



*Getting Equal: Proposals to
outlaw sexual orientation
discrimination in the provision
of goods and services*

Government response to consultation



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Contents

Foreword	6
Introduction	8
Consultation	9
Individual questions	12
Annex A	18

Foreword

The overwhelming majority of people in our country want a society where every citizen is treated fairly and with respect. This Government, over the last decade, has done more than any other to build a decent and cohesive society.

New legislation, for example, has outlawed age and sexual orientation discrimination in the workplace. Public bodies must promote race equality; a similar duty now exists for disability, and one for gender equality will come into force on 6th April 2007.

Laws on religious hatred, and on discrimination at work on the basis of religion or belief, have brought equal protection to the different faiths that make up our increasingly diverse society.

And the Government has extended the recognition and protection of the law to same sex couples. The fact that over 15,000 couples have already taken advantage of civil partnerships shows how successful this has been. All these reforms are making a real difference to people's lives.

It is in the same spirit of equality that the Government is legislating to protect people against discrimination on the basis of sexual orientation in the provision of goods and services.

The principles behind these measures are straightforward. It can't be right in a decent, tolerant society that a shopkeeper or restaurant can refuse to serve a customer because of his or her sexual orientation. It cannot be right for a school to discriminate against a child because of their parents' sexuality or not to take homophobic bullying as seriously as they should.

Our consultation on these issues has been extensive and has provided evidence that this kind of unfair treatment takes place far too often.

The goal of the new Regulations is to make such discrimination illegal. We want to ensure that when people visit their hospital, study at school or college, or even do something as everyday as shopping or booking a holiday, they get treated fairly and with respect, no matter what their sexual orientation.

While the case for this new legislation was widely accepted, opinion was divided on the issue of how the Regulations ought to balance the competing rights of individuals to hold and manifest a religious belief against the rights of lesbian, gay and bisexual people to live free from discrimination.

And it is exactly because of these complex issues about how to reconcile potentially competing rights and freedoms that the Government consulted so extensively on these measures. There have been, as we expected, sincere and passionate views on all sides.

Finding a way through these strongly held views was always going to be a sensitive and difficult exercise. But good government is not about ducking difficult questions – it is about robust debate.

We set out our proposals last March when we published the consultation. Since then there has been a vigorous debate with strong views expressed on all sides, particularly on the issue of faith based adoption and fostering agencies. The Prime Minister addressed these issues in his statement of 29th January 2007, confirming there is no place in society for discrimination, and that in the interests of vulnerable children the Regulations will provide for a transition period for faith based adoption agencies until the end of 2008.

We are supportive of the approach in the regulations which came into force in Northern Ireland on 1 January 2007, and which were upheld by solid majorities in both Houses. We intend to follow the same progressive approach.

We are confident that our Regulations strike the right balance in response to some of the most sensitive challenges we face today. They will tackle practical barriers and real, everyday problems. And they will be a big step forward towards dignity, respect and fairness for all.



Ruth Kelly



Meg Munn

Introduction

These Regulations build on the Government's record in tackling discrimination, legislating to improve the rights of lesbian, gay and bisexual (LGB) people and for respecting people from all faiths and none.

Since 1997, the Government has repealed Section 28 of the Local Government Act 1988, passed the Adoption and Children Act 2002 to permit adoption by same sex couples, brought forward the Civil Partnership Act 2004, and been uncompromising in its work to tackle homophobic bullying.

In 2003, recognising the need for protection both on grounds of sexual orientation and on grounds of religion or belief, the Government introduced new employment protections and in the Racial and Religious Hatred Act 2006 it introduced new legislation aimed at tackling religious hatred.

The Equality Act 2006 contains protections against discrimination in the provision of goods, facilities and services, education, the disposal and management of premises and the performance of public functions on grounds of religion or belief. It also includes a power to allow the Government to make regulations to extend similar protections on grounds of sexual orientation.

Consultation

The Government launched a consultation on the 13th March 2006 seeking the views of interested parties on the proposed Regulations. This response sets out the Government's decisions on the shape and coverage of the Regulations in light of the views expressed by respondents to the consultation process.

We are grateful for the strong response to the consultation, which has provided a comprehensive body of evidence and case studies that have helped inform the Government's considerations. A wide range of organisations and individuals participated in discussion events and public debate throughout the consultation period and beyond. We are very grateful for the contributions they have made.

Overview

The Government received 2747 responses to consultation, with 507 organisational responses. There was a strong response from religious organisations, including 211 local churches, 14 national churches and 78 organisations for the advancement of religion. There was also a wide-ranging response from the public, voluntary and charitable sectors, including 28 local authorities, 9 public sector bodies, 45 charities or voluntary organisations and 44 LGB groups. A number of public sector unions and professional associations also responded to the consultation. Annex A provides a full breakdown of responses.

A series of regional consultation events were also held in Birmingham, Blackpool, Brighton, Edinburgh and London, including representatives from local government, national churches, LGB charities and interfaith groups.

Throughout the three months of consultation it was clear that various campaigns were run both in support of and in opposition to our overall proposals, with a clear majority of individual responses reproducing standard letters. In total we estimate that more than 1700 of the individual responses received drew directly from one of these campaign briefings.

Since the close of consultation there has continued to be strong public interest in the Regulations, with ongoing campaigns resulting in almost 5000 individual letters to date.

The principle of legislating in this area to prohibit unfair discrimination on grounds of sexual orientation was supported by almost 97% of responses.

Religious Organisations

Views were more divided on the proposed religious organisation exemption, with an exceptionally strong response on this issue. While the overwhelming majority of respondents supported the inclusion of a religious organisation exemption, there was a clear difference in opinion on the scope of the exemption needed to safeguard the right to freedom of conscience, religion or belief.

We have listened carefully to the many points raised on this issue, which have been informed by wide-ranging debates in the media and Parliament, and we believe that the balance we have reached – which mirrors the approach in Northern Ireland, which is in turn based on the religious organisations exemption in Part 2 of the Equality Act 2006 – is the right one.

The Government is clear that nobody should be required to act in a way that contravenes their core religious beliefs, and maintains that an exemption for religion or belief organisations is necessary to protect practices that arise from basic doctrines of faith.

However, where religious organisations enter into an agreement to provide social or welfare services to the wider community, on behalf of and under contract to a public authority, the rights of lesbian, gay and bisexual people to have equal access to those services comes to the fore. This is in line with the conclusions reached by the Joint Committee on Human Rights' legislative scrutiny report on the Sexual Orientation Regulations.

Adoption and Fostering

During the consultation process specific concerns were expressed about the application of the Regulations to the adoption and fostering sector, with the Catholic Church in particular signalling that its faith-based agencies could face closure as Catholic teaching about the foundations of family life means that its adoption agencies would not be able to recruit and consider same-sex couples as potential adoptive parents.

On 29th January, the Prime Minister and the Secretary of State for Communities and Local Government made clear that there would be no specific exemption for faith based adoption and fostering agencies offering publicly funded services. But to prevent any disruption to services currently being provided to adoptive parents and children, the Government decided that it would provide for a transition period for faith based adoption and fostering agencies until the end of 2008.

In the interim, any faith based adoption or fostering agency wishing to take advantage of the transitional arrangements would have to refer same-sex couples to other agencies which they believe are able to assist.

In addition, the Prime Minister announced that he would be commissioning an ongoing independent assessment of the issues agencies would need to address in the transition period, if much valued and needed services are to be retained and developed. This approach enables vital services for children to be maintained, whilst preserving the principle of non-discrimination.

Harassment

When we set out our proposals in our consultation document last March, we were clear that the Regulations would make no specific provision on harassment. The debate that took place in the House of Lords during the passage of Part 2 of the Equality Act, regarding the inclusion of a similar provision in relation to religion or belief, convinced the Government that this should be looked at as part of the broader Discrimination Law Review which will be consulted on shortly.

Next Steps

Subject to Parliamentary approval, the Government intends the Regulations to come into force – together with the Religion or Belief provisions in Part 2 of the Equality Act 2006 – on 30th April.

We will provide guidance and information on both the Sexual Orientation Regulations and the Religion or Belief provisions when they come into force. The new Commission for Equality and Human Rights will provide further advice and support on these provisions when it opens its doors this October.

Individual questions

1. Scope

The consultation proposed that the sexual orientation Regulations should apply to goods, facilities and services, whether or not a charge is made, offering protection from sexual orientation discrimination that is *on a par* with the protections provided on the grounds of race, gender, disability, and religion or belief.

Many examples of discrimination faced by lesbian, gay and bisexual people were provided in the consultation process. We received examples where people were barred or ejected from public spaces because of their sexuality. These included door staff refusing entry to clubs, bars and restaurants refusing to serve lesbian, gay or bisexual customers, waiters asking same-sex couples to stop holding hands, and same-sex couples being turned away from bed and breakfast hotels.

The Government intends to apply the Regulations to goods, facilities and services, education, the disposal and management of premises, and the exercise of public functions, with the same scope as the Northern Ireland Regulations, and in other equality enactments including Part 2 of the Equality Act 2006.

2. Separate services

The consultation proposed an exemption for public sector services meeting a specific and justified need to be provided separately to different groups on the basis of their sexual orientation.

The majority of responses by unions, professional associations and local authorities, were in favour of allowing existing separate services to continue. NHS groups and professional medical associations supported the proposed exemption on the basis that separate services help to address the low take-up of mainstream health services by lesbian, gay and bisexual people. However, a number of respondents questioned whether the exemption should be limited to the public sector, pointing to the excellent support provided by advice lines, housing and emergency refuge services.

In line with the Northern Ireland approach, the Government will provide an exemption to allow services to be provided separately for different groups on the basis of their sexual orientation, where this is the best way to meet a specific need facing people of a particular sexual orientation (which may result from discrimination or disadvantage).

Currently, the National Blood Service excludes donations by certain groups, including gay men, where this is tied to close and regular analysis of the epidemiology of confirmed HIV and Hepatitis B positive tests among blood samples from people donating blood in the UK. The Great Britain Regulations will include a targeted exemption for the National Blood Service to enable this policy to be maintained.

Insurance companies tailor their policies to reflect different risk profiles, based on the latest actuarial data around lifestyles and behaviour. The GB regulations will include an exemption that will have the same effect in relation to insurance as

provisions in the Sex Discrimination Act and regulations made under the Disability Discrimination Act. It is our intention that this particular exemption will not apply beyond the end of 2008. We will work with the insurance industry and others to ensure that if any exemption is required beyond 2008, it reflects a genuine need in the industry and is in line with industry best practice, and we will legislate accordingly. The latest ABI guidance makes clear that insurers should not ask about sexual orientation or any HIV negative tests, but instead base their assessment of risk on answers provided about actual behaviour, regardless of sexual orientation.

3. Premises

The consultation proposed a general provision to make it unlawful for anyone selling or letting premises to discriminate against potential buyers or tenants because of their sexual orientation. In line with other discrimination legislation, the consultation also proposed a small dwellings exemption to allow people to choose with whom they live in their private home.

The consultation provided wide-ranging evidence that lesbian, gay and bisexual people continue to face discrimination when seeking to buy a private home, rent property and obtain sheltered accommodation, including at residential care facilities or college campuses.

The majority of responses from religious organisations proposed that the exemption be widened to allow either specifically Christian hostels or commercial bed and breakfast establishments with religious owners to turn away same sex couples. The Government contends that where businesses are open to the public on a commercial basis, they have to accept the public as it is constituted.

The majority of responses from churches and religious groups sought an exemption for religious organisations in the letting and sale of their property. In certain situations, religion or belief organisations may not have to comply with the Regulations in the management of their premises, subject to their qualifying for the religious organisation exemption (see proposal 7). Whether or not the religious organisation will qualify for the exemption will depend on the facts of each case. As in Northern Ireland, however, the exemption will cease to apply where an organisation gives up the whole of its interest in the property.

The Government intends to apply the Regulations to the selling or letting of premises, with an exemption for shared accommodation in small dwellings, in line with the Northern Ireland approach. This exemption will not apply to commercial services such as bed and breakfast establishments (which fall within the prohibitions on discrimination in relation to facilities and services).

4. Charities

The consultation proposed an exemption for charitable instruments that specify a beneficiary group in terms of sexual orientation, to allow charities to restrict their client group in line with the provisions of the charitable instrument through which they were established.

This proposal was widely welcomed by respondents to this question – primarily groups representing lesbian, gay and bisexual people, charities, unions and professional associations, and human rights and legal organisations.

The Government will provide an exemption for charities whose charitable instrument explicitly specifies a beneficiary group on the basis of sexual orientation in line with the Northern Ireland approach.

5. Private Members' Clubs

The consultation proposed an exemption for private member clubs which exist in order to provide a genuine benefit or opportunity to a group linked to their sexual orientation, to permit the inclusion of a sexual orientation criterion in their membership criteria.

A clear majority of responses to this question welcomed this proposal. However, some religious organisations held that the membership criterion ought to be based around differences in sexual practice. The religious organisation exemption (see proposal seven) may enable religious organisations to make such a distinction in certain circumstances.

The Regulations will include an exemption for private members' clubs to have a sexual orientation membership criterion, where the main purpose of the association is to enable the benefits of membership to be enjoyed by people of a particular sexual orientation in line with the Northern Ireland approach.

6. Public Services

The consultation proposed that the Regulations would apply to public functions, meaning the activities carried out by public bodies that are not otherwise caught by the general goods, facilities and services provisions.

All of the responses that addressed this question directly welcomed the application of the Regulations to the exercise of public functions. The Government heard of a young lesbian who had been thrown out of her family home and was initially refused temporary accommodation by the Local Authority, on the grounds that she had chosen to tell her parents about her sexuality and was therefore not involuntarily homeless.

In line with provisions on public bodies and functions in other discrimination legislation, the consultation proposed not to include some bodies when they exercised certain constitutional or judicial functions, to allow their independence to be fully preserved.

A minority of responses questioned our rationale for the proposed exemption for local authority wellbeing powers (section 2 of the Local Government Act 2000).

In line with the Northern Ireland approach, the Government intends to apply the Regulations to the delivery of services by public bodies and the exercise of public functions. There will be no exemption for the exercise of the Local Authority wellbeing power, bringing the list of exemptions included in the Regulations in to line with discrimination legislation for sex, race and disability.

7. Education

The consultation proposed that schools should be covered by the Regulations in their admissions and discipline policies, and sought views on whether there were any areas of activity for schools for which special provision needed to be made.

This proposal was opposed by the majority of responses from churches and religious groups. In part, this can be explained by the level of misunderstanding about how the Regulations would apply to schools, with some educational establishments, churches and religious groups expressing concern that the Regulations would require the ‘promotion of homosexuality’ or specific ‘gay rights’ literature in the classroom. This is not the case.

The consultation provided wide-ranging evidence that lesbian, gay and bisexual people continue to face discrimination in schools – contributing to under-achievement and absenteeism amongst lesbian, gay and bisexual pupils. Surveys which showed the vast majority of schools still do not have specific policies in place to tackle homophobic bullying were also cited, and health experts reported emotional and psychological harm, including higher risk of suicide and self harm, in patients caused by discrimination, homophobia and prejudice in school.

The Government intends that the prohibition of discrimination on grounds of sexual orientation will apply to all schools in both the maintained and independent sectors. This will mean that schools will not be able to discriminate when: selecting pupils for admissions; providing access to benefits, facilities or services in school; or deciding whether to exclude a pupil. Nor will a school be able to subject a pupil to any other detriment on grounds of sexual orientation.

As in Northern Ireland, however, the Regulations will not affect the subjects currently taught in schools; this will be a matter for the Department for Education and Skills. The current statutory and non-statutory framework is sufficient to ensure that schools deal appropriately with subjects and situations where sexual orientation is a relevant issue.

8. Religious Organisations

The consultation proposed to include an exemption in the Regulations for activities closely linked to religious observance or practices that arise from the basic doctrines of a faith, such as marriage ceremonies or public worship.

There was an exceptionally strong and diverse response to this question, with a clear divide on the issue of how the Regulations ought to balance the competing rights of individuals to hold and manifest a religious belief against the right to live free from discrimination. A majority of both individuals and organisations sought a widening of the exemptions.

The majority of those seeking a wider exemption argued that the proposed distinction between practices that arise from basic doctrines of faith and the provision of wider services to the community was false, and cited the experience of many faith-based voluntary and community organisations to show that serving the community is an integral part of religious observance.

On the other hand, lesbian, gay and bisexual groups, unions and local authorities expressed concern that social exclusion would be exacerbated if community and voluntary projects held in church halls were exempt from the Regulations.

The Government has listened to the many points of view offered in response to this question. In order to strike the right balance between the various interests, we will provide religious organisations and those acting under their auspices with an exemption from the Sexual Orientation Regulations provided they are:

- **not operating on a commercial basis;**
- **not providing a service on behalf of and under contract with a public authority;**
- **and the aim of the discrimination is to comply with doctrine or avoid conflicting with the strongly held religious beliefs of a significant number of the religion's followers.**

This is in line with the approach in the Northern Ireland Regulations.

A number of responses to the consultation document specifically raised the issue of faith based adoption agencies, and the conflict between their religious views on same-sex couples and the requirement of the Regulations that they do not discriminate against people who might seek their services on the grounds of their sexual orientation. These responses asked for an exemption to be applied to these faith based adoption agencies on the grounds of religion.

The government will provide a transition period for faith based adoption and fostering agencies until the end of 2008. This will ensure that vital services to children are not disrupted. In the interim, any agency wishing to take advantage of the transitional arrangements will have to refer same-sex couples to agencies who they believe are able to assist.

9. Direct and indirect discrimination

A clear majority of lesbian, gay and bisexual groups, local authorities and equality and human rights groups made clear the importance of securing consistency and clarity across equality legislation with regard to the treatment of direct and indirect discrimination.

Some cited cases of civil partners experiencing indirect discrimination by being refused services reserved for married couples. We also received many cases of same-sex couples being turned away from hotels and other public venues that were registered as Approved Premises for both civil marriage and civil partnerships.

But a number of religious organisations expressed concern that these Regulations would attack the sanctity of religious marriage, by placing civil partnership on a comparable footing to religious marriage.

The Government will ensure that the Regulations include direct and indirect discrimination. The Regulations will make clear that civil partners who are treated less favourably on grounds of sexual orientation than married couples in similar circumstances are protected. In some cases different treatment is required by statute and will be exempted from the Regulations; for example, marriage ceremonies conducted by ministers of religion cannot legally take place between same-sex couples, and compliance with this statutory requirement will not be discrimination.

10. Other types of discriminatory conduct

Almost all specific responses on this issue welcomed the proposed application of the Regulations to victimisation, discriminatory practices and instructions, advertisements and validity of contracts. Discrimination law applies to these areas in equality enactments for race, sex, disability and religion or belief.

The majority of responses to this question supported the proposed application of the Regulations to discriminatory advertising, including the Advertising Association.

In line with the Northern Ireland approach, the Government will ensure that the Regulations include victimisation, discriminatory practices and instructions to discriminate, advertisements and validity of contracts. It will remain legal to advertise for non-discriminatory services or for differential treatment that is exempted under the Regulations.

11. Enforcement

Subject to Parliamentary approval, the Regulations will come into force on 30th April. From that date on the Regulations will provide individuals with a legal remedy, and individuals subjected to unlawful discrimination will be able to take claims directly to the County Court.

The Government will provide a time limit on bringing proceedings, of six months from when the alleged unlawful discrimination occurred, in line with other equality enactments.

When the Commission for Equality and Human Rights opens its doors this October, it will be able to take advantage of a suite of enforcement powers.

Annex A – Summary of Responses

Stakeholder group	No of responses
Age	6
Belief	4
Business	4
Central government	2
Disability	1
Education and research	23
Gender	6
Individuals	2240
Human Rights & Law	11
Local church	211
Local government	28
National church	14
Public Sector	9
Race	1
Religion	78
Sexual Orientation	44
Unions & Professional bodies	20
Voluntary and Community Sector (VCS), including charities	45