



The Leader of the House of Lords

Lord Goodhart
Chairman
Delegated Powers and Regulatory Reform Committee
House of Lords
London
SW1A 0PW

24th February 2010

Dear Mike

Equality Bill: power to make provision about caste; diversity reporting

I am writing to inform the Delegated Powers and Regulatory Reform Committee that the Government is minded to accept an amendment which was tabled by Lord Avebury (also in the name of Lord Lester and Baroness Hamwee) on 24 February. Broadly speaking, the amendment provides a Minister of the Crown with a power to legislate against caste discrimination, harassment and victimisation. A full description of the proposed power is enclosed.

I should also add that the Government has re-tabled (without any substantive changes) a set of amendments on diversity reporting by political parties, which was notified to the Committee by the Solicitor General on 18 January and which the Committee noted without comment in its report of 22 January.

I am copying this letter to Baroness Warsi and Lord Lester of Herne Hill. I am also placing a copy in the House library.

A handwritten signature in dark ink, appearing to read "Jan Royall", with a large, stylized flourish extending from the end.

JAN ROYALL

EQUALITY BILL

Amendment to clause 9, page 6, line 7

– Race: power to make provision about caste

Race is a protected characteristic under clause 9 (Race) of the Bill, defined to include colour, nationality and ethnic or national origins. This amendment provides a power at subsections 9(5)-(6) for a Minister of the Crown to make an order to amend the Act by adding caste as a subset of race, with the power to make amendments to exceptions to provisions of the Act so as to apply or not to apply to caste, or to apply or not to apply to caste in specified circumstances.

Under subsections (5) and (6), the order may amend the Act in accordance with subsection 205(4)(b). The power to make exceptions is necessary in certain cases, for instance, where there are a limited number of exceptions in the Bill in which certain elements of the race definition are treated differently to other elements. For example, in relation to the exercise of immigration and nationality functions, Schedule 18 paragraph 2 (Immigration) provides that the second limb of the public sector Equality Duty (subsection 148(1)(b)) shall not apply in relation to nationality or ethnic or national origins. There would need to be consideration of whether caste should be included in that exception together with nationality and ethnic or national origins, or whether it should be excluded and treated like colour.

The reference to specified circumstances is intended to allow different provision to be made in relation to certain exceptions. For example, in relation to Schedule 16 paragraph 1 (Single characteristic associations), if it were decided to treat caste like colour in sub-paragraph (4), it would nonetheless be possible to distinguish between different types of association for this purpose. This could mean that some types of associations would be permitted to be single characteristic caste associations, whereas other types would not be.

This Henry VIII power is subject to the affirmative procedure under subsection 206(2) (Ministers of the Crown, etc). It is acknowledged that an exercise of the power would be significant in that a protected characteristic would be extended, with all the implications of such an extension for employers, service providers etc.

The circumstance and date on which the power may be exercised is unspecified. The Government will decide at a future date, on the basis of there being sufficient evidence of caste discrimination occurring in Great Britain, if exercising the power is a proportionate response to the problem. To this end, in parallel with the inclusion of this power in the Bill, the Government is separately commissioning independent research into the issue of caste discrimination. The power provides the Government with the flexibility to make a substantive change to the law, if the evidence shows that there is a need for it.