

Increased protection for disabled people in the Equality Bill

The Equality Bill has now completed its report stage and had its third reading in the House of Commons on 2 December. The Bill contains a number of amendments including the addition of a new clause 40 on pre-employment enquiries about disability and health. Such questions are thought to be one of the main reasons why disabled people often fail to reach the interview stage. The majority of other amendments clarify existing provisions.

If an applicant claims that a potential employer has contravened certain disability provisions by asking about his or her health before making 'a relevant decision', the new clause 40 shifts the burden of proof onto the employer so that, in the absence of any other explanation, the tribunal must hold that a contravention has occurred. A relevant decision is one that determines progression to the next round of the application process or a decision on who gets the job.

In a blow to those campaigning for a blanket ban on such pre-employment questions, the section will not apply to questions which are necessary to establish whether a duty to make reasonable adjustments arises; to monitor diversity in applicants; to enable an employer to take positive action; or, if the employer requires a potential employee to have a particular disability, the questions necessary to establish this.

- Other amendments at the Bill's third reading include:
- amending the definition of direct discrimination to clarify that, as at present, it is not direct discrimination to treat disabled people more favourably than someone who is not disabled. Sub-clause 6 of clause 13 is also removed, which provided that if the protected characteristic is religion or belief, it does not matter whether the religion or belief is shared by the discriminator. The inclusion of such a sub-clause only in relation to religion and belief was thought to raise doubt over whether for other protected characteristics it would matter if the discriminator shared that characteristic
- amending the definition of combined discrimination in clause 14 to clarify that a claim will not succeed if the employer can show that his treatment is not direct discrimination in relation to either of the protected characteristics
- changing the definition of discrimination arising from a disability so that it is discrimination where A treats B 'unfavourably because of something arising in consequence of B's disability' and A cannot show that the treatment is a proportionate means of achieving a legitimate aim
- redrafting the harassment provisions in clause 25 to make them clearer
- extending the public sector duty to have regard to socio-economic inequalities to Scotland.

An amendment to allow positive action where candidates are 'equally qualified' rather than 'as qualified' was rejected, as was an amendment to introduce compulsory equal pay audits. The Solicitor General remained open to the possibility of prohibiting caste discrimination if research commissioned from the Equality and Human Rights Commission showed such measures to be necessary.