

Equalities legislation and EU exit

Context and overview

The European Union (Withdrawal) Bill will repeal the European Communities Act 1972 on the day the United Kingdom leaves the European Union (EU). The Bill will end the supremacy of EU law in UK law and convert EU law as it stands at the moment of exit into domestic law. It will also preserve existing domestic legislation which implements EU obligations or otherwise relates to the EU or the European Economic Area (EEA).

The Bill provides for temporary powers to make secondary legislation in order to enable corrections to be made to domestic law and converted EU law that might not otherwise operate appropriately once the UK has left the EU.

The government needs to use these powers to make a number of technical amendments to domestic equality legislation that are required as a consequence of exiting the EU. These changes will enable equality legislation to continue to operate and be interpreted as Parliament intended.

This government has made a firm commitment to maintaining the UK's long-standing record of ensuring our rights and liberties are protected. The UK has rigorous domestic equalities legislation, parts of which predate or go beyond EU provisions. The government has committed to ensuring that the protections covered in the Equality Act 2006, the Equality Act 2010, and equivalent legislation in Northern Ireland, will continue to be available the day after EU exit, as the day before. This means all the protections in the Equality Act 2010 against discrimination, harassment and victimisation for those with 'protected characteristics' will continue to be available in full. These protections are simply not affected by, for example, the removal of "the European Parliament" from the legislation that allows for women-only shortlists for election candidates.

This paper provides a comprehensive account of the government's plans for amending the Equality Act 2010 and the Equality Act 2006 (the Equality Acts) (and any secondary legislation under those Acts) using the delegated powers under the EU (Withdrawal) Bill. These are presented, for ease of understanding, in four groups – based around where the Equality Acts currently refer to:

1. the European Parliament
2. possible future EU obligations
3. specific EU Directives
4. the UK as part of the EEA

The equivalent legislation in Northern Ireland is the responsibility of the Northern Ireland Executive and not covered in this paper.

Intended changes in more detail

1. References to the European Parliament

Some sections in the Equality Act 2010 make reference to the European Parliament, an institution that will no longer be relevant to the UK once we leave the EU.

We will therefore repeal the following subsections in the Equality Act 2010:

- Section 104(8)(b) (*selection of candidates*); and
- Section 106(5)(b) (*information about diversity in range of candidates*).

Example in more detail: Section 104 of the Equality Act 2010 allows registered political parties to make arrangements in the selection of candidates for election (such as women-only short lists) to address the under-representation of people with particular protected characteristics. Subsection 8 lists the elected bodies that this applies to; including, at paragraph (b), the European Parliament. We will therefore remove subsection (8)(b). The rest of the section will be unaffected by this deletion, and will therefore continue to operate as now.

Both the repeals outlined under this heading relate only to the European Parliament; the provisions in the Equality Act will remain unaffected as regards elections within the UK so that, for example, the use of women-only short lists to select candidates for the House of Commons, the Scottish Parliament, the National Assembly for Wales and specified local government bodies will continue to be entirely legal.

2. References to future EU obligations

This heading covers references to (a) new EU obligations implemented under the European Communities Act (ECA) 1972, (b) references to EU law and (c) harmonisation provisions. These provisions will be amended to reflect the fact that no new EU obligations will arise for the UK after we leave the EU. These amendments will therefore reduce the mechanisms by which the Equality Acts can be changed.

(a) new EU obligations implemented under the ECA 1972. The Equality Act 2010 refers in several places to new provisions made in order to implement EU law under section 2(2) of the ECA (*implementation of EU obligations*). These references currently allow various specific functions under the Equality Act 2010 to take account of any new legislation made under section 2(2) of the ECA. As no new legislation will be made under the ECA after EU exit day, these references are no longer needed.

We will therefore delete from the Equality Act 2010 the references to section 2(2) of the ECA in the following provisions:

- Section 162(4) (*designated transport facilities*);
- Schedule 3, Part 4 (Immigration), paragraphs 15A(5)(c) (*age exception*) and 17(5)(c) (*ethnic or national origins or nationality exception*); and
- Schedule 18, paragraph 2(h) (*Public Sector Equality Duty exceptions*).

(b) references to “EU law” as a generic term. The Equality Acts refer in several places to “EU law”. These references need to be replaced with the term “retained EU law”. The EU (Withdrawal) Bill will take a snapshot of directly applicable EU law as it applies immediately prior to our EU exit, converting this into domestic law, and will also preserve existing domestic law which implements EU obligations. Together the converted and preserved law will be referred to as “retained EU law”, as defined in clause 6 of the Bill. All pre-existing EU-related measures will be covered by the term “retained EU law”, so this is the term needed for a fully comprehensive reference. If these changes were not made, the statute book would risk becoming inoperable in relation to protections in the Equality Acts.

We will therefore replace the term “EU law” with the term “retained EU law” in the following provisions:

- Section 28(12) and (13) Equality Act 2006 (*legal assistance*);
- Schedule 3, Part 4 (Immigration), paragraphs 15A(5)(d) (*age exception*) and 17(5)(d) Equality Act 2010 (*ethnic or national origins or nationality exception*); and
- Schedule 18, paragraph 2(h) Equality Act 2010 (*Public Sector Equality Duty exceptions*).

(c) harmonisation measures. The Equality Act 2010 contains ‘harmonisation’ provisions (sections 203 and 204, and Schedule 24 (*EU obligations: harmonisation*)) that provide powers to amend the Equality Acts to ensure consistency across the legislation where changes required by EU law would otherwise result in inconsistent provision. These provisions have never been used and will be redundant following EU exit. We will therefore delete sections 203, 204, 208(5)(h) of and Schedule 24 to the Equality Act 2010.

In summary, the changes outlined under this heading ensure: that the Equality Acts can continue to refer to the body of EU law at the point of EU exit (that is, ‘retained EU law’); and that there are no references on the face of the Equality Act 2010 which relate to future EU obligations given that these references would be redundant after EU exit. Once the temporary powers in the EU (Withdrawal) Bill fall away, the only way that the Equality Acts could be changed after EU exit will be via primary legislation.

3. References to specific EU Directives

The Equality Act 2010 and secondary legislation made under that Act currently contain references to several EU Directives and related matters that have already been implemented in UK law. The way forward for these references is being developed on a case-by-case basis, depending on the policy context, the way relevant legislation is structured and whether any relevant functions are devolved.

Example in more detail: Section 140(AA)(1) (*extension of time limits because of alternative dispute resolution in certain cross border or domestic contractual disputes*) refers to Directive 2013/11/EU on alternative dispute resolution. This provision relates to enforcement of the Equality Act 2010. It extends time limits for the purposes of initiating judicial proceedings because of alternative dispute resolution in certain cross border or domestic contractual disputes. Section 140AA contains definitions which refer back to the Directive (‘ADR entity’,

‘ADR Procedure’, non-binding ADR procedure’ and ‘relevant dispute’). Some of these definitions cross-refer to other provisions in the Directive which would be irrelevant or incorrect following EU withdrawal, such as a requirement to notify ADR providers to the Commission, or references to ‘Member States’ which would also be incorrect or irrelevant following the UK’s exit. To the extent necessary, we will amend those definitions so as, for example, to remove the requirement to notify the European Commission and to ensure that the definition of relevant dispute to which the Equality Act 2010 applies will still work when the UK leaves the EU.

Other cases are:

- Section 140A(1) (*extension of time limits because of mediation in certain cross border disputes*) – which refers to the Mediation Directive 2008/52/EC. This provision relates to enforcement of the Equality Act 2010. It extends time limits for the purposes of initiating judicial proceedings because of mediation in certain cross-border disputes.
- Section 155 (*power to impose specific duties in relation to public procurement*) provides for the scope of regulations that may be made to impose specific duties on public bodies as part of the public sector equality duty. Subsection (2) ensures that this scope can include the ‘procurement’ functions of public bodies. It specifies that terms such as ‘public procurement functions’ are as regulated by the Public Sector Directive 2014/24/EU. We plan to change subsection (2) to refer instead to provisions in the Public Contracts Regulations 2015 and to engage with the devolved administrations to discuss appropriate amendments to their Regulations.
- Section 182 provides for a regulation-making power to ensure that specified transport systems are accessible to disabled people. The scope for this section is vehicles that are not part of an interoperable rail system – this is achieved via the references in subsections 4 and 5 to “trans-European rail system”, as defined in the Railways (Interoperability) Regulations 2011 by reference to the Interoperability Directive 2008/57/EC. The approach to these provisions is being considered in the wider context of EU exit related changes to transport legislation.
- Schedule 25 (*information society services*). This Schedule ensures that the provisions of the Equality Act 2010 do not conflict with the requirements of the E-Commerce Directive 2000/31/EC. This Directive relates to information society services – that is, services provided from a distance by means of electronic equipment to businesses and consumers such as online shopping, direct marketing and advertising.
- Equality Act 2010 (Work on Ships and Hovercraft) Regulations 2011 which refer to a number of Directives: the Race Directive 2000/43/EC, the Employment Framework Directive 2000/78/EC and the Recast Gender Directive 2006/54/EC. These Regulations extend employment-related protections afforded under part 5 of the Equality Act 2010 to seafarers working on United Kingdom ships and hovercraft, or on ships and hovercraft from other EEA states.

- Equality Act 2010 (Amendment) Regulations 2012 (2012/2992) which refer to the Equal Treatment Directive 2004/113/EC. These regulations amended the Equality Act 2010 to reflect a change to EU law: the European Court of Justice in Case C-236/09 (*Test Achats*) ruled that the use of sex as a risk factor should not result in differences in individuals' insurance premiums and benefits. The regulations provide that HM Treasury must from time to time carry out a review of the regulatory system established by the Equality Act 2010 insofar as it implements Directive 2004/113/EC and have regard to how this Directive is implemented in other Member States in respect of insurance services.

In these cases, it may be that a change is required to refer instead to the corresponding provisions in UK legislation, that no change is needed or that another approach is required. No planned changes to the Equality Acts 2006 and 2010 or secondary legislation under those Acts, using the powers under the EU (Withdrawal) Bill will substantively affect the statutory protections provided for by that equality legislation.

4. Reference to the UK as part of the EEA

Schedule 25 (Information Society Services) is described under heading 3 of this note. In addition to its reference to an EU Directive, the Schedule also refers in paragraphs 1 and 2 to a person/provider "in an EEA state (other than the United Kingdom)". After EU exit, the UK will no longer be a part of the EEA by dint of being a Member State of the European Union. The Government is considering whether this provision requires amendment to correct the inaccurate implication that the UK will be part of the EEA after EU exit.