

Lords Liaison Committee Response

Introduction

The government is committed to improving disabled people's everyday lives. Everyone should be able to participate fully in society - whoever you are, wherever you live, and importantly, whether you have a disability or not, visible or invisible.

The government welcomes this report from the Lords Liaison Committee, which follows up on the 2016 report: *The Equality Act 2010: the impact on disabled people*, which was prepared by a select committee established for that purpose under the chairmanship of Baroness Deech.

The government responded fully to the 2016 report's 55 recommendations and since then has sought to safeguard and promote the interests of disabled people, culminating in the National Disability Strategy, *Shaping Future Support: the health and disability Green Paper*, and a response to the *Health Is Everyone's Business* consultation, all published in July 2021.

The government remains strongly committed to the protections offered by the Equality Act 2010 to disabled people. The reasonable adjustment duty and the prohibitions on direct and indirect discrimination, harassment and victimisation remain key planks of the government's approach. We are committed to ensuring that disabled people can achieve their employment aspirations and access the services that they need, in the knowledge that unfair treatment related to disability can be challenged, in court if necessary.

Although these protections pre-date the Equality Act 2010, we are also committed to retaining the protections newly introduced in 2010, such as protection from associative discrimination and the prohibition on discrimination arising from disability. We are a world leader in this legislative area and offer protections that far exceed those offered by the European Union, for example.

Of particular interest, the government will soon be running a public consultation on the details of implementation of the remaining parts of Section 36 of the Equality Act 2010 (reasonable adjustments to the common parts of leasehold properties), to ensure that we have taken proper account of the concerns and suggestions of all stakeholders as we move towards commencement.

The findings of the consultation will feed into our draft approach to the detailed regulations that may be needed to underpin commencement and to the guidance which is planned to assist disabled occupants, tenants and landlords to operate the new legal framework.

This commitment featured as part of the National Disability Strategy, and a link to the consultation will be sent to the Committee following publication. The timetable for actual commencement will depend on the findings of the consultation and the extent of regulation that is needed.

The government is determined that the National Disability Strategy, which represents one of the first truly cross-government efforts to transform the lives of disabled people, coupled with the broader programme of work underway at DWP and across government, will successfully level up opportunity across the country.

We are committed to reporting annually on delivery of the Strategy, holding ourselves firmly to account. There is also a network of Ministerial Disability Champions in each department who have personally committed to driving progress. This strategy will not sit on the shelf.

The coordinated approach outlined in the National Disability Strategy, together with Shaping Future Support: the health and disability Green Paper, and our response to the Health Is Everyone's Business, will support disabled people and people with long term health conditions to live independently and thrive.

The government is taking action now to create a society that is richer and fairer for us all.

Government Leadership and Strategy

Recommendation 1

The Committee hopes that information about the current status of [the inter-ministerial group on disability and society] will be included in the Government's response to this report. (Paragraph 20)

Government response

Ministerial Disability Champions were appointed in summer 2020, at the request of the Prime Minister, to help drive the development and delivery of the National Disability Strategy.

Their aims include:

- Providing a personal lead and commitment to championing disabled people within their departments; and
- Ensuring disability inclusivity is a priority and that their officials work with the Disability Unit and across Government to improve the lives of disabled people.

The names and details of the Ministerial Disability Champions are available on GOV.UK.

The Champions inter-ministerial group have met regularly through the year during the development of the National Disability Strategy, which sets out that the Minister for Disabled People will continue to chair a quarterly meeting of the Champions to drive progress.

Recommendation 2

The Committee recommends that the Government include an update on the progress made with this legislation, [a Public Service Ombudsman (PSO)], in their response to this report. If the Government does intend to move forward with this legislation, the Committee recommends that it consults closely with the EHRC and Disabled People's organisations. (Paragraph 22)

Government response [cleared text]

The Government does not anticipate bringing forward legislation at this time. Should the Government take forward any Ombudsman reform, it will run a full public consultation including considering responses from equalities and disability organisations.

Recommendation 3

The Committee reiterates the 2016 recommendation that "any new relevant public sector ombudsman be given an explicit remit to secure compliance with the Equality Act 2010 in the services for which it is responsible." (Paragraph 23)

Government response

The Government notes this recommendation. Should the Government undertake future reforms on a Public Service Ombudsman it will consider this recommendation.

Recommendation 4

The Committee looks forward to receiving in the Government's response to this report a detailed outline of how the Minister for Disabled People and the Prime Minister will oversee the implementation of the strategy. It is crucial that the National Strategy should not displace the need to enact the recommendations made in the 2016 Report. The Strategy should include them along with indications as to how they are to be implemented. We recommend that a timetable and details of the mechanisms for oversight and coordination, including Cabinet Committees and inter-ministerial groups, is published within three months of the publication of the strategy to ensure that the needs of disabled people are met without delay. (Paragraph 25)

Government response

The National Disability Strategy, published on 28 July 2021, sets out a wide range of tangible, timebound actions we are taking now that will improve the everyday lives of disabled people, across jobs, housing, transport, education, shopping, culture, justice, public services, and data and evidence.

Part 1 of the strategy includes over 100 commitments, with contributions from right across government. The department responsible for implementing each commitment is made clear.

Part 2 of the strategy includes details of how the implementation of the strategy will be tracked, and Part 3 lists specific commitments by department.

The strategy is backed by the personal commitment of Ministerial Disability Champions, who will drive progress in their respective departments.

The government is committed to review progress and delivery annually, and hold ourselves to account, by publishing an annual report.

The annual report will also be forward leaning, considering future work and priorities.

The government's position on other recommendations in the Committee's 2016 report is set out elsewhere in this response.

Recommendation 5

The Committee notes that the Minister for Women and Equalities role is currently part of a mixed portfolio. In order to give due regard to this important and complex policy area, the Committee recommends that the Government consider making the Minister for Women and Equalities a stand-alone, full-time role. The Minister should be part of the Cabinet Office team, with the right to attend Cabinet. (Paragraph 26)

Government response

The Portfolios of Ministers and Cabinet Committees are the prerogative of the Prime Minister.

Recommendation 6

The Minister [for Women and Equalities] should continue to work closely with the Minister for Disabled People to deliver the National Strategy for Disabled people. The Committee urges the Government to consider recommendations made by the Women and Equalities Committee that Junior ministerial roles should also be based in the Cabinet Office, but could be jointly held with departments whose remits reflect the Government's top equalities priorities at

the time, such as the Home Office, Department for Work and Pensions or the Ministry of Housing, Communities and Local Government. (Paragraph 27)

Government response

Please see response to recommendation 5.

Recommendation 7

The Committee is disappointed to see that the Cabinet Social Justice Committee has been disbanded, with no obvious replacement to discuss these crucial issues. The Committee supports the recommendation made by the Women and Equalities Committee that a Cabinet sub-committee for equalities should be established, chaired by the Minister for Women and Equalities. The Minister for Disabled People should be a member of this Committee.

(Paragraph 28)

Government response

Cabinet and its committees provide a framework for Ministers to consider and make collective decisions on policy issues, covering the full range of government business, including issues of equality and fairness.

Public Sector Equality Duty

Recommendation 8

The Committee reiterates the 2016 recommendation that the following subsection be added to section 149: “To comply with the duties in this section, a public authority in the exercise of its functions, or a person within subsection (2) in the exercise of its public functions, shall take all proportionate steps towards the achievement of the matters mentioned in subsection (1).” (Paragraph 45)

Government response

The Government notes the Committee’s recommendation for changing the public sector equality duty, and that this reflects its recommendation in 2016 and indeed a proposed amendment in the original Parliamentary passage of the Equality Bill in 2009/10.

However, the recommendation raises a number of significant issues, some of which were foreshadowed in the then Labour Government’s rejection of the Bill amendment, while others relate to the experience of the Act over more than a decade.

The public sector equality duty has very wide application, applying to all functions of most public bodies, to the public functions of other organisations, and to every

protected characteristic in the Act. It is often added to other grounds as part of a claim for judicial review. Although a requirement to “take all proportionate steps” would be a positive duty, inevitably claims against public authorities for failing in this duty would be set in negative and possibly counterfactual terms - that the authority should have taken this or that step (or indeed several successive steps), but had failed to do so. Arguments in the courts would focus on actions that had not happened, and whether they would have been proportionate if they had happened. Adoption of the 2009/10 Bill amendment as a way of moving to an outcome-focussed duty would therefore not simply be a shift in policy terms, but would raise potentially significant legal issues for public bodies.

The public sector equality duty is, in any case, a cross-cutting duty in the Equality Act, applicable to all public settings - employment, the provision of public functions, transport, housing, education and so on. Any change to the main duty set out in the body of the Act would therefore require opening up the Act as a whole to amendment, including every protected characteristic and every legislative exception to unlawful discrimination.

Nor is there necessarily any consensus among stakeholders about whether and how the duty itself should change, as the relevant recommendations in the Policy Exchange’s analysis of how the Equality Act 2010 has worked in practice over 10 years - issued a few days after the publication of the Committee’s report - illustrate.

The Government therefore takes the view that amendments to the public sector equality duty at S149 of the Equality Act should in due course be considered if and when any more general decision is taken to revise or replace the Act in the future.

Recommendation 9

The Committee reiterates the 2016 recommendation that: that the Government replace the Equality Act 2010 (Specific Duties) Regulations 2011 with provisions that require a listed public authority to develop and implement a plan of action setting out how they will meet the requirements of the general duty in all of their functions. (Paragraph 46)

Government response

The Government notes the Committee's proposed change to the specific duties, which it will ensure is fully considered, along with suggestions from other stakeholders, in any future work to review and/or revise the specific duties for English and cross-border GB public authorities.

Reasonable Adjustments

Recommendation 10

The Committee finds it objectionable that parts of the Equality Act, now over 10 years old, are still not in force. It is an affront to Parliament that its will expressed in legislation has been ignored or set aside by the executive.
(Paragraph 61)

Government response

The Government notes the Committee's view.

Recommendation 11

The Committee finds the Government's arguments for non-commencement of section 36 unconvincing. There is no reasonable justification for the Government's delay. The Committee recommends that section 36 should be brought into force within six months of the publication of this report and that the Government outline a timeline for commencement in its response to this report. (Paragraph 62)

Government response

The Government appreciates the Committee's frustration that the remaining parts of Section 36 of the Equality Act 2010 (Reasonable adjustments to common parts) and its associated schedules have not as yet been brought into force. However, as the Scottish Government's experience of implementing equivalent provisions in Scotland shows, this is a measure with significant implementation issues including coherence with existing housing legislative framework. These considerations impact a variety of stakeholders –

- Disabled occupants, tenants and leaseholders, who must ordinarily fund any agreed works;
- Local authorities in England and Wales, who may be required to undertake or fund some adjustments;
- Private landlords and commonhold associations, who, while not required to fund any approved works, may encounter certain administrative challenges around consulting with other tenants and unit holders and ensuring what is proposed does not cause any issues as regards existing leases and the leasehold legislative framework in general; and
- Other tenants and leaseholders living in the properties where adjustments are proposed.

That is why the Government is very pleased to be running a public consultation soon, to ensure that we have taken proper account of the concerns and suggestions of these important stakeholders as we move towards commencement. The findings of the consultation will feed into our drafting approach to the detailed regulations that will be needed to underpin commencement and to the guidance which is planned to assist both disabled occupants, tenants and landlords to negotiate the new legal framework.

A link to the consultation, a commitment to which we were delighted formed part of the Government's recently published National Disability Strategy, will be sent to the Committee following publication. The timetable for actual commencement will depend on the findings of the consultation and the extent of regulation that is needed.

Recommendation 12

The Committee reiterates the 2016 recommendation that the Government include provisions similar to those of the Accessible Sports Grounds Bill in a Government Bill. (Paragraph 67)

Government response

We recognised the good intentions behind the Accessible Sports Grounds Bill in seeking to be a catalyst for action to ensure stadia are made accessible for disabled spectators, but the proposed mechanism to achieve the desired objective within the Bill was flawed and while we did consider alternative legislative mechanisms during the Bill's passage none could be found to achieve the desired outcome.

We have no plans to introduce such a Government Bill as existing legislation in the form of the Equality Act makes provisions for anyone to be able to take clubs to court for failure to provide reasonable adjustments, if they feel a club is in breach of the Act. The Act, however, remains untested on access to sports stadia for disabled people.

Recommendation 13

The Committee reiterates the 2016 recommendation that Ministers report regularly to Parliament in this regard on the progress made (a) by the Premier League and by the Football League, and (b) on comparable action by the operators of other large stadia. (Paragraph 68)

Government response

The Government's Sports Strategy commits us to work with the football authorities to ensure that all clubs meet their legal obligations under the Equality Act 2010 to provide reasonable adjustments to accommodate disabled spectators.

Recommendation 14

The Government must take action to ensure that all public transport is accessible to disabled people as a matter of urgency. The Committee recommends that section 163 of the Equality Act is amended to apply to Private Hire Vehicles (PHVs) as well as taxis, and commenced without further delay. (Paragraph 79)

Government response

The government continues to deliver on its policies to improve the accessibility of the transport system including commitments set out in the Inclusive Transport Strategy (2018), the National Disability Strategy, the national bus strategy “Bus Back Better”, and the Williams-Shapps rail reform white paper (all 2021).

The government is clear that taxis and private hire vehicles (PHVs) must be accessible to those who rely upon them. It has a long-standing position of encouraging mixed taxi and private hire vehicle fleets that contain a range of vehicles which meet a variety of access needs. This approach is supported by the Disabled Persons Transport Advisory Committee.

The legislation that provides for licensing of taxi and private hire vehicle services is enabling in its nature. Local licensing authorities already have the discretion to require vehicles to meet the accessibility requirements they deem to be appropriate for their area. We encourage them to use it to ensure they licence sufficient vehicles to meet demand.

The government accepts that in some parts of the country there are too few wheelchair accessible licensed vehicles to meet the need of passengers. Wheelchair users should be able to travel as easily as other people.

The government is grateful for the committee’s recommendations which will help to inform the next steps on this important issue.

Recommendation 15

Committee recommends that the following bold wording is inserted into section 163, so that the section reads as follows:

“163 Taxi or **Private Hire Vehicle** licence conditional on compliance with taxi **and Private Hire Vehicle** accessibility regulations

(1) A licence for a taxi to ply for hire (**or to operate a Private Hire Vehicle**) must not be granted unless the vehicle conforms with the provisions of taxi (**and Private Hire Vehicle**) accessibility regulations with which a vehicle is required to conform if it is licensed.

(2) Subsection (1) does not apply if a licence is in force in relation to the vehicle at any time during the period of 28 days immediately before the day on which the licence is granted.

(3) The Secretary of State may by order provide for subsection (2) to cease to have effect on a specified date.

(4) The power under subsection (3) may be exercised differently for different areas or localities (**or ages of vehicle**).” (Paragraph 80)

Government response

Please see response to recommendation 14.

Recommendation 16

The Committee recommends that the Government outline their timetable for the public consultation on best practice guidance for licensing authorities in their response to this report. The Committee recommends that the guidance is published within 12 months of this report being published. (Paragraph 81)

Government response

The government wants all local authorities to support taxi and private hire vehicle (PHV) services which are as inclusive as the best in the country.

Updating best practice guidance on taxi and PHV licensing is an important step in making that possible. A public consultation on the updated guidance will be launched shortly, including strengthened recommendations on the provision of an inclusive service.

In the meantime, the government remains committed to improving the experience of disabled taxi and PHV passengers. Subject to parliamentary time, the government will legislate to mandate the completion of disability awareness training by taxi and PHV drivers, and to ensure that every disabled customer receives the assistance they need.

Access to Justice

Recommendation 17

[In February 2020 the High Court dismissed a judicial review seeking the extension of QOCS to discrimination claims in all civil courts.] The Committee finds the Government's stance on this matter disappointing. The Government should be focusing on the impact of the current costs regime on disabled people and the fact that it is preventing disabled persons from accessing justice. (Paragraph 87)

Government response

As confirmed by Lord Wolfson of Tredegar QC in his evidence to the Committee, and the Government in its Post-Implementation Review of Part 2 of the LASPO Act 2012, the Government is still considering this issue. While our work has unfortunately been delayed by the pandemic, we propose to set out the way forward on this issue in the coming months. We remain committed to ensuring that access to justice is a reality for disabled people in exercising their rights.

Recommendation 18

The Committee reiterates the 2016 recommendation that: “The Civil Procedure Rules should be amended to apply Qualified One-Way Costs Shifting to discrimination claims under the Equality Act”. It recommends that this is actioned within six months of the publication of this report. (Paragraph 90)

Government response

Please see response to recommendation 17.

Recommendation 19

The Committee were pleased to hear that the Government are reviewing the fees remission scheme. The Committee recommends that the Ministry of Justice give clearer guidance to the legal aid authorities about the importance of extending this funding to discrimination cases. (Paragraph 93)

Government response

The consultation referred to by Lord Wolfson in his answer to question 21 of the hearing was a consultation on ‘Increasing selected court fees and Help with Fees income thresholds by inflation’. A part of this consultation involved proposed increases to the income thresholds of the Help with Fees (HwF) remission scheme by inflation. Increases to the capital thresholds and other changes to the Help with Fees scheme were not included in the consultation. By increasing the income thresholds in line with inflation the Government is taking proportionate measures to preserve access to justice for those that need it most. These increases were applied on 30th September 2021. These changes will widen access to and increase the generosity of the Help with Fees scheme. In particular, the extended scheme will benefit women, people from black and minority ethnic backgrounds, disabled people and pensioners, who all feature disproportionately among low income groups.

Under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), legal aid may be available for legal advice for cases alleging unlawful discrimination under the Equality Act 2010, subject to certain criteria being satisfied. As set out in our response to the Equality and Human Rights Commission’s report on legal aid in discrimination cases, we are continuing to consider whether changes to the Lord Chancellor’s guidance are necessary for these cases.