

# Proposal for Extending Protection from Discrimination in Goods, Facilities, Services, Premises and Public Functions to Religion or Belief.

## Final Regulatory Impact Assessment January 2005

### ***Purpose of Regulatory Impact Assessment***

This Regulatory Impact Assessment is to accompany the Equality Bill and is intended to provide an assessment of the proposed extension of protection against discrimination in the provision of goods, facilities, services, premises and public functions on the grounds of religion or belief<sup>1</sup>.

### ***Background***

#### *Religious Discrimination in the UK*

2. A Home Office report<sup>2</sup> on religion discrimination in 2001 highlighted that:

*“A consistently higher level of unfair treatment was reported by Muslim organisations than by most other religious groups”*

*“Hindu, and especially Sikh, organisations also reported a relatively high level of unfair treatment”*

*“Christian organisations in the survey were generally much less likely to report unfair treatment than Muslims, Sikhs and Hindus”*

*“Black-led Christian organisations, and those representing groups such as Mormons and Jehovah’s Witnesses, were much more likely to report unfair treatment in nearly all walks of life than organisations in what are often seen as the ‘mainstream’ Christian traditions.”*

*“Pagans and people from ‘New Religious Movements’ also complained of open hostility and discrimination”*

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<sup>1</sup> It is envisaged that a similar approach to defining religion or belief will be adopted to that taken by the Employment Equality (Religion or Belief) Regulations 2003, whereby any interpretation of religion, or belief, is not defined explicitly in the statute.

However, the accompanying Explanatory Notes will provide guidance that this includes widely recognised religions, and beliefs founded in a religion, if they attain a certain level of cogency, seriousness, cohesion and importance, provided the beliefs are worthy of respect in a democratic society and are not incompatible with human dignity. Belief does not include any philosophical or political belief unless it is similar to a religious belief. This would include atheism and humanism, but exclude support for a political party or a football team. The provision protects not just those who have an avowed religion or belief but also those who may potentially be discriminated against because of their perceived religion.

<sup>2</sup> Weller, P, A Feldman and K Purdam (2001) Home Office Research Study 220: Religious Discrimination in England and Wales. London: Home Office.

3. A Home Office report<sup>3</sup> on religion in England and Wales highlighted that:

*"most respondents [of the nationally representative survey] thought the government and employers were doing enough with regard to protecting religious rights and respecting religious customs. However, a sizeable minority of young people and women affiliated to Muslim and Sikh faith communities thought that the government was doing too little."*

#### *The Current Legislative Framework*

4. The Race Relations Act 1976 makes it unlawful to discriminate against a person in the provision of goods, facilities, services or premises and in the area of public functions on the grounds of their race. While the Race Relations Act was drafted to provide protection against discrimination on grounds of colour, race, nationality and racial or ethnic origin, subsequent case-law has seen this protection extended to Jews and Sikhs who have been recognised as specific ethnic groups. However, this protection does not currently extend to other religions or beliefs, such as Christians and Muslims.

5. Since December 2003 it has been unlawful under the Employment Equality (Religion or Belief) Regulations, to discriminate against a person on the grounds of their religion or belief in the area of employment and vocational training. The regulations prohibit direct discrimination<sup>4</sup>, indirect discrimination<sup>5</sup>, victimisation<sup>6</sup> and harassment<sup>7</sup> on the grounds of a person's religion or belief.

6. The government consultation pamphlet 'Strength in Diversity: Towards a Community Cohesion and Race Equality Strategy' asked for views on what further effectively targeted policies the government could pursue to tackle specific disadvantage experienced by different sections of the population. On 7 July 2004 the Home Secretary said in his speech to the Institute of Public Policy Research<sup>8</sup> that:

*"Already, in the consultation on the cohesion and race strategy we have heard strong voices calling for the extension of the protection against religious discrimination. This is an important part of the debate and I hope that people will take the opportunity of making these points in the context of the ongoing consultation on the CEHR [Commission for Equalities and Human Rights]"*.

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<sup>3</sup> Maria O Bernie (2004) Religion in England and Wales: findings from the 2001 Home Office Citizenship Survey

<sup>4</sup> In other words where a person, on grounds of religion or belief, is treated less favourably than other people.

<sup>5</sup> In other words where a provision, criterion or practice has the effect of putting people of a particular religious belief at a disadvantage which cannot be justified as a proportionate means of achieving a legitimate aim.

<sup>6</sup> In other words where someone is treated less favourably than others because, for example, they have complained of discrimination or have assisted someone else in a complaint

<sup>7</sup> In other words where a person engages in unwanted conduct that has the purpose or effect of humiliating

<sup>8</sup> New challenges for race equality and community cohesion in the 21<sup>st</sup> century.

7. The formal Government response to the Strength in Diversity consultation exercise, “Improving Opportunity, Strengthening Society”, was published on 19 January. In it the Government acknowledges that:

“There has been growing concern that discrimination on the grounds of religion or belief has become more widespread. In 2003, the Government provided protection from discrimination in the areas of employment and vocational training... we now intend to go further, by introducing legislation against religious discrimination in the provision of goods and services.”

8. The government’s formal response to the White Paper consultation exercise ‘Fairness for All: A new Commission for Equality and Human Rights’, was published in November 2004. Several of the 433 responses that were received, for example from the Commission for Racial Equality, the 1990 Trust, and the Runnymede Trust, commented upon the unequal level of discrimination protection afforded to the various groups<sup>9</sup> that it is proposed that the CEHR will protect. The Commission for Racial Equality’s response concludes by urging the government to consider ways of quickly offering equal protection to those who suffer discrimination due to their religion or belief. The response of the Muslim Council for Britain emphasises the need for urgent and immediate action to provide greater protection to British Muslims from discrimination and disadvantage.

9. The government believes that there is a strong case for addressing the unequal level of discrimination protection afforded to Jews and Sikhs under race relations legislation; and persons of other religions or beliefs, in the area of the provision of goods, facilities, services and premises and public functions. Throughout the consultation process that supported the development of the religious discrimination proposals, representatives of various faith groups, and indeed the CRE itself, confirmed that they were aware of instances where discrimination had occurred due to the victim’s religious beliefs. However, because there has been no formal mechanism for pursuing claims of religious discrimination in the provision of goods, facilities, services and premises before, specific details of these incidents have gone unrecorded. This Partial Regulatory Impact Assessment addresses the impact that affording protection from discrimination in these areas on the grounds of religion or belief would have upon the business, public and voluntary sectors.

### **Options**

10. In effect, there are three options for dealing with religious discrimination.

- Do nothing. This is not seen as tenable. Sikhs and Jews are currently covered by the RRA and many followers of other religions are becoming increasingly anxious to see that anomaly rectified, particularly as they feel increasingly more susceptible to potential discrimination in the provision of GFS. Recent government comments on their commitment to see this anomaly rectified have reinforced the expectation that a widening of the protections to other religions and beliefs is imminent.
- Partial extension of protection to cover some other religions or beliefs. This would be technically possible, but would not be practical. The

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<sup>9</sup> These groups are men and women; people of different racial groups; people of different sexual orientations; people of different religions or beliefs; people who have, either temporary or permanent, disabilities; people of different ages; people who intend to undergo, are undergoing, or have undergone gender re-assignment.

inherent costs of implementation would remain the same, yet the anomaly where followers of some religions or beliefs would be protected but not others would be exacerbated.

- Extend the protection from religious discrimination in line with these proposals. The preferred option. This would address the loophole and provide equitable protection to followers of all religions and beliefs from religious discrimination in the provision of GFS. This is the option that is being pursued. However, even within this option there are further considerations, such as whether to extend the provisions to cover harassment, what exceptions may need to be made and whether a duty to promote religious equality needs to be included.

11. In tackling discrimination against someone on the grounds of his/her religion or belief, the government intends to take a similar approach, where appropriate, in some areas of the provision of goods, facilities, services and premises to that taken in race legislation in the provision of goods, facilities, services and premises<sup>10</sup>; and in religion or belief legislation in the areas of employment and vocational training regulations<sup>11</sup>.

12. The protection being extended is intended to capture direct discrimination, indirect discrimination and victimisation. In essence, the new legislation will make it unlawful for businesses or public functions to discriminate in the provision of the goods, facilities or services that they would normally offer to someone on the grounds of his or her religion or belief. For instance:

- A butcher who sold only traditional forms of meat would be unable to refuse to sell these meats to someone on the grounds of their religion or belief. However, the butcher would not normally be regarded as being discriminatory if he refused requests to stock either halal or kosher meat.
- A kosher butcher would be unable to refuse to sell these meats to someone on the grounds of their religion or belief. However, the butcher would not normally be regarded as being discriminatory if he refused requests to stock halal meats.

### *Exceptions*

13. There will be a number of exceptions to allow discrimination on the grounds of religion or belief in a number of areas. Examples are:

- in the area of education - faith schools will be exempted from the provisions, as will the areas of collective worship, the national curriculum and religious education
- in the area of charities - to allow charities with a religion or belief ethos to discriminate in the provision of services
- acts done in the interests of national security

### *Religious Harassment*

14. The balance between free speech and affording protection from religious discrimination becomes more delicate under the wider concept of harassment that

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<sup>10</sup> Race Relations Act 1976

<sup>11</sup> Employment Equality (Religion or Belief) Regulations 2003.

was introduced in the employment regulations<sup>12</sup>. Under the new concept, harassment is interpreted as unwanted conduct that has the purpose or effect of violating a person's dignity or creating an intimidating, degrading, humiliating, or offensive environment for a person. This definition is so broad that it could capture remarks on religion or belief that one person may find offensive, but others would regard as perfectly legitimate critical, but not offensive, comment. The government believes that, while the more inclusive definition is proper in the environment of employment and vocation training, it is not appropriate in the context of provision of goods, facilities and services.

15. However, it would be totally inappropriate to accept that there should ever be situations where public authorities could act in a way that would create an intimidating, degrading, humiliating or offensive environment, and so the statutory concept of harassment will be applied to public functions.

#### *Public duty to promote religious equality*

16. The government does not believe that it is appropriate at this time to place public authorities under a general duty to eliminate unlawful discrimination, and promote equality of opportunity and good relations between persons of different religions or beliefs. However, it is intended to introduce measures that mirror sections 19B-F of the Race Relations Act 1976, which place a prohibition on public authorities discriminating in the carrying out of their functions.

17. The government does not believe that the model for tackling discrimination on the grounds of religion or belief, requiring providers of goods, facilities, services and premises to consider making reasonable accommodation or adjustment<sup>13</sup> is appropriate.

#### *Health Impact*

18. There is no anticipated health impact of these proposals.

#### *Rural Impact*

19. There is no anticipated differential impact on rural areas.

#### *Environmental Impact*

20. There is no anticipated impact of these proposals on the environment.

### **Costs and benefits**

21. For the costs and benefits assessed below it must be kept in mind that all organisations are currently bound by race relations legislation not to discriminate in the provision of goods, facilities, services and premises to anyone on the grounds of

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<sup>12</sup> The result of enacting into UK law in 2003 the European directive to prohibit harassment on the grounds of race or religion in employment and race in the provision of goods and services.

<sup>13</sup> Hepple, B. and Choudhury, T., (2001) Tackling Religious Discrimination: Practical Implications for Policy-makers and Legislators. Home Office Series 221. London: Home Office

their race, and this would already include Jews or Sikhs, who have been considered under case-law to be specific racial groups. This means that, for example, under the existing race relations legislation a halal butchers is unable to refuse to sell their meats to Jews and Sikhs. It is highly likely that when seeking to be compliant with this existing legislation, organisations would have developed their policies and services in a manner that does not discriminate on the grounds of anyone's religion or belief, not just those explicitly covered. As such, this is a change that improves the consistency of the current framework rather than adding extra burdens on business. This assumption means new actions taken by organisations as a result of extending protection to all religious groups are likely to be fewer than could otherwise be expected.

22. Because of the overlapping nature of religious discrimination with racial discrimination, it is difficult to establish the extent of the likely impact.

23. The Home Office report on religious discrimination<sup>14</sup> suggests that discrimination is much more likely to be experienced in areas like employment (which is already covered by legislation).

### **Benefits**

24. There will be benefits to individuals as they will be afforded greater protection to access goods, facilities, services and premises. However most of the benefits of this legislation are non-quantifiable. The proposed change is designed to maintain the desired levels of equity and fairness in our society. This does not necessarily have any economic benefits, but it certainly has value.

25. The Home Secretary in his speech to the Institute of Public Policy Research, 7 July 2004 said that:

*“Focusing on race alone will not achieve full equality of opportunity. We know that people can be and are discriminated against because of their religion, and that people of faith cannot have full access to jobs, careers and services if their religious needs are ignored or overridden.”*

26. This change would be in line with business and public sector best practise, and as such should only formalise what many good businesses and public authorities already do. Whilst there may be revenue benefits to business associated with selling their goods, facilities, services etc. to a wider market (i.e. by serving all customers, regardless of religion or belief) these are difficult to estimate, and the impact of this change is likely to be marginal.

### **Costs**

#### *Implementation Costs*

27. It is intended that costs of producing guidance for the religious discrimination proposals will be fully met from within the budget of the CEHR. However, should it be decided that the religious discrimination provisions should be introduced in advance of the CEHR being established, then the Home Office may need to

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<sup>14</sup> Weller, P, A Feldman and K Purdam (2001) Home Office Research Study 220: Religious Discrimination in England and Wales. London: Home Office.

produce and distribute separate introductory guidance. It has been estimated that the cost of production and distribution of this guidance would be approximately £50k.

28. There will be costs for businesses and the public sector associated with the assimilation of new guidance. The amount of time spent reading the guidance, and number of providers spending time doing so, is dependent upon the current equal opportunity policies of that business and the awareness of the managers towards these issues. It is envisaged that each provider will have access to a leaflet that explains the changes.

29. Providers may be expected to spend about 5 minutes in total reading and understanding the guidance. Medium to large employers, those with 50 or more employees, will be expected to take about 10 minutes, in reading and considering the guidance, as some of them may produce and disseminate guidance for personnel departments and other staff. These are assumptions of the average time spent dealing with the guidance. We will have a more accurate estimate as to the average time it will take to deal with the guidance when the legislation is drafted.

30. There are about 4.11 million businesses in Great Britain<sup>15</sup> of which about 4.07 million are small employers or businesses with no employees at all. Just over 32,000 are medium to large employers.

31. The costs for each small business will be about £2<sup>16</sup>. The total cost for small businesses of reading and understanding the guidance is, therefore, about £8.6 million<sup>17</sup>. The cost for medium to large business is about £4<sup>18</sup> each. The total cost for medium to large businesses of reading and understanding the guidance is, therefore, about £0.158 million<sup>19</sup>.

32. There are approximately 43,000 public authorities, of which around 2,000 could be classed as larger authorities (central government, local government authorities, higher and further education authorities, strategic health authorities etc.) Reading time for the guidance will be the same as for the private sector so the total cost to larger public authorities is expected to be about £7,843 and about £80,394 for the smaller authorities.<sup>20</sup> The total anticipated cost to public authorities would therefore be approximately £88,237.

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<sup>15</sup> There are 3,989,435 small businesses (businesses with less than 50 employees) and a further 31,950 small to large business (businesses with over 50 employees) in the UK, Source: Small Business Service Statistic (SBS) 2003. There were 88,940 small businesses and 925 medium to large businesses in Northern Ireland in 2000 (the latest date for which regional information is available), Source: SBS 2001

<sup>16</sup> In 2003, the average hourly pay, excluding overtime, of a manager / administrator (1 digit SOC90) was £19.58. Source: New Earnings Survey (NES) 2003 from NOMIS. The cost of a manager's time includes non-wage costs and overheads, estimated at 30% of wage costs. The hourly cost of a manager's time is, therefore, £19.58 x 1.3 = £25.45. Five minutes reading and understanding the guidance is, therefore, about £2.12.

<sup>17</sup> The cost for small firms is 4.07m x £2.12 = £8.623m

<sup>18</sup> £25.45 divided by 6 = £4.24

<sup>19</sup> The cost for medium to large firms is 37,290 x £4.24 = £158,110

<sup>20</sup> In 2003, the average hourly pay, excluding overtime, of a manager / administrator in the public sector was £18.10. Source: New Earnings Survey (NES) 2003 from NOMIS. The cost of a manager's time includes non-wage costs and overheads, estimated at

33. The total costs for awareness and guidance could, therefore, be up to £8.76 million in the first year and thereafter minimal. It can also be argued that the cost will be even lower if the guidance can be issued concurrently with the new Commission of Equality and Human Rights as it will be part of a larger more co-ordinated package of information. These are one-off implementation costs, with no ancillary ongoing costs attached.

34. Medium to large employers who provide customer service training or guidance for staff are already likely to have reflected upon the protection afforded to Sikhs and Jews in this area in the Race Relations Act. We assume that employers update this information regularly and these changes will be incorporated into these routine revisions. Small to medium size enterprises are less likely to have procedures associated with these issues. Although most will recognise that this change is in line with best business practice, apart from managers reading the awareness raising literature small businesses are unlikely to provide formal training or guidance for staff as a result of these changes.

#### *Costs to Service Providers*

35. The essence of the protection would be to require providers of goods, facilities, services and premises, not to refuse to sell to customers on the grounds of their religion or belief. This will not extend to any requirement to consider reasonable accommodation or adjustment, so it is expected that the costs to providers will be negligible.

#### *Costs to police/CPS*

36. The only criminal offence to be included in the new provisions relates to a summary offence when someone knowingly misleads a publisher into placing a discriminatory advert. This offence currently exists in relation to racial and sex discrimination and has never been used. We therefore assess that the costs to the police and CPS will be negligible, if any

#### *Cost to the Courts*

37. There may be a cost associated with extra court cases as a result of the proposal. All cases will be heard in district/sheriff courts. Before the full RIA is completed we will estimate the number of expected cases<sup>21</sup> and associated average costs per case with this new provision. Our current estimate is that no more than 10 cases per year will require court action

38. Such cases are likely to be very small in number for two reasons:

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30% of wage costs. The hourly cost of a manager's time is, therefore, £18.10 x 1.3 = £23.53. Five minutes reading and understanding the guidance is, therefore, about £1.96 The cost to smaller authorities would be £1.96 x 41,000 = £80,394. Ten minutes reading time would cost about £3.92 so the cost to larger authorities would be about £7,843.

<sup>21</sup> In 2003 the Commission for Racial Equality received 417 applications for assistance (508 in 2002) and disposed of 16 cases ( 28 in 2002) in relation to non-employment cases. This include cases related to goods, facilities, services, and premises, and all other non-employment cases. Source: CRE Annual Report.

- As explained earlier organisations are already legally bound under race relations legislation to not discriminate in this manner against Jews and Sikhs.
- Many individuals who might claim discrimination on the grounds of religion or belief, may also be able to claim on the grounds of race (e.g. many Muslims of Bangladeshi origin could claim they are being discriminated against because they are Bangladeshi.)

### *Small Firms' Impact Test*

39. Small to medium size enterprises are less likely to have procedures associated with these issues. However, most would recognise that avoiding discrimination in any form is in line with best business practice. We do not anticipate that any action will be needed beyond the familiarisation already identified under costs earlier in this document. Apart from managers reading the awareness raising literature, small businesses are unlikely to provide formal training or guidance for staff as a result of these changes. The Small Business Service do not believe these proposals will have a significant adverse effect on small firms.

### ***Equity and Fairness***

40. Currently only two religious groups, Jews and Sikhs, are legally protected from discrimination in goods, facilities, services and premises. It is within the interests of race equality and fairness to expand this protection to other religions or beliefs. A full Race Equality Impact Assessment has been prepared for the overarching Equality Bill and this contains a section specifically on religious discrimination.

### ***Competition Assessment***

41. Due to the minimal effect on the private sector, there will be no effect on competition. A competition filter has been performed that indicated a competition assessment is unnecessary.

### ***Enforcement and Sanctions***

42. Enforcement will normally be through the courts (ie county court or sheriff court), with the proposed new Commission for Equality and Human Rights<sup>22</sup> being the enforcement body with powers to mount formal investigations and serve non-discrimination notices.

### ***Consultation***

43. The government consultation pamphlet 'Strength in Diversity: Towards a Community Cohesion and Race Equality Strategy' asked for views on what further effectively targeted policies the government could pursue to tackle specific disadvantage experienced by different section of the population. The responses are in the process of being collated and analysed.

44. The Home Secretary also invited people to take the opportunity to make their points in the context of the consultation on the Fairness for All: A new Commission

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<sup>22</sup> Fairness for All: A New Commission for Equality and Human Rights White Paper

for Equality and Human Rights' consultation exercise. The government intends to publish a formal response to the consultation exercise.

45. In support of these proposals we undertook a series of targeted consultations. Over twenty religion/faith groups were consulted, including representatives from all of the major religions, together with various civil liberty organisations, such as Amnesty, Liberty and Justice. We also met with the CBI and the TUC. However, the Small Business Service declined an offer of direct consultation as they thought that the proposals would not have a significant impact upon them. The RIA has been discussed with the LGA and DCA.

***Monitoring and Review***

46. The proposed new Commission for Equality and Human Rights<sup>23</sup> will have a responsibility to keep the working of discrimination legislation and the Human Rights Act under review. It will need to consider the effectiveness and adequacy of statutes and, if necessary, make recommendations or proposals to the relevant Secretary of State for changes.

***Summary and recommendation***

47. After listening to concerns expressed in the course of the Strength in Diversity consultation upon a community cohesion and race equality strategy, and considering the responses to the Fairness for All White Paper, the government believes it is appropriate to extend protection against discriminate in the provision of goods, facilities, services or premises on the grounds of religion or belief.

48. The government believes that the nature of the protection envisaged will have a minimal impact upon costs for the business, public and voluntary sectors.

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs

Signed by the responsible Minister

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Date.....

Fiona Mactaggart

Parliamentary Under Secretary for Race Equality, Community Policy and Civil Renewal.

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<sup>23</sup> Fairness for All: A New Commission for Equality and Human Rights White Paper

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