Equality Bill:
Assessing the impact of a multiple discrimination provision

A discussion document

April 2009
## CONTENTS

1. **PREFACE** ............................................................................................................. 4  
   Who this document is aimed at ................................................................. 4  
   Purpose of this document ........................................................................... 4  
   Territorial extent ......................................................................................... 4  
   Duration of this discussion ......................................................................... 4  
   How to respond .............................................................................................. 4  
   Queries about this document ....................................................................... 5  
   Freedom of Information ................................................................................... 5  

2. **OVERVIEW** ...................................................................................................... 8  

3. **MULTIPLE DISCRIMINATION: CONTEXT** ...................................................... 10  
   What is multiple discrimination? ................................................................. 10  
   Discrimination Law Review consultation and response ............................. 12  

4. **MULTIPLE DISCRIMINATION: PROPOSED EQUALITY BILL PROVISION** ................................................................. 14  
   Direct discrimination .................................................................................. 14  
   Enabling claims combining two protected characteristics ..................... 16  
   Single claims alongside multiple claims .................................................... 16  
   The comparator ............................................................................................ 17  

5. **MULTIPLE DISCRIMINATION IN PRACTICE** .................................................. 20  
   Complying with the law .............................................................................. 20  
   Defending a claim ....................................................................................... 20  
   Preparing for change in the law ................................................................. 23  
   Costs and benefits ...................................................................................... 24  

6. **CONCLUSIONS** .................................................................................................. 28  

7. **ANNEX A**  
   Response Proforma ......................................................................................... 30  

8. **ANNEX B**  
   Proposed Multiple Discrimination Clause ................................................. 38  

9. **ANNEX C**  
   Impact Assessment .......................................................................................... 40
1. **PREFACE**

**Who this document is aimed at**

1.1 This document is aimed at businesses, organisations and individuals who may be affected by the introduction of any provision providing protection from multiple discrimination.

**Purpose of this document**

1.2 This document is seeking views on the implications of including in the Government’s Equality Bill a provision to protect people from multiple discrimination.

1.3 In this document, we explain what we mean by multiple discrimination.\(^1\) We ask specific questions about how this provision would operate in practice and its impact. We welcome your views on the draft Impact Assessment which is included as Annex C to this document.

1.4 In the light of the feedback received, we will decide whether protection from multiple discrimination should be introduced and if so how, taking into account progress on the Equality Bill currently being considered by Parliament.

**Territorial extent**

1.5 The proposal in this document would extend to England, Wales and Scotland.\(^2\)

**Duration of this discussion**

1.6 The closing date for receipt of comments is **Friday 5th June, 2009**. Any views received after this date may not be reflected in our analysis.

**How to respond**

1.7 When responding to this document please use the proforma at Annex A. An electronic version will be available to download from the GEO website at: www.equalities.gov.uk.

\(^1\) Defined for the purposes of this document as intersectional multiple discrimination based on a combination of two protected characteristics.

\(^2\) Northern Ireland is responsible for its own discrimination legislation.
1.8 Responses should be sent to:

By email  multiplediscresponses@geo.gsi.gov.uk

By post  Multiple Discrimination Responses
Government Equalities Office
9th Floor, Eland House
Bressenden Place
London
SW1E 5DU

1.9 Please ensure that your response reaches us by Friday 5th June, 2009.

1.10 When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of a larger organisation please make clear who the organisation represents and, where applicable, how the views of members were assembled.

Queries about this document

1.11 Any queries about the subject matter of this document should be made to Sharmin Choudhury by:

Telephone:  0207 944 0616
Email:   multiplediscqueries@geo.gsi.gov.uk

1.12 We have sent this document to a various people and organisations who we believe have an interest in the proposal. Please do share this document with, or tell us about, anyone you think will want to respond.

Freedom of Information

1.13 The information you send us may need to be passed to colleagues within the Government Equalities Office and may be published in a summary of responses received.

1.14 All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000 (FOIA) or the Data Protection Act 1998. If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality
1.15 The Government Equalities Office will process your personal data in accordance with the Data Protection Act 1998 and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.
2. OVERVIEW

2.1 People are complex, with many different characteristics making up who they are. This can affect the opportunities open to them and how they are treated. Discrimination law protects people from being treated less favourably because of certain characteristics – their sex, race or because they have a disability, for example. These are known as protected characteristics. The Equality Bill, currently before Parliament, will strengthen and streamline discrimination law to help us achieve a more equal society in which people are treated fairly and can fulfil their potential, regardless of their protected characteristics.

2.2 It is increasingly recognised that some people can experience particular disadvantage because of a combination of protected characteristics. For example, black women, or men of a particular religion, can face discrimination and disadvantage because of stereotyped attitudes or prejudice relating to particular combinations of protected characteristics. This type of discrimination is known as multiple discrimination.

2.3 We want the law to provide appropriate protection against the harmful discrimination people experience. Currently, the law does not always provide a remedy for an individual who experiences multiple discrimination. In these circumstances, the person experiencing multiple discrimination has to bring separate claims in respect of each protected characteristic, such as his or her race or sex. However, this can cause problems in practice because it can be difficult, complicated and sometimes even impossible, to prove such claims. Moreover, they do not reflect the discrimination which actually occurred.

2.4 For example, a black woman passed over for promotion by her employer because she is a black woman would have to bring separate claims of discrimination because of race and sex. However, she may not succeed in either claim if her employer can show that black men and white women are not discriminated against and therefore her treatment was not because of race or sex alone.

2.5 In our Discrimination Law Review consultation document Framework for Fairness: Proposals for a Single Equality Bill for Great Britain we recognised that many people were calling for protection from multiple discrimination and asked for evidence of people having difficulties in securing legal redress in such circumstances. Many of those responding to the consultation highlighted the problems the absence of any multiple discrimination provision can cause and argued that the law must be changed to reflect the fact that people’s identities are multi-

---

3 Available at www.equalities.gov.uk/PDF/DLRConsultation.pdf
faceted and complex. In our white paper *Framework for a Fairer Future – The Equality Bill*⁴ and in the Government’s response to the consultation, *The Equality Bill – Government Response to the Consultation*⁵, we committed to exploring further how we could allow multiple discrimination claims to be brought without making the law overly complex and therefore placing an undue burden on those with responsibilities under the law.

2.6 Having examined the evidence available, we have developed a proposal for protection from multiple discrimination which would enable claims to be brought combining two protected characteristics, to be implemented in or after April 2011.

2.7 Many businesses and organisations have excellent records on diversity. For these employers and service providers, introducing this new provision for multiple discrimination will have minimal impact, as they wouldn’t need to do anything differently than they currently do to ensure that they do not discriminate. Introducing this new provision will provide protection for some of the most vulnerable within our society. By limiting the grounds which can be combined to two, we are extending protection to the vast majority of those who need it, without placing an undue burden on businesses or making the law unduly complex.

2.8 In this document, we describe how we consider this provision would operate in practice and, in particular, we seek your views on the potential impact of our proposals. In the light of the feedback received, we will decide whether protection from multiple discrimination should be introduced and if so how, taking into account progress on the Equality Bill currently being considered by Parliament.

---

⁴ Available at www.equalities.gov.uk/PDF/FrameworkforaFairerFuture.pdf
⁵ Available at www.equalities.gov.uk/PDF/EqBillGovResponse.pdf
3. **MULTIPLE DISCRIMINATION: CONTEXT**

*What is multiple discrimination?*

3.1 Discrimination law protects people from being treated less favourably because of certain characteristics. These are known as protected characteristics. The protected characteristics are defined within the recently introduced Equality Bill\(^6\) as:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

3.2 As discrimination law currently stands, if someone is discriminated against because of one of these protected characteristics – because they are black, or because they have a disability, for example, they can bring a claim for discrimination in the appropriate tribunal or court. The Equality Bill, currently before Parliament, maintains this approach and will streamline the law to make it easier for people to understand their rights and responsibilities and strengthen it to drive forward progress towards a fairer and more equal society.

3.3 We know, however, that people are complex, with many different characteristics which make up who they are and which can affect the opportunities open to them and how they are treated. While the existing law gives most people the protection they need from discrimination, for some of the people who experience multiple discrimination, it is difficult, complicated and sometimes impossible to get a legal remedy. It is this gap in the law which we are seeking to address.

3.4 Multiple discrimination occurs when a person is treated less favourably because of more than one of the protected characteristics. It can be experienced in several different ways, including:

- when someone is treated less favourably because of more than one protected characteristic, but each type of discrimination occurs on separate occasions. A remedy for these circumstances exists within current discrimination law;

\(^{6}\) Equality Bill (2009)
• when a person is treated less favourably because of more than one protected characteristic and, although the two forms of discrimination happen at the same time, they are not related to each other. For example, a lesbian experiences both homophobia and sexist bullying from her employer during the same incident. This is known as additive multiple discrimination. Existing discrimination law provides remedies for these circumstances;

• when the discrimination involves more than one protected characteristic and it is the unique combination of characteristics that results in discrimination, in such a way that they are completely inseparable. This often occurs as a result of stereotyped attitudes or prejudice relating to particular combinations of the protected characteristics. This is known as intersectional multiple discrimination and the current discrimination law framework does not always provide a remedy for it.

3.5 This document focuses on the gap in discrimination law in relation to intersectional multiple discrimination. The Government committed to exploring how to close this gap while ensuring that the law can be understood by everyone and easily applied in everyday situations – by small businesses as well as large firms, by small schools and large government departments.

3.6 We are therefore seeking comments on how this protection from multiple discrimination would work in practice, to ensure that our proposed approach is practical and does not impose disproportionate burdens on those who have responsibilities under the law.

**Multiple discrimination in practice:**

An older woman applies for a job as a driving instructor. She is unsuccessful in her application and when she asks for feedback she is told it that she was not appointed to the job because it is not considered a suitable job for an older woman. The driving school advises her that they don’t think she would have the strength and agility needed to grab the steering wheel or be able to brake quickly. She is told that she would have been appointed had she been an older man or a younger woman.
Discrimination Law Review consultation and response

3.7 The Discrimination Law Review consultation document *A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain*,\(^7\) recognised the need for a more joined-up approach to tackling different types of discrimination. One of the reasons for establishing the Equality and Human Rights Commission was to help achieve this by providing a single source of expertise across all strands of discrimination.

3.8 The consultation also identified a level of public concern that the current law does not adequately protect those who experience multiple discrimination. We therefore asked for further evidence about instances of multiple discrimination to inform our approach.

3.9 There were nearly one hundred responses to the question about multiple discrimination. Generally, there was a large volume of support for additional protection against multiple discrimination – from equality organisations, trade unions, voluntary bodies and legal organisations. Business respondents were most concerned about not making the law significantly harder for employers to understand. This is one of the key issues on which we are now exploring further.

3.10 The white paper *Framework for a Fairer Future – The Equality Bill*\(^8\) identified situations where people are discriminated against because of a particular combination of characteristics and stated that we wanted to allow discrimination claims to be brought on combined multiple grounds.

3.11 *The Equality Bill – Government Response to the Consultation*\(^9\) summarised the responses we had received and concluded that there may be a gap in the way in which the law is framed in relation to multiple discrimination. We therefore committed to further work to explore a remedy which would not unnecessarily complicate the law or place disproportionate burdens on businesses and organisations.

3.12 Accordingly, we have developed a proposal to provide protection from, and a remedy for intersectional multiple discrimination, which we outline in Chapter 4. In Chapter 5 we describe how we expect this provision to operate in practice and seek your views on the impact of our proposals.

\(^7\) Available at www.equalities.gov.uk/PDF/DLRConsultation.pdf
\(^8\) Available at www.equalities.gov.uk/PDF/FrameworkforaFairerFuture.pdf
\(^9\) Available at www.equalities.gov.uk/PDF/EqBillGovResponse.pdf
Multiple discrimination in practice:

A bus driver does not allow a Muslim man onto her bus, claiming that he could be a “terrorist”. While it might not be possible for the man to demonstrate less favourable treatment because of either of the protected characteristics of religion or belief or sex if considered separately, a multiple discrimination claim will allow him to show that the reason for his treatment was the specific combination of being a man and a Muslim, which resulted in him being stereotyped as a potential terrorist.
4. MULTIPLE DISCRIMINATION: PROPOSED EQUALITY BILL PROVISION

4.1 The provision we considering for inclusion in the Equality Bill would enable multiple discrimination claims to be made in relation to direct discrimination only and combining no more than two of the following protected characteristics:

- Age
- Disability
- Gender reassignment
- Race
- Religion or belief
- Sex
- Sexual orientation.

4.2 An example illustrating what a clause accomplishing the above proposals might look like can be found in Annex B.

4.3 It is not proposed to allow the protected characteristics of pregnancy and maternity or marriage and civil partnerships to be included in a multiple discrimination claim. Claims involving pregnancy and maternity do not require a comparator and it is therefore difficult to see how pregnancy and maternity could be included in a multiple discrimination claim in combination with another characteristics which does require a comparator. There was no evidence presented during the consultation that demonstrated that pregnancy and maternity or marriage and civil partnership, when combined with any other characteristic caused problems in practice. In most cases involving these characteristics, appropriate remedy can be found under a single strand claim, for example, sex or sexual orientation.

4.4 Included within the illustrative clause in Annex B is a power which would enable the exclusion of claims from the scope of this provision in specified circumstances. This would allow further provisions to be made to, for example, clarify the standard of evidence required.

**Direct discrimination**

4.5 Our proposal is to limit multiple discrimination claims to direct discrimination only and not to enable claims of indirect discrimination or harassment to be brought on a combined basis. Any claims of victimisation would be considered under other provisions as they relate to specific protected acts, rather than relating to protected characteristics.
4.6 Limiting the provision to direct discrimination reduces the risk of unnecessarily complicating the law or placing an undue burden on businesses. Extending the provision to include indirect discrimination or harassment could be unwieldy for businesses and organisations trying to ensure they comply with a multiple discrimination provision, and there was little evidence presented through the consultation that there was a need for such protection.

4.7 In a multiple discrimination case, the same legal test would apply as in single strand direct discrimination claims. Therefore, for a claim to be successful, the claimant must be able to demonstrate that less favourable treatment occurred because of the combination of characteristics alleged. It must also be the case that the treatment the person experienced is prohibited for each protected characteristic individually, but it won’t be necessary for a claim in relation to each characteristic included in the combination to be successful if brought separately. For example, if a person claims that they were discriminated against because of a combination of disability and sex, the allegedly less favourable treatment they received would have to be prohibited in respect of each of the protected characteristics of disability and sex. The claimant must be able to demonstrate that the reason for the treatment was the combination of the protected characteristic of disability and sex together, but need not be able to succeed if the claims were brought as disability and sex discrimination separately.

4.8 Where any other provision within the Equality Bill makes allegedly less favourable treatment lawful in relation to either of the characteristics in the combination, for example where an exception or justification applies, then the less favourable treatment would not be unlawful under the multiple discrimination provision. For example, if a man who is denied a job in a domestic violence refuge alleges this denial is because he is a disabled man, but in fact it is because being a woman is an occupational requirement for the post, a multiple discrimination claim combining sex and disability would not succeed – because, based on the facts, there was no disability discrimination and the sex discrimination was not unlawful.
Multiple discrimination in practice:

A black woman is charged £100 for insurance. As white men are only charged £50 for the same insurance, she alleges this is multiple discrimination because of the combination of sex and race. By pointing to a white woman who also pays £100, or a black man who pays £50, the insurance company is able to demonstrate that the difference in premium is entirely due to sex, not race. Insurance companies can lawfully set different premiums for women and men – provided the exception applies in this case, the claim of multiple discrimination cannot succeed. The less favourable treatment is because of sex and an exception makes the sex discrimination lawful.

Enabling claims combining two protected characteristics

4.9 Evidence indicates that enabling claims combining two of the protected characteristics would provide protection for the vast majority of people who experience multiple discrimination. Following our request for evidence of multiple discrimination, the examples presented by stakeholders focused for the most part on combinations of two characteristics. This has been reinforced by the evidence provided The Citizens Advice Bureau which showed that, out of the 13,000 clients who visited them between April 2008 and December 2008, 1,072 (8%) presented with two grounds of discrimination. Only a further 119 of these 13,000 clients presented with three or more grounds. This indicates that the large majority of cases would be addressed by allowing multiple discrimination claims combining two protected characteristics and the benefit of extending protection to combinations of three or more protected characteristics would be marginal.

4.10 This approach has the advantage of avoiding the undue complexity which might result from permitting combinations of more protected characteristics.

Single claims alongside multiple claims

4.11 We propose to enable single strand claims to be brought alongside multiple discrimination claims. If an individual wishes to bring a claim of multiple discrimination, he or she would not be prevented from also bringing separate claims for each of the protected characteristics included in the combined claim, if he or she chose to do so. In developing these proposals we considered whether to prevent claimants from bringing single strand claims alongside multiple discrimination claims, but concluded that it was neither compatible with

---

10 These figures relate to the number of separate protected characteristics each client presents with and are not figures relating to intersectional discrimination.
EU law nor appropriate in policy terms to do so. In practice this means that, if someone believes they have experienced age and gender reassignment discrimination but is unsure whether it is a matter of multiple discrimination or single-strand discrimination, he or she would be able to bring a multiple discrimination claim combining age and gender reassignment alongside a claim for age discrimination and a claim for gender reassignment discrimination.

4.12 Because there is currently no provision enabling claims of multiple discrimination, we believe that the majority of people experiencing multiple discrimination separate their claims into single strand claims and seek a remedy through this route. So, for example, a person experiencing disability and race discrimination will currently bring separate claims of disability discrimination and race discrimination, or will bring only one or other of those claims (whichever is the strongest). This means that the impact of enabling claims of multiple discrimination to be brought would be to add one more claim to the existing cases already being brought.

4.13 Our proposal is therefore likely to lead to an increase in the number of claims made and this is reflected in our Impact Assessment (attached at Annex C). However, the process for hearing these claims would, in most cases, consider the same circumstances and the same evidence as for existing single strand claims. Therefore, in the example above, the evidence underpinning the disability and gender reassignment multiple discrimination claim would relate to the same set of circumstances as the separate claims for disability discrimination and gender reassignment discrimination.

**Question A**

*Do you agree with the conclusions set out in our Impact Assessment on the impact of multiple discrimination claims being brought alongside single strands claims? If not, please explain why.*

**The comparator**

4.14 In discrimination law, courts and tribunals use comparators to test whether the reason for the claimant's treatment was because of a protected characteristic. A comparator is a person who does not share the same protected characteristic as the person claiming they have been discriminated against but whose circumstances are not materially different. For example, if a woman claims that she has been treated less favourably because she is female, a court or tribunal would compare her treatment to that of a man in the same or similar circumstances to determine whether sex was the reason for the treatment.
4.15 Comparators can be actual or hypothetical. If there is no-one in the same or similar circumstances without the protected characteristic at issue, then the courts and tribunals may develop a hypothetical comparator to help them decide whether unlawful discrimination has occurred. Although dealing with hypothetical comparators can be more difficult, they are nonetheless necessary in some discrimination claims. Businesses and organisations, courts and tribunals are therefore already familiar with their use.

4.16 Under our proposal, courts and tribunals could continue to use either actual or hypothetical comparators when considering a multiple discrimination claim. The comparator would be someone who does not have either of the protected characteristics the combination of which the claimant alleges was the reason for the less favourable treatment. For example, if a fifty-year old man claims he was discriminated against because he is an older disabled person, the comparator would be a (actual or hypothetical) non-disabled younger person in the same or similar circumstances.

4.17 We recognise that in cases of multiple discrimination, it could be more difficult to find an actual comparator – someone who does not share either of the characteristics at issue. This could be a particular issue in small businesses where the size of the organisations could make it difficult to identify someone who is in the same or similar circumstances without either of the characteristics in the combination. However, by limiting to two the number of protected characteristics which can be combined, we consider that it would be more likely that an actual comparator can be found than if a greater number of characteristics could be combined. In the cases where a hypothetical comparator is needed, this would not be too difficult for businesses or organisations, or for courts and tribunals, to use in considering a case

**Question B:**

*To what extent would you agree that the process for identifying a comparator in a multiple discrimination case would be no more onerous than in a single strand case?*
Multiple discrimination in practice:

A black woman is passed over for promotion to work on reception because her employer thinks black women do not perform well in customer service roles. Because the employer can point to a white woman and a black man who have equivalent qualifications and experience and who have been appointed to the role in question, the woman needs to be able to compare her treatment on grounds of race and sex combined to demonstrate that she has been subjected to less favourable treatment because of her employer’s prejudice against black women.
5. MULTIPLE DISCRIMINATION IN PRACTICE

Complying with the law

5.1 No business or organisation wants to fall foul of the law. To comply with existing discrimination law, businesses and organisations must ensure that they operate in a non-discriminatory way – basing their personnel or service-related decisions on rational reasons rather than irrelevant or discriminatory ones. If an employer wants to ensure that they are not discriminating unlawfully in their decision-making, they need to be clear, for example, that the reasons for appointing staff relate to their suitability for the role and not irrelevant factors such as their race or sex.

5.2 The same considerations would apply in minimising the risk of liability for multiple discrimination. The fact that such claims would be possible does not mean that employers and service providers would need to consider each and every combination of protected characteristics which could arise in order to ensure they do not discriminate unlawfully. If organisations are treating their employees and service users fairly, making decisions based on relevant considerations and not on the basis of prejudice or irrelevant factors, then they can be confident that they will not fall foul of the law.

Question C:

Do you agree that the proposed multiple discrimination provision would not require businesses or organisations to do more to avoid the risk of a multiple discrimination claim than they need to do to avoid single-strand claims? If not, please explain why. Please include what additional steps you think they would need to take.

Defending a claim

5.3 Under existing discrimination law, if a business or organisation faces a claim of unlawful discrimination, it will first fall to the person making the allegation to prove to a court or tribunal, the facts from which it can infer that discrimination took place (for example, showing that less favourable treatment occurred). The burden of proof then shifts to the business or organisation to disprove discrimination, usually by providing a non-discriminatory reason for its actions. For claims relating to employment, this might be supported by, for example, the notes following an interview, evidence that the individual did not meet the requirements for the job or evidence of lack of relevant experience for a promotion.
5.4 The burden of proof will operate in the same manner for multiple discrimination claims. If the person bringing the claim can show that they were treated less favourably, it will be for the employer or service provider to demonstrate the non-discriminatory reason why he or she treated the claimant as they did.

5.5 We would expect many businesses would continue to use tools such as competency frameworks, job evaluation systems, scoring matrixes and other models of good practice to continue to ensure that their employment practices do not treat any individual less favourably than another for immaterial reasons.

5.6 Given that the significant majority of cases of multiple discrimination are already being brought as single-strand claims (as discussed above), and that in most cases the facts of the case will be the same for both the single strand and the multiple discrimination claim, we consider that in most circumstances a multiple discrimination claim would not take significantly longer to consider in a court or tribunal than a single strand claim.

5.7 We do, however, recognise that including any additional claim within a case will lengthen the courts or tribunal process. Our discussions with tribunal judges suggest that the addition of a multiple discrimination claim may increase the time needed to consider the case, particularly if new evidence was brought relating to the interaction of the strands, but the view was that this would not be a significant increase in time. The introduction of a multiple discrimination provision should not hamper the efficient case management by the courts and tribunals when considering a discrimination case. Indeed, courts and tribunals may find it more procedurally more efficient to be able to consider a multiple discrimination claim, where previously this option was not available.

5.8 Should a court or tribunal find in favour of the claimant in a multiple discrimination claim, compensation and damages will be calculated in the same manner as for single-strand claims of discrimination based on actual loss and injury to feeling. There is no provision for aggravated damages or increased compensation for multiple discrimination. If the claimant is successful on more than one claim (including a claim of multiple discrimination), the award will be calculated in the same manner as for more than one successful single-strand claim, again based on actual loss and injury to feeling. Because there can be no double recovery, the award for more than once successful claim must reflect the actual loss and injury to feeling as a result of the less favourable treatment as a whole, rather than, for example, just doubling the award which would have been made in a single successful claim.
Question D:

Do you agree with our assessment of how businesses and organisations will defend a claim, and the costs which will be incurred when they face a claim of multiple discrimination? If not, please set out how you think the process would differ from that described and how this would impact on the costs incurred.

Question E:

Do you agree with our conclusion that multiple discrimination claims should not take significantly longer to consider than single strand claims? Do you agree with our conclusions that cases including a multiple discrimination claim would not take significantly longer to consider than cases only including single strand claims? If not, can you describe how much longer you think these claims and cases would take to consider, and what would be the subsequent cost burden to businesses or organisations from this additional time in courts and tribunals?

5.9 When faced with an allegation of unlawful discrimination, an organisation defending a claim will often seek to identify an individual within their business or organisation who has the same protected characteristic as the person who is alleging discrimination, but whose treatment has been different. For example, if a person claims that they did not get a promotion because they are over fifty, being able to point to someone else in the same business who is also over fifty and did get a promotion provides compelling evidence that the employer does not discriminate because of age.

5.10 Businesses and organisations will want to be able to do the same when faced with claims of multiple discrimination and point to someone in the same circumstances with the same combination of protected characteristics as the claimant. For example, if someone alleges that they were singled out for redundancy because they are a fifty-year old disabled person, the employer would want to point to someone else of a similar age and with a disability but who was not made redundant to show that they were not discriminating because of the combination of characteristics alleged.

5.11 As with the actual comparator issue discussed in paragraph 4.17, in defending a claim it may be that smaller organisations with smaller workforces may have more difficulty finding a person within their organisations with the same combination of protected characteristics which have formed the basis for the multiple discrimination claim. However, by limiting to two the number of protected characteristics which can be combined, we consider that businesses will not find this
significantly harder than under current discrimination law when seeking someone with the same protected characteristic at issue in a single strand claim. As with any claim of discrimination, the maintenance of accurate records clearly reflecting the rationale for a decisions will contribute to a strong defence.

**Question F:**

In defending claims of discrimination, do you/does your organisation rely on evidence of the treatment of similar people within your organisation? How would a multiple discrimination provision impact on this? By limiting the combination to 2 characteristics, we consider that this approach will still be feasible. Do you agree?

**Question G:**

To what extent does your business or organisation demonstrate good practice in making sure you can point to the non-discriminatory reasons for the decisions your business or organisation makes?

**Question H:**

Do you consider there would be any other costs involved in defending a claim of multiple discrimination which we have not addressed in these questions? Can you please describe what these costs might be?

**Preparing for change in the law**

5.12 To ensure that businesses and organisations have time to familiarise themselves with any new multiple discrimination provision and prepare for what it would mean in practice, we would not bring any such provision into force before 2011.

5.13 As with all the changes in the law, clear guidance on any multiple discrimination provision would need to be published at least three months in advance of implementation to give organisations time to understand and prepare for the new legislation. We recognise that small businesses and organisations tend to respond differently to changes in the law than larger organisations. Larger firms benefit from established human resources departments which can support them through change, ensuring that the business is kept abreast of the changes in legislation. Smaller businesses or organisations are often without the support of human resources specialists or lawyers but are nonetheless keen to ensure that they remain compliant with the law and seek information and guidance from different sources. We will, therefore, work closely with the Equality and Human Rights
Commission and others to support the development and dissemination of appropriate and accessible guidance.

5.14 We recognise costs are incurred for businesses and organisations when familiarising themselves with the law. We anticipate that businesses and organisations would spend up to two hours familiarising themselves with this provision and have included an estimation of these costs within our Impact Assessment.

**Question I:**

*What would guidance need to cover to ensure that businesses and organisations are clear about what they do and do not need to do? What do you consider to be the best way to communicate this guidance? Where would you normally go to for guidance on discrimination law?*

**Question J:**

*Do you think our estimation of up to two hours for familiarisation time is correct? If not, how much time do you think would be needed to familiarise your business or organisation with this provision? Can you please describe the size of your business or organisation?*

**Costs and benefits**

5.15 In assessing the impact of the proposed provision, we have looked at evidence from a range of international and national sources. Available data and research has been used to develop the Impact Assessment at Annex C. The Impact Assessment sets out how many cases it is anticipated will be brought which will include a multiple discrimination claim, and what the financial impact of this will be. These calculations include analysis of how the introduction of a multiple discrimination provision would impact on the existing discrimination caseload, how many new cases would be anticipated and how the processes and outcomes of case management would be affected. This analysis is focused on assessing the financial impact of introducing the new multiple discrimination provision described in Chapter 4.

5.16 **Existing cases:** As stated above, it is likely that, currently, anyone who feels that they have been subjected to multiple discrimination would seek a remedy under existing discrimination legislation by bringing separate single-strand claims. Without a multiple discrimination provision in operation here or in other jurisdictions, it is difficult to be certain of the total number of multiple discrimination claims which would be brought under a new provision. Examination of international evidence has shown that, while there is no similar
intersectional multiple discrimination provision in operation, there is provision for additive multiple discrimination in some jurisdictions such as the Republic of Ireland, where claims of additive multiple discrimination shall be investigated as a single case. We have used this evidence as the basis of our assessments.

5.17 The Impact Assessment concludes that the large majority of people who have experienced multiple discrimination are already bringing cases relying on single strand claims. Using available evidence, we estimate that 7.5% of the existing discrimination cases would include a claim for multiple discrimination if such a provision were available.

**Question K:**

*We think that the large majority of people who have experienced multiple discrimination are already bringing cases relying on single strand claims and if a provision for multiple discrimination were introduced, that approximately 7.5% of the existing caseload would include a claim for multiple discrimination. From your business or organisation’s perspective, do you agree with this conclusion? If not, please explain why.*

5.18 **New Cases:** Even though we consider the vast majority of cases which would include a multiple discrimination claim are already being brought as single-strand claims, the intention of this provision is to protect those experiencing multiple discrimination for which there is currently no remedy. With this in mind, we anticipate a small increase in the number of new cases brought. The Impact Assessment estimates that there would be a 10% increase in the number of cases brought, which equates to approximately 250 new cases per year. We have included this figure within the Impact Assessment, together with an estimate of how this increase will impact financially on businesses and organisations.

5.19 In calculating the numbers of existing cases where we think that a multiple discrimination claim would be included, and the number of new cases which would be brought, we have used the highest calculations available. This means that the impact calculated is likely to be higher than the reality. We have taken this approach to ensure that when assessing the impact of our proposals we believe that we are reflecting the greatest possible potential burden to individuals, businesses or organisations.
Question L:

Were protection from multiple discrimination to be introduced, we estimate that there would be a 10% increase in the number of cases brought. From your business or organisation’s perspective, would you agree with this conclusion? If not, please explain why.

5.20 It is common for businesses or organisations, when faced with a claim for discrimination, to consider whether to settle the case prior to it proceeding to a hearing. Businesses and organisations will consider the costs involved in defending the claim and the chances of an outcome in their favour when deciding whether to settle or proceed. With new provisions, it is anticipated that businesses and organisations may be more likely to settle due to greater uncertainty about success rates. However, ensuring that businesses and organisations have a good understanding of the new provision with sufficient time to prepare will reduce the risk of defendants settling cases because of uncertainty about the new provision. And over time, businesses and organisations should become more confident about defending claims. Nonetheless, based on the projected number of cases described in paragraphs 5.16-5.18, the Impact Assessment assumes that the number of businesses and organisations who would choose to settle cases which include a claim for multiple discrimination would be 20% greater than the proportion that currently settle discrimination cases (amounting to an additional 434 cases).

Question M:

We conclude that there is likely to be a 20% increase in the number of cases that include a multiple discrimination claim which businesses or organisations choose to settle. From your business or organisation’s perspective, would you agree with this conclusion? If not, please explain why.

5.21 The aim of our proposal is to protect people who experience multiple discrimination. However, we recognise that under any provision individuals can bring unmeritorious claims and this will be the case in relation to multiple discrimination as well. Such claims may be brought in good faith but where a lack of understanding leads to a multiple discrimination claim being incorrectly alleged. On the other hand, they could be vexatious claims, brought solely in an attempt to prompt settlement.

5.22 In assessing the impact of this new provision, we have considered the potential for unmeritorious claims. It is the intention that this provision
provides protection for those people who require it but we are keen to reduce the burden for businesses in managing these types of claims. We consider that the guidance referred to in paragraph 5.13 would support businesses and organisations in preventing, identifying and responding to these types of claims.

Question N:

How can we work with businesses and organisations to discourage unmeritorious claims of multiple discrimination?

Question O:

What can Government do, either through guidance or other means, to help individuals to understand their rights in relation to multiple discrimination?

Question P:

Can you please describe how you think a multiple discrimination provision would affect your business or organisation? Please indicate the size of your business or organisation when answering this question.

Question Q:

Do you consider that the proposed provision could have unintended consequences? If so, please explain what they are and how the risk could be reduced.

Question R:

What benefits could the proposed provision have for you or your organisation?

Question S:

Do you think the provision we are proposing would fill the gap we have described?
6. CONCLUSIONS

6.1 The introduction of protection from multiple discrimination is intended to provide protection for individuals who experience intersectional multiple discrimination, for which it is difficult, complicated and sometimes impossible to get legal protection or remedy. In considering the issue of multiple discrimination and in designing a remedy, we believe we have provided a solution to address the gap in the law without complicating the law or placing undue burdens on employers and service providers.

6.2 In developing this provision we have estimated the impact our proposal on individuals, businesses and organisations. Throughout this document we have sought your comments on the impact of our proposals. We will use your feedback to review and refine the Impact Assessment, and, in the light of the feedback received, we will decide whether protection from multiple discrimination should be introduced and if so how, taking into account progress on the Equality Bill currently being considered by Parliament.

6.3 Prohibiting multiple discrimination would strengthen protection against harmful discrimination and provide a remedy for some of the most vulnerable people in our society – people who are subject to prejudice and stereotypes because of a combination of protected characteristics they possess.

6.4 We now seek your views on what we believe is a forward-thinking provision which would establish our place as a world leader in the fight against harmful discrimination, without overcomplicating the law or placing undue burdens on businesses or organisations.
7. ANNEX A  Response Proforma

<table>
<thead>
<tr>
<th>RESPONDENT NAME:</th>
<th>ADDRESS:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ORGANISATION:</th>
<th>DATE:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>EMAIL:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

**DISCUSSION QUESTIONS**

<table>
<thead>
<tr>
<th>RESPONSE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

**Question A:**
Do you agree with the conclusions set out in our Impact Assessment on the impact of multiple discrimination claims brought alongside single strands claims? If not, please explain why.

**Question B:**
To what extent would you agree that the process for identifying a comparator in a multiple discrimination case would be no more onerous than in a single strand case?
**Question C:**

Do you agree that the proposed multiple discrimination provision would not require businesses or organisations to do more to avoid the risk of a multiple discrimination claim than they need to do to avoid single-strand claims? If not, please explain why. Please include what additional steps you think they would need to take.

**Question D:**

Do you agree with our assessment of how businesses and organisations will defend a claim, and the costs which will be incurred when they face a claim of multiple discrimination? If not, please set out how you think the process would differ from that described and how this would impact on the costs incurred.

**Question E:**

Do you agree with our conclusion that multiple discrimination claims should not take significantly longer to consider than single strand claims? Do you agree with our conclusions that cases including a multiple discrimination claim would not take significantly longer to consider than cases only including single strand claims? If not, can you describe how much longer you
think these claims and cases would take to consider, and what would be the subsequent cost burden to businesses or organisations from this additional time in courts and tribunals?

**Question F:**

In defending claims of discrimination, do you/does your organisation rely on evidence of the treatment of similar people within your organisation? How would a multiple discrimination provision impact on this? By limiting the combination to 2 characteristics, we consider that this approach will still be feasible. Do you agree?

**Question G:**

To what extent does your business or organisation demonstrate good practice in making sure you can point to the non discriminatory reasons for the decisions your business or organisation makes?

**Question H:**

Do you consider there would be any other costs involved in defending a claim of multiple discrimination which we have not addressed in these questions? Can you please describe what these costs might be?
**Question I:**

What would guidance need to cover to ensure that businesses and organisations are clear about what they do and do not need to do? What do you consider to be the best way to communicate this guidance? Where would you normally go for guidance on discrimination law?

**Question J:**

Do you think our estimation of up to two hours for familiarisation time is correct? If not, how much time do you think would be needed to familiarise your business or organisation with this provision? Can you please describe the size of your business or organisation?

**Question K:**

We think that the large majority of people who have experienced multiple discrimination are already bringing cases relying on single strand claims and if a provision for multiple discrimination were introduced, that approximately 7.5% of the existing caseload would include a claim for multiple discrimination. From your business or organisation’s perspective, do you agree with this conclusion? If not, please explain why.
**Question L:**

Were protection from multiple discrimination to be introduced, we estimate that there would be a 10% increase in the number of cases brought. From your business or organisation’s perspective, would you agree with this conclusion? If not, please explain why.

**Question M:**

We conclude that there is likely to be a 20% increase in the number of cases that include a multiple discrimination claim which businesses or organisations choose to settle. From your business or organisation’s perspective, would you agree with this conclusion? If not, please explain why.

**Question N:**

How can we work with businesses and organisations to discourage unmeritorious claims of multiple discrimination?
<table>
<thead>
<tr>
<th><strong>Question O:</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>What can Government do, either through guidance or other means, to help individuals to understand their rights in relation to multiple discrimination?</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Question P:</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Can you please describe how you think a multiple discrimination provision would affect your business or organisation? Please indicate the size of your business or organisation when answering this question.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Question Q:</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Do you consider that the proposed provision could have unintended consequences? If so, please explain what they are and how the risk could be reduced.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Question R:</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>What benefits could the proposed provision have for you or your organisation?</td>
<td></td>
</tr>
<tr>
<td><strong>Question S:</strong></td>
<td></td>
</tr>
<tr>
<td>----------------</td>
<td></td>
</tr>
<tr>
<td>Do you think the provision we are proposing would fill the gap we have described?</td>
<td></td>
</tr>
</tbody>
</table>

8. ANNEX B     Proposed Multiple Discrimination Clause

(1) A person (A) also discriminates against another (B) if, because of a combination of 2 relevant protected characteristics, A treats B less favourably than A treats or would treat a person who does not share either of those characteristics.

(2) The following are relevant protected characteristics.
   (a)  age;
   (b)  disability;
   (c)  gender reassignment;
   (d)  race;
   (e)  religion or belief;
   (f)  sex;
   (g)  sexual orientation.

(3) A does not discriminate against B by virtue of subsection (1) if, in consequence of any other provision of this Act, A’s treatment of B is not a relevant contravention.

(4) For the purpose of establishing a contravention of this Act by virtue of subsection (1), it does not matter whether, in relation to either of the combined characteristics, there is sufficient evidence to justify a finding that there has been a relevant contravention.

(5) Proceedings in respect of a contravention of this Act by virtue of subsection (1) may not be brought if subsection (6) applies.

(6) This subsection applies if.

   (a)  a provision of an enactment (including this Act) requires that, in circumstances to which the provision applies, proceedings in respect of a relevant contravention may be brought only in a specified court or tribunal, and

   (b)  in such circumstances, the court or tribunal does not have jurisdiction in respect of a relevant contravention relating to the other characteristic in the combination.

(7) A Minister of the Crown may by order specify other circumstances in which proceedings in respect of a contravention of this Act by virtue of subsection (1) may not be brought; and an order under this subsection may amend this section.

(8) A relevant contravention is a contravention of this Act by virtue of section 13 because of a characteristic in the combination.
9. ANNEX C Impact Assessment

Summary: Intervention & Options –

<table>
<thead>
<tr>
<th>Department /Agency: GEO</th>
<th>Title: Impact Assessment of Multiple Discrimination</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stage: Consultation</td>
<td>Version: 1</td>
</tr>
<tr>
<td>Date: 27 April 2009</td>
<td></td>
</tr>
</tbody>
</table>


---

**What is the problem under consideration? Why is government intervention necessary?**

The current domestic anti-discrimination framework has been criticised for preventing claims of multiple discrimination from succeeding because it forces claimants to separate their claims in respect of each protected characteristic and in some circumstances, it is impossible for the claims to be proven when considered separately.

As a result of this, a gap in current protection has been identified. For example, a black woman alleges discrimination on grounds of sex and race in applying for a job, requiring comparison with the treatment of a man (for the sex claim) and a person who is not black (for the race claim) and the employer can show that they employ both men and women within their workforce and that their workforce is racially diverse (warranting the conclusion that the treatment of the claimant was not on grounds of either sex or race). Therefore, he may evade liability even if his failure to appoint the claimant was discriminatory (on grounds of being a black woman, i.e., the combination of sex and race). While the current legislative framework provides a remedy for those who experience single strand discrimination, there is a gap for those who experience discrimination because of a combination of strands.

---

**What are the policy objectives and the intended effects?**

Our policy objectives are:

- to ensure that the law more accurately reflects the discrimination which people actually experience;
- to ensure that individuals who experience unlawful discrimination because of a combination of protected characteristics can bring a claim and achieve the appropriate remedy;
- to avoid unduly complicating the law or placing undue burdens on employers and services providers by placing limits on the number of protected characteristics and types of claims which can be combined.
What policy options have been considered? Please justify any preferred option.

Option 1 – do nothing.

Option 2 – allow multiple discrimination claims without any limitations on the type or number of claims and protected characteristics which can be combined.

Option 3 – allow multiple discrimination claims for direct discrimination and victimisation enabling claims of up to a maximum of three characteristics.

Option 4 – Final Proposal
Allow multiple discrimination claims restricted to direct discrimination and for a combination of 2 characteristics only. If the treatment would amount to victimisation under the Bill, it would be dealt with as victimisation and not under this provision. This is the preferred option as it would enable courts and tribunals, businesses and organisations to become familiar with this new area of discrimination law and ensure that the provisions work in practice and any complications that arise can be resolved before any further extension.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?
After implementation, and on an ongoing basis, by the Equality and Human Rights Commission.

Ministerial Sign-off
For SELECT STAGE Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

............................................................................................................. Date:
### Summary: Analysis & Evidence

<table>
<thead>
<tr>
<th>Policy</th>
<th>Option:</th>
<th>Description:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>COSTS</strong></td>
<td></td>
<td>Description and scale of <strong>key monetised costs</strong> by ‘main affected groups’</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>One-off (Yr)</th>
<th>Average Annual Cost (excluding one-off)</th>
<th>Total Cost (PV)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ANNUAL COSTS</strong></td>
<td>£0 (1)</td>
<td>£3,846,406 (10)</td>
<td>£31,989,041</td>
</tr>
</tbody>
</table>

**Other key non-monetised costs by ‘main affected groups’** Businesses and employers will need to familiarise themselves with multiple discrimination.

<table>
<thead>
<tr>
<th></th>
<th>One-off (Yr)</th>
<th>Average Annual Benefit (excluding one-off)</th>
<th>Total Benefit (PV)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ANNUAL BENEFITS</strong></td>
<td>£0 (1)</td>
<td>£2,132,829 (10)</td>
<td>£17,737,897</td>
</tr>
</tbody>
</table>

**Other key non-monetised benefits by ‘main affected groups’** These provisions will protect those who experience multiple discrimination but would otherwise be without an adequate remedy.

### Key Assumptions/Sensitivities/Risks
- We expect that around 7.5% of discrimination cases\(^{11}\) will include claims of multiple discrimination. The large majority of these claims are currently already being brought as single strand claims. We do not anticipate an increase in the overall number of cases, beyond the 10% increase below, but rather a change in the way 7.5% of the existing caseload are brought.
- We expect 10% more cases\(^{12}\) following the introduction of multiple discrimination provisions.

### Price Base Year & Time Period

<table>
<thead>
<tr>
<th>Net Benefit Range (NPV)</th>
<th>NET BENEFIT (NPV)</th>
</tr>
</thead>
<tbody>
<tr>
<td>£14,251,144</td>
<td>£ See Range</td>
</tr>
</tbody>
</table>

### What is the geographic coverage of the policy/option? | Great Britain |
### On what date will the policy be implemented? | April 2011 |
### Which organisation(s) will enforce the policy? | N/A |
### What is the total annual cost of enforcement for these | £ |

\(^{11}\) Over the last 3 years, an average of 7.5% of claims per year have been brought to the Irish Equality Tribunal with multiple grounds.

\(^{12}\) This figure is based on assumption as there is no available evidence of any kind, and no equivalent data of any kind, to indicate how many claims have not been brought due to lack of protection against multiple discrimination.
Does enforcement comply with Hampton principles? N/A
Will implementation go beyond minimum EU requirements? N/A
What is the value of the proposed offsetting measure per year? £
What is the value of changes in greenhouse gas emissions? £ 0
Will the proposal have a significant impact on competition? No

<table>
<thead>
<tr>
<th>Annual cost (£-£) per organisation</th>
<th>Micro</th>
<th>Small</th>
<th>Medium</th>
<th>Large</th>
</tr>
</thead>
<tbody>
<tr>
<td>Are any of these organisations exempt?</td>
<td>No</td>
<td>No</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)</th>
<th>Net Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Increase of £</td>
<td>Decrease of £</td>
</tr>
</tbody>
</table>

Key: Evidence Base
Options Identification

Option 1 was to do nothing. This option has been discounted because it would mean that individuals who experience multiple discrimination will continue only to be able to bring claims under separate protected grounds. These claims would not reflect the reality of discrimination. The gap in protection will continue to exist.

Option 2 was to allow claims to be brought for any type of prohibited conduct on any combination of the nine protected characteristics. This option was rejected because it is considered unlikely that a significant proportion of cases involving multiple discrimination would occur beyond a combination of two protected characteristics, and that enabling an unlimited combination of protected characteristics within a claim would be impracticable and a disproportionate response to the actual need. There is also no evidence that other prohibited conduct such as indirect discrimination and harassment requires a multiple approach in order to achieve a remedy.

Option 3 was to allow multiple discrimination claims with the possibility of combining up to 3 protected characteristics in any one claim. However, it is considered that enabling claims of up to 3 characteristics from the outset would prove unduly complex and burdensome for employers and service providers.

Option 4 [Final preferred proposal] is to allow combined multiple discrimination claims restricted to direct discrimination and for a combination of 2 characteristics only. If the treatment would amount to victimisation under the Bill, it would be dealt with as victimisation and not under this provision. This would enable courts and tribunals, businesses and organisations to become familiar with this new area of discrimination law. It would ensure protection against the vast majority of potential incidents of multiple discrimination.
Multiple discrimination claims would not cover indirect discrimination or harassment as there is no evidence that the existing approach prevents individuals from achieving a remedy in these instances.

Secondly we will exclude pregnancy/maternity from multiple discrimination claims as pregnancy and maternity do not require a comparator. It is difficult to see how pregnancy and maternity could be included in a multiple discrimination claim in combination with another protected characteristic which does not require a comparator. There was no evidence presented during the consultation that demonstrated that pregnancy and maternity or marriage and civil partnership, when combined with other characteristics, cause problems in practice.

Thirdly, we will exclude marriage and civil partnerships from multiple discrimination claims because it is considered that such claims are likely to be brought on a sex or sexual orientation basis respectively in any case.

Claims relating to discrimination arising from disability and the duty to make reasonable adjustments will be excluded from this new provision which will encompass direct discrimination only because of disability. This will not preclude claimants from bringing a discrimination arising from disability claim and/or failure to make reasonable adjustments claim alongside a separate claim for multiple discrimination.

Finally, equal pay claims will also be excluded from consideration as part of a multiple discrimination claim.

As there is no existing multiple discrimination provision in the UK, there is limited evidence demonstrating impact of multiple discrimination for any number of combinations. We have, therefore, based assumptions on evidence collated from international examples.

We consider this the most appropriate and proportionate approach to multiple discrimination claims, ensuring that the changes do not unduly complicate the law or place undue burdens on employers and service providers, or the courts and tribunals.

**Analysis of costs and benefits (final proposal)**

Based on the average number of tribunal cases over the last three years up to 2008 (excluding equal pay claims, which it will not be possible to include in a combined multiple discrimination claim), we estimate that approximately 2514, out of a total 33,521 claims per year would have been brought as multiple discrimination claims, but were actually brought as single claims as there was no provision for multiple discrimination claims.

This assumption is based on the number of multiple claims brought in the Irish Equality Tribunals. Over the last 3 years, an average of 7.5% of the claims brought, per year, to the Irish Equality Tribunal included multiple grounds. Whilst this figure provides a useful evidence base assessing the impact of our
proposed provision, we believe this to be an over-estimation of the potential impact of our provision. The provision in Ireland is based on the total number of claims brought, some of which would have been unsuccessful. The provision in Ireland also includes a number of areas that we do not intend to provide for, such as:

- indirect discrimination and harassment cases, which we are not proposing to include in a multiple discrimination case;
- discrimination arising from disability and reasonable adjustment claims, which we are not proposing to include in our multiple discrimination legislation;
- collective agreement cases, which we are not proposing to include in our multiple discrimination legislation.

We estimate a small increase in success rate for cases brought including a multiple discrimination claim. As it is difficult, complicated and sometimes impossible or some people who experience multiple discrimination to get a legal remedy, introducing a provision for multiple discrimination would lead to an increase in the rate of successes for these cases. For example, if a black woman has been discriminated against because of her combination of race and sex, the respondent can currently adduce evidence about how they treat black men or white women as proof that they do not discriminate on the grounds of race or, separately, sex. The latest available figures provided by The Survey of Employment Tribunal Applications 2003 show that 2% of discrimination cases are successful at tribunal. We therefore, anticipate that the new provision will mean that multiple discrimination cases will have a greater success rate compared to other discrimination cases.

However, any increase in the success rate is likely to be offset by an increase in claims which will be brought, as a result of the new provision, where claimants have not, in fact, suffered multiple discrimination, and which will not be successful (unmeritorious or vexatious claims). We, therefore expect the success rate to remain at 2%.

Of the estimated 2514 cases we consider would be brought to include a multiple discrimination claim, we expect 2% would be successful and this equates to a further 50 successful claimants per year. This assumption is made on the basis that only a small number of claimants will lose their case as a result of having to separate out their claim into separate characteristics, even though multiple discrimination has occurred.

As claims for multiple discrimination are not currently made, we have been unable to calculate how many of these 2514 cases will withdrawn before hearing, struck out, dismissed or resulting in a default judgment. It is important to consider, therefore, that the figure of 2514 that has been calculated is an inflated estimate of the number of cases which will proceed to a hearing or trial.

In addition to these 2514 existing discrimination cases which would also include a multiple discrimination claim as described above, we also assume
an increase in the total number of cases (10%) which will be brought as a result of this new provision. These are cases which could not have been brought before as there had been no provision to enable this, and which were not brought as single claims. This figure is based on estimation. We have gathered evidence and views from external experts including the Equality and Human Rights Commission, the Equality and Diversity Forum, The Citizens Advice Bureau, Unions, academics, the Employment Tribunals (Scotland) and the Employment Tribunals (England) who have identified some of the problems caused by the absence of a multiple/intersectional discrimination provision. However, there is no available evidence to indicate how many claims have not been brought due to lack of multiple discrimination provision. Our estimate of an increase in cases by 10% equates to a further 251 multiple discrimination cases per year. In addition to the 2514 cases which were brought as single claims due to lack of provision enabling multiple claims, we therefore expect 2766 multiple discrimination cases per year. With a success rate of 2%, we therefore expect that there will be 55 successful multiple discrimination cases per year.

We have estimated that 2514 cases are currently brought under a single ground claim that would have included a multiple discrimination claim, and estimate that 50 of these cases are successful at tribunal. With the inclusion of a multiple discrimination provision, we would expect 2766 cases which would include a multiple discrimination claim to be brought per year, of which 55 cases would be successful. We therefore need to cost the increase in compensation costs for the 5 additional successful cases.

The compensation costs are shown in the table below:

<table>
<thead>
<tr>
<th>Compensation Costs in Successful Cases</th>
<th>Currently</th>
<th>New Estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of MD cases</td>
<td>2514 (cases)</td>
<td>2799 (cases)</td>
</tr>
<tr>
<td>Assume 2% success rate</td>
<td>50 (cases)</td>
<td>55 (cases)</td>
</tr>
<tr>
<td>Mean Compensation Award</td>
<td>£8103</td>
<td>£8103</td>
</tr>
<tr>
<td>Total Cost</td>
<td>£405,150</td>
<td>£445,665</td>
</tr>
<tr>
<td>Net additional cost</td>
<td></td>
<td>£40,515</td>
</tr>
</tbody>
</table>
Multiple Discrimination - Out of court settlements (privately and through the Advisory, Conciliation and Arbitration Service (ACAS))

As stated above, we expect 2766 cases which include a multiple discrimination claim per year. A number of stakeholders including EEF, London Chamber of Commerce, the British Chamber of Commerce and the CBI have stated that large organisations (250+ employees) would be more likely to try and settle cases which include a multiple discrimination claim out of court. We therefore estimate that there will be a 20% increase in the proportion of cases which would settle as a result of multiple discrimination provisions. This will result in 72%\(^{13}\) of cases overall which will settle out of court. We have also factored the following into our calculations.\(^{14}\)

- 60% of Employment Tribunal cases are currently settled
- 90% of settlements involve monies.
- the mean settlement in discrimination cases is £4821.

We know that of these 2514 cases where we would have expected a multiple discrimination claim to be included, currently, without this provision, 1358 settle out of court. We estimate, if multiple discrimination provision were available, that 1792 cases would settle out of court considering the increase in total cases. This would lead to an additional 434 cases which have settled out of court.

The table below shows calculated costs for out of court settlements.

<table>
<thead>
<tr>
<th>Out of court Settlements</th>
<th>Currently</th>
<th>New Estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of MD cases</td>
<td>2514 (cases)</td>
<td>2284 (cases)</td>
</tr>
<tr>
<td>Previously 60% Settled</td>
<td>1508 (cases)</td>
<td>-</td>
</tr>
<tr>
<td>New Estimate based on 72% that would settle</td>
<td>-</td>
<td>1991 (cases)</td>
</tr>
<tr>
<td>90% money settlements</td>
<td>1358 (cases)</td>
<td>1792 (cases)</td>
</tr>
<tr>
<td>Mean settlement</td>
<td>£4821</td>
<td>£4821</td>
</tr>
<tr>
<td>Total Cost</td>
<td>£6.5 million</td>
<td>£8.6 million</td>
</tr>
<tr>
<td><strong>Net additional cost</strong></td>
<td><strong>£2.1 million</strong></td>
<td></td>
</tr>
</tbody>
</table>

\(^{13}\) This figure incorporates the cases settled via ACAS and settled privately.

\(^{14}\) All taken from the Survey of Employment Tribunal Applications 2003.
The table below shows calculated costs of the extra 251 multiple discrimination cases, compensation costs for the extra five successful cases and out of court settlement awards for the 434 cases for the Public/Private and voluntary sector and individuals.

<table>
<thead>
<tr>
<th>COSTS</th>
<th>One-Off Low Est</th>
<th>One-Off High Est</th>
<th>Recurring Low Est</th>
<th>Recurring High Est</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Public Sector</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Increase in cases</td>
<td>£ 228,410</td>
<td>£ 228,410</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Compensation from increase in successful cases</td>
<td>£ 10,939</td>
<td>£ 10,939</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Increase in out of court settlements</td>
<td>£ 564,925</td>
<td>£ 564,925</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Private Sector</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Compensation from increase in successful cases</td>
<td>£ 26,335</td>
<td>£ 26,335</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Increase in cases</td>
<td>£ 1,191,246</td>
<td>£ 1,191,246</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Increase in out of court settlements</td>
<td>£ 1,360,004</td>
<td>£ 1,360,004</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Individuals</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Increase in cases</td>
<td>£ 293,921</td>
<td>£ 293,921</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Voluntary</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Compensation from increase in successful cases</td>
<td>£ 3,241</td>
<td>£ 3,241</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Increase in out of court settlements</td>
<td>£ 167,385</td>
<td>£ 167,385</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>£ 3,846,406</td>
<td>£ 3,846,406</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

We anticipate that enabling individuals to bring combined multiple discrimination claims rather than having to bring claims which relate to a single incident under a number of different characteristics, each of which must be considered separately, will not lead to a significant increase in time spent at court or tribunal. This is because the evidence which will have to be prepared and presented by the respondent and claimant will remain broadly the same – the case is likely to relate to the same single incident and set of facts. Rather, the tribunal will be able to consider the evidence in relation to the combination of characteristics rather than each strand separately. In addition, the claim will better reflect the actual incident of discrimination, which we anticipate would make consideration of the claim, easier for courts, tribunals, businesses and organisations. Evidence which may have previously needed to have been manipulated to fit single claims could be, with this provision, presented more easily.
**BENEFITS**

The table below shows how the inclusion of a provision for multiple discrimination could benefit individuals through an increase in the compensation awarded in respect of the additional 5 successful cases, and awards in the 434 out of court settlements.

<table>
<thead>
<tr>
<th></th>
<th>One-Off</th>
<th>Recurring</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Low Est</td>
<td>High Est</td>
</tr>
<tr>
<td></td>
<td>Low Est</td>
<td>High Est</td>
</tr>
<tr>
<td><strong>Individuals</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Compensation from</td>
<td>£ 40,515</td>
<td>£ 40,515</td>
</tr>
<tr>
<td>increase in successful cases</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Increase in out of court settlements</td>
<td>£ 2,092,314</td>
<td>£ 2,092,314</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>£ 2,132,829</td>
<td>£ 2,132,829</td>
</tr>
</tbody>
</table>

**Familiarisation costs**

We have recognised that familiarisation with any new provisions will incur a one-off cost for most employers and service providers. It is assumed that “familiarisation” means reaching the point where a manager or relevant employee of an organisation is aware of the changes in the law and how they impact upon their organisation. It is also assumed that this will be achieved through guidance provided by the Equality and Human Rights Commission and/or by other advisory bodies such as ACAS.

There are approximately 1.2 million small and medium enterprises (SMEs). It is assumed that a general manager will be responsible for informing themselves about the change in legislation before disseminating this information. We estimate that this process will take one hour. Data from the Annual Survey on Hours and Earnings Survey (ASHE) 2008 shows that the average gross hourly wage for this occupation (allowing also for non-wage labour costs) is £27.60. We have multiplied this by the time investment of one hour, and subsequently multiplied by the number of SMEs likely to need to become familiar with the legislation in any one year.

We therefore estimate that familiarisation costs for SMEs will be about £28 per SME.

There are approximately 5180 enterprises with 250+ employees (large enterprises). It is assumed that a dedicated personnel manager with the aid of a legal expert will be responsible for informing themselves about the change in legislation before disseminating this information. It is also assumed that large enterprises will, as an indirect cost, produce their own guidance for staff. We estimate that large enterprises will spend two hours on familiarisation. Data from the ASHE 2008 survey indicates that the average gross hourly wage for a personnel manager (allowing also for non-wage labour costs) is £30.75. Similarly for legal professionals, the average gross hourly wage is
£34.05 after inclusion of non-wage labour costs. Again, we have multiplied this by the time investment of two hours, and subsequently multiplied by the number of large enterprises likely to need to become familiar with the legislation in any one year.

We therefore estimate that familiarisation costs for large enterprises will be about £62 per large enterprise.

**Risks**

Allowing multiple discrimination claims represents a significant change to the single strand model of discrimination law. Therefore, there is a risk of unforeseen consequences, although these have been mitigated as far as possible by considering the implications of the proposed changes with legal practitioners and other experts.

**Enforcement**

Enforcement will continue to be through individuals bringing claims to courts or tribunals.