

Repealing of sections of the Equality Act

The Red Tape Challenge website was set up by the Coalition Government in April 2011 to challenge the public to 'reduce the overall burden of regulation' in a number of areas including Health and Safety, Environment and Employment Related Law.

A number of consultations into sections of the Equality Act 2010 were held of which UCU responded to along with the wider trade union movement.

The areas under threat of being repealed were:

- **Employment tribunals' power to make wider recommendations in discrimination cases**
- **The procedure for obtaining information (equality questionnaires)**
- **Third Party Harassment**

The Government announced on Wednesday 10 October its decisions to repeal all of these areas. We set out below our concerns and the possible impact on UCU members this decision will have and suggestions for you to take action.

Employment tribunals' power to make wider recommendations in discrimination cases

The Government plans to abolish the new extended power that enables employment tribunals to recommend that an employer who is found guilty of unlawful discrimination would now not be encouraged to take specific steps to prevent others suffering similar treatment.

This repeal will further allow employers to continue to operate discriminatory practices in colleges and universities instead of changing the culture of the workplace.

The procedure for obtaining information

Otherwise known as the equality questionnaire, the government plans to remove the questionnaire procedure that enables an individual who thinks that he or she has been discriminated against to gather information from the employer and enables the parties to use the individual's questions and the employer's response as evidence in the proceedings

UCU members have found the use of Statutory Discrimination Questionnaires a valuable tool in assisting them make their case in discrimination cases. They have also been invaluable in negotiations involving equal pay claims. The ability to have statistics available to prove that discrimination has occurred is extremely vital to show the comparators between two or more individuals as well as being useful in negotiating settlements without the need of having to attend the arena of an employment tribunal.

Government's response to Employment tribunals' power to make wider recommendations in discrimination cases and the procedure for obtaining information and, the procedure for obtaining information (equality questionnaires)

'We received a total of 157 responses to both proposals. Of those, 18 (12 per cent) were in favour of repealing the wider recommendations provisions, and 125 (79 per cent) were opposed. 24 (15 per cent) were in favour of repealing the obtaining information provisions and 130 (83 per cent) were opposed.'

'All business representative organisations supported repeal. Responses which agreed to the proposed repeals came mostly from private and not-for-profit sector employers and business representative organisations. Responses which disagreed with our proposals were mainly on behalf of unions, equality lobby groups, staff associations, the judiciary and members of the public.'

Third party harassment

The Government plans to repeal third party harassment which makes an employer liable for repeated racial, sexist, homophobic or other prejudice-based harassment of staff by third parties like service users, students, customers or clients, where the employer has failed to take reasonable steps to protect them.

Harassment is often linked to discrimination on the basis of age, disability, gender, gender identity, race and ethnicity, religion and or belief, and sexual orientation. The repealing of this area of the Equality Act makes for worrying times for **all** UCU members as it gives further ammunition to bullies to continue to harass and cause injury and stress to UCU members'.

In Further Education, UCU along with five other trade unions and the Association of Colleges, have agreed a Joint Agreement on Guidance on Equality in Employment in Further Education Colleges. The agreement reads:

9.5 The College should also refer to the joint agreement on guidance on harassment and bullying, which provides good practice guidance on handling employees' complaints of harassment.

9.6 If an employee reports an allegation of harassment by a third party, the College must investigate the allegation and take action where the allegation is upheld.

9.7 The College should make third parties aware that they will not tolerate harassment of their staff. This includes acts of harassment by contractors, visitors, students and employers.

You can read the Joint Agreement in Further Education here [http://www.ucu.org.uk/media/pdf/e/j/Joint Agreement on Guidance on Equality in Employment May 2012.pdf](http://www.ucu.org.uk/media/pdf/e/j/Joint_Agreement_on_Guidance_on_Equality_in_Employment_May_2012.pdf). For members' in Higher Education, please refer to the guidance issued by the Equality Challenge Unit on how to protect employees from third party harassment at <http://www.ecu.ac.uk/your-questions/what-could-higher-education-institutions-heis-do-to-take-reasonable-steps-to-protect-employees-from-third-party-harassment>

UCU members' are reminded to read the health and safety factsheet '*Cyber-bullying: the invisible hand of bullying*' for alternatives on dealing with bullying especially from students.

Government's response to Third party harassment

'We received 80 responses, of which 16 (20 per cent) agreed our proposal for repeal and 57 (71 per cent) opposed it. Responses which agreed with the proposals came mostly from individual public, private and not-for profit sector employers and business organisations. All business representative organisations supported repeal. Responses which disagreed with our proposal were mainly on behalf of public sector employers, unions and equality lobby groups.'

All business representative organisations supported repeal. Responses which disagreed with our proposal were mainly on behalf of public sector employers, unions and equality lobby groups.

The announcement came as amendments to the Enterprise and Regulatory Reform Bill were published. The measures announced will form part of Section 5 of Bill and whilst the Government states that the reason for these amendments is to '*ensure that there is a reduction of legislative burdens for employers*' we know that this is at a detrimental cost to workers and is another example of the erosion of equality and employment rights.

The University and College Union are extremely disappointed to hear the news that the government has decided to repeal these areas of protection for workers. UCU argued that to repeal these areas would leave our members open to continued harassment and victimisation and no change in the culture of an institution allowing employers to continue to operate discriminatory practices in the workplace.

Commenting on the announcement, TUC General Secretary, Brendan Barber said:

"Getting rid of third party harassment will make working life even harder for the thousands of care home staff, teachers and health workers who suffer prejudice and abuse from those they are trying to help. And taking away the power of tribunals to make recommendations to employers will make it much more difficult to deal with employers who serially bully and discriminate against their staff."

"These changes are in line with wider Government plans to weaken employment rights and let bad bosses off the hook. This is no way to create the decent full-time jobs that this country so desperately needs."

Brendan Barber
TUC General Secretary

Equal Pay Audits

On a plus side, the Equality Act 2010 will also be amended to include for a **requirement for employment tribunals to order an employer to conduct an equal pay audit where it has breached the equal pay provisions under the Act, except in limited circumstances.**

The Equality and Human Rights Commission

The Equality and Human Rights Commission (EHRC) is an independent body responsible for enforcing equality legislation and compliance with the Human Rights Act and costs less than £1 a year per person. The Government plans to slash its budget by 68% which will mean at a time of unprecedented cuts that will hit the most vulnerable in society hardest.

The Public and Commercial Union (PCU) and Unite the Union are running a joint campaign to save the EHRC. See below for details on how to support the campaign

The Equality Act 2010 will include the following clauses affecting the operation of Commission:

Clause 51: Equality and Human Rights Commission

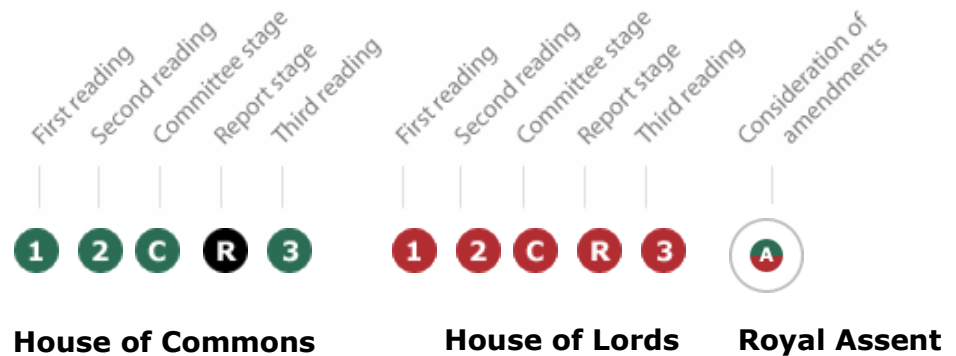
- 381. This clause amends Part 1 of the Equality Act 2006, which makes provision for the Commission for Equality and Human Rights, to clarify the Commission's remit by removing some of its powers and duties and by reducing the frequency with which the Commission is required to report on progress in society so that its reports capture more meaningful change over time. This clause also makes consequential amendments to the Equality Act 2006 and the Equality Act 2010.

382. Specifically, the clause makes the following amendments to the Equality Act 2006:

- Repeals section 3, which sets out the general duty of the Commission;
 - Repeals section 10, which imposes a duty on the Commission to promote good relations between members of different groups, and section 19, which gives the Commission powers associated with section 10;
 - Repeals section 27, which enables the Commission to make arrangements for the provision of conciliation in certain non-employment-related disputes;
 - Amends section 12, which requires the Commission to monitor and report every 3 years on progress in society relevant to the general duty in section 3. As a consequence of the repeal of section 3, this clause amends section 12 to require the Commission to monitor and report on changes and developments in society which are consistent with its duties in sections 8 (Equality and diversity duties) and 9 (Human rights duties). It also reduces the frequency with which the Commission is required to publish a report on progress from every 3 years to every 5 years.
- 383. The clause also makes further amendments, consequential on these changes, to provisions in the Equality Act 2006 and the Equality Act 2010.

Timetable of the Bill

The Enterprise and Regulatory Reform Bill is now in the Report stage and will enter its 3rd Reading in the House of Commons on 16th and 17th October before it is transferred to the House of Lords before it is given Royal Assent.



Implementation

Amendments to the Bill will come into force on the day of Royal Assent. Clause 51 (Equality and Human Rights Commission) will come into force at the end of the period of **TWO MONTHS** beginning with Royal Assent.

What you can do

Demonstrate with UCU for a **Future that Works** and march against austerity on Saturday 20 October with the thousands of trade union members', community organisations and concerned individuals sending out a clear message to the Government to say that their austerity measures are not working.



You can find information at <http://afuturethatworks.org/>

UCU will proudly be marching in London with its brand new Equality Banner! The London meet-up point for UCU members is in front of Embankment entrance to Somerset House: <http://goo.gl/maps/8tXPZ>

For those with accessibility requirements there will be a special assembly point in Savoy St ([see map](#)), at the start of the March for wheelchair users and disabled people who wish to join the demonstration in a group. This point will be separately stewarded and will feed into the march via a cordoned-off section along the side of the march. For detailed accessibility information, visit the following link: <http://afuturethatworks.org/march-logistics/accessibility/>

Write to your MP about:

- Our concerns regarding repealing certain sections of the Act by using the proforma letter below. You can find details of how to contact your MP at <http://www.theyworkforyou.com/mp/>
- Saving the Equality and Human Rights Commission at <http://www.unitefoursociety.org./page/speakout/protect-our-freedom>

Sign up to:

- Receive the latest update on equality issues by sending an email to eqadmin@ucu.org.uk
- Sign the e-petition to save the Equality and Human Rights Commission at <http://www.epetitions.direct.gov.uk/petitions/29879>

Read the:

- Health and Safety factsheet on Cyber-bullying
http://www.ucu.org.uk/media/pdf/s/t/hsfacts_cyberbullying.pdf
- TUC Report 'Two steps forward, one step back'
<http://www.tuc.org.uk/equality/tuc-21425-f0.pdf>
- Joint Agreement on Guidance on Equality in Employment in Further Education Colleges
http://www.ucu.org.uk/media/pdf/e/j/Joint_Agreement_on_Guidance_on_Equality_in_Employment_May_2012.pdf
- Equality Challenge Unit guidance on third party harassment
<http://www.ecu.ac.uk/your-questions/what-could-higher-education-institutions-heis-do-to-take-reasonable-steps-to-protect-employees-from-third-party-harassment>

Dear

Repealing of sections of the Equality Act 2010

I/we are/am writing to ask that due consideration is given to the decision announced on October 10th 2012 to repeal the three sections of the Equality Act 2010.

- **Employment Tribunals power to make recommendations in discrimination cases**
- **The procedure for obtaining information**
- **Third party harassment**

I / we believe that this repeal will further allow employers to continue to operate discriminatory practices in our workplaces (colleges and universities) instead of encouraging a change in the culture of the workplace.

UCU members have found the use of Statutory Discrimination Questionnaires a valuable tool in assisting them make their case in discrimination cases. The ability to have statistics available to demonstrate whether discrimination has occurred is extremely vital in negotiations to eradicate inequality. Also it often alleviates the need for a tribunal as the issue can be resolved through negotiations.

I / we believe that the repealing of this area of the Equality Act makes for worrying times for **all** workers as it gives further ammunition to bullies to continue to harass and cause injury and stress – and in the education sector, stress is a major issue and the removal of third party harassment will now make it even more difficult to seek remedy.

I / we are also extremely concerned to read that despite the exceptionally poor response **in favour of the proposals** that the Government has decided to continue to repeal these sections totally ignoring the views from trade unions, equality organisations and the judiciary. It appears that regardless of the responses received, the decision had already been made to repeal and the consultations held earlier in the year were just a paper based exercise in favour of business. I / we see this as a U-turn in employment rights and a step back in progressing equality in the workplace and wider society and as a clear example of equality under attack and proves the government plans to weaken and ultimately remove the rights of the worker in favour of the rights of the employer.

With less than two years after the legislation was introduced I / we believe that the Government has not given the Equality Act sufficient time to measure its effectiveness and has now given the green light for discrimination, victimisation and harassment to continue in the workplace. I / we recommend that you read the TUC Report *'Two steps forward, one step back'* (<http://www.tuc.org.uk/equality/tuc-21425-f0.pdf>) to see our concerns in more detail.

As an elected member of the government, I / we would like to take this opportunity to remind you that the purpose of equality legislation is to treat everyone with dignity and respect and that **we all** have an equal right not to be victimised, harassed and discriminated against by **any** member of society and that these repeals are indeed a step back and urge you to consider these points as the Bill enters its 3rd Reading in the House of Commons and to speak against it.

Yours sincerely,

Name or branch /LA name