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Equality Bill: Government amendments

The Government tabled a number of amendments on 4 February and I thought it would be helpful to clarify the details of these amendments.

I attach an explanation of each of these amendments and am copying this letter to members who spoke at Second Reading of the Equality Bill. I also attach the list of amendments as tabled and the attached Annex refers to the amendment numbers in that list.

As you know, I welcome any questions from colleagues and would like to take this opportunity to inform you that Lords Ministerial Colleagues will be available at the following times for anyone who wishes to discuss these or any other amendments as we move through the Committee stages.

Tuesday 9 February at 13.30 – 14.30

I am placing a copy of this letter and attachment in the House Library.

A handwritten signature in black ink, appearing to read 'Jan Royall'.

JAN ROYALL

**EQUALITY BILL: GOVERNMENT AMENDMENTS FOR LORDS COMMITTEE,
TABLED 4 FEBRUARY**

Schedule 18, amendment 1: power in relation to exceptions to the public sector equality duty

Schedule 18 sets out the exceptions to the public sector equality duty. It also contains a power for a Minister of the Crown to add, limit or omit those exceptions. The Delegated Powers and Regulatory Reform Committee, in its report on Parts 6 to 15 of the Equality Bill (Third Report of Session 2009-10), recommended that this power should be limited so that it could not be used to remove or limit the exceptions provided for judicial functions or those relating to Parliament, the Scottish Parliament, the National Assembly for Wales and the General Synod. The Government said in its response to the Committee (letter from Baroness Royall of 22 January covering one from the Solicitor General to Lord Goodhart) that it would carefully consider this recommendation, and amendment 1 meets the recommendation.

Clause 150, amendment 2; clause 200, amendment 10; clause 201, amendments 14-17 and 19; and clause 202, amendments 20-23 and 25: power in relation to the list of public authorities subject to the public sector equality duty

Clause 150(1) enables a Minister to amend Schedule 19 (the list of bodies subject to the public sector equality duty) by order. The Delegated Powers and Regulatory Reform Committee, in its above report on the Bill, recommended that this power should not be capable of being used to add, to Schedule 19, the judicial and parliamentary bodies currently excluded from the duty by virtue of Schedule 18. It also recommended that the limited power should be subject to the affirmative procedure, not the negative procedure as currently provided. The Government said in its response to the Committee that it would carefully consider the recommendation to limit the power, and amendment 2 meets the recommendation. (In effect, it is a counterpart of amendment 1.) The Government also said in its response that it would carefully consider the recommendation to make the limited power subject to the affirmative procedure, but that there were certain cases where the negative procedure would be more appropriate. Amendment 10 in respect of clause 200 (which sets out which powers are subject to affirmative and which to negative procedure) has the effect of applying the affirmative procedure to the use of this power, for example when adding an entry, but retaining the existing negative procedure for use of the power in relation to cases where an entry is removed because an authority has ceased to exist or is changed because an authority has changed its name. Amendments 14 to 17 and 19, and 20 to 23 and 25 make equivalent changes regarding use of the power by Welsh Ministers and Scottish Ministers respectively to add, vary or omit entries in their Parts of Schedule 19.

Clause 195, amendment 3; clause 200, amendment 9: guidance-making powers regarding age discrimination exceptions

Clause 195(1) provides a power for a Minister by order to make exceptions from the ban on age discrimination, including in the provision of services and exercise of public functions. Clause 195(3)(a) allows such an order, amongst other things, to “confer on a Minister of the

Clause 200: amendments 11 and 12 in respect of clause 199: orders containing consequential provisions

Clause 199 enables, in subsection (7), a provision that is consequential upon the commencement of the Bill to be contained in a separate order which would not be subject to parliamentary procedure. The Delegated Powers and Regulatory Reform Committee, in its above report on the Bill, recommended that such additional orders should be subject to the negative procedure. In its response, the Government said it would carefully consider this recommendation. Amendments 11 and 12 change clause 200(7) in a way that provides negative procedure for such additional orders.

Clause 200: amendment 13: exemption from hybridity procedure

The Delegated Powers and Regulatory Reform Committee, in its above report on the Bill, noted that clause 200(10) disapplies the hybrid instruments procedure for affirmative instruments under the Bill and drew this to the attention of the House. In its response the Government noted the Committee's comments and indicated some powers to whose use it considered the hybrid instruments procedure should not apply, for example clause 2 and clause 150 which simply enable the adding (under affirmative procedure) of various bodies that are subject to the relevant duties. The amendment achieves the effect of narrowing the exemption from the hybrid instruments procedure to use of an order under clause 2 (power to add bodies to be covered by the socio-economic duty) or regulations under clause 150 (power to specify public authorities), 152 (power to impose specific duties), 153(2) (power to impose specific duties on cross-border authorities) or clause 154(5) (power to modify or remove duties that have already been imposed).

Clauses 201 and 202: amendments 18 and 24

The Delegated Powers and Regulatory Reform Committee noted that it was unclear whether statutory instruments made by Ministers of the Crown and referred to in clauses 200(3) were subject to any parliamentary procedure. Amendment 136 has previously been tabled to clarify that instruments which are not subject to the affirmative procedure because they are listed in 200(3) are subject to the negative procedure. The same point arises in relation to instruments made by the Welsh and Scottish Ministers. Clauses 201 and 202 set out the procedures to be followed in their respective legislatures when the Welsh and Scottish Ministers make statutory instruments. Amendments 18 and 24 mirror amendment 136 and clarify that instruments which are not subject to the affirmative procedure because of clauses 201(2) and 202(2) are subject to the negative procedure.

- “() Guidance issued (or treated as issued) under a power conferred by virtue of subsection (3)(a) comes into force on such day as the person who issues the guidance may by order appoint; and an order under this subsection may include the text of the guidance or of extracts from it.”

Clause 196

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- 4 Page 122, line 2, leave out “Before making the order” and insert “If the Minister proposes to make an order under this section”
- 5 Page 122, line 4, leave out subsections (4) and (5) and insert—
- “(4) If, as a result of the consultation under subsection (3), the Minister thinks it appropriate to change the whole or part of the proposal, the Minister must carry out such further consultation with respect to the changes as the Minister thinks appropriate.”
- 6 Page 122, line 26, leave out “5” and insert “2”
- 7 Page 122, line 28, leave out “5” and insert “2”

After Clause 196

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- 8 Insert the following new Clause—

“Harmonisation: procedure

- (1) If, after the conclusion of the consultation required under section 196, the Minister thinks it appropriate to proceed with the making of an order under that section, the Minister must lay before Parliament—
- (a) a draft of a statutory instrument containing the order, together with
 - (b) an explanatory document.
- (2) The explanatory document must—
- (a) introduce and give reasons for the harmonising provision;
 - (b) explain why the Minister thinks that the conditions in subsection (1) of section 196 are satisfied;
 - (c) give details of the consultation carried out under that section;
 - (d) give details of the representations received as a result of the consultation;
 - (e) give details of such changes as were made as a result of the representations.
- (3) Where a person making representations in response to the consultation has requested the Minister not to disclose them, the Minister must not disclose them under subsection (2)(d) if, or to the extent that, to do so would (disregarding any connection with proceedings in Parliament) constitute an actionable breach of confidence.

- 18 Page 125, line 16, leave out “other than one mentioned in” and insert “that is not subject to the affirmative procedure by virtue of”
- 19 Page 125, line 18, after second “the” insert “order or”

Clause 202

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- 20 Page 125, line 26, at end insert “an order or”
- 21 Page 125, line 28, after “The” insert “orders and”
- 22 Page 125, line 30, at end insert—
“() an order under section 150 (power to amend list of public authorities for the purposes of the public sector duty);”
- 23 Page 125, line 35, at end insert—
“() But a statutory instrument is not subject to the affirmative procedure by virtue of subsection (2) merely because it contains an order under section 150 that provides for—
(a) the omission of an entry where the authority concerned has ceased to exist, or
(b) the variation of an entry where the authority concerned has changed its name.”
- 24 Page 125, line 36, leave out “other than one mentioned in” and insert “that is not subject to the affirmative procedure by virtue of”
- 25 Page 125, line 38, after second “the” insert “order or”