

## EQUALITY BILL WOMEN'S NATIONAL COMMISSION POSITION PAPER COMMITTEE STAGE HOUSE OF LORDS

### About the Women's National Commission (WNC)

The Women's National Commission (WNC) is an advisory non-departmental public body that represents the views of over 550 partners, representing some eight million women. It was established in 1969 as the 'official independent advisory body giving the views of women to Government'. The WNC is the only national organisation representing the views of women. Further information about our work is available at [www.thewnc.org.uk](http://www.thewnc.org.uk).

This paper gives the collective views of WNC partners and Commissioners about the Bill. WNC partners are made up of both national, regional and local organisations as well as individual women. The WNC is largely funded by Government but is independent in its views.

The Women's National Commission (WNC) warmly welcomes the Equality Bill as important as it aims to strengthen Equality Law for example by:

- Introducing a new public sector duty to consider reducing socio-economic inequalities
- Placing a new single Equality Duty on public bodies
- Using public procurement to help eliminate inequality
- Banning age discrimination outside the workplace in the provision of goods, facilities and services.
- Introducing gender pay and equality reports
- Extending the scope of positive action
- Strengthening employment tribunals
- Protecting carers from discrimination

WNC believes this Bill is a necessary step in the right direction. International instruments like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) mean that the global context for women has changed. In particular, a key recommendation of the CEDAW Committee calls on Governments to develop a comprehensive strategy to implement CEDAW.

Multiple identities are the norm but must, importantly, also recognise differences. This has particular resonance for WNC who, whilst aiming to represent the interests of 51% of the population, also recognises those multiple and diverse identities of the women that make up that 51%.

WNC welcomes measures covering transparency on pay, stronger procurement and positive action.

## Key WNC Concerns

This paper covers the following provisions in the Bill:

- **Purpose clause**
- **Part 1 - Socio-economic duty**
- **Part 2 – Equality – key concepts**
  - Clause 13, Carers
  - Clause 14, Dual discrimination
  - Clause 15, 36, 37 Disability
  - Clause 17, 73-76 Pregnancy and maternity provisions Clause
- **Part 5 - Work**
  - Clause 73-6, Pregnancy and maternity equality
  - Clause 78, Gender pay and equality reports
- **Part 6 Education**
  - Clause 85 (10), Harassment
- **Part 9 – Enforcement**
  - Clause 123, Employment Tribunals
- **Part 11 – Advancement of Equality**
  - Clause 148-56, Public sector duty
  - Clause 148, Religion or belief
  - Clause 154, Procurement
  - Clauses 157-8, Positive action
- **Part 14 – General exceptions**
  - Clause 195, Age discrimination also Clause 4, 28

### 1. Purpose clause

WNC feels that a ‘purpose clause’ at the beginning of the Bill to state the goals and fundamental principles of the Bill would be an important and useful tool for those applying the law in practice; would help to prevent misinterpretation of the legislation; and thereby serve to strengthen protection for all groups. This clause should be framed by key human rights conventions like the CEDAW Convention.

### 2. Part 1 - Socio-economic Duty

WNC welcomes the Government’s proposal to require key public bodies like local authorities and NHS bodies to consider socio-economic disadvantage in the planning, spending, monitoring and delivery of the services they provide helping to reduce health inequalities. WNC believes that socio-economic disadvantage is one of the causes of inequality and discrimination. By enabling public authorities to tackle the root causes of inequality and deprivation, a socio-economic duty would help social mobility, health outcomes and life-chances. This is particularly relevant to women who are more likely to be living in poverty, working part time and who have lower incomes than men.

## **Part 2 – Equality: key concepts**

### **3. Clause 13, Carers**

It is currently illegal to discriminate against someone because they are 'linked' or 'associated' to a person who is of another sexual orientation, race, religion or belief.

WNC welcomes plans in the Bill to extend the current law to protect *all* equality grounds to include age, disability, sex and gender reassignment. WNC partners welcome this new provision as it is particularly relevant for carers, for example, where an employer would not be able to refuse a woman a promotion because she looks after an elderly relative. However, WNC has concerns that carers of non-disabled children will not be protected.

### **4. Clause 14, Dual Discrimination**

This new provision for dual discrimination fills a gap in the law for people who experience discrimination *because of a combination* of characteristics and enables claims of direct discrimination because of a combination of two relevant protected characteristics.

The WNC is satisfied that the vast majority of these cases concern direct discrimination and that this new Clause 14 has been based on careful consideration of commissioned evidence, the consultation process and discussions with interested parties. Whilst WNC feels that protection against multiple and indirect discrimination is ideal, WNC have looked carefully at this and feel it is a progressive, effective and proportionate remedy.

### **5. Clause 15, 36, 37, Disability**

The Bill will make it easier for disabled people who live in homes with communal areas (for example hallways and stairs) to use these areas and it will place a responsibility on landlords and managers of residential properties to make reasonable alterations for disabled people.

The Bill will make it unlawful to knowingly treat a disabled person in a particular way which amounts to poor treatment, unless the treatment can be shown to be justified. WNC partners welcome the positive measures in the simplification and consistency that the Bill offers.

## **Part 5 - Work**

### **6. Clause 73-76, Pregnancy and maternity provisions**

WNC welcomes the clarification of the pregnancy and maternity provisions and to make it unlawful to treat a woman unfavourably because of pregnancy/maternity. The Bill will make it clear that it is unlawful to require breastfeeding mothers and their babies of up to six months old to leave a public place (applicable in England and Wales).

WNC supports this clarification but is aware that in Scotland, the Breastfeeding etc Scotland Act 2005 already protects breastfeeding mothers with babies up to the age of two years, not six months. The World Health Organisation (WHO) recommend

exclusive breastfeeding until a child is six months old but that women should continue breastfeeding their children until they are two years old.

WNC would welcome an extension of the legislation to two years to bring it into line with WHO guidelines and also to be consistent with Scottish legislation.

## 7. Clause 78, Gender Pay and Equality Reports

After nearly forty years of the Equal Pay Act, the gender pay gap remains at 22.6% and higher both for part time workers and in the **private sector**. We know from the EHRC that in the financial sector, there are gender pay gaps of up to 60%. Despite improvements, particularly in the public sector, the situation overall is not improving, the fragmentation and disorganisation of the labour market makes data difficult to access and, therefore, equal pay difficult to advance. Furthermore, progress in the public sector has been constrained by historic sexist pay systems that should have eradicated pay privilege among men, but in many cases remains. Again, without pay audits, it is difficult for employees to access the information they need to challenge these historic systems. Equal pay has been further compromised by a reluctance to bear the full costs of women's historic underpayment, with all that implies not only for pay but also for pensions and other benefits.

WNC welcomes inclusion in the Bill of the power to require reporting on the gender pay gap by employers with 250 or more employees. The Government will not bring this into effect until 2013 and only then if sufficient progress on reporting has not been made. WNC believes this should come sooner.

There are many challenging factors that account for the gender pay gap. The gender pay gap is complex and encompasses many factors besides pay discrimination; including differences in men and women's labour market experiences; skills and education; occupational segregation; lack of quality part-time work; historical culture and gender-stereotyping. It therefore requires action on many fronts and WNC recognises that not all of these can be solved by the introduction of equal pay audits, eg equal pay audits do not tackle the fundamental cause for lower-paid or part-time women, particularly those with caring responsibilities. WNC recognises however, that they are a vital pre-condition.

Because of all these factors, the WNC is aware that there is a considerable difference of view on the introduction of pay audits. It is clear that equality cannot be tackled if it is hidden and equal pay audits would solve an important part of the problem. WNC supports pay audits as a minimum condition and encourages Government to take action as soon as possible.

Secrecy clauses: WNC also supports the proposal within the Equality Bill to ban secrecy clauses that prevent employees discussing their pay with colleagues. This will serve to promote transparency which is essential to make employers look again at their pay structures.

Hypothetical comparators: Equal pay is the only area of discrimination law where claimants have to identify an actual comparator in the same employment who is treated differently. WNC supports hypothetical comparators in principle. This would ensure that legal action could be taken in workplaces where there was an all-female workforce but women were being paid less than men in other workplaces doing comparable work for more money.

## Part 9 - Employment tribunals

### 8. Clause 123, Employment tribunals

The Equality Bill will allow Employment Tribunals to make recommendations in discrimination cases which benefit the whole workforce and not just the individual who took the claim forward. This will help to prevent similar types of discrimination happening in the future. WNC welcomes this; it should ensure that employers do not repeat discriminatory acts or practices.

Equal pay is one of the most complex areas of legislation. Specialist employment tribunals involving the intervention of experts and judges and panel members with specialist training will help ensure a fair and proper hearing. There is also a strong argument for introducing Employment Tribunal rules that stipulate that panels judging sex discrimination claims include at least one woman member.

Trade Union Equality Representatives: WNC supports trade union equality representatives having a statutory right to time off for training and to carry out their duties. Trade union equality reps do a great deal to assist employers in developing good practices on diversity and equality. They also provide advice and assistance to employees where discrimination has occurred, using their specialist knowledge and experience.

Representative actions: The WNC supports the concept of representative actions as a means of speeding up equal pay claims and taking the pressure off individual women who often do not have the confidence to pursue claims against their employers, even if they are represented by unions. Unequal pay is often systemic rather than individual, requiring an overhaul of an entire pay system, not just compensation to a few brave individuals.

## Part 6 - Education

### 9. Clause 85(10), Harassment in schools

This clause would allow schools to discriminate against current or potential pupils on grounds of gender reassignment, religion or belief or sexual orientation.

The WNC is concerned about this omission and the messages it sends. WNC recognises that perpetrators are not only fellow pupils, but also teachers and others in positions of power. This omission runs counter to the Bills overall intention to harmonise and strengthen protection for each equality strand. WNC disagrees with this exclusion and urges Government to include express prohibition on harassment on grounds of sexual orientation and religion or belief in services, premises and education.

## Part 11- Advancement of Equality

### 10. Clause 148- 56, Public Sector Duty

There are currently three separate equality duties on public bodies: on race, disability and gender. The Equality Bill will bring these duties together and extend them to cover sexual orientation, religion or belief, pregnancy and maternity explicitly, and gender reassignment in full. If the Bill receives Royal Assent next spring, the Government expects to bring the new single equality duty into force in 2011 or before

that if the Regulations specify an earlier start date. The Regulations will be laid after the General Election. As there is currently little detail on the face of the Bill, there could be latitude in terms of what the new duties will require. The Bill will give Ministers power to repeal the existing duties so until the new Regulations are commenced there could be a period where there are no regulations in force. It is hoped that the Bill will be amended or measures will be introduced to ensure that the existing Regulations remain in place until the new ones are commenced.

WNC welcomes this harmonisation but feels strongly that the beneficial aspects of the gender duty must not be lost as it provides a legislative framework for women to hold public bodies to account. This is particularly important for vulnerable women, for example, women in public institutions such as women in prison, women with mental health problems and women with learning disabilities as well as older women to ensure that councils and public authorities are responsive to the needs of an ageing population. Also, WNC Partners believe the duty provides a potentially powerful instrument to address the marginalisation of women who suffer multiple discrimination, particularly if utilised more effectively by engaging women at a local level to determine how the duty can be best applied.

WNC believes that the category of gender will always be problematic as **women will invariably make up the majority across all the equalities strands or grounds.**

It also should be acknowledged that attention to individual strands serves to dilute the collective representation of women. It is therefore, vital that a gender perspective is prominent across all the grounds, both in the Bill's clauses and its associated regulations and guidance. We welcome strong and clear EHRC guidance on this. The fact that there are few, if any, perceived penalties for non-compliance with the Gender Equality Duty means that organisations and bodies are not encouraged to take the proper process to the end conclusion. WNC partners feel these penalties should be strengthened. **WNC feels it is necessary to preserve gender impact assessments and WNC partners call for more effective and widespread awareness-raising of their importance and the proper procedures to achieve their full effectiveness.**

The proposal for regulations is that “public bodies should *demonstrate* how they have taken into account evidence of the impact on equality.” Gender impact assessments and the Gender Equality Duty have set the bar much higher for gender equality nationally and internationally; and laudably, the CEDAW Committee see it as a world class model. Uniquely, it enables many ordinary women to see how national and local decisions are made in a truly transparent and democratic way, empowering them to engage directly in decisions that affect their everyday lives. There is concern that under new proposals the onus will be taken away from public bodies to demonstrate equality and will be placed on individuals to question the outcome. We therefore believe that the EHRC needs more powers to enable this to work properly alongside a remit to report back to Parliament, similar to that of the Health and Safety Executive. The extensive experience in Northern Ireland points to the importance of focus, and powers to deliver on, both process and outcomes.

Whilst, clause 148(1)(b) refers to the “need to advance equality of opportunity”. **WNC and partners feel strongly that progress under the current gender duty must not be lost under the Single Equality Duty. The Single Equality Duty needs to focus on *equality of outcome*, otherwise it will result in a gender-neutral approach that actually disadvantages women.** A differentiated/personalised approach to meeting different needs would achieve this.

Whilst Clause 148(5) states “Compliance with the duties in this section may involve treating some persons more favourably than others,” there is still a widespread misconception that equality means ‘treating everyone the same’. Partners tell us this approach is already being applied to the funding of third sector women-only services and having a highly detrimental effect.

We note that clause 148(2) states “A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard” to the Equality Duty. WNC supports this and would welcome clarity that all references to public authorities and public services should include those carrying out public service functions, for example, the out-sourced and contracted-out services that so many women now work in.

## 11. Clause 148, Religion or belief

Clause 148 of the Bill states that a public authority must, in the exercise of its functions, have due regard to the need to:

- i. Eliminate unlawful discrimination, harassment or victimisation
- ii. Advance equality of opportunity between people who share a protected characteristic and people who do not share it: and
- iii. Foster good relations between people who share a protected characteristic and people who do not share it.

We have heard from many WNC partners that whilst supporting the first ‘limb’ of the Duty (‘eliminate unlawful discrimination, harassment or victimisation’) in relation to all equality strands or ‘protected grounds’, they have concerns about the inclusion of religion or belief in the second and thirds limbs (‘advancing equality of opportunity’ and ‘fostering good relations’).

They state that it is not always clear whether *disadvantage* (as distinct from *discrimination*) is due to religion or other factors.

There is concern in particular from the violence against women sector, that the Duty as currently worded, could be detrimental to women’s services and health education for girls. In short, women from religious backgrounds could be treated differently from other women experiencing abuse and there are reservations that public authorities could prioritise a religious ethos over women’s safety or access to essential sexual or reproductive services.

We understand that there is no requirement on organisations carrying out public functions to promote particular religions or belief systems and in fact doing so may run counter to the Duty. However, Partners have also told us that they feel the Duty could lead to the active promotion of religion and belief in Britain.

Partners did not want women to get a “second class service” because of their religion and felt that religion and belief should not subsume gender equality. Women told us that this is something that can affect all women from all different backgrounds. Partners were clear that the spokespeople for some religious and community groups do not speak for the women in these communities.

They also highlighted the need for clear, simple language so that authorities do not compromise gender equality due to fear of an accusation of discrimination on other grounds. Partners also felt that sex equality is a more fundamental right than protection of religious beliefs which they felt were often used to misuse power.

In conclusion, WNC does not welcome the inclusion of religion and belief in the second and third limbs in the Equality Bill. However, if it remains, there is a need for a clear statement or clause to ensure certain equality strands have primacy over religion and belief.

## **12. Clause 154, Procurement**

The public sector spends £175 billion a year on goods and services which means that the public sector can use procurement's significant potential as a way of promoting equality and good equal pay practice. Authorities can do this already for ethnic minorities, disabled people and women. The new Single Equality Duty will extend this to cover age, sexual orientation, gender reassignment and religion or belief.

WNC feels it is essential that there is a requirement for public authorities and to use procurement positively to promote equality. We note there will be further consultations on the specifics of how it will work.

In particular, WNC partners tell us that provisions on procurement vary between public bodies dramatically. Good practices include training for contractors, workforce profiling, tender questions on equality, and performance management of contractors. In other areas procurement teams are not aware of the duty and ask suppliers to have 'a tick-box equal opportunities statement,' if that.

We would therefore welcome clear direction on what compliance might look like.

## **13. Clause 157- 8, Positive action**

WNC fully supports measures in the Bill on positive action so that, for example, employers can take into account under-representation of disadvantaged groups when choosing between two equally qualified candidates. WNC recognises that the processes of interviews are equally important to ensure good outcomes under positive action.

WNC would also like to see positive action being used more widely to support targeted training and skills programmes for women where they are failing to get more senior posts through a lack of relevant qualifications or skills. Partners would welcome further work in this area.

The Equality Bill will extend the use of women-only shortlists until 2030 or any other measures to enable political parties to take positive measures to encourage candidates from the under-represented groups. The WNC particularly welcomes this given the low figures of particularly BME women represented in Parliament. WNC also welcomes this proposal to enable service providers to take positive action measures to meet the particular needs of disadvantaged groups.

## **Part 14 - General Exceptions**

### **14. Clause 195, Age discrimination**

The number of people aged 65 and over is set to increase rapidly over the next two decades. The majority in this category will be women in the lower income brackets and WNC feels that the Bill has the ability to release their potential and energy.

Age discrimination also contributes to a much longer-term inequality of outcome, as women in lower income brackets generally have reduced opportunities to contribute to pensions and savings, with spending on family normally taking priority over preparation for retirement.

Age discrimination in the workplace was banned in 2006 and this Bill seeks to extend that to make it unlawful in the provision of services or public functions against someone aged 18 or over, which WNC warmly welcomes. The proposal aims to stop age discrimination where it has negative or harmful consequences so it does not intend to take away flu vaccinations for over 65s or freedom bus passes for older people, for example. It should also mean that if an older person asks for travel insurance, for example, their age should not be used arbitrarily, but should reflect the underlying risk they present.

The Bill will not provide for the abolition of the default retirement age, but the Government are committed to reviewing in 2010 – having brought this forward from 2011. Partners feel that given the impact on women of life-long lower wages, pension contributions, savings, etc, they support removing the default retirement age and use the opportunity presented by the Bill to address the national default retirement age to prevent employees losing a job because of their age. There is an increasing awareness, which Government feels should be promoted, to ask to stay on after retirement age.

WNC would welcome a clear timetable for implementation of the age equality elements of the Bill.

There is no proposal currently in the Bill to extend this provision on age discrimination to under 18's because protection for this age group is already provided by other legislation and anti-discrimination provisions are not the best way to meet children's needs.

**For more information, please contact [wnc@communities.gsi.gov.uk](mailto:wnc@communities.gsi.gov.uk) .**

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