



Equality Hub

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Rt Hon Caroline Nokes MP
Chair, Women and Equalities Committee

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Dear Caroline,

Thank you for your letter 23 January, regarding the Government Response to the Women and Equalities Committee's First Report of Session 2022 – 2023: Menopause and the workplace.

Menopause is an important issue to be considered in both of my roles as Minister for Women and Minister for Mental Health and Women's Health Strategy, so I broadly welcome these recommendations from the Committee to make positive changes, where possible, in response to last year's inquiry.

I am glad that you were pleased that we have reiterated several commitments made to the Committee, within the Women's Health Strategy.

However, I understand that the Committee is disappointed that a number of recommendations were rejected. I note that your letter particularly focuses on the rejection of recommendations 11 and 12, which push for changes to the Equality Act 2010:

- The Government should immediately commence section 14 of the Equality Act 2010.
- The Government should launch a consultation on how to amend the Equality Act to introduce a new protected characteristic of menopause, including a duty to provide reasonable adjustments for menopause employees. This consultation should commence within six months of publication of this report. The Government's consultation response should include a review of whether the newly commenced (above) has mitigated concerns about the law.

While you have my sincere apologies for the late response to the report, I would appreciate your patience in giving us more time to explore alternative options for making improvements to protections, whether through new measures or improved awareness by employers and employees and support for those experiencing menopause. As you are aware, there have been times of uncertainty and a number of Ministerial changes over the last few months, which have contributed to the delay. Now settled in my role as Minister for Women, I can ensure that this work is taken forward.

Below at Annex A, I have responded to the four questions outlined in your letter. I hope these provide assurances to the Committee that we too want to ensure employees are not discriminated against due to menopause.

I look forward to continuing to engage constructively with your Committee on this and other equalities issues.

A handwritten signature in blue ink, appearing to read 'M. Caulfield'.

MARIA CAULFIELD MP
Minister for Women

Annex A

1. Whether the Menopause Taskforce will continue with its work and when it is next due to meet?

We have had two productive meetings of the UK Menopause Taskforce. Since the last meeting in June 2022, the National Institute for Health and Care Research (NIHR) has commissioned a menopause research prioritisation exercise, which is considering research recommendations from a range of experts including the National Institute for Health and Care Excellence (NICE) and the UK Menopause Taskforce. The exercise is also considering the priority areas identified through the Women's Health Strategy's call for evidence. Following completion of the exercise, we expect that research will be commissioned in summer 2023. I will soon be meeting with co-chair Carolyn Harris MP to discuss the UK Menopause Taskforce.

2. What evidence the Government is relying on, when they state there would be potential additional burden for employers and service providers if section 14 Equality Act 2010 is commenced?

Any new or newly commenced requirements in the Equality Act 2010 and particularly those that would be focussed on Part 5, will inevitably create new burdens for business and employers in general. There is an initial familiarisation burden and then a longer-term operational burden as employers may need to create workaround solutions to ensure that they remain within the law.

This is particularly the case with section 14, where there is such a potential variety of combinations of characteristics that employers would need to accommodate or ensure that they are not treating those less favourably than people who do not have the particular combination of characteristics. It is important to remember that with very few exceptions the commenced provisions of the 2010 Act apply equally to employers of all sizes and while large employers with dedicated HR teams may be well placed to absorb and implement new requirements, smaller enterprises may find this more challenging, particularly in the prevailing economic circumstances.

In terms of providing specific figures on the estimated cost to employers of commencing section 14, the usual practice is to undertake a detailed assessment following an "in principle" decision to switch a provision on. Also, a full Regulatory Impact Assessment is only produced and published for new legislation, rather than law that is already on the statute book.

When the provisions in Equality Act 2010 were first explored, it was estimated that the costs of these section 14 to businesses, in the first year, was of more than £15M and £1 million a year thereafter. These costs will have significantly increased since 2008/9 when the assessment was done and we have taken the view that any upwardly-revised costs would not be sufficiently outweighed by the benefits of commencement to business or individuals. These provisions were considered as part of the equalities red tape challenge to reduce burden for business and were not implemented because of the regulatory complexity and the assessed cost to business and although that exercise occurred during the Coalition, we still feel that its conclusions were right.

Recent Employment Tribunal data shows that employees already have scope within the Act to challenge outdated and/or insensitive treatment by employers - claiming under one or more of the three relevant characteristics. As stated in the report, implementation of the provision would create

21 dual protected characteristics, which undoubtedly would bring increased burdens even without assessment. We also remain concerned about potentially creating new areas of dispute over self-identity and the complexity of hierarchies of rights. We are additionally concerned about the impact on the justice system - and ultimately the taxpayer - of introducing a new, more complex layer of requirements under the 2010 Act, when the data indicates that the position is currently manageable.

3. What consideration has been given to amending the Equality Act through options which do not require primary legislation, such as expanding the definition of disability?

As stated in the report, while the Government supports the aim of ensuring that women are not discriminated against due to menopause, legislation is not the only, or even the best approach to doing this.

Like others who provided evidence at the inquiry, we previously agreed that guidance is a useful tool to both better familiarise employers with the reality of the menopause - something that has been taboo to many in the past - and bolster their awareness of their current legal obligations, including compliance with the 2010 Act. The Equality Hub will continue to work with Acas and EHRC to see if further steps are needed to produce and disseminate effective guidance on this subject.

The Government is open to exploring a variety of options, including those noted in the report - bespoke extensions to the reasonable adjustments duty or the Age provisions. This is something that needs further careful consideration, as it is important we ensure that any changes considered in the round to avoid unintended consequences which may inadvertently create new forms of discrimination. Likewise, we will have to analyse their impacts with regards to costs and burdens.

4. Whether the Government will review their position on consulting to introduce menopause as a protected characteristic?

By their nature, no policy positions or decisions are indefinite. In the short term however, we have no plans to review our position on this matter. We will inform the Committee if this situation changes and we will continue to monitor any emerging evidence in this space.

It is far from clear that a new characteristic would be the optimum route to improving the experiences of women going through the menopause. The Government has faced calls for several other new additions to the protected characteristic list in recent years with arguably as much credence, for example terminal illness and those brought up in care homes. Any changes to the Act would need primary legislation and given the structure of the legislation, it would be difficult to confine changes to the part dealing with employment.

Like others at the inquiry, we believe that the existing legislation already protects employees experiencing the menopause. While menopause should largely be covered under the three protected characteristics of age, sex and disability discrimination, as detailed in our response to question 3, the Government will explore alternative options to provide further protections, awareness and support.