

The Equality Bill: Defining a new approach or business as usual?

A Fawcett Society
think piece for the
Gender Equality Forum

Sharon Smee and Dr Katherine Rake OBE, July 2009

The Equality Bill was published on 27th April 2009 and is now making its way through Parliament. A principal aspiration for the Bill has been to harmonise and simplify existing equality legislation in order to provide individuals, employers, service providers and public bodies with a more straightforward legal approach to addressing equality. The Bill consolidates 116 different pieces of equality legislation in force, including 35 acts, 52 statutory instruments, 13 codes of practice and 16 European Commission directives.

However, during the long process of consultation and discussion of the Bill, dating back to the Equality Act 2006 which formed the Equality and Human Rights Commission in October 2007 and the Discrimination Law Review which was launched in February 2005, its nature has changed and a broader set of aspirations and expectations are now in place. The stated aim of the Bill has shifted from being a technical process of simplification to being one of using the Bill more positively to promote equality. The late introduction of a duty on public bodies to reduce socio-economic differences is the most striking example of this shift and will, in Harriet Harman's words, be used to "make Britain a more equal place, and help us build a stronger economy and fairer society for the future" and promote a society that is "at ease with itself."¹

These are high aspirations and the key question is: will these aspirations be met by the measures currently enshrined in the Bill?

¹ Harriet Harman, "Equality Bill will build a fairer and stronger Britain", press release, 27th April 2009
http://www.equalities.gov.uk/media/press_releases/equality_bill.aspx

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What's in the Bill?

Media myth and legislative reality

There has been significant, and oft times very hostile, media commentary on certain aspects of the Bill while other proposals have received very little attention. Paradoxically, those provisions of the Bill which have attracted the most media attention (gender pay gap reporting and positive action for example) may in reality have a limited impact on business while others (such as changes in procurement) have the potential to be transformative if they are properly understood and interpreted.

Any discussion of the Equality Bill also needs to be conditioned by the fact that the Bill remains very 'green,' with a large number of elements subject to further consultation, guidance or other processes, such as the pay transparency process led by the Equality and Human Rights Commission (EHRC). Its final form will also be determined by which amendments are successful as the Bill makes its passage through Parliament.

However, below we set out the main aspects of the Bill as it stands relating to gender equality within the employment law field. While we mention the provision for changes that will apply to pay transparency, where much of Fawcett's lobbying work is concentrated, we will leave a detailed examination of this to a subsequent forum paper and discussion to take place when the EHRC consultation process is underway.

Positive action

The Bill contains two provisions in relation to positive action. The first of these, Clause 152, builds on existing positive action rules which centre on training and encouragement to take up certain types of work. The Bill proposes to allow employers to introduce measures to encourage or enable participation; counter perceived disadvantage; or address particular needs of individuals who share a protected characteristic, provided such measures are able to be justified as a proportionate way of achieving the relevant aim.

The second positive action measure in relation to recruitment and promotion is perhaps one of the most controversial aspects of the Bill and has provoked much comment. Headlines such as that in the Daily Express - "White men face jobs ban" - demonstrate how there is little understanding of the meaning of this positive action measure.² In reality, this provision will allow employers to address under-representation of certain groups in the workplace, particularly within business sectors which have been traditionally male dominated. Such positive action will be voluntary and there will be no quotas imposed. This means employers will be permitted (but not required) to take into account any under-representation in the workplace, such as a particular race or sex, when choosing between two equally qualified candidates for recruitment or promotion.

² <http://www.dailyexpress.co.uk/posts/view/49922> , 26 June 2008

The Government's supporting paper provides an example of the board of a bank which is 100 per cent male. During recruitment, if the bank was choosing between an equally qualified male and female candidate, the positive action provision would allow the bank to appoint the woman to address the gender imbalance on the board.³

This measure takes advantage of EU law which allows measures to 'compensate for disadvantages'. However, positive action should not be confused with positive discrimination which will remain unlawful. Positive discrimination involves promoting or employing an individual because they are from an under-represented group even if they are less qualified.

The proposed positive action clause is in fact an employer-friendly provision as it allows employers the flexibility to address imbalances in their workforce, if they choose to. However, in practice, it may be difficult for an employer to decide whether a particular group is under-represented in the workplace and it may also prove difficult to determine whether two candidates are equally qualified.

The interpretation of the provision will be crucial and already there is confusion as to the exact test which will be used. The Government in its supporting paper, *A Fairer Future – The Equality Bill and other action to make equality reality*, uses the term candidates who are 'equally suitable'⁴ but within the Bill (Clauses 152 and 153) it is specified as being if A is 'as qualified as' B. The meaning of 'qualified' is likely to be contested given that recruitment decisions are rarely based on formal qualifications. Unless the provision is clearly defined and straightforward guidance provided to employers is it likely that employers will be reluctant to use positive action on the basis that it will be difficult to prove that one candidate is not more qualified than another and that positive action may, in fact, be interpreted as positive discrimination.

Guidance is pending from the Equality and Human Rights Commission but it remains to be seen whether this will resolve the current confusion surrounding the provision. However, if clear guidance and tightly worded clauses are achieved, this measure will be a significant step forward in allowing employers to take gender into consideration when recruiting, without risking discrimination, where the aim is to address under-representation.

Positive action

Will:

- Allow organisations to address under-representation if they choose

May:

- Be difficult for organisations to use and apply because of the difficulties of making exact comparisons between candidates in a selection process

Will not:

- Introduce quotas

³ Government Equalities Office, *A Fairer Future: The Equality Bill and other action to make equality a reality*, April 2009, p.18 - http://www.equalities.gov.uk/pdf/NEWGEO_FairerFuture_may09_acc.pdf

⁴ Ibid.

The public sector duty – implications for business

The Bill proposes that the existing public sector duties will be replaced by a single unified duty that will cover all discrimination strands. The key area in which the duty will have an impact on business is in relation to procurement and this is discussed in detail below.

The new single equality duty

A new equality duty will replace the current race, disability and gender equality duties on public bodies and extend it to gender reassignment, age, sexual orientation and religion or belief. This duty will require a range of public bodies to have due regard to the needs of diverse groups in the community (and within their own staff) when designing and delivering public services so that people can get fairer opportunities and better public services. In addition, the equality duty will apply to private bodies that deliver a public function, such as a private firm running a prison.

The Government is currently consulting on the specific duties which will underpin the new equality duty.⁵ The aim is for the new duty to come into force in 2011 to allow for the public sector and for business to prepare and for comprehensive guidance to be provided. In discussing the effect of the proposed single equality duty it is worth noting concerns that the proposed duty may weaken the power of the current race, gender and disability duties. The Gender Duty came into force in April 2007 and was intended to result in a more proactive and positive approach with the burden resting with all organisations providing a public service to address sex discrimination and promote gender equality. However, results to date have been disappointing, with gender equality still not being mainstreamed into all policies and processes and a dearth of mechanisms to monitor outcomes and ensure accountability. There is concern that the proposed single duty for public bodies will lead to a further reduced focus on gender inequality, with gender being lost among the other inequalities.⁶

There are also concerns about the proposal to extend the second and third limb of the duty, in relation to ‘fostering good relations’ and ‘advancing equality of opportunity’, to religion or belief, on the grounds that it may undermine equality on the grounds of gender, sexual orientation and race.⁷

The single equality duty

Will:

- Extend the duty to promote equality beyond gender, race and disability to gender reassignment, age, sexual orientation and religion or belief

May:

- Be weakened by poor practice and limited understanding by public bodies

Will not:

- Apply directly to the private sector

⁵ <http://www.equalities.gov.uk/pdf/Specific%20Duties%20Consultation%20DocumentWEB.pdf>

⁶ See, for example, discussion in Fawcett’s Report, *Engendering Justice; from policy to practice*, 2009, pp.18-19 -

⁷ <http://www.fawcettsociety.org.uk/index.asp?PageID=933>

End Violence Against Women Coalition, *Second Reading Briefing: Equality Bill*, 11 May 2009 -

<http://www.endviolenceagainstwomen.org.uk/index.php>

A new duty to consider 'socio-economic disadvantage'

A new duty is also proposed on certain public authorities to consider socio-economic disadvantage when taking strategic decisions about how to exercise their functions. The Government states that this new duty 'will enshrine in the law the role of our key public bodies in narrowing gaps in outcomes resulting from socio-economic disadvantage.'⁸ Those to be placed under the duty will include Government Ministers and departments, local authorities and NHS bodies. The duty relates only to strategic decisions and it will not therefore impact on frontline decisions in relation to service provision for individuals. The Government will issue guidance, which public bodies will be obliged to take account of, prior to the commencement of the duty.

Procurement

With public sector annual expenditure of around £175 billion on goods and services,⁹ the Government has identified the important role the public sector can play in using its purchasing power to promote equality. The Bill makes it clear that public bodies will be able to use procurement to support the aim of greater equality to the extent that they consider it necessary to comply with the public sector duty. It also gives ministers powers to make regulations regarding public procurement which could set out how public bodies should go about using procurement to support the aim of greater equality and diversity.

The use of procurement to further equality objectives is not a new proposition. Under the gender equality duty, public bodies are already legally bound to give 'due regard' to how procurement can be used to promote equality of opportunity between women and men. Where equality has been assessed as relevant to a contract, equality considerations must be reflected in the procurement process in a way that is consistent with achieving value for money and the EU procurement rules of ensuring a level playing field between the UK and other EU suppliers. It is important to note that having 'due regard' to equality in the context of public procurement, means that weight given to these equality issues should be proportionate to the relevance of the equality issue to the individual procurement in question.

However, despite the obligations imposed by the current public sector duties, confusion remains as to the extent to which procurement processes can be used to include equality requirements. The Bill will provide important clarification in this regard and a common approach to procurement should reduce the burdens on businesses applying for public sector contracts, making it easier for small and medium-sized businesses to compete for contracts.

The Government, in its supporting paper *A Fairer Future – The Equality Bill and other action to make equality a reality*, provides some examples of how procurement could be used to promote and support gender equality.¹⁰ For example, a local council is commissioning a significant building project, in the context of a social regeneration scheme, in an area where women are particularly affected by disadvantage. This project requires work from trades in which women are traditionally under-represented such as plasterers, plumbers and carpenters. The contract for work could include a condition that the contractor runs a positive action scheme to train women in these skills. The public sector duty also has the potential to have a significant impact on recruitment including specifying outcomes for targeted recruitment or a contractual condition such as requiring that all jobs must be advertised on a part-time basis or with flexible working, to encourage female applicants, unless there is a business reason why this is not possible.

⁸ *A Fairer Future: The Equality Bill and other action to make equality a reality*, op cit. p.9

⁹ *Ibid.* p.12

¹⁰ *Ibid.* p.13

Case Study: Transport for London – Supplier Diversity Procurement Programme

Transport for London’s (TfL) supplier diversity procurement programme ensures that all suppliers have measures in place to promote diversity, equality and inclusion. Suppliers are required to produce an equality plan and to demonstrate their compliance with appropriate equality legislation and codes of practice.

The East London Line Extension (ELLX) is the first major project where the TfL responsible procurement requirements encouraged diverse suppliers. Terms were included in the invitation to tender to help ensure fair opportunities for small suppliers, particularly those led by black and minority ethnic groups and by women. Contractors were also required to develop plans to ensure supplier diversity and benefit for the local community from the work opportunities the project brings.¹¹

It is important for businesses and organisations to be aware of how equality issues may be addressed throughout the procurement process in order to understand how equality issues and breaches of equality legislation obligations may affect selection for tender. This table sets out how gender equality issues may be addressed at each stage of the procurement process and provides a useful model of good practice for businesses and organisations to consider in their own procurement processes:¹²

Stage of the Procurement Process	Examples of how gender equality issues could be addressed
Pre-procurement – when identifying the need and considering the market.	Consulting with a diverse range of stakeholders including women’s organisations. Advertising in a range of journals and newspapers to attract diverse organisations and businesses such as those led by women or ethnic minorities.
Specification stage – when deciding the requirement.	Equality issues can be included as a core specification where they are relevant to the subject of the procurement. This may include performance-related requirements such as specifying outcomes for recruitment (for example a 10% increase in the proportion of female applicants) or functional requirements such as baby changing facilities in a commissioned building.
Selection stage – when selecting suppliers to tender.	Pre-qualification questionnaires in which contractors are expected to demonstrate an understanding of equal opportunities; supplier diversity; and workforce monitoring can be used when relevant to the particular contract. Bidders could be excluded from the procurement process if they have been found guilty of grave professional misconduct which could include breaches of equality legislation.

¹¹ See <http://www.london.gov.uk/rp/casestudies/casestudy01.jsp>

¹² For detailed analysis of how equality issues may be addressed at each stage of the procurement process see – OGC, *Making Equality Count*, 2008, http://www.ogc.gov.uk/documents/Equality_Brochure.pdf

Stage of the Procurement Process	Examples of how gender equality issues could be addressed
Award stage – when awarding the contract.	A contract should be awarded to the tenderer offering the best value-for-money. Equality issues can be relevant such as when equality issues affect the quality of a service being delivered (e.g. if services are being procured to help unemployed people find jobs, the quality of the service may be improved by additional tailored programmes aimed at disadvantaged groups such as women with caring responsibilities).
Contract conditions – in the performance of a contract.	Contract conditions can relate to equality issues providing these relate to the performance of the contract, are non-discriminatory and do not disadvantage suppliers outside the UK. For example, a catering company providing services in a central government office and having contact with government staff may be required to deliver the contract in line with the department’s equality and diversity policy.
Relationship management – on an informal basis, outside procurement and contract management.	Public authorities are also encouraged to promote the importance of equality issues to their suppliers through steps such as the provision of in-house training, equality and diversity workshops, events to highlight and encourage supplier diversity, and raising awareness of equality issues such as encouraging a flexible approach to working.

As well as being aware of the potential impact of equality and diversity issues in the procurement process there are also instances where the equality duty obligations may be transferred to contractors such as where a public service is contracted out and a public sector equality duty is relevant to that service, and the public authority determines that the relevant obligations should be passed on to the contractor. This will be included in the contract conditions. Further, if public authorities decide to contract out the procurement function, the public sector duty in relation to procurement will still apply and must be passed to the contractor.

Procurement has the potential to be transformative if properly understood and interpreted. However, this will require practical support for public bodies to encourage best practice and to ensure they feel confident using this provision.

Case Study: Olympic Delivery Authority – Pre-Qualifying Questionnaire

The Olympic Delivery Authority (ODA) promotes equality and inclusion as one of its core procurement values. In a pre-qualification questionnaire contractors are expected to demonstrate an understanding of equal opportunities; supplier diversity; and workforce monitoring. The ODA acknowledges that contractors, particularly small businesses, may not have formal policies in place. However, it is expected that contractors should be able to submit information that demonstrates a commitment and identifies measures to ensure fair work practices and how these are promoted through the supply chain. Organisations with more than 50 employees are expected to have a written equal opportunities policy; reasonable adjustments policy; a recruitment and selection policy; and a monitoring policy.¹³

¹³ Olympic Delivery Authority, *Equality and Inclusion PQQ Bidder Response Guide*, <http://www.london2012.com/documents/eqia/oda-equality-and-inclusion-pqq-bidder-response-guide.pdf>

Procurement

Will:

- Clarify the way in which equality requirements can be used in procurement

May:

- Depend on interpretation by public sector bodies and legal advice in what is a very complex area

Will not:

- Overturn existing procurement obligations regarding value for money and UK/EU bidders or allow for equality considerations to be given disproportionate weight

Pay

The Bill has importantly recognised that transparency is needed in order to reduce the pay gap. Two clauses of the Bill specifically attempt to promote transparency in relation to pay: Clause 72, which will prohibit secrecy clauses preventing employees from having relevant pay discussions with colleagues, and Clause 73, which contains a power for the Government to require large employers to publish information about the gender pay gap. There has been much media attention around these clauses but both provisions have limitations which will limit the practical impact for employers.

Secrecy clauses

The Bill proposes to ban pay secrecy or ‘gagging’ clauses (i.e. clauses in employment contracts which stop employees from discussing their pay or bonuses) so that clauses in an employment contract requiring employees to keep details of their pay and benefits confidential will no longer be enforceable. This does not mean that employees will be required to disclose their pay details to colleagues but it does mean that employees will be protected from disciplinary action in the event that they choose to discuss their pay or benefits in the context of a ‘relevant pay discussion’.

The Bill provides straightforward examples of how the clause will operate. For instance, a female colleague thinks she is underpaid in comparison to a male colleague. She asks him what he is paid and he tells her. As a result, the employer takes disciplinary action against the man. The man can make a victimisation claim against the employer for disciplining him.

However, how the Bill will operate in more complex situations is not clear. According to the Bill, ‘a relevant pay discussion’ must relate, to some degree at least, to the possibility of discrimination. If the Bill is enacted in its current form, arguments as to what amounts to a relevant pay discussion are sure to be raised. For example, it is unlikely that two white male colleagues of a similar age discussing their bonuses would be protected by the clause. Similarly, a male and a female colleague involved in pay discussions may not be protected by the clause if discrimination issues have not crossed their minds.¹⁴

¹⁴ www.uk.practicallaw.com

The ban on secrecy clauses is an important step towards encouraging transparency in respect of pay. However, it is not clear how many employees outside the financial sector currently have such secrecy clauses in their contracts and workplace culture which discourages transparency around pay will also need to be addressed.¹⁵ Further, employees will not be required to legally discuss their pay with colleagues therefore female employees will not be guaranteed access to information about the pay rates of their male colleagues.

Gender pay gap reporting requirements

Clause 73 of the Bill contains a power to require private sector employers with 250 or more employees to report on the gender pay gap in their organisation. This provision will not come into force immediately. The Government's aim is for employers to publish this information voluntarily and has stated that it only intends to make reporting a requirement if there has not been sufficient progress in voluntary reporting by 2013.

Even if gender pay reporting was made mandatory in 2013, employers with fewer than 250 employees would be exempt from this requirement. Of the 4.7 million businesses in the UK, only approximately 6,000 have over 250 employees. As a result, 59 percent of the private sector workforce would be untouched by these regulations.¹⁶

The Government is also currently consulting on the reporting duties that the public sector will be subject to under the new Equality Duty. It is envisaged that public bodies with over 150 employees will be required to publish annual details of their gender pay gap; ethnic minority employment rate; and disability employment rate from 2011.

At present, it is not clear exactly what the reporting requirements will involve and over the summer, the Equality and Human Rights Commission will develop set metrics for gender pay reporting in consultation with business, unions and other interested parties. There is therefore great scope for debate and employer involvement around the development of the reporting requirements.

Pay measures

Will:

- Allow the Government to require organisations over a certain size (currently 250+) to report on pay discrimination at a future date (currently 2013)

May:

- Through a well designed set of metrics, set a standard for company reporting that organisations comply with voluntarily

Will not:

- As currently specified, introduce compulsory pay audits or affect all of the private sector

¹⁵ A report by the former Equal Opportunities Commission in 2003, *Monitoring Progress Towards Pay Equality*, estimated 22 percent of employers did not permit employees to share pay information with their colleagues.

¹⁶ www.berr.gov.uk

Other measures:

The tribunal process

As 70 percent of employees involved in discrimination claims leave their employment, the current power of tribunals to make recommendations as to what steps the employer should take to reduce the adverse effect of discrimination on the claimant is limited.¹⁷ It is proposed in the Bill to broaden the power of Employment Tribunals to make recommendations in discrimination cases which benefit the whole workplace and not just the individual who brought the tribunal claim. Recommendations may include steps such as introducing an equal opportunities policy; re-training of staff; or more effective implementation of an harassment policy.

This will help to prevent similar types of discrimination occurring in the future and will assist employers by pinpointing measures to proactively address discrimination in the workplace. However, disappointingly, this proposed power will not apply to equal pay claims. Further, the recommendations would not be binding. This means that a failure to follow the recommendation will not incur a financial penalty but could be considered as evidence to support similar discrimination claims and may result in a 'tougher ruling' at future tribunal hearings.

Discrimination by association

Under the current law, it is unlawful to discriminate against or harass someone because they are 'linked' or associated with a person who is of another sexual orientation, race, religion or belief. However, currently UK law does not provide the same protection in respect of age, disability, sex or gender reassignment.

The European Court case of *Coleman v Attridge Law*¹⁸ involved a mother who was discriminated against because she was the carer for her disabled son and the European Court held that UK law was inadequate in this respect. As a result of this ruling, the Government extended the scope of the Bill so that perception and association is covered in relation to all protected characteristics.

However, this clause does not provide explicit protection for parents and carers on the basis of their caring responsibilities as protection is due to the characteristics of the individual being cared for, rather than the fact that they are cared for per se. An employer who treats all persons with caring responsibilities equally badly, (regardless of the age, disability and so forth of the person being cared for) would not be guilty of discrimination or harassment under the Bill as currently drafted.¹⁹

What's left to be decided?

Multiple discrimination

The Government Equalities Office is also consulting on a proposal to include a new multiple discrimination provision into the Bill. Many women experience discrimination on multiple grounds, for example, on the grounds of their ethnic origin, religion, disability, sexual orientation or age as well as their gender. This is further complicated when it is the unique combination of characteristics which results in discrimination, in such a way that they are inseparable. This intersectional multiple discrimination is not addressed by the current discrimination law framework. For example, a company may have a practice of not promoting Turkish women. If the company can demonstrate there is no gender discrimination in promotion practices, in that women are promoted on parity

¹⁷ *A Fairer Future: The Equality Bill and other action to make equality a reality*, op cit., p.20

¹⁸ Case No: C-303/06, 29.07.08

¹⁹ www.practicallaw.com

with men, and similarly that there is no race discrimination, with Turkish men holding senior positions, a Turkish woman would not be able to prove less favourable treatment on the grounds of race or sex if considered separately, as it is the specific combination of these characteristics which is the grounds for the less favourable treatment.

Any business or organisation that has good equality policies on each of the separate grounds of discrimination will necessarily cover any combinations of protected characteristics. If employers operate a fair system of employment and can justify all the requirements placed on staff, there should be no additional burden resulting from a law on multiple discrimination. The introduction of this new law would also assist employers to proactively prevent multiple discrimination within the workplace through an understanding and consideration of how discrimination can involve the unique combination of more than one protected characteristic.

Representative actions

Representative actions would enable bodies such as trade unions or the EHRC to take cases to an Employment Tribunal on behalf of a group of individuals as a single claim. This has not been included in the Bill but further thought is currently being given as to whether to allow representative actions in employment tribunals.

The tribunal process as a whole is unnecessarily protracted and financially burdensome for all parties. Representative actions would ensure that individual women would be less likely to be victimised while ensuring that the process is quicker and cheaper for all parties and would apply to all women affected not just those able to take the case. This measure would also ease the administrative burden on employment tribunals and on companies defending multiple claims.

The Bill in changing political circumstances

There has been opposition to the Bill from the Conservative front-bench and in the second reading debate, Mrs Theresa May, on behalf of the Conservative Party, asked for the Bill not to be read a second time. She argued, among other things, that it allows "...discrimination in recruitment and promotion decisions," "gives employment tribunals too many powers in areas where they are not best placed to judge" and contains "...unworkable and overly bureaucratic proposals...".²⁰ A Tory motion rejecting the Bill was defeated by 322 votes to 139 and the legislation is now being considered in more detail by a parliamentary committee.

The Bill is expected to reach the House of Lords for approval in Autumn 2009 and, subject to their approval, would be put forward for Royal assent in Spring 2010. If this timing is achieved, the earliest commencement date for any provisions would be Autumn 2010.

With a general election looming, there will be pressure on the Government to push through the Bill so that the Spring 2010 timing for Royal assent is achieved. However, if there is no Royal assent when Parliament is dissolved the Bill will be automatically lost and will need to be reintroduced by the elected Government. Even if the Bill does receive Royal assent prior to the election, a Conservative government could repeal it.

It is also worth noting that the majority of the provisions within the Bill do not commence on the day the Act is passed²¹ and will require a commencement order before they take force. This requires

²⁰ <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090511/debtext/90511-0006.htm>

²¹ The only clauses which come into effect upon Royal assent are the whole of Part 15 (which contains general provisions on application to the Crown, subordinate legislation, interpretation, commencement and extent), clauses 193, 198 and 179(2).

positive action on the part of the Government and if such commencement order(s) have not been made prior to the election, any newly elected Government would have the discretion to decide when, if ever, the circumstances were right for commencement. In this situation, the relevant Minister would be under a duty to keep the question of commencement under review and a decision not to commence would also be open to challenge in the courts.²²

New framework or business as usual?

The 1970s legislative framework was, broadly speaking, built on an anti-discrimination model which offers individuals the right to seek legal redress after they have experienced discrimination. In other words, the framework has been one of negative rights, and individual redress. The last decade has seen a broad recognition of the need to change the framework to one in which equality is positively promoted and where the duty falls on an organisation to tackle discrimination at source. For gender equality, this new approach found its first concrete legislative form in the 2007 Gender Equality Duty.

Although the Bill is sadly weakened by a failure to deliver its promise of harmonisation, particularly on issues relating to equal pay, which will leave us with a messy and inconsistent picture for many years to come, the Bill's provisions on procurement, positive action and the single duty sum to a potentially powerful, positive new framework for the active promotion of equality between women and men. However, many technicalities remain unspecified in the Bill leaving the impact open to interpretation by organisations, the drafting, implementation and use of good guidance and interpretation in the courts.

The Bill's provisions will depend on support for the development of good practice across the piece and a tougher regulatory environment where there are real costs (be they reputational, financial or other) for those who fail to meet required standards. Here, the lessons learnt from the application of the Gender Duty are particularly pertinent. Although there are some good examples of the Duty being used to transform organisational practice, as argued above, the Duty has had rather more limited impact than originally anticipated. This may be a result of poor understanding of gender equality among some bodies, a gap in terms of support of good practice across public sector bodies and the fact that the EHRC has yet to publish its monitoring of the duty or to take action on any breaches of compliance.

We can take from this experience the fact that continued Government and EHRC leadership will be essential in ensuring that best use is made of this legal framework. With a changing political administration now a distinct possibility, the role of the EHRC in enforcing existing statutory obligations while leading the transformation of practice on the ground with businesses and public sector bodies becomes ever more important.

²² William Feilden Craies et al, *Craies on Legislation*, Sweet & Maxwell, London, 2004, p.360; pp.369-74.

Appendix One: Draft Parliamentary Timetable

<i>Date</i>	<i>Parliamentary stage</i>
24 April 2009	First reading
11 May 2009	Second reading
2 June to 7 July 2009	Bill in Committee
November 2009	Report stage and third reading in House of Commons (anticipated)
November/December 2009	Anticipated Bill will reach House of Lords for first reading
December/January 2010	Second reading, House of Lords followed by Committee stage (2 weekends after second reading)
Spring 2010	Third reading, House of Lords
Spring 2010	Bill put forward for Royal assent
Autumn 2010	Anticipated earliest commencement date for any provisions

Gender Equality Forum

In 2008, the Fawcett Society launched the Gender Equality Forum as a new and progressive space for businesses to drive the future of gender equality across a series of focussed debates.

This think piece was developed to explore and inform the aspirations enshrined in the Equality Bill published on 27th April 2009. It follows four earlier pieces:

Women and the Future Workplace: a blueprint for change - calling for transformed UK workplaces fit for women

Harnessing the Power of Difference: race, gender and the future workplace - challenging leading diversity practitioners and policy makers to tackle the 'double invisibility' of ethnic minority women in the workplace

Breaking the Mould for Women Leaders: could boardroom quotas hold the key? - exploring radical mechanisms to move women into leadership positions in the UK workforce

Gender Stereotyping: the silent barrier to equality in the modern workplace? - to explore the potential of a values based approach to tackling gender stereotyping at work.

The Fawcett Society

The Fawcett Society is the UK's leading campaign for gender equality. When individual women are able to realise their potential, the benefits will be felt across society. The Fawcett Society makes a difference by campaigning for legislative change, influencing practice, and empowering women and men to effect change at a grassroots level.

www.fawcettsociety.org.uk