



Government
Equalities Office

Putting equality at the heart of government

Equality Act 2010

Removing:

- (a) employment tribunals' power to make wider recommendations in discrimination cases; and
- (b) the procedure for obtaining information:

A consultation

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Ministerial Foreword

This Government is committed to promoting economic growth and tackling the red tape and bureaucracy that holds businesses back. We are clear that the benefits of economic growth are best achieved when everyone has the opportunity to fulfil their potential, where no one is held back because of who they are or where they come from.

A central plank of our strategy to promote growth is to tackle the culture of unnecessary and ever-multiplying regulation that is burdening businesses. We are doing this through the Government's Red Tape Challenge process: a systematic stock-take of existing regulation

The Red Tape Challenge process is making significant progress. For example, we have announced that we will overhaul employment tribunals, delivering £40m a year in benefits to employers. Overall, of over 1,500 regulations considered so far, we have agreed to scrap or improve well over 50% – decisions that will bring real benefit to businesses, civil society organisations and individuals.

As part of the Red Tape Challenge process, this consultation sets out proposals to repeal two measures within the Equality Act 2010: removing (a) employment tribunals' power to make wider recommendations in discrimination cases; and (b) the procedure for obtaining information.

The power of employment tribunals to make wider recommendations adds little to the powers that tribunals already have, may be of no direct benefit to the claimant, and is in any case merely discretionary on the employer. But employers have no way of knowing how or when a tribunal may make such recommendations; or whether it is feasible or affordable for them to comply.

Procedures for obtaining information were intended to increase pre-hearing settlements and reduce tribunal loads, but have not had this effect. Instead they too have created new burdens and risks for employers.

Removal of these two provisions from the Equality Act 2010 does not affect the essential rights of employees, customers or claimants. They will still be able to take such claims to a court or tribunal.

We would like to encourage everyone with an interest in this issue - but employers and employees in particular - to let us know what they think.



A handwritten signature in black ink, appearing to read 'Theresa May'.

Rt Hon Theresa May MP Home Secretary
and Minister for Women and Equalities



A handwritten signature in black ink, appearing to read 'Lynne Featherstone'.

Lynne Featherstone MP
Minister for Equality

Chapter 1 – About this consultation

Purpose of the consultation

1.1 Following a review of equalities legislation under the Red Tape Challenge¹, the Government is proposing to repeal two specific provisions in the Equality Act 2010, subject to the outcome of a consultation.

- Section 124(3)(b). This provision gives employment tribunals a power, when an employee wins a discrimination case, to make recommendations to the losing party – the employer.
- Section 138. This provision provides for a specific procedure for the collection of information by someone who thinks that he or she may have been unlawfully discriminated against, harassed or victimised, from the person (for example an employer or service provider) who is thought to be responsible for the unlawful treatment.

The above provisions are described in more detail in Chapter 2. This consultation seeks your views on removing them from the Equality Act 2010.

Intended audience

1.2 This consultation will be of particular interest to:

- individual businesses and employers' organisations;
- people who provide goods and services;
- trade unions;
- equality organisations;
- members of employment tribunals and the judiciary more widely; and
- individuals.

1.3 Comments from other interested parties are also welcomed.

Territorial scope

1.4 These proposals apply to England, Scotland and Wales.

Duration of this consultation

1.5 This consultation begins on 15 May and ends on 07 August 2012. Any views received after the closing date may not be considered or reflected in our analysis.

¹ <http://www.redtapechallenge.cabinetoffice.gov.uk/themehome/equalities-act/>

How to respond

- I.6 We would be grateful if you would use the response form available on the Home Office website at www.homeoffice.gov.uk/equalities.
- I.7 Responses can also be sent by email to:
enforcement@geo.gsi.gov.uk
or by post to:
Enforcement Consultation Responses
Government Equalities Office
Equality Law and Better Regulation Unit
Home Office
3rd Floor, Fry – North East Quarter
2 Marsham Street
London
SW1P 4DF
- I.8 Please ensure your response reaches us by **07 August 2012**.
- I.9 Please tell us whether you are responding as an individual or whether you are representing the views of an organisation. If you are responding on behalf of an organisation please tell us whom the organisation represents and, where possible, how the views of members have been sought.

Queries about this document

- I.10 Any queries about this document should be directed to Jay Begum on 020 7035 8115 or to enforcement@geo.gsi.gov.uk.

After the consultation

- I.11 We will publish a summary of the results of this consultation on the Home Office website within three months of the end of the consultation period.
- I.12 Subject to the outcome of the consultation, we will repeal sections 124(3)(b) and 138 of the Equality Act 2010 through primary legislation.

Freedom of information

- I.13 We may need to share any information you send us with colleagues in the Home Office, or to pass it to other Government Departments, and we may also need to publish your response.
- I.14 All information you provide in your response, including personal information, may be subject to publication or disclosure if someone requests it under the Freedom of Information Act 2000 (FOI Act) or the Data Protection Act 1998.
- I.15 If you want the information you provide to be treated as confidential, please be aware that the FOI Act has a Statutory Code of Practice that we have to comply with which sets out our obligations on confidentiality. Because of this it would be helpful if you tell us why you want the information to be treated as confidential. If someone does then ask us to disclose the information we will be able to take into account your reasons for confidentiality, but we cannot guarantee that confidentiality can be maintained in all circumstances.
- I.16 Automatic confidentiality disclaimers generated by your IT system on emails will not of themselves be regarded as binding on the Home Office.

Code of Practice on Consultation

- I.17 This consultation complies with the Code of Practice on Consultation produced by the Department for Business Innovation and Skills (BIS).

Impact Assessment

- I.18 Two associated impact assessments (one for each measure) are included in this consultation document. Each also contains a consideration of the impact on equality and an assessment of the impact on justice. In addition to responses on the policies themselves we would welcome any further data or evidence and views you have on the assumptions and approach we have suggested and on the estimates shown.

Alternative formats

1.19 We will consider any requests for **alternative accessible formats** of this document.
Please send your request to

Email:

enforcement@geo.gsi.gov.uk

(Please state “accessible format request” in the subject line)

Post:

Consultation on wider recommendations and obtaining information – Accessible Formats
Government Equalities Office
Equality Law and Better Regulation Unit
Home Office
3rd Floor, Fry – North East Quarter
2 Marsham Street
London
SW1P 4DF

Telephone:

020 7035 8115

Chapter 2 – The measures proposed for removal

Wider recommendations power of employment tribunals: section 124(3)(b) Equality Act 2010

- 2.1 Section 124(3)(b) of the 2010 Act introduced a new provision enabling employment tribunals to make wider recommendations to an employer: for example, introducing an equal opportunities policy; retraining staff; making public the selection criteria used for transfer or promotion of staff. This provision goes beyond EU law. A wider recommendation cannot be enforced, but if the employer fails to comply with it, an employment tribunal can take that failure into account, should a similar complaint in a case subsequently occur involving the same employer.
- 2.2 The Government proposal is to repeal section 124(3)(b). Section 124(3)(a) will remain in place so that employment tribunal judges can still make recommendations for the benefit of the individual claimant. The text of section 124 is set out at Annex A.

Procedures for obtaining information: section 138 Equality Act 2010

- 2.3 Like the wider recommendations power, section 138 goes beyond EU law. The text of section 138 is set out at Annex B.
- 2.4 Section 138 enables a potential claimant (the person who may have been discriminated against) to establish the facts relating to the dispute by asking questions of the respondent (for example, an employer or service provider). The potential claimant is able to use the prescribed forms to ask the respondent questions on any matter that might be relevant, either before or after commencing proceedings in a court or employment tribunal.
- 2.5 Section 138 consists of the following elements:
 - A Minister of the Crown must prescribe forms by which questions or answers might be asked or given. Forms were prescribed through secondary legislation under the Act in October 2010². There are four separate forms: two for discrimination and prohibited conduct cases and two for equal pay cases (a form for the potential claimant and a form for the respondent in each case)³. The text of the relevant secondary legislation can be found at Annex C.
 - There is no obligation on the potential claimant to use a prescribed form; they may ask questions in any other format, such as a letter.
 - A question or an answer can be used as evidence in subsequent legal proceedings, if they happen.
 - There is no obligation on the respondent to answer questions (whether or not contained in a prescribed form). However, a court or tribunal may draw an inference from a failure to answer a question within 8 weeks or from an evasive or equivocal answer.
- 2.6 The Government proposal is to repeal section 138. This will not prevent employees and employers, or customers and service providers being able to correspond to try to resolve or narrow down the issues in a dispute about discrimination.

² The Equality Act 2010 (Obtaining Information) Order 2010 – SI 2010/2194

³ As prescribed under the Equality Act 2010

Chapter 3 – Reasons for the repeal proposals

Wider recommendations power (section 124(3)(b) Equality Act 2010)

- 3.1 Businesses and other organisations expressed concern about this provision when the Equality Bill was going through Parliament. Although the Act has only been in force since October 2010, we have examined the power carefully in the context of the Red Tape Challenge on equalities legislation. We are aware of only one case where a wider recommendation has been made by an employment tribunal since this power came into force in October 2010⁴.
- 3.2 Employers remain concerned that the remedy might be unnecessary. For instance, it has been suggested by the British Chambers of Commerce⁵ that the power is not required because employers often make changes to their policies and practices, anyway, as a result of a tribunal finding, without the need for a recommendation.
- 3.3 It requires employment tribunals to be able to formulate proposals which go beyond the case in question, and which affect an employer's business more generally – in effect, taking on the role of an equality consultant.
- 3.4 The view of this consultation is therefore that the wider recommendations provision is not likely to serve a practical purpose or to be an appropriate or effective legal remedy for employment tribunals. We have no evidence that the pre-existing remedies available to a court or tribunal for discrimination cases are insufficient. If this is so, the Government's case is that this provision is an unnecessary burden on business. Subject to consideration of any evidence to the contrary resulting from this consultation, the Government proposes to repeal section 124(3)(b) of the 2010 Act.

⁴ Stone v Ramsay Health Care UK Operations Ltd ET/1400762/11. The tribunal found that the respondent had subjected the claimant to pregnancy and maternity discrimination. The claimant had resigned by the time the judgment was made. The employment tribunal exercised the discretion given under section 124(3)(b) to make the recommendations that “within 6 months, the respondent appoint external consultants to implement a programme of training for all managers and all members of HR team relating not only to the respondent's existing maternity policies but also in relation to its particular statutory legal obligations to employees in their protected period and that the programme of training be completed within a 12 month period” and that “the respondent redraft its equal opportunities policy to include maternity and pregnancy as a protected characteristic”.

⁵ The Workforce Survey – Micro Businesses August 2011 | www.thamesvalleychamber.co.uk/uploads/Policy/WorkforceSurveyMicroAug2011.pdf

Questions for you to consider

3.5 The following questions are intended to identify evidence of awareness and usage of the wider recommendations power and to seek your views on whether it should be repealed.

Question 1: Do you know of any other discrimination-related case in which the wider recommendations power under section 124(3)(b) of the Equality Act 2010 has been used since October 2010?

Question 2: If yes, please provide details of the case(s) concerned, such as nature of the claim, type of organisation involved in the case, whether the organisation is a large, small or medium sized enterprise or other.

Question 3: Please say whether you consider the use of the power in this case or cases has been effective (closely linked to the act of discrimination to which complaint relates) and/or proportionate (tribunal took account of employer's capacity to implement the recommendation). Please provide further details.

Question 4: Whatever your answer to Question 1, do you agree or disagree that the wider recommendations power should be repealed? Please explain your answer.

Procedures for obtaining information (section 138 Equality Act 2010)

A: Wider employment context: the Government's proposals for resolving workplace disputes⁶

- 3.6 This consultation supports the Government's commitment to deliver a flexible, effective and fair labour market where businesses feel confident to take on staff and grow. The Government response to the Resolving Workplace Disputes consultation outlined the measures Government would take forward to address some of the key employment-related concerns of businesses. These measures are designed to provide greater access to alternative means of resolving disputes, and take steps to make the employment tribunal process swifter and more efficient for all users.
- 3.7 The measures announced in the response include the introduction of an early conciliation mechanism to be delivered by Acas, intended to help parties understand their rights before entering the employment tribunal system, and a Fundamental Review of the Rule of Procedure for Employment Tribunals to help create a more streamlined and efficient system.

⁶ www.bis.gov.uk/Consultations/resolving-workplace-disputes?cat=closedawaitingresponse

- 3.8 In early conciliation, the requirement for the claimant to submit details of their claim to Acas in the first instance will give Acas a chance to explain how conciliation works and the benefits it offers, particularly to those claimants who have never considered conciliation as an option for resolution. But even where early conciliation is refused or is unsuccessful, the claimant will have been given information about the tribunal process to enable them to make a more informed decision about whether to pursue their claim.
- 3.9 Where claimants do decide to make a claim to an employment tribunal, the review of the Rules will place effective case management at the heart of the process, so parties understand what – if any – issues the tribunal will address. In that way, parties are more likely to focus their attention on issues of real substance rather than spending time and resource on those elements where no real claim exists.
- 3.10 These measures will encourage the early resolution of disputes outside the employment tribunal system, ensure the system is as streamlined and simple for all users and give employers more confidence to hire new workers, thus supporting growth.

B: Problems with this provision

- 3.11 **Potential regulatory burdens on business.** Research⁷ into the use of the prescribed question/answer forms under previous equality legislation prior to the 2010 Act estimated that 9,000-10,000 businesses completed the forms each year, taking 5-6 hours to complete in each case. Thus compliance with the provision requires around 45-60,000 staff hours a year. We do not have evidence on usage of the new forms prescribed since October 2010 under the 2010 Act but are seeking this through this consultation. Our default assumption is that usage is broadly similar to the previous forms. The time taken for firms to complete these forms, together with the obligation on businesses to respond to questions within 8 weeks, is burdensome and expensive. The current Government is committed to reducing such regulatory burdens on businesses.
- 3.12 There are two key reasons for repeal:
- **Failure of the procedure to achieve its intended purpose.** We have seen no evidence to suggest that the provision has had the intended effect of encouraging settlement of claims without recourse to tribunals or the courts, or has encouraged efficiency of the claims process for cases that reach a court or tribunal.

⁷ GEO Administrative Burden Reduction Study, IFF Research prepared for Government Equalities Office, June 2009

- **Additional unintended burdens created by the provision.** A survey carried out by the British Chambers of Commerce⁸ reflects concerns that some businesses have about the forms and the procedure generally: the forms were thought to be very long and technical; potential complainants can ask for records that go back years resulting in many hours of staff time to complete the forms. In such cases, some employers believe this process is used as a ‘fishing exercise’ by potential claimants even if they do not reasonably have any cause for complaint. And employers were concerned that, whilst the use of the forms is not compulsory, courts or tribunals can take into account an employer’s failure to complete the form. As a result, employers are employing or contracting legal expertise to help complete the form – resulting in an additional expense.

3.13 The proposal to remove the procedures under section 138 of the 2010 Act and related secondary legislation (setting out the prescribed forms) will not affect access to justice. Repealing these provisions would not prevent those claiming they have been discriminated against from using other means of obtaining information about the alleged discrimination. It will remain open to an employee or customer to ask an employer or service provider, verbally and/or in writing, with or without legal or other assistance, about a situation where they think they have been discriminated against. And, if they consider any response to be insufficient (or if no response is provided), they will still be able to bring a case before an employment tribunal or a court. It would be for the tribunal or court to take into account as evidence any previous exchanges between the complainant and the respondent. The proposed repeal would simply remove the statutory procedural mechanisms of section 138, not the scope for establishing facts about whether discrimination, harassment or victimisation under the 2010 Act has occurred.

Questions for you to consider

3.14 The following questions are intended to identify evidence of use and effectiveness of the procedures for obtaining information, including under section 138 of the 2010 Act, and to seek your views on whether this provisions should be repealed.

Question 5: Have you or your organisation been involved in a procedure for obtaining information about a situation involving potential discrimination, harassment or victimisation?

Questions 6 & 7: Please provide details of your involvement in a procedure for obtaining information and indicate whether the procedure for obtaining information was set in motion under previous equality legislation or under section 138 of the Equality Act 2010.

Question 8- 10: Please indicate what action was taken by the potential complainant after using the procedure for obtaining information? And provide further details.

⁸ The Workforce Survey – Micro Business August 2011

Question 11: Please provide any additional details about your experience of the procedure for obtaining information (e.g. details of time/costs involved, whether the forms assisted with the efficiency of the claims process in a tribunal or court etc.

Question 12: Whatever your answer to question 5, do you agree or disagree that the procedure for obtaining information in section 138 of the Equality Act 2010 should be repealed? We would welcome reasons for your answer.

Chapter 4 – Impact Assessments

4.1 Impact Assessments relating to this consultation are at Annexes D (wider recommendation powers) and E (procedure for obtaining information). They set out the estimated benefits and costs of repealing sections 124(3)(b) and 138 of the 2010 Equality Act. Each also contains an assessment of the equality impact of repeal. We would welcome your comments and/or evidence of potential impact.

Questions for you to consider – (a) wider recommendations

Question 13: Do you think that there are further benefits and/or costs to repealing the wider recommendations provision which have not already been included in the impact assessment? If so, please give details.

Question 14: Do you have any comments on the assumptions, approach or estimates we have used in the wider recommendations provision impact assessment?

Question 15: Does the impact assessment for the wider recommendations provision properly assess the implications for equality? Please give details.

Questions for you to consider – (b) obtaining information provisions

Question 16: Do you think that there are further benefits and/or costs to repealing the obtaining information provisions which have not already been included in the impact assessment?

Question 17: Do you have any comments on the assumptions, approach or estimates we have used in the obtaining information provisions impact assessment?

Question 18: Does the impact assessment for the obtaining information provisions properly assess the implications for equality? Please give details.

Questions proforma template

The consultation closes on 07 August 2012. Please let us have your response by that date.

The consultation can be completed via the online form using the link below (web team to add), or responses can be emailed or posted to the addresses shown below:

Email to: enforcement@geo.gsi.gov.uk

Post to:

Enforcement Consultation Responses
Government Equalities Office
Equality Law and Better Regulation Unit
3rd Floor Fry, North East Quarter
2 Marsham Street
London SW1P 4DF

When responding, it would be helpful if you could provide the following information.

Please fill in your contact details below, and that of your organisation if relevant. Providing this information will enable us to contact you for future consultation exercises which may be of interest to you.

Contact details are voluntary and will be treated as personal data by the Home Office in compliance with Government guidance on holding personal information.

Contact details: (optional)

Please supply details of who has completed this response.

Response completed by (name):

Position in organisation (if appropriate):

Name of organisation (if appropriate):

Contact e-mail address:

Consultation confidentiality information

The information you send us may be passed to colleagues within the Home Office, the government or related agencies.

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want other 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, among 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.

If you wish your response to remain confidential, please tick this box and say why.

I would like my response to remain confidential (please tick if appropriate)

Please say why

An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

You or your organisation

Question 1: In what capacity are you responding? (select one)

- As an individual (if so, please go to Q5 in the main comments section)
- On behalf of an organisation/as an employer (if so, please go to Q2 or 3 as appropriate)
- Other (please specify)

Question 2: Is your organisation (select one)

- A local authority (including health authority) or local authority organisation
- An equality lobby group or body
- A statutory body
- An organisation representing employers
- A professional organisation
- A trade union or staff association
- A legal organisation
- An employment tribunal or another part of the judiciary
- Other – please specify

Question 3: If responding as an employer, how many people do you employ? (select one)

- Between 1 and 5 employees
- Between 6 and 14 employees
- Between 15 and 49 employees
- Between 50 and 249 employees
- 250 employees or more

Question 4: If responding as an employer, please indicate which sector best describes you. (select one)

- Legal services
- Construction and/or building design
- Communications
- Wholesale and retail trade
- Leisure – hotels, restaurants, pubs
- Leisure – cinemas, theatres, museums
- Leisure – other
- Distribution/transport
- Financial and/or business services
- Electricity, gas and water supply

Advice and/or information services

Public administration

Education/training

Health and social work

Charity/voluntary work

Other (please tick box and specify)

Employment tribunal power to make wider recommendations – s124(3)(b) (see Chapter 2 Paragraph 2.1 of the consultation document for a description)

Question 5: Do you know of any discrimination-related case in which the wider recommendations power under section 124(3)(b) of the Equality Act 2010 has been used since October 2010? (select one)

Yes

No

Don't know

If your answer to Question 5 is “yes”, please go to Question 6.

If your answer to Question 6 is “no” or “don't know”, please go to 8.

Question 6: It would be helpful to understand more about the case(s). Please provide further details, such as nature of the claim, type of organisation involved in the case, whether the organisation is a large, small or medium sized enterprise or other.

Question 7: Please say whether you consider the outcome of the use of the power in this case or cases has been effective (closely linked to the act of discrimination to which the complaint relates) and/or proportionate (tribunal took account of employer's capacity to implement the recommendation).
(select one for each statement)

	Y	N	Don't know
a) Effective	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Proportionate	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please use the space below to provide further details

Question 8: How far do you agree or disagree that the wider recommendations power should be repealed? (select one)

- Strongly agree
- Tend to agree
- Neither agree nor disagree
- Tend to disagree
- Strongly disagree
- Don't know

Obtaining information procedure – s138 (see Chapter 2 Paragraph 2.4 of the consultation document for a description)

Question 9: Have you or your organisation been involved in a procedure for obtaining information about a situation involving potential discrimination, harassment or victimisation? (select one)

- Yes
- No
- Prefer not to say

If your answer to Question 9 is “yes”, please go to Question 10.

If your answer to Question 9 is “no” or “don't know”, please proceed to Question 16.

Question 10: Please provide details of your involvement in a procedure for obtaining information. (select one)

Involved as an employee/customer

Involved as an employer/service provider

Involved as a member of the judiciary

Involved as a representative organisation

Involved as a mediator

Involved in any other capacity not listed above please specify:

Don't know/Prefer not to say

Question 11: Please indicate whether the procedure for obtaining information was set in motion under previous equality legislation or under section 138 of the Equality Act 2010. (select one)

Previous equality legislation

Section 138 of the Equality Act 2010

Don't know

Prefer not to say

Question 12: Please indicate what action was taken by the potential complainant after using the procedure for obtaining information. (select one)

- The potential complainant did not lodge a claim with an employment tribunal or court
(If you ticked this box, please go to Question 14)
- A case was lodged with an employment tribunal or court
(If you ticked this box, please go to Question 13)
- Don't know/Prefer not to say

Question 13: If a claim was taken to an employment tribunal or court after using the obtaining information procedure, what was the outcome of that case? (select one)

- Complainant won the case
- Complainant lost the case
- Case was settled
- Case was withdrawn
- Case was struck out
- Case was dismissed
- Don't know/Prefer not to say
- Other (please specify)

Question 14: If the potential complainant did not lodge a claim with an employment tribunal or court, please indicate the outcome of using the procedure for obtaining information. (select one)

Issue was settled direct with the employer/service provider

Issue was settled through conciliation or mediation with another organisation

Other (please tick box and specify)

Prefer not to say /don't know

Question 15: Please use the space below to provide any additional details about your experience of the procedure for obtaining information (e.g. details of time/costs involved, whether the forms assisted with the efficiency of the claims process in a tribunal or court etc).

Question 16: How far do you agree or disagree that the procedure for obtaining information in section 138 of the Equality Act 2010 should be repealed? (select one)

Strongly agree

Tend to agree

Neither agree nor disagree

Tend to disagree

Strongly disagree

Don't know

Please use the space below to explain your answer, for instance if you disagree, explain to what extent you think that retaining the provisions would benefit employees.

Impact assessments

We have produced impact assessments which set out the estimated benefits and costs of repealing sections 124(3)(b) and 138 of the Equality Act 2010. We are looking to refine our impact assessments and would appreciate information to help improve our assessment of cost and benefits (see Annexes D and E of the consultation document for a description of costs and benefits).

Wider recommendations

Question 17: Do you think that there are further costs to repealing the **wider recommendations** provision which have not already been included in the impact assessment? (select one)

Yes, I think there are further costs to include

No, I think all costs have been included

Don't know

If yes, please use the space below to provide detail

Question 18: Do you think that there are further benefits to repealing the **wider recommendations** provision which have not already been included in the impact assessment? (select one)

Yes, I think there are further benefits to include

No, I think all benefits have been included

Don't know

If yes, please use the space below to provide detail

Question 19: Please use the space below to provide any comments you have on the assumptions, approach or estimates we have used in the **wider recommendations** provision impact assessment (e.g. do you agree with the estimates, assumptions/approach, such as our assumptions that employers may settle a case in order to avoid a wider recommendation; or that wider recommendations would avoid a future case against the same employer for the same discriminatory practice; or the likelihood of wider recommendations being used in the future? Or are there any estimates or assumptions we have missed out which you think should be included)

Question 20: In your view, does the impact assessment for the **wider recommendations** provision accurately assess what the implications for equality is? (select one)

Yes

No

Don't know

If no/don't know, please use the space below to explain your answer

Obtaining information provisions

Question 21: Do you think that there are further costs to repealing the **obtaining information** provisions which have not already been included in the impact assessment? (select one)

Yes, I think there are further costs to include

No, I think all costs have been included

Don't know

If yes, please use the space below to provide detail

Question 22: Do you think that there are further benefits to repealing the **obtaining information** provisions which have not already been included in the impact assessment? (select one)

Yes, I think there are further benefits to include

No, I think all benefits have been included

Don't know

If yes, please use the space below to provide detail

Question 23: Please use the space below to provide any comments you have on the assumptions, approach or estimates we have used in the **obtaining information** provisions impact assessment (e.g. do you agree with the estimates, assumptions/approach? Are there any we have missed out? Can you identify any benefits to individual claimants receive in using the forms?)

Question 24: Does the impact assessment for the **obtaining information** provisions accurately assess what the implications for equality is? (select one)

Yes

No

Don't know

If no/don't know, please use the space below to explain your answer

Thank you for completing this response form.

Responses will be used to help the Government assess your views on its proposals to repeal the employment tribunal powers to make wider recommendations – section 124(3)(b) of the Equality Act 2010, and the obtaining information procedure – section 138 of the Equality Act 2010.

Wider recommendations powers of employment tribunals**Section 124 Equality Act 2010****Note: The provision proposed for repeal is section 124(3)(b)****124 Remedies: general**

- (1) This section applies if an employment tribunal finds that there has been a contravention of a provision referred to in section 120(1).
- (2) The tribunal may –
 - (a) make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate;
 - (b) order the respondent to pay compensation to the complainant;
 - (c) make an appropriate recommendation.
- (3) An appropriate recommendation is a recommendation that within a specified period the respondent takes specified steps for the purpose of obviating or reducing the adverse effect of any matter to which the proceedings relate –
 - (a) on the complainant;
 - (b) on any other person.
- (4) Subsection (5) applies if the tribunal –
 - (a) finds that a contravention is established by virtue of section 19, but
 - (b) is satisfied that the provision, criterion or practice was not applied with the intention of discriminating against the complainant.
- (5) It must not make an order under subsection 2(b) unless it first considers whether to act under subsection (2)(a) or (c).
- (6) The amount of compensation which may be awarded under subsection (2)(b) corresponds to the amount which could be awarded by a county court or the sheriff under section 119.
- (7) If a respondent fails, without reasonable excuse, to comply with an appropriate recommendation in so far as it relates to the complainant, the tribunal may –
 - (a) if an order was made under subsection (2)(b), increase the amount of compensation to be paid;
 - (b) if no such order was made, make one.

Procedures for obtaining information**Section 138 Equality Act 2010**

Note: it is proposed to repeal the whole of this section

138 Obtaining information, etc

- (1) In this section –
 - (a) P is a person who thinks that a contravention of this Act has occurred in relation to P;
 - (b) R is a person who P thinks has contravened this Act.
- (2) A Minister of the Crown must by order prescribe-
 - (a) forms by which P may question R on any matter which is or may be relevant;
 - (b) forms by which R may answer questions by P.
- (3) A question by P or an answer by R is admissible as evidence in proceedings under this Act (whether or not the question or answer is contained in a prescribed form).
- (4) A court or tribunal may draw an inference from –
 - (a) a failure by R to answer a question by P before the end of the period of 8 weeks beginning with the day on which the question is served;
 - (b) an evasive or equivocal answer.
- (5) Subsection (4) does not apply if –
 - (a) R reasonably asserts that to have answered differently or at all might have prejudiced a criminal matter;
 - (b) R reasonably asserts that to have answered differently or at all would have Revealed the reason for not commencing or not continuing criminal proceedings;
 - (c) R's answer is of a kind specified for the purposes of this paragraph by order of a Minister of the Crown;
 - (d) R's answer is given in circumstances specified for the purposes of this paragraph by order of a Minister of the Crown;

- (e) R's failure to answer occurs in circumstances specified for the purposes of this paragraph by order of a Minister of the Crown.
- (6) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.
- (7) A Minister of the Crown may by order –
 - (a) prescribe the period within which a question must be served to be admissible under subsection (3);
 - (b) prescribe the manner in which a question by P, or an answer by R, may be served.
- (8) This section –
 - (a) does not affect any other enactment or rule of law relating to interim or preliminary matters in proceedings before a county court, the sheriff or an employment tribunal, and
 - (b) has effect subject to any enactment or rule of law regulating the Admissibility of evidence in such proceedings.

Forms for obtaining information under section 138 Equality Act 2010
The Equality Act 2010 (Obtaining Information) Order 2010 – SI 2010/2194

S T A T U T O R Y I N S T R U M E N T S

2010 No. 2194

EQUALITY

Made - - - - - *2nd September 2010*

Laid before Parliament *7th September 2010*

Coming into force - - - *1st October 2010*

The Secretary of State makes this Order in exercise of the powers conferred by section 138(2), 138(5)(d) and (e), 138(7) and section 207(1), (2) and (4)(a) of the Equality Act 2010^(a):

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Equality Act 2010 (Obtaining Information) Order 2010 and comes into force on 1st October 2010.

(2) In the Order “the Act” means the Equality Act 2010.

Forms for obtaining information — prohibited conduct

2. In relation to a contravention of the Act other than a breach of an equality clause or rule—

- (a) the form prescribed for the purposes of section 138(2)(a) of the Act is the form set out in Part 1 of Schedule 1 or a form to the like effect with such variations as the circumstances may require, and
- (b) the form prescribed for the purposes of section 138(2)(b) of the Act is the form set out in Part 2 of Schedule 1 or a form to the like effect with such variations as the circumstances may require.

Forms for obtaining information — equality of terms

3. In relation to a breach of an equality clause or rule—

- (a) the form prescribed for the purposes of section 138(2)(a) of the Act is the form set out in Part 1 of Schedule 2 or a form to the like effect with such variations as the circumstances may require, and

^(a) 2010 c.15.

- (b) the form prescribed for the purposes of section 138(2)(b) of the Act is the form set out in Part 2 of Schedule 2 or a form to the like effect with such variations as the circumstances may require.

Period for service of questions

4. In order to be admissible under section 138(3) of the Act a question must be served—
- (a) before proceedings under the Act relating to the contravention are commenced, or
 - (b) where proceedings under the Act relating to the contravention have been commenced, before—
 - (i) the end of the period of 28 days beginning on the day on which proceedings were commenced, or
 - (ii) such later time as the court or tribunal specifies.

Manner of service for questions and answers

5.—(1) P may serve a question on R—

- (a) by delivering it to R or by sending it by post to R at R's usual or last-known residence or place of business, or
- (b) if R has indicated in writing to P that R is willing to accept service of the question by electronic means, by sending it by electronic means to the number, address or other electronic identification given by R for the purpose.

(2) R may serve an answer on P—

- (a) by delivering it to P or by sending it by post to P at the address stated on the document containing the question, or, if no address is stated, at P's usual or last-known residence or place of business, or
- (b) if P has stated on the document containing the question or has otherwise indicated in writing to R that P is willing to accept service of the answer by electronic means, by sending it by electronic means to the number, address or other electronic identification given by P for the purpose.

(3) Where P or R is acting by a solicitor, a question or answer may be served—

- (a) by delivering it at, or by sending it by post to, the solicitor's address for service, or
- (b) if the solicitor has indicated in writing to P or R as the case may be that he or she is willing to accept service of the question or answer by electronic means, by sending it by electronic means to the number, address or other electronic identification given by the solicitor for the purpose.

(4) Where P or R is a body corporate, or is a trade union or employers' association within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992^(b), a question or answer may be served—

- (a) by delivering it to the secretary or clerk of the body, union or association at its registered or principal office, or by sending it by post to the secretary or clerk at that office, or
- (b) if the secretary or clerk has indicated in writing to P or R as the case may be that he or she is willing to accept service of the question or answer by electronic means, by sending it by electronic means to the number, address or other electronic identification given by the secretary or clerk for the purpose.

(5) For the purposes of service by electronic means—

- (a) the following are to be taken as sufficient written indications—

^(b) 1992 c.52.

- (i) a number, address or other electronic identification set out on the writing paper of the person to be served, or, in the case of P, on the document containing the question, or
 - (ii) where the person to be served is acting by a solicitor, a number, address or other electronic identification set out on the writing paper of the solicitor, but for service other than by fax, only where it is stated that the number, address or other electronic identification may be used for service.
- (b) a question or answer is deemed to be served—
- (i) if it is sent on a business day before 4:30pm, on that day, or
 - (ii) in any other case, on the next business day after the day on which it was sent.
- (6) For the purpose of paragraph (5)(b)—
- (a) “business day” means any day except Saturday, Sunday, a bank holiday, Good Friday or Christmas Day, and
 - (b) “bank holiday” means a bank holiday under the Banking and Financial Dealings Act 1971^(c) in the part of the United Kingdom where service is to take place.

National security

6. For the purposes of section 138(5)(d) and (e) of the Act the circumstances specified are where R reasonably asserts that the reason for failing to answer or for giving an evasive or equivocal answer is the purpose of safeguarding national security.

Theresa May

2nd September 2010

Secretary of State for the Home Department

^(c) 1971 c.80.

SCHEDULE 1

Article 2

Obtaining information on prohibited conduct

PART 1

Questions Form

(For P)

1. To.....(*name of the person to be questioned (R)*)
of.....(*address*)

2. I..... (*name of the person asking questions (P)*)
of.....(*address*)

think that you may have treated me in a way which is unlawful under the Equality Act 2010.

3. I think that the treatment I received may have been unlawful under the Act because of:

Age Disability Gender Reassignment
Marriage and Civil Partnership Pregnancy and Maternity Race
Religion or Belief Sex Sexual Orientation

4. I think that the treatment I received amounted to:

Direct Discrimination Indirect Discrimination Harassment
Victimisation Failure to make Reasonable Adjustments for Disabled Persons
Gender Reassignment Discrimination Discrimination arising from Disability
Pregnancy and Maternity Discrimination

5. (*If applicable*) I think that you instructed, caused or induced or that you aided another person to treat me in a way which is unlawful under the Act as set out in sections 3 and 4 of this questions form.

6. (*Give date, approximate time and factual description of the treatment received and of the circumstances leading up to the treatment*)

7. (*If possible, give the reason(s) why you think that the treatment you have received was unlawful under the Act*)

8. My questions to you are:

(1) Do you agree that the statement at paragraph 6 above is an accurate description of what happened?

(2) If not, in what respect do you disagree or what is your version of what happened?

(3) Do you agree that your treatment of me was unlawful under the Act as set out at paragraphs 3 to 5 above? If not:

(a) why not?

(b) what was the reason for your treatment of me?

(c) did considerations of the protected characteristic stated in section 3 affect your treatment of me and if so,

how?

(4) (*Any other relevant question(s) to R*)

9. Please send your answers to my home address above

or

Please send your answers to the following address:

.....(address)

.....(signature of P)

.....(date)

(If applicable)

Please send your answers to (name of P's representative)

of(address)

..... (signature of P's representative)

.....(date)

By virtue of section 138(3) and (4) of the Act, these questions and any answers are admissible as evidence in proceedings under the Act. A court or tribunal may draw an inference from a failure by R to answer a question by P before the end of the period of 8 weeks beginning with the day on which the question was served or from an evasive or equivocal answer.

PART 2

Answers Form

(For R)

1. To(name of the person asking questions
(P))
of.....(address of the person asking questions)

2. I.....(name of the person answering questions(R))
of(address)
acknowledge receipt of the questions form signed by you and dated(date)
which was served on me on(date)

3. My answers to the questions at paragraphs 8(1) and (2) of the questions form are:

(1) I agree in full / in part* that the statement at paragraph 6 of the questions form is an
accurate description of what happened
(If applicable) I agree in full / in part* because

(2) I do not agree that the statement at paragraph 6 of the questions form is an accurate
description of what happened
(If applicable) I do not agree because.....

4. My answers to the questions at paragraph 8(3) of the questions form are:

(1) I agree in full / in part that my treatment of you was unlawful under the Act
(If applicable) I agree in full / in part* because.....

(2) I do not agree that my treatment of you was unlawful under the Act
(If applicable) I do not agree because

(3) The reasons for your treatment by me and the answers to the other questions at
paragraph 8(3) of the questions form are

5. (If applicable) My answer(s) to the question(s) at paragraph 8(4) of the questions form are:

6. I am unable / unwilling* to answer the question(s) numbered
of the question(s) form because.....

(*delete as appropriate)

.....(signature of R)
.....(date)

(If applicable)

..... (name of R's representative)
of(address)

.....(*signature of R's representative*)
.....(*date*)

SCHEDULE 2

Article 3

PART 1

Questions Form

(For P)

1. To.....(*name of the person to be questioned (R)*)
of.....(*address*)

2. I..... (*name of the person asking questions (P)*)
of.....(*address*)
think that I may not have received equality of terms in accordance with the Equality Act 2010 for
the following reasons:.....
.....
(*Give a summary of the reasons why you think that you may not have received equality of terms*)

3. I am claiming equality of terms with the following comparator(s):.....
.....
(*Give the name(s) or, if not known, the job title(s) of the person(s) with whom you are claiming
equality of terms*)

4. My questions are:

(1) Do you agree that I have not received equality of terms in accordance with the Equality
Act 2010?

(2) Do you agree that my work is equal to that of my comparator(s)?

(3) If you do not agree, please explain why you disagree.

(4) Do you agree that I have received less favourable pay or other contractual terms than my
comparator(s)?

(5) If you agree that I have received less favourable pay or other contractual terms than my
comparator(s), please explain the reasons for this difference.

(6) If you do not agree that I have received less favourable pay or other contractual terms
than my comparator(s), please explain why you disagree.

5. (*Any other relevant question(s) to R*)

6. Please send your answers to my home address above

or

Please send your answers to the following address:

.....(*address*)

.....(*signature of P*)

.....(*date*)

(*If applicable*)

Please send your answers to (*name of P's representative*)

of(*address*)

..... (*signature of P's representative*)

.....(*date*)

By virtue of section 138(3) and (4) of the Act, these questions and any answers are admissible as evidence in proceedings under the Act. A court or tribunal may draw an inference from a failure by R to answer a question by P before the end of the period of 8 weeks beginning with the day on which the question was served or from an evasive or equivocal answer.

PART 2

Answers Form

(For R)

1. To(name of the person asking question(s) (P))
of(address)

2. I(name of the person answering question(s) (R))
of(address)

acknowledge receipt of the questions form signed by you and dated(date)
which was served on me on(date)

3. My answers to your question at paragraph 4 of the questions form are:

(1) I agree / do not agree* that you have not received equality of terms in accordance with
the Equality Act 2010.

(2) I agree / do not agree* that you are doing equal work to that of your comparator(s).

(3) I do not agree that you are doing equal work to that of your comparators because.....
.....

(4) I agree / do not agree* that you have received less favourable pay or other contractual
terms than your comparator(s).

(5) (If applicable) I agree that you have received less favourable pay or other contractual
terms than your comparators and the reason for this difference
is.....
.....

(6) (If applicable) I do not agree that you have received less favourable pay or other
contractual terms than your comparator(s) because
.....

4. (Answers to any questions at paragraph 5 of the questions form)

5. (If applicable) I am unable / unwilling* to answer the questions numbered.....
in the questions form because.....

(*delete as appropriate)

.....(signature of R)
.....(date)

(If applicable)

..... (name of R's representative)
of(address)

..... (signature of R's representative)
.....(date)

EXPLANATORY NOTE

(This note is not part of the Order)

This Order prescribes forms on which individuals who think that they may have been the subject of a contravention of the Equality Act 2010 (“the Act”) including the breach of an equality clause or rule (P) may ask questions of a person who they think was responsible for the contravention or breach (R) and forms on which R may reply.

Article 2 of this Order prescribes forms for obtaining information about contraventions of the Act other than breaches of the provisions on equality of terms. P may use the questions form in Part 1 of Schedule 1 to the Order and R may use the answers form in Part 2 of that Schedule or P or R may use different forms with the same purpose.

Article 3 prescribes forms for obtaining information about breaches of the equality of terms provisions of the Act. P may use the questions form in Part 1 of Schedule 2 to the Order and R may use the answers form in Part 2 of that Schedule or P or R may use different forms with the same purpose.

Article 4 provides that for any question or answer to be admissible as evidence in proceedings under the Act, P must serve the questions either before the proceedings are commenced or within 28 days of commencement of proceedings or, if later, within a period specified by the court or tribunal.

Article 5 sets out the manner in which questions and answers may be served, including by delivery in person, by post or by electronic means such as fax or email.

Article 6 specifies that where R reasonably asserts that a refusal to answer or an unhelpful answer is due to the purpose of safeguarding national security, then a court or tribunal must not draw an inference from the answer or lack of an answer.

This Order is one of a series of instruments that implement the Act. A full impact assessment of the effect that the Act will have on the costs of business and the voluntary sector is available at the Government Equalities Office website at www.equalities.gov.uk. A separate impact assessment has not been carried out for this Order.

Impact Assessment of removing the provisions in the Equality Act 2010 which give employment tribunals the power to make wider recommendations

Title: Review of the need for employment tribunals to have the power to make wider recommendations IA No: GEO 1032 Lead department or agency: Home Office (Government Equalities Office)		Impact Assessment (IA)			
		Date: 22/12/2011			
		Stage: Consultation			
		Source of intervention: Domestic			
		Type of measure: Primary Legislation			
		Contact for enquiries: Jay Begum 020 7035 8115			
Summary: Intervention and Options		RPC Opinion: Amber			
Cost of Preferred (or more likely) Option					
Total Net Present Value £0	Business Net Present Value £0	Net cost to business per year (EANCB on 2009 prices) £0	In scope of One-In, One-Out? Yes	Measure qualifies as One-Out? OUT	
What is the problem under consideration? Why is government intervention necessary? <p>Under previous discrimination law, where a discrimination claim was successful, an employment tribunal had the power to make recommendations to the employer concerned to take specific actions to prevent or reduce the adverse effect on the claimant of the discriminatory treatment he/she had been subjected to. The Equality Act 2010 extended this power so that employment tribunals can make such recommendations for the benefit of the employer's wider workforce, not just the individual claimant. We refer to these as "wider recommendations". We understand that employers continue to have fears of inappropriate or excessive recommendations although we are unaware of any wider recommendations having been made since the commencement of these provisions in October 2010. In line with the Government's commitment to reduce potentially unnecessary regulatory burdens on business, we therefore intend to review by way of consultation whether the power of tribunals to make wider recommendations imposes a disproportionate burden on business.</p>					
What are the policy objectives and the intended effects? <p>The policy objective is to reduce any regulatory burden on employers that the power of employment tribunals to make wider recommendations may impose. The intended effects are to ensure that, if the results of the forthcoming consultation <i>on the need for employment tribunals to have the power to make wider recommendations</i> identify these provisions as unnecessary, disproportionate or ineffective, steps will be taken to remove these provisions from the legislation without affecting strong and effective enforcement.</p>					
What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base) <p>Option 1 – Do nothing. Keep the power of employment tribunals to make wider recommendations in force Option 2 – Repeal the provisions in the Equality Act which empower employment tribunals to make wider recommendations (preferred option).</p> <p>Option 2 is the preferred option as this will achieve the policy objective of reducing any potential unnecessary burdens on employers. We intend to consult on the need for employment tribunals to make wider recommendations.</p>					
Will the policy be reviewed? It will not be reviewed. If applicable, set review date: N/A					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes

What is the CO₂ equivalent change in greenhouse gas emissions?
(Million tonnes CO₂ equivalent)

Traded:
N/A

Non-traded:
N/A

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: January 2012

Summary: Analysis & Evidence

Policy Option 2

Description: Repeal the provisions in the Equality Act which empower employment tribunals to make wider recommendations

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0.5	Best Estimate: 0*
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)	
Low	N/A	1	0	0	
High	N/A		0.02	0.19	
Best Estimate	0		0*	0*	
<p>Description and scale of key monetised costs by ‘main affected groups’</p> <p>0-17 (0-3% of all successful discrimination cases) would lead to wider recommendations. A survey of employers suggests that on the back of a discrimination case, 5% of employers have subsequent cases brought against them. Wider recommendations leading to changes in employer practices and policies may have helped prevent these cases. The estimated annual cost of 0-1 (5% of 0-17 wider recommendations made per annum – see ‘Benefits’ below) employment cases being brought because wider recommendations were not made is £0-0.02million, including £0-0.01million to private and voluntary sector employers.</p> <p>The figures represent the cost of an additional number of discrimination cases avoided as a result of wider recommendations. The estimate is at the lower range as the evidence suggests there has been no use of wider recommendations to date (see evidence base)</p>					
<p>Other key non-monetised costs by ‘main affected groups’</p> <p>There would not be any significant familiarisation costs associated with repeal. Employers currently only need to know wider recommendations can be made in the event of a successful claim against them and therefore in the event of repeal employers would simply need to know that this is no longer the case. It was assumed that wider recommendations would increase compliance and lead to changes to discriminatory policies and practices, potentially preventing future cases. If the provisions are repealed it could lead to continuing instances of workplace discrimination, and other non-financial negative effects of disputes to both employers and individuals. Any increase in instances of workplace discrimination could have indirect costs for employers.</p>					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)	
Low	N/A	1	0	0	
High	N/A		0.08	0.70	
Best Estimate	0		0*	0*	
<p>Description and scale of key monetised benefits by ‘main affected groups’</p> <p>The annual benefit of employers no longer receiving wider recommendations in an estimated 0-3% of all successful discrimination cases at hearing (0-17 cases) is £0-0.08million, including £0-0.01m to private and voluntary sector employers</p> <p>Whilst we have represented the benefit of a positive number of recommendations no longer being made as the high estimate, our best estimate reflects the lower range, because the evidence suggests that the likelihood of any wider recommendations being made is very low (see evidence base). The high estimate for benefits arising through removing wider recommendations is indicative of scale only.</p>					
<p>Other key non-monetised benefits by ‘main affected groups’</p> <p>Repeal of the provisions would reduce employers’ concerns that wider recommendations could be inappropriate or excessive.</p>					
Key assumptions/sensitivities/risks				Discount rate (%)	3.5

- The average annual number of discrimination jurisdiction employment tribunal cases accepted (excl. equal pay) is 21,800 per annum.
- 2.5% (or 550 cases) are on average successful at tribunal per annum.
- A high estimate of the likelihood of recommendations being made in successful cases is 3%, or 17 cases per annum. However, the best estimate is 0 as there is no evidence of recommendations having been made to date.
- 5% of employers have discrimination cases brought against them on the back of other claims. This indicates that 0-17 recommendations per annum would possibly prevent 0-1 cases each year being brought.
- 10% of wider recommendations would require staff within an organisation to undergo training.
- There will be no significant transitional costs as an impact of this policy.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIIO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	Yes	OUT

Evidence Base (for summary sheets)

Introduction

Under previous discrimination law, where discrimination claims were successful, employment tribunals had powers to make recommendations to the employer concerned to take specific actions to prevent or reduce the adverse effect on the claimant of the discriminatory treatment he or she had been subjected to. In cases where the employment tribunals made recommendations, as many as 72% of claimants in discrimination cases were no longer working for the respondent by the time of a hearing, so in those cases, such recommendations had no effect¹. It was estimated that recommendations would be made in about 1-3% of successful discrimination cases.

The Equality Act 2010 extended the power of employment tribunals to make recommendations in discrimination cases so that they could benefit the employer's wider workforce, as well as the individual claimant. This was done to ensure that the employer's wider workforce would be in a position to benefit when an individual claimant is successful in bringing a discrimination case, and the employment tribunal makes an appropriate recommendation. An appropriate recommendation is one that requires the employer to take particular action which would reduce or eliminate the discriminatory conduct which the tribunal ruled unlawful, regardless of whether the individual claimant is still employed by that employer.

Previously, employment tribunals had been able to make recommendations, in discrimination cases where the claimant was successful, that the employer should take specific action in relation to the successful claimant. Such action might include, for example, introducing a phased-in return to work for an applicant who may have been on sick leave as a result of a long campaign of bullying and harassment. It was hoped that a wider recommendation in such a case could include for example, the company introducing a harassment policy and referring to guidance or taking advice (e.g. from the Equality and Human Rights Commission) when doing so.

Wider recommendations are not compulsory. However, if the employer fails to comply with a wider recommendation, it is open to the tribunal, should a similar case subsequently occur involving the same employer, to take that failure into account in coming to its judgement.

It was envisaged that there was scope to reduce the incidence of repeat offending as the wider recommendations would also help employers to take the necessary steps to avoid future discrimination claims being brought against them.

The introduction of these provisions was never expected to result in a significant increase in the use of the power to make recommendations; In the Equality Act 2010 impact assessment, this was estimated at around 3-5% of successful discrimination cases.²

¹ Survey of Employment Tribunal Applications, 2008 – where discrimination was the primary jurisdiction

² Annex J, Equality Act Impact Assessment, Final Version (Royal Assent), April 2010; <http://www.equalities.gov.uk/pdf/Equality%20Act%20Impact.pdf>

Problem under consideration and rationale for intervention

It was originally considered that the power to make wider recommendations would be a 'light touch' tool to help employers learn from their mistakes and take the necessary steps to avoid discrimination claims being brought against them in the future. The Survey of Employment Tribunal Applications 2008 suggests that as many as 5% of employers who have discrimination claims brought against them, have subsequent claims brought on the back of the first claim. Wider recommendations could help such employers and limit their exposure to further claims in this regard, whilst suggesting beneficial change for their workplace and employment practices.

However, responses from business representatives to the *Discrimination Law Review: A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain* (June 2007)³ in relation to the issue of extending the power of employment tribunals to make wider recommendations indicated employer fears of excessive or inappropriate recommendations.

We are also aware that findings of discrimination can trigger changes to employer policies and practices without any employment tribunal recommendations, perhaps highlighting that employers do learn from the process without the need for explicit recommendations made by a tribunal. For example, see the findings from the Survey of Employment Tribunal Applications 2008 in the table below. This shows the fraction of all employers who experienced a discrimination case who made specific changes. 54% of all employers who faced a case made at least one change.

Changes made by employer as a result of a discrimination case (without recommendations)	Percent of employers making change
Introduce/review formal disciplinary and grievance policies	16%
make sure procedures are followed	46%
Revise terms and conditions in employee's contracts	13%
Take insurance out against further claims	6%
Join an employers association for legal services	4%
Seek professional advice prior to taking disciplinary action	19%
Made at least one change	54%

Source: SETA 2008

We have not seen evidence that employment tribunals have used the power to make wider recommendations to date. There is therefore no evidence, so far, to show that the extended power is necessary or that it is an appropriate or effective remedy. We are now consulting on removing this power, subject to any evidence that it is necessary and appropriate.

Policy objective

The policy objective is to reduce any potentially unnecessary regulatory burdens that the power of employment tribunals to make wider recommendations may impose on business.

Description of Policy options

Option 1 – **Do nothing**. By leaving the power in force, this could leave the Government open to criticism for implementing ineffective or disproportionate legislative measures, thereby imposing unnecessary potential regulatory burdens on businesses.

³ <http://webarchive.nationalarchives.gov.uk/20110608160754/http://www.equalities.gov.uk/PDF/DLRCconsultation.pdf>

Option 2 – Remove the provision entirely. This is our preferred option as there is no evidence that the power to make wider recommendations is an appropriate or effective legal remedy. We are unaware that any such recommendations have been made since the commencement of the Equality Act in October 2010. We consider that by removing these provisions we will reduce unnecessary burdens on business without affecting the other legal remedies currently available (for example, where a claimant wins his/her case, the tribunal will still be able to make claimant-specific recommendations; and to order compensation to be paid). Employment tribunals could still make claimant-specific recommendations, such as training for managers, which would also clearly be of value to the wider workforce, where the claimant continues to be employed by the respondent. Furthermore, it will still be open to employers to seek advice on their practices and policies from organisations such as ACAS. To this extent, this constitutes an alternative non-legislative remedy to the problem of employers failing to learn from discrimination cases they have lost.

We are not aware of further viable alternative non-legislative remedies at this time. We will use the consultation to identify whether any such remedies exist.

Micro Business and Start-up Exemption

It is intended to repeal the wider recommendations provisions for all enterprises, including micros and start-ups. For all employers to benefit from the removal of this provision, all enterprises will be covered by this proposal.

Costs and Benefits

Note: Throughout this Impact Assessment all prices have been inflated to 2011 prices using HM Treasury GDP Deflator Series last updated 25 October 2011 unless stated otherwise

Option 1 – Do nothing

In this Impact Assessment, the costs and benefits of doing nothing are those which would be incurred were the provisions to remain in force, and the baseline against which the impact of other options are assessed. The Equality Act Impact Assessment, April 2010 assessed the impact of widening the powers of tribunals so that they can make recommendations that benefit the wider workforce before commencement. The estimated costs and benefits of associated with the wider recommendations provisions have been reassessed here.

Number of recommendations per annum

The Equality Act 2010 Impact Assessment suggested that under the new power 3-5% of successful discrimination cases would lead to wider recommendations.

The estimate of the number of discrimination cases expected at employment tribunal per annum is 21,800.⁴ Over the same period, an average of 2.5% or 550 discrimination cases were successful at hearing.⁵ We do not know of any use having been made of the power to make wider recommendations since it was implemented in October 2010. Therefore, the lowest estimate of recommendations per annum is zero. A high estimate of the number of discrimination cases where recommendations are made is 3%, or 17 per annum, in line with the lower estimate when the measure was commenced in the Equality Act. The high estimate of 3% (17 per annum) simply gives an indication of the potential benefits and costs should any wider recommendations be made. However, on the basis of the current evidence, we must consider our best estimate to be that no wider recommendations would be made.

⁴ Average over the last 3 years, adjusted by a factor of 1.72 to account for number of jurisdiction claims per case; Employment Tribunal Annual Statistics (GB), 2008/09-2010/11

⁵ 2.54% x 21,798 = 554

Table 1 – Breakdown of recommendations by sector of employer, per annum

	Percentage of Cases ⁶	Estimated Number of Cases with Wider Recommendations	
		Low	High
Private Sector	52%	0	9
Public Sector	36%	0	6
Voluntary Sector	12%	0	2
Total	100%	0	17

Source: SETA 2008, GEO estimates

Impact of Wider Recommendations

As stated in the Equality Act Impact Assessment, one of the principal policy objectives of allowing tribunals to make wider recommendations was “to improve compliance with the law and help respondents to avoid future claims, thereby reducing the number of employment tribunal cases.” The original Impact Assessment assumed that 25-35% of employers receiving wider recommendations were possible re-offenders, and that in 50% of such instances, a case would be avoided.

The Survey of Employment Tribunal Applications 2008 provides evidence on the non-financial negative effects incurred by an employer after a discrimination claim. Of those employers who identified such effects, 5% stated that another claim was brought on the back of the original discrimination case.⁷ This is considered to be a reasonable estimate of the likelihood that wider recommendations would avoid future offences. We are also assuming here that all recommendations would be complied with, in line with Better Regulation Executive guidance that 100% compliance should be assumed without evidence to the contrary. Therefore, we estimate that 0-1 (5% of 0-17) cases would be avoided as a result of recommendations being made. We will use the consultation on these provisions to test this estimate.

Cost of Recommendations

As no wider recommendations are yet known to have been made, it is not known what they would typically involve, and therefore there is no significant evidence to base the likely cost on. The Explanatory Notes to the Equality Act 2010 (paragraph 406) anticipated that wider recommendations might involve, for example, recommending that the employer should:

- Introduce an equal opportunities policy;
- Re-train staff
- Make public the selection criteria used for transfer or promotion of staff.

We rely on the assumptions previously made in the Impact Assessment for the Equality Act. Respondents to the recommendation, typically corporate managers, would take on average two days (14 hours) to review policies or implement changes. It is possible that employers would need to retrain staff. For this requirement, we have assumed that 10% of recommendations would require all staff to undergo a day of relevant training. The median hourly wage costs for a corporate manager and for all UK employees are £49.25 and £13.49 respectively.⁸ The average number of employees in private, public and voluntary sector organisations is estimated to be 12, 927 and 28 respectively, using the Business Population Estimates for the UK and Regions 2011.⁹ The total expected cost of wider recommendations made is estimated at **£0-67,000** per annum, with the best estimate being **£0**.

⁶ Where discrimination is the primary jurisdiction, Survey of Employment Tribunal Applications 2008

⁷ Survey of Employment Tribunal Applications 2008, BIS

⁸ ASHE 2011 –111 & All, incl. 21% uplift for non-wage labour costs – Note: uplift derived from European Labour Costs Survey (2007)

⁹ Business Population Estimates for UK and Regions, BIS, <http://www.bis.gov.uk/analysis/statistics/business-population-estimates>

Non-monetised Costs

The issue of wider recommendations was consulted on as part of the Dispute Resolution Review consultation in March 2007.¹⁰ The consultation *Discrimination Law Review: A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain* (June 2007)¹¹ did not explicitly consult on wider recommendations. However, a significant number of responses provided views on this issue. A number of business representative responses argued that a tribunal would not understand the workings of a firm on the strength of an individual case; that a scenario where different tribunals make contradictory recommendations would lead to confusion; and that it would be inappropriate for a tribunal to “recycle” a recommendation related to a similar case for another different organisation. Under this option, to do nothing, employer fears of excessive or inappropriate recommendations will continue.

Benefits of Recommendations

The Cost of a Discrimination Case

Exchequer

The average cost of an accepted employment tribunal claim is calculated using the Employment Tribunals Service Annual Accounts and Report 2005/2006¹²; net operating cost divided by the number of claims accepted. On this basis, the average cost to the exchequer per claim accepted is **£690** in 2010/2011 prices

Individuals

The average costs to individuals are calculated using SETA 2008, and reflect average values where the primary jurisdiction of a claim was discrimination for advice and representation, and travel and communication costs¹³. The cost to the individual of market work foregone as a result of claiming is represented by loss of earnings, which is also taken from SETA 2008. The overall average cost of a discrimination case is **£1,833**.

Table 2 – Cost of a discrimination case to the individual

Cost for Advice and Representation	£888
Costs incurred from travel and communication	£31
Loss of Earnings	£914
Total	£1,833

Source: SETA 2008 adjusted for zero values

Employers

The average costs to employers are calculated using SETA 2008. This is calculated as the cost of advice and representation, time spent by corporate managers and senior officials, and time spent by other employees, namely dedicated personnel, training and industrial relations managers, on the case. The median hourly wage excluding overtime is assumed to be £49.25¹⁴ and £26.58¹⁵ respectively for these two roles. The overall average cost to an employer of a discrimination case is **£5,528**.¹⁶

¹⁰ <http://www.bis.gov.uk/files/file38516.pdf>

¹¹ <http://webarchive.nationalarchives.gov.uk/20110608160754/http://www.equalities.gov.uk/PDF/DLRConsultation.pdf>

¹² Employment Tribunals Service Annual Accounts & Report, 2005/2006; <http://www.employmenttribunals.gov.uk/Documents/Publications/ARA0506.pdf>; More recent accounts for the former Employment Tribunals Service are not available as annual reports are now published under HM Courts & Tribunals Service as a whole, which are not considered as indicative of the true actuarial cost

¹³ Note, all cost figures taken from SETA 2008 in this Impact Assessment are adjusted from median figures to account for zero values

¹⁴ ASHE 2011 –111, incl. 21% uplift for non-wage labour costs – Note: uplift derived from European Labour Costs Survey (2007)

Table 3 – Cost of a discrimination case to the employer

Time spent on case by directors & senior staff	£2,068
Time spent on case by other staff	£558
Cost for advice and representation	£2,901
Total	£5,528

Source: SETA 2008 adjusted for zero values, ASHE 2011

Settlements and Compensation

Where a claim is brought against an employer who has reoffended, the likelihood that a claimant would subsequently agree to a settlement in respect of a discrimination complaint with that employer is low. Therefore, it is very probable that employers in these circumstances will have to pay further compensation. The average compensation awarded in a discrimination case is **£14,545**.¹⁷

Non-monetised Benefits

Tables 4 and 5 show some of the non-financial, negative effects of being involved in discrimination cases.

The majority of claimants report negative effects of bringing discrimination cases. Almost half of these report that the experience is stressful/emotionally draining/depressing, and 7% have difficulty in finding subsequent employment. 38% of employers also experience negative non-financial effects on their organisation as a result of a claim being brought against them. Where wider recommendations increase compliance and prevent reoffending these other negative impacts of disputes would be avoided.

Table 4 – Percentage of claimants in cases where discrimination was the primary jurisdiction reporting non-financial negative effects

	Percent of claimants reporting negative effect
Stressful/emotionally draining/depression	48%
Physical health problems	16%
Difficulty in getting re-employed	7%
Loss of confidence/self-esteem	12%
Financial problems	5%
Lost hope/faith/trust in the system	5%

Source: SETA 2008

¹⁵ ASHE 2011 –1135, incl. 21% uplift for non-wage labour costs

¹⁶ Assumes 7 hour day

¹⁷ Employment Tribunal Statistics 2010/11

Table 5 – Did discrimination case have any non-financial negative effects on employer’s organisation

	Percent reporting negative effect
Yes	38%
No	60%
Don't know	2%

Source: SETA 2008

The Impact Assessment for *Equality Act 2010 – employer liability for harassment of employees by third parties: a consultation*¹⁸ describes illustrative indirect benefits to employers of reducing instances of workplace discrimination more widely, not just in the form of cases. Such non-monetised benefits should also be considered here if recommendations should lead to increased compliance and improved working practices of employers found to have broken discrimination law and individuals within the wider workforce would similarly benefit from such changes to discriminatory policies and practices.

Benefits Summary

The total expected benefits from wider recommendations leading to greater compliance and reduced risk of reoffending is estimated at **£0-23,000**.

Note: The compensation avoided by an employer is a transfer payment¹⁹, and therefore leads to an equivalent cost to individuals of **£0-15,000**.

Appeals

Under this option to do nothing, employers would continue to face potential costs incurred by any subsequent appeal cases and associated legal costs. However, given the number of recommendations discussed above, this cost is considered to be minimal.

Settlement Behaviour

A number of business representatives suggested that some potential respondents would seek to settle in order to avoid a recommendation being made against them. We have no evidence that this is happening as a result of the extension to the power, but under this option it remains a possible factor affecting settlement behaviour. We will use the consultation to explore this impact further.

Option 2 – Remove the provisions (repeal the power of Employment Tribunals to make wider recommendations - preferred option)

The costs and benefits under the previous option (option 1, do nothing) provide the baseline against which the impact of option 2 (remove the provisions) is assessed. Therefore, benefits can be referred to as ‘savings.’

Costs

Transitional Costs

The Equality Act 2010 Impact Assessment did not assume any familiarisation costs when this provision was commenced.

Currently, in the relatively uncommon eventuality that employers have a discrimination case brought against them successfully, they will subsequently need to be aware that the tribunal could make wider recommendations if that case is successful at hearing.

¹⁸ This consultation can also be found on the Home Office website

¹⁹ Better Regulation Executive guidance on Impact Assessments is that transfer payments should be scored as both benefits and costs

If the power to make wider recommendations is removed, it is therefore expected to be a minimal familiarisation cost on employers and captured within the overall cost to an employer of a case being brought against them.

There will be no obligations placed on HM Courts & Tribunals Service as a result of repealing these provisions. They would have to inform tribunal judges that they could no longer make wider recommendations, but there would not be a significant burden.

Therefore, there will be no significant transitional costs as an impact of the option to repeal the power.

Annually Recurring Costs

0-1 additional cases per annum would be brought because wider recommendations are not made. The costs of option 2 (repealing the power) are those incurred where benefits as described under option 1 (do nothing) are no longer realised following removal of the provisions, and are set out below in table 7.

Non-monetised Costs

Under option 1 ('do nothing') we described the non-monetised benefits of wider recommendations. We assumed that they could reduce some of the negative effects of discrimination cases being brought for individuals and employers. These benefits would not be realised under option 2 (if the provisions are removed).

Benefits

Annually Recurring Benefits

The savings from removing these provisions, and there no longer being 0-17 cases per annum where wider recommendations are made, are the same as the costs described under the do nothing option. This would also include benefits to individuals in the form of compensation awarded from the 0-1 cases where additional cases are brought. These savings are set out in table 7 below.

Non-monetised Benefits

Removing the power of employment tribunals to make wider recommendations will reduce employer fears of excessive or inappropriate recommendations.

Appeals and Settlement Behaviour

The impact of option 2 on appeals and settlement behaviour would be the opposite as described under option 1, with possibly fewer respondents choosing to settle through fear of what wider recommendations could mean, and fewer appeals. However, there is currently no evidence for these impacts nor would they be considered significant.

Summary

The overall net impact of option 2 is an annually recurring impact of **£0- £59,000**, with a net impact of **£0 - £506,000** over ten years. However, given that our best estimate currently is that no wider recommendations would be made, then our best estimate of the net impact is also **£0** for all affected groups. The range described above should therefore be treated as illustrative of the scale of impact should any wider recommendations be made, the likelihood of which the consultation will explore further.

Table 6 – Summary of costs and benefits of option 2 by key affected groups (£000s)

	Annually recurring benefits		Annually recurring costs		Net Present Value		Best Estimate
	Low	High	Low	High	Low	High	
Private and Voluntary Sector Employers	0	9	0	13	0	-33	0
Exchequer and Public Sector Employers	0	58	0	8	0	429	0
Individuals	0	15	0	2	0	109	0
Total	0	81	0	23	0	506	0

Note: Figures may not sum due to rounding

Risks and Assumptions of Preferred Option

- There has not yet been any public consultation about whether the wider recommendation powers in the Equality Act 2010 are working as intended.
- We have used available data and evidence to estimate the number of potential wider recommendations and avoidances of reoffending which we would expect if the provisions were to remain in place, and will seek to improve this during the consultation process.
- We are unaware of any wider recommendation being made since the Equality Act 2010 was commenced. This is our best estimate of any future impact the provisions may have had also. Therefore the estimated costs and savings from removing the provision are minimal.

Direct Costs and Benefits to Business (One-in, One-out)

For the purposes of One-In-One-Out scoring we calculate the direct costs and benefits to business and voluntary sector organisations as a result of this proposal in 2009 prices. The figures here are deflated using HM Treasury GDP deflator series.²⁰

The best estimate of the Equivalent Annual Cost²¹ to business and the voluntary sector of the preferred option is **£0** in 2009 prices, and this measure is therefore considered to be an OUT.

Wider Impacts

Equality Impact

A document setting out our consideration of the impact on equality is attached at Appendix A.

²⁰ Consistent with series last updated 25 October 2011

²¹ Equivalent Annual calculations use formula: $NPV / [1 - 1/r + 1 / (r \times (1+r)^9)]$ for 10 year time period, where r is the standard social time preference discount factor (3.5%)

Justice Impact

We consider that the preferred option to repeal the power of employment tribunals to make wider recommendations will have minimal impact on the justice system as there will be no need for specific judicial training. Nor do we envisage any new employment tribunal or court procedures, rights of appeal, further changes to primary and/or secondary legislation, or an increase demand for prison places.

Monitoring and Review

As the preferred option is to remove the wider recommendation powers, there will not be a dedicated review of this action. GEO is committed to reviewing the Equality Act as a whole, for a Post Implementation Review in 2015. Part of this review will aim to establish if individuals are protected by the Act, and whether organisations feel that the Act has helped simplify legislation and it is more consistent.

Summary and Implementation

Our preferred option is to repeal the provisions in the Equality Act which empower **employment tribunals** to make wider recommendations **as there is no evidence that this power** is an appropriate or effective legal remedy. We are unaware that any such recommendations have been made since the commencement of the Equality Act in October 2010. We consider that by removing these provisions we will reduce any unnecessary burdens on business, removing any unnecessary concerns they have about what wider recommendations may entail, without affecting the other legal remedies currently available to those claiming they have been discriminated against, thereby maintaining strong and effective enforcement.

EQUALITY IMPACT

Review of the power of employment tribunals to make wider recommendations

Introduction

We have considered the impact of the provisions in the Equality Act 2010 relating to the power of employment tribunals to make recommendations that benefit the employer's wider workforce, on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation ie the protected characteristics set out in the Act.

The aim of this consideration is to ensure that the implications for equality for all the protected characteristics have been properly assessed during the development of the policy, taking account of views expressed, and to provide assurance that changes needed to mitigate any potential adverse impacts have been identified.

Since discrimination cases may involve any of the protected characteristics, the impact of removing the power of tribunals to make wider recommendations can be assumed to affect people with those characteristics, potentially according to the proportion of claims in each category of characteristic. We want the law to provide appropriate remedies for the harmful discrimination people experience. However, we are unaware of any wider recommendations being made since extending the power of tribunals in October 2010. It is not clear therefore whether this legislative remedy is effective or necessary. We will therefore be consulting *on the need for employment tribunals to have the power to make wider recommendations*.

Methodology

A full Equality Impact Assessment of the Equality Act was published in April 2010 covering the impact of extending the power of tribunals to make recommendations that benefit the wider workforce on all those with protected characteristics (age, disability, gender reassignment, race, religion or belief, sex, sexual orientation). We consider that the impact of repealing the provisions is the reverse of the potential impact identified by the earlier published Equality Impact assessment.

Without these provisions tribunals will no longer be able to make recommendations that benefit the wider workforce. However, because no wider recommendation has been made to date and the power to make recommendations for the benefit of the individual complainant will remain in place, we consider that effective remedies for employees who do experience discrimination are not affected in relation to each of the protected characteristics.

The Provision

Under previous discrimination law, where a discrimination claim was successful, an employment tribunal had the power to make recommendations to the employer concerned to take specific actions to prevent or reduce the adverse effect on the claimant of the discriminatory treatment he or she had been subjected to. The Equality Act 2010 extended this power so that employment tribunals can make such recommendations for the benefit of the employer's wider workforce, not just the individual claimant (wider recommendations).

OPTION 1 – do nothing

General impact

Extending the power, so that employment tribunals can make recommendations for the benefit of the employer's wider workforce, not just the individual claimant (wider recommendations) provides a remedy which will benefit not only the individual claimant but also others who may be affected by the act of discrimination. These wider recommendations could be made following findings of discrimination across any of the protected characteristics. Complying with a recommendation to improve policy or practice could encourage a reduction of discriminatory practices within organisations across any or all protected characteristics and help to achieve a fairer and more equitable workplace for all. In the earlier published Equality Impact Assessment, it was considered that the biggest positive impact might initially be seen in the areas of race, sex and disability where most employment tribunal cases occur, but any positive impact would apply proportionately to all characteristics depending on the number of cases brought to tribunals.

OPTION 2 – repeal the power of employment tribunals to make wider recommendations

General impact

It was assumed, in the earlier published Equality Impact Assessment that wider recommendations would increase compliance and lead to changes to discriminatory policies and practices across all protected characteristics, potentially preventing future cases. If these provisions are to be repealed these changes may not be triggered following cases brought against employers.

However, we are not aware of any wider recommendation being made to date and evidence suggests that employers do make changes following a finding of discrimination, without a recommendation. We therefore anticipate no impact on any of the protected characteristics following removal of the power to make wider recommendations.

Impact Assessment of removing the provisions in the Equality Act 2010 on the obtaining information procedure

Title: Review of section 138 of the Equality Act 2010 and the need for the obtaining information Question and Answer Forms			Impact Assessment (IA)		
IA No: GEO 1033			Date: 22/12/2011		
Lead department or agency: Home Office (Government Equalities Office)			Stage: Consultation		
			Source of intervention: Domestic		
			Type of measure: Primary Legislation		
			Contact for enquiries: Jay Begum 020 7035 8115		
Summary: Intervention and Options			RPC Opinion: Amber		
Cost of Preferred (or more likely) Option					
Total Net Present Value £12.8m	Business Net Present Value £7.5m	Net cost to business per year (EANCB on 2009 prices) -£0.8m	In scope of One-In, One-Out? Yes	Measure qualifies as One-Out? OUT	
What is the problem under consideration? Why is government intervention necessary? Section 138 of the Equality Act 2010 requires a Minister of the Crown to prescribe forms in order that a person who thinks that they may have been unlawfully discriminated against, harassed or victimised, can obtain information from the person (employer or service provider) they think has acted unlawfully against them ("obtaining information"). There are also forms for employers to respond to such complaints. Whilst it is voluntary for an employer to respond, any answers provided or lack of a response may be taken into account if discrimination claims are subsequently brought to tribunal, and hence the forms may impose a disproportionate regulatory burden on business relative to any benefit. The scale of the possible burden that these forms may impose on business is given by research that suggests around 9,000 employers use the Questions and Answers forms annually. In line with the Government's commitment to reduce potentially unnecessary regulatory burdens on business, we therefore intend to review by way of consultation whether these forms are a disproportionate burden on business and should be removed.					
What are the policy objectives and the intended effects? The policy objective is to reduce any regulatory burden on employers that may be imposed as a result of the power to prescribe forms, and the related forms, which may be used by a person who thinks they have been treated unlawfully under the Equality Act 2010 to obtain information from the person they think is responsible for the unlawful treatment. The intended effects are to ensure that, if the results of the forthcoming consultation <i>on the need for the obtaining information Question and Answer forms</i> identify these measures as unnecessary or disproportionately burdensome, steps will be taken to remove the power and regulations prescribing the forms from the legislation.					
What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base) Option 1 – Do nothing. Keep in force the mechanisms, under section 138 of the Equality Act 2010, for a person who thinks that they may have been unlawfully discriminated against, harassed or victimised to obtain information from the person they think has acted unlawfully against them. Option 2 – Repeal the obtaining information provisions in the Equality Act 2010 and related secondary legislation (preferred) which may be used by a person who thinks they have been treated unlawfully under the Equality Act 2010 to obtain information from the person they think is responsible for the unlawful treatment, either before or after commencing proceedings in a court or tribunal Option 2 is the preferred option as this will achieve the policy objective of reducing any related potential unnecessary burdens on employers. We intend to consult on the need for the obtaining information Question and Answers forms.					
Will the policy be reviewed? It will not be reviewed. If applicable, set review date: N/A					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes	< 20 Yes	Small Yes	Medium Yes
				Large Yes	

What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: N/A	Non-traded: N/A
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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: January 2012

Summary: Analysis & Evidence

Policy Option 2

Description: Repeal the obtaining information provisions in the Equality Act 2010 and the forms

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: 12.8

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	4.4	0	4.4

Description and scale of key monetised costs by 'main affected groups'

There will be transitional costs to employers of familiarising themselves with the fact they no longer need to answer employees' questions under Section 138 of the Equality Act 2010:

Private and voluntary sector employers - £4.1million

Public sector employers - £0.3million

Other key non-monetised costs by 'main affected groups'

There is no evidence to suggest that the Questions and Answers forms have been effective either in preventing claims proceeding to tribunal, or in improving the efficiency of how claims are handled once brought. Therefore removal of the procedure should not cause additional costs to business or others. Potential claimants will still be free to ask questions or otherwise seek information from an employer or service provider if they think they have been discriminated against, and will still be able to bring a case to a court or tribunal. There may be benefits to individuals from having the option to use the forms to present their complaint to an employer or service provider in a specific format. However, we are not able to monetise these as costs of removing the measures, and it is impossible to estimate their extent given individuals will still approach their employer with a view to obtaining information or raising a complaint.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	0	2.0	17.2

Description and scale of key monetised benefits by 'main affected groups'

There will be annually recurring benefits to employers and individuals from no longer using the statutory forms:

Private and voluntary sector employers - £1.3million

Public sector employers - £0.1million

Individuals – £0.6million

Other key non-monetised benefits by 'main affected groups'

Removing the forms will address business concerns that "the Questions and Answers forms are often very long and technical, can ask for records that go back years, and may serve as a 'fishing' exercise by disgruntled employees"¹.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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- Level of awareness and use of the current statutory forms is roughly equivalent to what it was before the forms were consolidated under the Equality Act 2010; 58% for smaller organisations and 76 % for larger organisations
- Transitional costs for employers and service providers will be small. They will only need to be aware that the forms are no longer statutory.

¹ The Workforce Survey (British Chamber of Commerce) – Micro Business August 2011

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0.5	Benefits: 1.3	Net: -0.8	Yes	OUT

Evidence Base (for summary sheets)

Introduction

The Equality Act 2010 requires a Minister of the Crown to prescribe forms for a person who thinks that they may have been unlawfully discriminated against, harassed or victimised to obtain information from the person (employer or service provider) they think has acted unlawfully against them. However, there is no direct requirement for complainants or respondents to use them. They may use the prescribed forms, a form to the like effect, or any other form of question or answer. It was considered helpful for individuals (both complainants and respondents) to have template forms available so that they have a framework within which they are able to ask and answer questions.

In June 2009, GEO commissioned research into the use of some of the forms that were prescribed under previous discrimination legislation, specifically, the equal pay questionnaire, the sex discrimination questionnaire and race relations questionnaire. The research conducted a total of 811 telephone interviews with respondents from UK businesses with one or more employees².

As a result of findings from the GEO research, and views from stakeholders to the Discrimination Law Review consultation, draft forms under the Equality Act 2010 across all protected characteristics, intended to replace existing forms in relation to age, disability, race, religion or belief, sex, sexual orientation and equal pay, were published on 16 June 2010 for a four-week public consultation. A total of 21 responses were received from employers, employer and employee representative groups, trade unions, equality groups and an employee. Of these, 16 respondents completed the online consultation document for the prohibited conduct forms, and of these, 12 commented on the equality of terms (equal pay) forms. The remaining respondents provided general comments on both forms only. Respondents generally felt that the guidance and instructions were better than before, and the process itself appeared largely the same. For some it was difficult to estimate whether the new forms would be quicker to complete without the practical experience of completing them. The British Chambers of Commerce (BCC) called to abolish the forms.

Secondary legislation which came into force in October 2010³ prescribed four Question and Answer forms for assisting persons to obtain information in disputes about prohibited conduct and equality of terms to replace the 20 forms that had been prescribed under previous discrimination legislation.

It was intended that this process would speed up and in some cases avoid litigation, by bringing forward the key issues at an early stage and enabling the parties to focus on them.

These forms are also admissible as evidence in any subsequent proceedings brought under the Equality Act 2010 in either a court or tribunal. The court or tribunal may draw inferences from a failure by the respondent to answer the questions posed within eight weeks or from evasive or equivocal answers. Therefore, whilst it is voluntary for a respondent to complete Answers forms, these possible consequences of not responding mean that they impose a regulatory burden on respondents. We are aware that as a result, employers are engaging legal advisors to assist with their completion.

Problem under consideration and rationale for intervention

Data is not collected that would indicate how many tribunal or court cases have used these new forms, but the aforementioned research carried out in 2009 suggests that around 9,000 employers choose to use the form annually (as already noted, a court or tribunal is permitted by the legislation to draw

² GEO Administrative Burden Reduction Study, IFF Research prepared for Government Equalities Office, June 2009 (Not published but available on request)

³ SI 2010/2194 The Equality Act 2010 (Obtaining Information) Order 2010

inferences from a failure by the respondent to answer the questions posed within eight weeks). This has given an indication of the possible burden that these forms may impose on business. In line with the Government's commitment to reduce potentially unnecessary regulatory burdens on business, we therefore intend to review by way of consultation whether these forms are a disproportionate burden on business and should be removed.

Policy objective

The policy objective is to reduce any potentially unnecessary regulatory burdens that the obtaining information provisions and forms may impose on business.

Description of Policy options

Option 1 – **Do nothing**. Keep in force the mechanisms for a person who thinks that they may have been unlawfully discriminated against, harassed or victimised, to obtain information from the person they think has acted unlawfully against them.

Option 2 – **Repeal the obtaining information provisions in the Equality Act 2010 and the related secondary legislation (preferred)** which may be used by a person who thinks they have been treated unlawfully under the Equality Act 2010 to obtain information from the person they think is responsible for potential discriminatory act against them, either before or after commencing proceedings in a court or tribunal.

By leaving the provisions in force, this could impose unnecessary potential burdens on businesses. Removing these provisions will reduce unnecessary burdens on business.

No other options have been considered because there are no viable alternative formal non-legislative mechanisms for a person who thinks that they may have been unlawfully discriminated against, harassed or victimised, to obtain information from the person they think has acted unlawfully against them. We will use the consultation to identify if there is a problem which requires a remedy and if so, we will explore through the consultation what those non legislative mechanisms might be.

Micro Business and Start-up Exemption

It is intended to repeal the provisions for all enterprises, including micros and start-ups. For all employers to benefit from the removal of this provision, all enterprises will be covered by this proposal.

Costs and Benefits

Note: Throughout this impact assessment all prices have been inflated to 2011 prices using HM Treasury GDP Deflator Series last updated 25 October 2011 unless stated otherwise

Option 1

In this impact assessment, the costs and benefits of doing nothing are those which would be incurred were the provisions and the forms to remain in force, and are the baseline against which the impact of other options is assessed.

The impacts here have been assessed using IFF research commissioned by GEO; *GEO Administrative Burden Reduction Study, June 2009*.⁴ This research provides evidence on private sector employers' awareness of the statutory forms, whether they have used them in the last three years, how long they typically take to complete, and whether or not they sought legal advice before completing. It was a representative survey of 811 employers. This research refers to the forms that were in existence before the Equality Act, but there is no reason to suggest that their subsequent consolidation would have any significant effect on the statistics detailed by the IFF research.

⁴ GEO Administrative Burden Reduction Study, IFF Research prepared for Government Equalities Office, June 2009 (Not published but available on request)

How often are the forms used?

It is possible that claimants could use the Questions forms in all of the 77,000 discrimination and equal pay employment claims accepted by HM Courts and Tribunals Service each year, and employers complete Answers forms for these also.⁵ It is also possible that employees could complete Questions forms and claims are not subsequently brought. The IFF research suggested that 2% of all employers had used the forms in the last 3 years, or 0.7% annually. This research only focused on private sector employers. However, there are approximately 87,000 employers in the voluntary sector, who we assume would be as likely as those in the private sector to use them. When considering only large employers (with 250 employees or more), 6.5% had used the forms in the last three years, or just over 2% annually. This figure is used to estimate how often public sector employers, which are typically large, may use the forms. Overall, it is estimated that about 9,200 employers might use the forms at least once each year.

Cost of Completing Questions and Answers Forms

Link to current version of forms and guidance on Home Office website:

<http://www.homeoffice.gov.uk/publications/equalities/equality-act-publications/complaints-Equality-Act/>

Questions

To complete the Questions forms it is expected that an individual would need to first read the associated guidance. On average, this should take no longer than an hour. Completing a form would on average take an individual no longer than three hours to provide the details of their complaint. The guidance advises individuals that they may wish to seek legal advice before completing a form. There is no evidence to suggest how often an individual might do this, but here we estimate that 25% of individuals would consult a legal professional, at a cost of no more than an hour. The median hourly earnings for all employees and legal professionals, including non-wage labour costs, are £13.48 and £28.27 respectively.⁶ Therefore, the average cost to the individual of completing a Questions form is **£61.03**.

Answers

To complete an Answers form it is expected that the equivalent of a corporate manager would need to read and assimilate a Questions form they had received from the employee, taking on average an hour. Like the employee, they would also have to read the associated guidance, taking on average an hour, and this advises that employers may also wish to consult a legal professional before answering the complaint. Employers are more likely than individuals to seek advice from a legal professional, either within their organisation or outside, before answering. The IFF research suggested that on average employers would take up to 6 hours responding to a complaint, implying after allowing for reading guidance and the Questions forms that answering the complaint should take no more than four hours on average. The IFF research suggests that 50% consult a legal professional, at a cost of no more than an hour. The median hourly earnings, including non-wage labour costs, are £23.76.⁷ Therefore, the average cost to an employer of completing an Answers form is **£156.70**.

We will use responses to the consultation on removing these provisions to test the cost estimates here.

⁵ Annual Tribunal Statistics (GB), 2008/09-2010/11: Average per annum for last three years

⁶ ASHE 2011 Codes All & 241, incl. 21% uplift for non-wage labour costs – Note: uplift derived from European Labour Costs Survey (2007)

⁷ ASHE 2011 Codes 11, incl. 21% uplift for non-wage labour costs

Table 1 – Breakdown of annual costs under option 1

	Population Estimates (GB)	Percent using forms annually	Number of times forms used annually	Cost Per Use	Estimated Annual Cost
Private Sector employers	1,145,155	0.7%	8,000		£1.25million
Public Sector employers	26,678	2.2%	600		£0.09million
Voluntary Sector employers	87,000	0.7%	600	£156.70	£0.09million
Individuals	-	-	9,200	£61.03	£0.56million
Total					£2.0million

Source: IFF Research, ASHE 2011, BIS SME statistics 2011, HMT Whole of Government Accounts, DFE, England and Wales Charity Commission, National Survey of Charities and Social Enterprise 2008, Office of the Scottish Charity Regulator

Non-monetised Costs

Businesses have expressed concern that the “Questions and Answers forms are often very long and technical, can ask for records that go back years, and may serve as a ‘fishing’ exercise by disgruntled employees”⁸.

Impact and Effectiveness of Forms

The forms were originally intended to help employees and employers set out the issues surrounding a complaint, and encourage a dialogue and resolution without a formal claim being made to a tribunal. However, we have no evidence to suggest that the forms have been used effectively in this manner. In fact there is anecdotal evidence that employees have used the Questions forms to test whether or not a complaint is valid and gauge the reaction of employers as an aid to presenting their claim as effectively as possible. The suggestion is therefore that employers have to complete Answers forms on vexatious and unmeritorious claims which a tribunal would probably not have accepted, but were questioned on the off-chance that the answers provide the individual with sufficient grounds to bring a viable claim.

A survey carried out by the British Chambers of Commerce⁹ reflects the concerns that business have about the Questions and Answers forms. In that report the BCC called for micro businesses to be exempt from this provision, on the basis that these questionnaires are often very long and technical, can ask for records that go back years, and may serve as a ‘fishing’ exercise by disgruntled employees. It also notes that whilst the use of the forms is not compulsory, tribunals can take into account an employer’s failure to complete the form (indeed, the legislation specifically permits this to be done), and as a result, employers are engaging legal advisors to assist with their completion.

A claimant lodges a claim by sending the Employment Tribunal a completed ET1 claim form, setting out the reasons for complaining to the Tribunal. The Tribunal will review these and will make an initial decision as to whether the claim is something over which it has jurisdiction and which has some merit. The respondent will use an ET3 form to defend the claim. It was intended that the information on the

⁸ The Workforce Survey (British Chamber of Commerce) – Micro Business August 2011

⁹ The Workforce Survey (British Chamber of Commerce) – Micro Business August 2011

Questions and Answers forms could be used by the tribunal, and potentially speed up the processing of claims.

Information obtained through the Questions and Answers forms is intended to help an individual understand why he or she was treated in a particular way and whether they have a legal basis for making or continuing a discrimination claim in a court or tribunal, and to encourage them to focus on the essential issues before or after commencing a claim. The questions and the answers are admissible as evidence in a case brought under the Equality Act 2010 and the court or tribunal may draw inferences from a failure by the respondent to answer the questions posed within eight weeks or from evasive or equivocal answers. There is however no evidence that the original objectives of the forms have been achieved.

Benefits to Individuals of using the Forms

As described above, individuals continue to use the forms. They must therefore get some benefit from being able to do so. It is not possible to monetise this benefit as there is no evidence as to why some individuals specifically use this format to set out their complaints against employers and service providers. The statutory forms provide a relatively formal method for presenting a complaint. It is possible that this is why some individuals favour it. It is also possible that individuals favour this method because they are aware of the regulatory requirement on employers to provide answers, and other methods are less likely to offer this. It would still be open to individuals to approach their employer or service provider for information, or to set out a complaint, simply the procedural mechanisms and template for obtaining such information would be removed. The consultation on the removal of these measures will seek views on the benefits individuals get from using the forms.

Summary of Costs and Benefits

The Questions and Answers forms cost **£2million** per annum, including, **£1.3million** to private and voluntary sector employers

Option 2

Costs

Transitional Costs

Employers and service providers will need to familiarise themselves with the fact that Questions and Answers forms will no longer be prescribed by the Act, or considered at the Tribunal, and therefore that any regulatory requirement on them has been removed.

There are approximately 1.1 million small and medium enterprises (SMEs) with employees in Great Britain.¹⁰ A general manager or equivalent will be responsible for informing themselves about the change in legislation. This should be a minimal burden, and should take no longer than 15 minutes. The median gross hourly wage for a general manager, including non-wage labour costs is £22.64.¹¹

According to the England and Wales Charity Commission, there are approximately 162,000 main registered charities, and according to the Office of the Scottish Charity Regulator there are approximately 23,000 registered charities in Scotland. Using the National Survey of Charities and Social Enterprises we estimate that 47%¹² of charities have employees. We feel that this is the best estimate of the size of the voluntary sector in scope as social enterprises will likely be included within the figures for small and medium sized enterprises. A general manager or equivalent will be responsible for informing themselves about the change in legislation, and similar to small firms, we estimate that this process will take 15 minutes.

¹⁰ Business Population Estimates 2011, BIS

¹¹ ASHE 2011 Code 1; incl. 21% uplift for non-wage labour costs

¹² Those with employees; National Survey of Charities and Social Enterprises 2008

There are approximately 6,200 enterprises with 250+ employees (large enterprises), and 27,000¹³ public sector employers in Great Britain. A dedicated personnel manager will be responsible for informing themselves about the change in legislation. We estimate that large enterprises will spend one hour, and public sector organisations will spend half an hour, familiarising with this change and reflecting it in work practices. The average gross hourly wage for a personnel manager, including non-wage labour costs, is £26.58.¹⁴

The IFF research shows that 58% of private sector enterprises are aware of at least one of the forms. This is the best available evidence on the extent of existing compliance with the regulation. This also suggests the fraction of employers who would now need to know the forms are no longer statutory. We assume that 58% of voluntary sector employers would likewise need to be aware of this, without any specific evidence for this type of organisation.

The IFF research suggested that 76% of larger employers were more likely to be aware of at least one of the forms. As for smaller organisations, this is our best estimate of the extent of existing compliance with the regulations, and the fraction that need to know that the forms are no longer statutory.

Table 2 – Transitional costs to employers and service providers of option 2

	Number of Organisations	% of Organisations Affected	Hours	Cost per Hour	Transitional Cost
SMEs	1,138,970	58%	0.25	£22.64	£3.74million
Large Firms	6,185	76%	1	£26.58	£0.12million
Public Sector	26,678	76%	0.5	£26.58	£0.27million
Voluntary Sector	185,000	27%	0.25	£22.64	£0.29million
Total					£4.4million

Source: ASHE 2011, BIS SME statistics 2011, HMT Whole of Government Accounts, DFE, England and Wales Charity Commission, National Survey of Charities and Social Enterprise 2008, Office of the Scottish Charity Regulator

Other Costs

As described under option 1, there is no evidence on the impact of the Questions and Answers forms have been effective either in preventing claims proceeding to tribunal, or in improving the efficiency of how claims are handled once brought. We will explore this further through the consultation process.

As described under option 1, there may have been benefits to individuals from having the option to use the forms to present their complaint to an employer or service provider. However, we are not able to monetise these as costs of removing the measures, and it is impossible to estimate their extent given individuals will still approach their employer with a view to obtaining information or raising a complaint. For example, individuals will still be able to use the current Employment Tribunal Claim forms (ET1 forms) to set out the issues in their complaint when considering and making a claim.

Benefits

Annually Recurring Benefits

Despite the costs to individuals of not being able to fill in the forms, there will also be benefits to individuals and employers from no longer completing Questions and Answers forms equivalent to the costs discussed under option 1. Employees may choose to use the ET1 forms now, which they would

¹³ Estimated from HMT *Whole of Government Accounts, 2011*, GB only + number of public funded schools & higher education institutions 2009/2010

¹⁴ ASHE 2011 Code 1135; incl. 21% uplift for non-wage labour costs

have had to complete anyway, to set out their complaint but there will be no requirement for the employer to respond unless the claim is accepted by a tribunal.

Non-monetised Benefits

Removing the obtaining information provisions and the forms will address business concerns that the Questions and Answers forms are often very long and technical, can ask for records that go back years, and may serve as a 'fishing' exercise by disgruntled employees.

Summary

The overall impact is a net present value of **£12.8million** over 10 years, with benefits to private and voluntary sector employers of **£7.5million**.

Table 3 – Summary of costs and benefits of option 2 by key affected groups (£000s)

	Annually recurring benefits	Transitional Costs	Net Present Value
Private and Voluntary Sector Employers	£1.3million	£4.1million	£7.5million
Exchequer and Public Sector Employers	£0.1million	£0.3million	0.5million
Individuals	£0.6million	-	£4.8million
Total	£2.0million	£4.4million	£12.8million

Note: Figures may not sum due to rounding

Source: See tables 1 and 2

Risks and Assumptions of Preferred Option

- Level of awareness and use of the current statutory forms will be approximately equivalent to what it was before the previous forms were consolidated in 2009-10. The IFF research used here refers to the forms before they were consolidated. However, consolidation should not have altered the length of time an employer or service provider would take to complete an Answers form, their awareness of the forms, nor how often they will be faced with a Questions form.
- Transitional costs will be relatively small. Employers and service providers who are currently aware of the forms will need to know that they are no longer statutory in nature. A small familiarisation cost has been calculated here to account for this.

Direct Costs and Benefits to Business (One-in, One-out)

For the purposes of One-In-One-Out scoring, we calculate the direct costs and benefits to business and voluntary sector organisations as a result of this proposal in 2009 prices. The figures here are deflated using HM Treasury GDP deflator series.¹⁵

The best estimate of the Equivalent Annual Cost¹⁶ to business and the voluntary sector of the preferred option are calculated as **-£0.8million** in 2009 prices, and this measure is therefore considered to be an OUT.

¹⁵ Consistent with series last updated 25 October 2011

¹⁶ Equivalent Annual calculations use formula: $NPV / [1 - 1 / (1 + r)^{10}]$ for 10 year time period, where r is the standard social time preference discount factor (3.5%)

Wider Impacts

Equality Impact

A document setting out our consideration of the impact on equality is attached at Appendix A.

Justice Impact

We consider that the preferred option to repeal the obtaining information provisions in the Equality Act 2010 and the related secondary legislation will have minimal impact on the justice system as there will be no need for specific judicial training. Nor do we envisage any new employment tribunal or court procedures, rights of appeal, further changes to primary and/or secondary legislation, or an increased demand for prison places.

Monitoring and Review

As the preferred option is to remove the Questions and Answers forms legislative provisions, there will not be a dedicated review of this action. GEO is committed to reviewing the Equality Act 2010 as a whole, for a Post Implementation Review in 2015. Part of this review will aim to establish if individuals are protected by the Act, and whether organisations feel that the Act has help simplify legislation and it is more consistent.

Summary and Implementation

Our preferred option is to repeal the obtaining information provisions in the Equality Act 2010 and related secondary legislation which may be used by a person who thinks they have been treated unlawfully under the Equality Act 2010 to obtain information from the person they think is responsible for the unlawful treatment, either before or after commencing proceedings in a court or tribunal. This is the preferred option as there is no evidence to suggest that the Questions and Answers forms have been effective either in preventing claims proceeding to tribunal, or in improving the efficiency of how claims are handled once brought. We consider that by removing these provisions we will reduce any unnecessary burdens on business, and remove any unnecessary concerns they have about what wider recommendations may entail, without affecting the other legal remedies currently available to those claiming they have been discriminated against, thereby maintaining strong and effective enforcement.

EQUALITY IMPACT

Review of the obtaining information provisions in the Equality Act 2010 and related secondary legislation

Introduction

We have considered the impact of the provisions in the Equality Act 2010 relating to requirement to prescribe forms for a person who thinks that they may have been unlawfully discriminated against, harassed or victimised to obtain information from the person they think has acted unlawfully against them because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The aim of this consideration is to ensure that the implications for equality for all the protected characteristics have been properly assessed during the development of the policy, taking account of views expressed, and to provide assurance that changes needed to mitigate any potential adverse impacts have been identified. This document considers the impacts on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation in line with the integrating policy of the Equality Act 2010.

We want the law to provide appropriate enforcement mechanisms for the harmful discrimination people experience. There are no figures available to indicate how many tribunal or court cases have used the new obtaining information forms but research suggests that around 9000 employers use the form annually. This has given an indication of the possible burden that these Questions and Answer forms may impose on business. We will therefore be consulting *on the need for the obtaining information Question and Answer forms*.

The Provision

Previous discrimination legislation prescribed the equal pay questionnaire, the sex discrimination questionnaire and race relations questionnaire. The Equality Act 2010 and its related secondary legislation has prescribed four Question and Answer forms for assisting persons to obtain information in disputes about prohibited conduct and equality of terms to replace the 20 forms that had been prescribed under previous discrimination legislation.

OPTION 1 – do nothing

General impact

Retaining the mechanisms for a person who thinks that they may have been unlawfully discriminated against, harassed or victimised, to obtain information from the person they think has acted unlawfully against them, applies in relation to all protected characteristics.

Information obtained through this process is intended to help an individual understand why he or she was treated in a particular way and whether they have a legal basis for making or continuing a claim in a court or tribunal and to encourage them to focus on the essential issues before or after commencing a claim. In practice, this may lead to people deciding not to bring a claim or agreeing to settle once they focus on those points. The information obtained can also be used to present a claim in a court or tribunal in the most effective way.


This applies in the same respect to claims relating to any protected characteristic.

OPTION 2 – Repeal the obtaining information provisions in the Equality Act 2010 and the forms

General impact

Removing the obtaining information provisions and the forms would mean that individuals will need to find other means by which to obtain information in disputes about prohibited conduct and equality of terms. This would apply in the same respect in relation to any of the protected characteristics.

This option does not impact on an individual's access to justice.



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