Government Response to the House of Lords Select Committee Report on The Equality Act 2010: The impact on disabled people

Presented to Parliament
by the Minister for Women and Equalities
by Command of Her Majesty

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PREAMBLE

Introduction

1. This Government is committed to ensuring that everyone can live their lives free from discrimination and harassment, including disabled people. Disability discrimination legislation has been in place since 1995, when the then Conservative Government passed a landmark piece of legislation, the Disability Discrimination Act. This Act was the first domestic Act on the issue of disability discrimination, prior to which it was legal to discriminate and exclude on the basis of disability. The 1995 Act was subsequently incorporated, with the support of the Conservative Party, into the Equality Act in 2010. We believe strongly therefore that the Equality Act 2010, and all our programmes that impact upon the lives of disabled people, act as tangible protections of disabled people's rights. As the Post-Legislative Scrutiny Memorandum on the Equality Act 2010 (CM 9101 – July 2015) shows, the Equality Act has essentially preserved and taken forward the protections in the Disability Discrimination Act 1995 (DDA). Indeed, it has resolved some of the issues that were not working in the DDA. For example, it rectified the changes to the comparator caused by the Malcolm case by including discrimination for a reason relating to a disability and it also included indirect disability discrimination.

2. Disability rights cannot be delivered by regulation alone. Forcing people to change their behaviours with regulation will not always change their hearts and minds and changing hearts and minds will lead to better attitudes, better access and better outcomes for disabled people.

3. While we know there is still a long way to go before disabled people can truly say they have achieved equality, Government has achieved more by initiating conversations between disabled people and the public, private and voluntary sector than by the blunt instrument of regulation.

4. The publication of the Select Committee report has already added to the wider conversation about disability rights. That is why we welcome the report, not least because the depth of the written and oral evidence provides a rich vein of information about the day to day lives of disabled people in the UK. This evidence can be used to inform the conversation and add weight to the Government's continuing commitment to enabling disabled people to fulfil their potential and aspirations by improving attitudes; by breaking down the barriers that they face in their day to day lives; and by continuing to work towards equality for all disabled people.

5. The Post-Legislative Scrutiny Memorandum indicates that for the most part the Act is working as the Labour Government which introduced it and the Coalition Government which implemented it intended, and as Parliament voted for in 2009-10. This Government is aware of two areas of concern by disabled people about developments under the last Government which mean that the current situation is not the same as was envisaged when the Act received Royal Assent – the fee system for employment tribunals; and a small number of

un-commenced provisions in the Act. All of these are currently under actual review or active consideration. More generally the current Government believes that the 2010 Act operates as expected and intended.

Working towards Better Outcomes

6. We know that taking account of the views of disabled people and co-producing work will lead to better outcomes. The Minister for Disabled People has therefore:

- initiated and supported targeted roundtables which have given an opportunity for disabled people and organisations with an interest in specific issues to talk directly to service providers, businesses and policy leads. These have led to a better understanding by service providers and businesses and a commitment from them to improve access and attitudes;

- attended the Fulfilling Potential Forum which offers 40 disabled people's user-led organisations an opportunity to talk to and advise Ministers and senior officials about the issues that are important to them, for example, transport, hate crime, sport and attitudes;

- regularly met the Disability Charities Consortium to discuss and listen to the issues that concern them; and

- co-chaired the Paralympic Legacy Advisory Group, made up of disabled people and organisations with an interest in the Paralympic Legacy.

Working across government to break down barriers

- **Employment**

7. Government is committed to halving the disability employment gap and wants to improve links between health services and employment support, recognising that timely access to health treatments can help individuals return to work more quickly, where possible and appropriate.

8. Over £115 million of funding is being provided for the Work and Health Unit (created jointly between the Department for Work and Pensions and the Department of Health), which includes at least £40 million for a health and work innovation fund, to pilot new ways to join up across the health and employment systems. This is in addition to existing policies such as access to work, which provides practical and financial support with the additional costs faced by individuals whose health or disability affects the way they do their job. Access to Work supported 36,760 disabled people to take up or remain in employment during 2014/15 (up from 35,560 in 2013/14). From April 2017 new Employment and Support Allowance claimants who are placed in the work-related activity

group will receive the same rate of benefit as those claiming Jobseeker's Allowance. We announced this, as well as new funding for additional practical support for this group, to ensure the right incentives and support are in place to help people move closer to the labour market, and when they are able, back to work. The 2015 Spending Review announced the new Work and Health Programme, restructuring DWP's current provision to focus on providing the best possible support for claimants with health conditions or disabilities, as well as those who are long-term unemployed. The Department is currently developing the design of the new Work and Health programme, and this includes consideration of what support claimants might need to move into work, including specialist support, and how that support might best be delivered within the new programme.

9. Changing employer attitudes is key to getting more disabled people into and retaining employment. This is why through our Disability Confident campaign the government is encouraging employers to attract, recruit and retain disabled people who are eager to work and have the skills, talents and abilities that employers are looking for. Employers have a crucial role to play in making a significant contribution to our ambition to halve the disability employment gap. The next phase for Disability Confident will aim to increase the number of employers, with a particular focus on SMEs and the public sector to sign up and demonstrate their actions and commitment and become Disability Confident Employers. We are currently testing a New Disability Confident scheme for employers which will be available this summer.

10. In the meantime we have set up a new facility for employers to register interest on Gov.UK[1] and receive further information and support. There is strong interest from MPs and others in holding local Disability Confident events which bring employers and disabled people together.

11. The Government has worked with the Disability Action Alliance (an alliance of over 400 cross sector organisations) to publish guidance for disabled people on taking up public appointments. This guidance includes information related to the support available and how benefits might be impacted, aiming to inform and encourage disabled people interested in taking up public appointments. In addition, the Government has supported the Disability Action Alliance in the launch and growth of its Volunteering Charter, a charter encouraging organisations across sectors to pledge to increase the quality and range of volunteering opportunities available to disabled people. Again this is in recognition of the skills gained and the increased inclusion in the community that volunteering opportunities can provide.

- **Transport**

12. The Department for Transport (DfT) is developing an Accessibility Action Plan. It will be working closely with the Disabled Persons' Transport Advisory Committee, and other organisations representing disabled people and transport

[1] www.gov.uk/government/collections/disability-confident-campaign

modes during its development. A draft will undergo public consultation later in the year. The Department is also producing guidance on delivering disability awareness training, informed by best practice across the transport industry and the experience of disabled passengers.

- **The Built Environment, Access and Inclusion**

13. One of the key successes of the London 2012 Olympic and Paralympic Games was that access and inclusion were built into the design and delivery of Queen Elizabeth Olympic Park and the venues from the beginning. As a consequence, the Paralympic Legacy Advisory Group proposed that a fitting legacy from the Games would be to ensure that inclusive design principles became a mandatory part of the training of all built environment professionals.

14. In accepting this proposal, central Government, working with the Greater London Authority, set up the Built Environment Professional Education Project. After two years the project has the active support of eighteen of the biggest and most respected institutions and organisations in the sector, has inspired changes to professional standards and competencies, and has raised the profile of inclusive design amongst professional educators and students.

15. Government understands that access and inclusion goes beyond the built environment; it is also about the accessibility of services provided. Following the findings of the BBC Watchdog programme on accessibility in restaurants, the Minister for Disabled People hosted a roundtable with leaders of the hospitality industry, trade bodies and disabled people including Baroness Winchester who had highlighted her interest in the issue during the Minister's oral evidence to the committee.

16. The Minister for Disabled People has written to ask each organisation who attended the roundtable to a formal commitment to the actions agreed as a result of it. He will be launching the "accessibility 10 top tips guide" which is being developed in partnership with the British Hospitality Association and Nimbus Disability, at the Annual Hospitality & Tourism Summit in London later this year.

17. Government departments also provide services to disabled people and must think about how they deliver those services. DWP has been piloting the use of the Video Relay Service (VRS) so British Sign Language Users can communicate in their preferred language with DWP in relation to several disability benefits. The trial has now been extended to claims for the Personal Independence Payments. In the future, it is hoped that VRS can be rolled out across DWP's complete range of services. Other departments have already expressed an interest in the pilot and the learning from the pilot will be shared widely.

- **Education**

18. Education has the power to transform the lives of disabled children and young people and the Government's White Paper 'Educational Excellence

Everywhere' outlines our commitment to extending opportunity to every child, wherever they live and whatever their needs. Reforms brought in by the Children and Families Act 2014 built on the Equality Act 2010 and represent the biggest change to the Special Educational Needs and Disabilities system in a generation. They are transforming the experience of children and young people and their families.

19. We are closely monitoring the implementation of these reforms and have provided over £212 million since 2014 to support implementation. Progress so far is encouraging, with parents reporting they have received better support and that their views are being taken into account more fully[2]. Ofsted and the Care Quality Commission will begin to inspect local area implementation from May 2016, focusing on how well the needs of children with Special Educational Needs and disabilities are identified and met, and how well local agencies (including health and social care) work together to do so.

20. The duties on Special Educational Needs and disabilities apply equally to schools of all types and we are working hard to ensure that schools comply with their legal requirements. For example, we have issued:

- Guidance to schools on their obligations under the Equality Act to complement the technical guidance published by the EHRC.
- The SEN & Disability Code of Practice Sept 2014 – statutory guidance integrating SEN and disability frameworks (last updated May 2015).
- Statutory guidance on supporting pupils with medical conditions in May 2014
- We have also funded a range of voluntary sector organisations to provide advice and training to schools.

21. We will keep focused on how to support schools to enable educational excellence for their disabled pupils, sharing expertise and good practice and challenging examples of bad practice if they occur.

- **Physical Activity and Sport**

22. The new government sport strategy "Sporting Future: a new strategy for an active nation", published by the Department of Culture, Media and Sport in December 2015, placed a particular emphasis on helping inactive people to become more active. Achieving this goal will include helping disabled people to become more active, including through new approaches to local delivery. The strategy also includes various measures aimed at ensuring disabled people are

[2] The evaluation of the SEND Pathfinder Programme found that families were more likely to state that their views had been taken into consideration in assessment and reviews (84% Pathfinder families; 73% comparison). The full report can be found here https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/448156/RR471_SEND_pathfinder_programme_final_report.pdf

properly represented among sport volunteers, coaches, the wider workforce and leadership.

23. The Minister for Disabled People has had a number of conversations with disabled people and the sport and physical activity industry about how to increase the number of disabled people taking up physical activity and working in the industry. In addition, the Minister supported a Disability Action Alliance project aimed at bringing together sporting organisations with disabled peoples' user-led organisations to build partnerships that would encourage greater participation in physical activity.

24. The new Sport Strategy also recognises the benefits that can be generated by spectator sports, and the importance of ensuring a good spectator experience for all. As part of the on-going work between DCMS and the ODI the strategy is designed to improve inclusion and access for disabled people at spectator sports grounds.

For the Future

25. Though Government understands and embraces the vital role it plays in ensuring that disabled peoples' rights are upheld, it also acknowledges that it cannot do this alone. Government will continue to work with the private, public and voluntary sectors to increase opportunities for disabled people to fulfil their potential.

26. We are committed to reviewing the cross-government strategy Fulfilling Potential during the summer and autumn and will use the evidence from the select committee and wider conversations with disabled people to help shape how we will take the strategy forward until 2020.

27. We will be taking the conversation forward with disabled people and business and service providers. We will be extending the conversation to young disabled people and hearing their views on policy development and their vision of the future of disability rights.

28. Through the Disability Action Alliance, we will continue to support organisations across sectors to work together to improve the lives of disabled people at both national and grassroots levels.

29. As part of the new sport strategy there will be a focus on under-represented groups including disabled people. In future, government will, via Sport England, support work designed to get more people from under-represented groups engaging in sport and physical activity.

30. We will be considering how we communicate with disabled people so that they have a better understanding of what is happening across government to improve disability rights. We will also consider how that information is delivered

so disabled people receive a balanced view of the work which is relevant to them, and is not distorted by external sources.

31. We will also be considering how Doug Paulley, a wheelchair-user, who has won many of the many disability discrimination claims that he has brought, has enforced the Equality Act 2010 and what lessons can be learned from his experience.

32. The Equality and Human Rights Commission's 2016-17 Business Plan includes commitments to: develop an approach for tackling disability pay gaps; work with public bodies to improve their approach to preventing and responding to disability-related harassment; launch a new inquiry examining housing options for disabled people, including those with learning difficulties; and continuing to press for changes to secure disabled people's access to bus and rail services, taxis and the right to fair treatment when travelling by air, including supporting accessibility of buses to wheelchair users in the Paulley vs First Bus case in the Supreme Court.

33. Government is fully committed to ensuring that disabled people live their lives free from discrimination and harassment. We continue to work with disabled people, businesses and service providers to raise awareness of the benefits of good access and inclusion.

Recommendation 1
We believe that combining disability with the other protected characteristics in one Act did not in practice benefit disabled people, but that separating statutory treatment of disability from the other protected characteristics would be impractical. We prefer to concentrate on improvements to the Equality Act 2010 which will give greater prominence to disability and will increase the protection of disabled people. (Paragraph 50)

Government response

The Government acknowledges this conclusion by the Committee. A key objective of the 2010 Act – to harmonise existing anti-discrimination law – would not however have been achieved as effectively if disability legislation had remained separate; also that the Act provided an opportunity for welcome improvements to be made to the provisions in the earlier Disability Discrimination Act[3]; something that was supported by both Houses of Parliament at the time. The Government welcomes the Committee's objective of working to improve the 2010 Act rather than seeking to re-separate disability from other protected characteristics. For its part, the Government is fully signed up to the objective of seeing greater prominence given to disability.

Recommendation 2
We call on the Government to make a commitment that it will give due consideration to the provisions of the UN Convention on the Rights of Persons with Disabilities when formulating new policy and legislation which may have an impact on disabled people. (Paragraph 84)

Government response

By ratifying the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), a convention binding in international law, the UK Government has already committed itself to taking steps to implement it, i.e. to protect and promote the rights contained within it. That means that all UK Government departments need to consider what the UNCRPD says when developing a policy that affects disabled people. The UK already fulfils these obligations through existing domestic legislation, including the Equality Act 2010, and through programmes that impact upon the lives of disabled people.

Fulfilling Potential is the cross-government disability strategy which aims to ensure that disabled people can realise their ambitions and fulfil their potential. The strategy explicitly aims to make a reality of the expectations of the UN Convention on the Rights of Disabled People, and highlights the key Convention articles that are relevant to particular actions within the strategy.

[3] See Memorandum to the Women and Equalities Select Committee on the Post-Legislative Assessment of the Equality Act (CM 9101) pp 22-24.

Recommendation 3
Locating both the Minister for Women and Equalities and the Government Equalities Office within the same department is welcome, and we hope that the Government will keep in mind the need for coherence and stability if and when any future changes are made to the location of the equalities portfolio.
(Paragraph 110)

Government response

The Government welcomes the Committee's positive remarks on the co-location of the Minister for Women and Equalities and the Government Equalities Office. Any future changes will of course take account of the need for coherence of the equalities agenda in Government, including that relating to disability.

Recommendation 4
The ability of the Minister to influence policy and practice across Government is more important than the location of the Minister's portfolio. We agree that this has been diminished by the change in status of the Minister for Disabled People, and greatly regret the decision of the Government to downgrade the role in this manner. The effectiveness of the role is also affected by the lack of power to challenge policy that may impact adversely on disabled people.
(Paragraph 112)

Government response

The rank of this portfolio has varied over time. Since the role of Minister for Disabled People was first introduced into the British Parliament in 1974 (the first such portfolio anywhere in the world) there have been 20 incumbents. Of these 11 have held the rank Minister of State and 9 have been Under Secretaries of State.

The role was held by:

- Ministers of State, May 1974 – May 1997
- Under Secretaries of State, May 1997 – October 2013
- Ministers of State, October 2013 – May 2015, and
- Under Secretary of State, May 2015 to present

The ministerial level at any given time has not in any way been indicative of the priority of disability issues at that time. The effectiveness of the Minister for Disabled People to undertake his role is not reliant on rank. When he intervenes on disability issues he speaks on behalf of the Secretary of State. Currently the Minister's role has a significant focus on disability issues which means more time dedicated to ensuring that disabled people have a voice throughout government.

Recommendation 5
The Cabinet's Social Justice Committee, whose terms of reference are "To consider issues relating to poverty, equality and social justice", has 16

members, but the Minister for Disabled People is not one of them. He should be made a member. (Paragraph 113)

Government response

The Secretary of State for Work and Pensions chairs the Social Justice Cabinet Committee (SJCC) and represents the portfolios of all his Ministers including the Minister for Disabled People's portfolio. The SJCC will oversee and review the work and actions set out in the Fulfilling Potential cross-government disability strategy. Whenever the SJSS has disability issues on the agenda the Minister for Disabled People will be invited to attend the Committee by the chair.

Recommendation 6
The Social Justice Committee should ensure that government departments do not take any major initiatives which will or may affect disabled people without first obtaining the Committee's agreement. (Paragraph 114)

Government response

All major initiatives that affect disabled people will continue to receive cross-government policy agreement through the standard policy clearance channels.

Recommendation 7
The Minister responsible for Children and Families has the rank of Minister of State, and until 2015 so did the Minister responsible for cross-government disability policy and strategy. The Minister for Disabled People should have the rank of Minister of State restored, to emphasise the importance of the post. (Paragraph 115)

Government response

Please see response to recommendation 4.

Recommendation 8
We recommend that the Equality and Human Rights Commission engage with disabled people and their organisations to co-produce a disability specific action plan covering the full range of the Commission's powers. The Disability Committee's involvement will be fundamental to the development and implementation of the plan, but it must belong to the whole organisation. (Paragraph 137)

Government response

This is a matter for the EHRC, which is independent of Government. We have brought this recommendation to the attention of the EHRC, and expect it will respond separately to the Committee.

Recommendation 9
We recommend that, from 1 April 2017, the Equality and Human Rights Commission use its powers under Schedule 1 to the Equality Act 2006 to re-establish its Disability Committee as a decision making body, in a way that as closely as possible mirrors the current statutory functions and powers of the Disability Committee. We welcome the fact that the EHRC continues to provide dedicated staff support for the Committee, in the face of staffing reductions, and recommend that it ring-fence specific resources for the Committee. (Paragraph 144)

Government response

This is a matter for the EHRC, which is independent of Government. We have brought this recommendation to the attention of the EHRC, and expect it will respond separately to the Committee.

Recommendation 10
We recommend that the Equality Advisory and Support Service be returned to the Equality and Human Rights Commission, either in-house or as the contract managers for a tendered-out service. (Paragraph 155)

Government response

The Equality Advisory and Support Service (EASS) currently manages some 200 contacts per day, and averages 4,340 contacts per month. It is open six days a week and offers disabled people, and others, a wide range of access options, including digital access. In June 2015, Sitel (the current EASS contractors) won an award for the Multi-Channel Customer Service category at the European Contact Centre Awards.

The current contract for running the Equality and Advisory Support Service (EASS) expires on 30 September 2016. In early discussions between the GEO and the EHRC about the future of the service, the EHRC did not express an interest in taking it “in-house”. The service has therefore been put out to tender and the EHRC has been invited to sit on the Management Board of the service with GEO, Department for Education and Ministry of Justice.

Recommendation 11
We further recommend that, once the Equality and Human Rights Commission is again responsible for the services provided by the Equality Advisory and Support Service, it should develop a service specification and strategy to realise fully the advantages of in-house provision, including face-to-face legal advice, the restored conciliation service and the link to its enforcement function. (Paragraph 156)

Government response

See the response to recommendation 10.

Recommendation 12
We recommend that the Government lay before Parliament as Codes of Practice the technical guidance on the Public Sector Equality Duty, Schools, and Further and Higher Education that have already been drafted and extensively consulted on by the Equality and Human Rights Commission. (Paragraph 164)

Government response

The advice contained in these draft Codes is already available as non-statutory technical guidance published by the EHRC. This can already be taken account of in the courts. The Government is not in favour of publishing substantial quantities of additional statutory material unless there is clear evidence that its availability in this form would ensure or facilitate compliance with the legislation.

Recommendation 13
All government departments, local authorities and official bodies should review their means of communication with the public, especially online, from the point of view of people with a variety of disabilities. The Office for Disability Issues should coordinate this and lead by example. (Paragraph 170)

Government response

We agree that effective communication is vital. Accessible communications are a priority issue for the Minister for Disabled People. The Office for Disability Issues is working with the Department for Work and Pensions (DWP) Communications Directorate, to develop better communications across a range of accessible formats to meet the needs of disabled people and the Minister's ambition to make DWP a communications centre of excellence. To help achieve this, the Minister convened an Accessible Communications Roundtable on 14 January; attendants included representatives from a number of disabled people's organisations. The event reviewed the current accessible communications work of the DWP and discussed its future direction.

At this event the Minister launched a Taskforce which will include key disabled peoples' organisations to look at and work to further improve DWP's communications with disabled people (this was announced in the House of Commons as part of an answer to a parliamentary question on 14 March[4]).

The Office for Disability Issues (ODI) will be working with disabled people's organisations and other government departments to review the suite of online communications guidance on GOV.UK. The updated guidance will provide advice

[4] http://hansard.parliament.uk/Commons/2016-03-14/debates/1603147000013/DisabilityAndEmployment)

for government departments and other organisations on accessible communications and it will also include examples of good practice.

One example where ODI are leading and influencing positive change in this area is the current DWP video relay service (VRS) pilot, which was instigated by ODI. The pilot enables British Sign Language users to communicate in their preferred language with DWP in relation to several disability benefits. It is hoped that VRS can be rolled out across DWP's complete range of services in the future. Other departments have already expressed an interest in this pilot, and the learning from it will be shared widely.

Another initiative to support accessible communications for disabled people is the development by the NHS of an Accessible Information Standard, which was published in July 2015 and will be implemented on 31 July 2016. The Standard aims to establish a framework and give clear direction to ensure that patients, service users and where appropriate their carers receive information that is understandable by the intended recipient and that, when needed, communications support is provided to ensure an effective dialogue between a professional and service user.

All organisations that provide NHS or adult social care are required to follow the new standard. ODI will be in regular contact with NHS England to learn from the NHS approach as it is rolled out.

Recommendation 14
We recommend that the Equality and Human Rights Commission work with local and national disabled people's organisations to undertake a wide programme of educational activity, raising awareness of the rights of disabled people and the responsibilities of those subject to duties under the Equality Act 2010. (Paragraph 191)

Government response

This is a matter for the EHRC, which is independent of Government. We have brought this recommendation to the attention of the EHRC, and expect it will respond separately to the Committee.

Recommendation 15
If this public awareness and education campaign should require the Equality and Human Rights Commission to access its discretionary programme funds, we expect the Government to fully support it in doing so. (Paragraph 192)

Government response

Government will, in consideration of any bid put forward by the EHRC for such a campaign, take account of the priority given it by this report.

Recommendation 16
We have carefully considered the statutory provisions on reasonable adjustment and conclude that, despite the problems described, the flexibility they provide is necessary for their effectiveness. (Paragraph 217)

Government response

The Government agrees with the Committee. The concept of a reasonable adjustment duty was imported from the 1995 Disability Discrimination Act into the Equality Act 2010. It has been a consistent and key element of disability discrimination protection legislation for the past 20 years. We believe that the concept of reasonable adjustment is now familiar to both employers and service providers and that by providing in the legislation that each case must be considered on its merits, this ensures that the burden and practicality of making an adjustment is appropriately balanced with the genuine needs of the disabled person to produce a just outcome.

Recommendation 17
We have sympathy for those calling for greater clarity on how 'reasonable' cost is determined, but question how far this is possible given that this can be a matter of judgment rather than objective criteria. Exercising this judgment does, however, require information, and guidance should make it clear that an adjustment should not be rejected as unreasonable on grounds of cost unless the expected cost is known. (Paragraph 225)

Government response

The Committee identifies an important issue which the Government will consider further with the EHRC, which has historically published guidance on reasonable adjustments. While the legislation does not require employers or service providers to establish the cost of making an adjustment prior to rejecting it on such grounds, it is clearly reasonable to expect that some effort be made to do so, rather than reliance on arbitrary and potentially inaccurate assumptions about cost.

Recommendation 18

The Equality and Human Rights Commission should prepare a specific Code of Practice on reasonable adjustments to supplement the existing Equality Act Codes. This would provide an appropriate balance between flexibility and clarity. (Paragraph 231)

Government response

It is for the EHRC, as an independent body, to decide whether it wishes to propose such a Code of Practice. However, we note that there is already a significant amount of guidance available on reasonable adjustment rights and responsibilities. Should the EHRC decide that it wants to produce such a Code of Practice, the Government will consider this in line with its statutory duties under s14(7) Equality Act 2006 and with the point noted in response to recommendation 12.

Recommendation 19
Alongside the new Code, the Equality and Human Rights Commission should produce, in consultation with organisations of and representing disabled people, industry-specific guidance on reasonable adjustment. Where appropriate this should be done in partnership with relevant professional and regulatory bodies. Regular updates on case law developments will be essential to the effectiveness of these guides, and should be provided by the EHRC. (Paragraph 234)

Government response

This is a matter for the EHRC, which is independent of Government. We have brought this recommendation to the attention of the EHRC, and expect it will respond separately to the Committee. We note however that much guidance on reasonable adjustments already exist and that it may be more effective to promote existing guidance rather than introduce more.

Recommendation 20
We do not understand why yet another review is needed of the commencement of the provisions dealing with alterations to common parts. There is no justification for further delay. They must be brought into force forthwith. (Paragraph 244)

Government response

The Government acknowledges the Committee's frustration on this point and as a general point we certainly agree that landlords should seek to co-operate with reasonable requests by disabled tenants to make adjustments to hallways, foyers etc. The Government is concerned that the consequences of implementing the remainder of section 36, and any supplementary regulations are unclear. The Coalition Government delayed commencement of the common parts provision pending Scottish Government experience with implementing the parallel devolved provision in section 37, but in the event the Scottish Government have not yet done that, so this has not provided any lessons for roll-out of the provision in England and

Wales. Although requests for reasonable adjustments to common parts are in the first instance matters between disabled tenants and their landlords, these have implications for wider Government policy on the provision and funding of care for disabled people, as funding to support such changes is a charge on the Department of Health-administered Better Care Fund (BCF) which supports local authority health and social care services. The review of section 36 therefore needs to take account of the impact on private landlords, any consequences for landlords' willingness to let premises to disabled tenants, and the implications of additional calls on the BCF for the existing but very different types of support which that Fund currently provides such as health care, dementia services and housing support for older people. The Government will inform the Women and Equalities Select Committee once the review is complete and a decision on commencement of the provision is reached.

Recommendation 21
We recommend that the Government include provisions similar to those of the Accessible Sports Grounds Bill in a Government Bill. (Paragraph 248)

Government response

We recognise the laudable 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 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 remains untested on access to sports stadia for disabled people.

Recommendation 22
We recommend that ministers report regularly to Parliament 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 249)

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.

We will submit a formal, annual report to Parliament setting out progress in implementing all the recommendations in the Strategy. This also includes the commitment to enable the Sports Grounds Safety Authority to take on a more formal role in helping sports grounds reach the required standards for accessibility.

Recommendation 23
The Equality and Human Rights Commission should work with carers' organisations to produce and disseminate guidance on the rights of carers under the Equality Act 2010. (Paragraph 269)

Government response

This is a matter for the EHRC, which is independent of Government. We have brought this recommendation to the attention of the EHRC, and expect it will respond separately to the Committee.

Recommendation 24
The Government Equalities Office, the Office for Disability Issues, the Department for Business, Innovation and Skills and the EHRC should undertake joint work to encourage employers to respond positively to flexible working requests from carers of disabled people. (Paragraph 270)

Government response

The introduction of the right to request flexible working was a milestone moment, not just in supporting working parents but also for those with caring responsibilities.

In June 2014, the right to request flexible working was extended to all employees with 26 weeks' service to empower individuals who might otherwise drop down or out of the labour market to participate in the UK workforce to request a pattern of work which suits them and their employer. Whilst employers are free to refuse a request to work flexibly, they must have sound business reasons for doing so, e.g. cost, and the circumstances in which an employer can refuse a request are set out in the legislation.

The extension of the right to request flexible working has doubled the number of employees who are able to make a request to over 20 million. Government estimates that this will lead to a further 80,000+ requests per year - leading to 60,000+ new working arrangements per year.

It is now easier for employers to consider requests for flexible working. The more onerous statutory procedure was replaced by a duty on employers to consider requests 'in a reasonable manner' – supported by a statutory Code of Practice and Acas guidance. Employers are now able to use their own informal processes for considering requests, as long as they can show that the way they considered the request was 'reasonable' in the circumstances.

Flexible working has steadily become more popular independent of the legislation. In a 2011 survey of employees, 92% of employees said that at least one flexible working practice was available in their place of work, and 60% of employees said that they had done some form of flexible working in the last year (up from 56% in 2006). In a 2013 survey of employers, 97% said that they offered at least one form of flexible working. Less than one in ten (9%) of employers reported turning down a flexible working request in the previous 12 months.

The proportion of employers receiving requests for flexible working has increased, but the ability to work flexibly varies according to the size of the employer (with larger employers being more willing and able to accommodate requests for flexible

working) and the industry sector, and employers who operate in the public or third sector are more likely to receive a request for flexible working. Similarly, requests for flexible working are more common in organisations where there is a union presence.

Government has committed to evaluate the policy by April 2019 when it will have more information on how the extended right to request flexible working and flexible working in general are being used in practice. Given that the policy was only extended to all employees in 2014 it is too soon to assess whether it has had the intended effect. Government will keep this under review and consider the case for activity to engage employers, sooner than the 2019 date for evaluating the policy.

Government will work with the Advisory, Conciliation and Arbitration Service (Acas) and business to share best practice with employers and to re-focus Acas guidance on flexible working to bring out the benefits to business.

In addition, the Department for Work and Pensions, the Government Equalities Office and the Department of Health have jointly funded pilots in nine Local Authorities to investigate the use of different kinds of support for carers in employment. These pilots commenced in April 2015 and will run for two years. As part of this, the pilots are engaging local businesses to raise awareness of carers' needs and the business benefits of supporting carers, and on how businesses can support carers, for example by promoting flexible working patterns.

As part of the Government's work on the Fuller Working Lives agenda, the Department for Work and Pensions is closely collaborating and working with a range of organisations and employers to address the issues which carers face in balancing their caring responsibilities alongside their paid work, and to identify best practice and HR policies for employers that will support carers to remain in work.

The Department of Health is developing a new cross-Government National Carers' Strategy for publication in late 2016. The Department is currently consulting widely to support the development of the Strategy. A wide-ranging call for evidence was launched in March that will be supported by consultation events with stakeholders including employers' organisations and individual businesses. This stakeholder engagement will be supplemented with research on the economic impact of caring on individuals, including the factors that influence carers' decisions around paid work and caring. At this early stage, it is anticipated that the strategy will be built around measures to improve the support that is provided to carers themselves and to their families; to build increasingly carer-friendly communities; and to support carers to remain in or re-enter employment.

In December 2015 the Minister for Disabled People established a Task Group consisting of 19 stakeholders representing employers and disabled people in December 2015 to develop a new Disability Confident self-assessment accreditation Scheme for employers. Their remit was also to take account of the existing Two Ticks scheme with the aim being to incorporate this into the new Scheme.

The Task Group presented their recommendations for a new Scheme to the Minister on 22 March. We are currently developing detailed guidance for employers to underpin the new Scheme and we will shortly start testing with employers. The

guidance will cover addressing responding positively to requests to flexible working for disabled people and in fully understanding the issues for staff who are carers.

Recommendation 25
Network Rail, Transport for London, train operators and bus companies should put more of their resources towards making their stations and vehicles more easily accessible to those in wheelchairs. (Paragraph 285)

Government response

Rail: Mandatory accessibility standards for all new rail vehicles have been in place since 1998 and since 2010 we have been working closely with rolling stock owners and train operating companies to achieve the refurbishment of existing rolling stock to the standards by the deadline of 31 December 2019. Currently 62% of all rolling stock in operation – both heavy and light rail – are compliant with accessibility standards. By 2020 the remaining rolling stock will either also be refurbished or will be replaced by new rolling stock – for example under the Thameslink or Intercity Express programmes, or as part of the new franchises for the North (Northern and Trans Pennine Express) – to achieve 100% fleet compliance by 2020.

Although there is no end date for stations to be made accessible, whenever work is carried out to station infrastructure the industry must meet current UK and EU accessibility standards, such as the recent redevelopments at Reading and Birmingham New Street stations. For stations where no major work that would trigger these requirements is planned, we have continued with the Access for All programme. Launched in 2006 this has so far delivered accessible routes at over 150 stations. Access for All was extended in 2014 and a further 68 stations were added to the programme.

Buses: Government already requires bus operators to ensure their services are accessible to wheelchair users and other disabled people. By 1 January 2017 all buses designed to carry over twenty-two passengers on local and scheduled routes must comply with the Public Service Vehicle Accessibility Regulations (PSVAR), and we will ensure that this is enforced effectively. Bus stations and stops are a matter for local authorities and whilst we cannot compel them to invest more resources in accessibility improvements we encourage them to be mindful of the needs of all their potential users.

Bus stations also play an important role in facilitating multi-part journeys and it is essential that they are accessible to all who need to use them. Transport for London is aiming for 95% of London's 19,000 bus stops to be accessible by the end of 2016, and we would encourage all transport authorities to remain mindful of the needs of disabled passengers when installing new or upgrading existing infrastructure.

Recommendation 26
The Driver and Vehicle Standards Agency must enforce strictly the Regulations governing access to vehicles. (Paragraph 286)

Government response

The Driver and Vehicle Standards Agency (DVSA) enforces the Public Service Vehicles Accessibility Regulations (PSVAR) on behalf of the Department for Transport. Enforcement is undertaken as part of routine vehicle compliance-checking and in 2015 over 7000 public service vehicles were inspected. Of these, only 47 were found to be non-compliant with PSVAR, generally because of malfunctioning rather than missing components.

We expect all bus and coaches subject to PSVAR to be compliant with its requirements by the respective deadlines for double-decker buses and coaches. In the meantime, we will continue working with DVSA to refine the enforcement approach and to incentivise compliance through appropriate communication channels.

Recommendation 27
More resources should be devoted to providing annunciators on trains and buses which do not have them. No new vehicles should be put into service which do not have audio and visual annunciators. The Public Service Vehicles Accessibility Regulations 2000 should be amended accordingly. (Paragraph 293)

Government response

Rail: Audio visual passenger information system requirements are one of the mandatory standards set out for all new rolling stock (both heavy and light rail/metros). No new rail vehicle has been put in to service without such equipment since 1999. For trains which do not have them fitted, the Rail Vehicle Accessibility (Non-Interoperable Network) Regulations 2010 and the Railways Interoperability Regulations 2011 set the deadline of 31 December 2019 for installation. In the interim, operators must set out in their Disabled Person's Protection Policy (DPPP), how they will assist passengers with aural or visual disabilities. The Office of Rail and Road is responsible for approving DPPPs as a condition of granting an operator's passenger licence. ORR's guidance states: "*Operators should give details in their DPPP of their policies for the provision of aural and visual information on trains. This must include a commitment to providing, wherever possible, clear and consistent aural and visual information on the approach to stations, and in the event of delays or disruption*."

Operators should take into account in their policies the particular needs of visually impaired, deaf or hard of hearing people with regard to aural and visual announcements, as well as considering the needs of those with reduced mobility when announcing the name of the station being approached to ensure that disabled passengers have sufficient time to prepare to leave the train.

Buses: We know that accessible on-board information helps a range of passengers, including those who are disabled, to feel sufficiently confident to use bus services. Traditional methods of providing such information have tended to be

expensive to fit and maintain, and we have resisted calls to mandate their use in order to avoid placing disproportionate financial burdens on the bus industry.

We have however supported initiatives to develop lower cost solutions for providing information on upcoming stops on-board buses, including wearable technology and smartphone applications. The winning entry from the Department's "All Aboard" competition, a vibrating wristband, was trialled in Nottingham earlier this year. We also understand that other technological developments may be reducing the cost of providing accessible information.

We are currently considering options for overcoming the barriers that still prevent some people from using bus services. In the meantime, we note that many operators already provide high quality audible and visual announcements, and encourage the industry at large to consider how better information could help all of their customers to access their services.

Recommendation 28
Training of all rail, bus and coach staff to a level agreed in consultation and set out in law is in our view essential. If no adequate level of training can be agreed, Ministers have power under section 22(2) of the Equality Act 2010 to make Regulations prescribing the level of training which is reasonable. They should be prepared to use these reserve powers if necessary, and to enforce the Regulations they make. (Paragraph 298)

Government response

Rail: Disability awareness training for all front line rail staff and managers is already mandatory. This is a condition of the licence to operate that Network Rail and the Train Operating Companies are issued by the Office of Rail and Roads.

Buses: For many disabled people the quality of interactions with bus and coach drivers can be as important as the physical accessibility of the vehicle. Many bus operators recruit specifically for staff with strong customer service skills and support disability awareness training courses.

We want to understand what good practice in delivering disability awareness training in the transport industry looks like, and have commissioned Mott MacDonald to review existing provision and propose guidance on delivering it. This will enable the whole industry to learn from the best, ensuring that disabled passengers receive a more consistently helpful service from bus and coach drivers in the future.

We remain of the view however, that legislation is not the appropriate tool for delivering meaningful disability awareness training in the bus and coach sector.

Recommendation 29
The reasons offered by the Government for failing to bring section 165 of the Equality Act 2010 into force 20 years after its enactment are entirely unconvincing. Ministers should be considering the burden on disabled people

trying to take taxis, not the burden on taxi owners or drivers. Section 165 and the remaining provisions of Part 12 of the Act should be brought into force forthwith. (Paragraph 311)

Government response

As indicated in our original evidence and recognised by the Committee, the Department for Transport understands the vital role played by taxis and private hire vehicles in helping many disabled people to remain independent and mobile. The assistance of drivers can be key to enabling this. Having given careful consideration to the effects of commencing sections 165 and 167 of the Equality Act, including ensuring that drivers understand fully their responsibilities, we will now proceed to bring the measures into force, aiming for commencement by the end of 2016. This will provide wheelchair users with similar protection from discrimination as that already available to assistance dog owners – ensuring that they are provided with the assistance they need to access taxis and private hire vehicles, and that they can no longer be charged extra.

Our position on the remaining un-commenced sections of Part 12 remains the same as at the time of the Inquiry and we have nothing further to add at present.

Recommendation 30
The Department for Transport should update its 2011 Local Transport Note to offer guidance to local authorities on how shared spaces schemes can best cater for the needs of disabled people. Local authorities should review existing schemes in the light of that guidance, make changes where necessary and practicable, and base any new schemes on that guidance. (Paragraph 324)

Government response

The Department has no plans to revise LTN 1/11 but the Chartered Institution of Highways and Transportation (CIHT), one of the professional bodies representing the highway and traffic engineering community, is planning to produce new guidance on shared space. DfT officials are also involved in this work and sit on the project steering group.

When LTN 1/11 was published there were few shared space schemes in existence. Since then, more have been installed and the CIHT guidance aims to use the practical experience gained from these to provide complementary advice to that in LTN 1/11. It will identify good and bad practice and try to move away from the idea that shared space is synonymous with a lack of definition between road and footway.

CIHT have invited groups representing blind and partially sighted people and DPTAC to provide input into the development of the guidance which is due to be published in Summer 2016.

Although this will be published by CIHT, not DfT, there is the opportunity for DfT to endorse the document as good practice, which will help its standing among practitioners.

Recommendation 31
Our evidence has demonstrated that there is a fundamental flaw in the current Public Sector Equality Duty, namely that a public authority can make no progress towards the aims of the general duty and yet be judged compliant with it by the courts. We have heard convincing evidence that an amendment is needed to remedy this. (Paragraph 345)

Government response

In line with the recommendations of the 2013 Review of the Public Sector Equality Duty by the independent steering group chaired by Lord Haywood, the Government is considering a further review of the PSED. We will ensure that the Select Committee's concerns and recommendations are taken into account in any such review.

Recommendation 32
We recommend that a new subsection should be added to section 149 of the Equality Act 2010: "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 346)

Government response

Please see response to recommendation 31.

Recommendation 33
We recommend 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 360)

Government response

Please see response to recommendation 31.

Recommendation 34
Duties to involve disabled people in the development and implementation of actions, to collect and publish data to measure progress against the aims of the general duty, and to report regularly on progress should also be specified in the Regulations. (Paragraph 361)

Government response

Please see response to recommendation 31.

Recommendation 35
We recommend that the Government produce an assessment of the cumulative impact of budgets and other major initiatives on disabled people. It should be supported in this by the Government Equalities Office and the Office for Disability Issues. (Paragraph 372)

Government response

Considering impacts on people with disabilities and those with other protected characteristics is an integral part of the Government's approach to its policy work, including for the measures taken at all budgets and other fiscal events. The Government's approach to considering such equalities implications reflects the Government's principled commitment to fairness as well as to its legal obligations.

The Government has carefully considered the arguments for the assessment at fiscal events of cumulative impacts for those with protected characteristics. We continue to keep the issue under review. However, we are still not convinced by the argument that such analysis would be practical. There are important modelling limitations to the robust analysis of cumulative impacts. Moreover, it is important to recognise the principle that once funding has been allocated at Spending Reviews, individual departments have the delegated authority/responsibility for determining their spending priorities. Departments discharge this responsibility in a way that fully complies with the Public Sector Equality Duty.

The Government's approach to the consideration of impacts for those sharing protected characteristics, as outlined above, ensures that the decisions that are taken at fiscal events are fully informed by all relevant information.

Recommendation 36
We recommend that our findings and recommendations regarding the Public Sector Equality Duty form the basis of the planned Government review. (Paragraph 375)

Government response

Please see response to recommendation 31.

Recommendation 37
We recommend that HM Courts and Tribunals Service be required to collect from all county courts and from the Employment Appeal Tribunal, and to make publicly available, data relating to disability discrimination claims separately from other claims, as they do in employment tribunals. (Paragraph 386)

Government response

Her Majesty's Courts and Tribunals Service (HMCTS) does not currently track equality related claims because the numbers are small and staff do not routinely inspect this level of detail in the grounds for claim. Collecting this data for civil court claims and in the Employment Appeal Tribunal (EAT) would require a potentially significant investment of resources which could not be justified given the need to address the ongoing fiscal challenge. HMCTS will, however, consider whether it would be possible in future to extend the collection of data relating to disability discrimination claims for civil claims as it takes forward the wider programme of work to reform the courts and tribunals.

Recommendation 38
We recommend that the Ministry of Justice, in its ongoing review of fees, act on the strong evidence that tribunal fees are unfairly obstructing discrimination claims under the Equality Act 2010. (Paragraph 389)

Government response

On 11 June 2015, the Government announced the start of the post-implementation review of the fees in the Employment Tribunals, which were first introduced in July 2013, following a public consultation.

As part of the review, the Government will be considering, so far as is possible, the impact the fees have had on those with protected characteristics who use the Employment tribunals and the types of claims they bring. The review is well underway and will conclude shortly.

It is well understood that since the introduction of fees, there has been a sharp fall in the number of claims lodged. According to the latest statistical bulletin, the total number of claims received by the Employment Tribunal in the financial year 2014-2015 was 68% lower than in the financial year 2012-2013, the last full year before the introduction of fees in July 2013.

While we do accept that the fees have had an impact on the volumes of claims, other factors, such as changes to employment law, the improving economy and the availability of alternative dispute resolution services (such as the Acas early conciliation scheme) are also likely to have had an impact.

The Acas early conciliation scheme, in particular, has proved to be very successful. For example, although it is not compulsory for either party to take part in early conciliation, the majority do – in 75% of cases both parties agree to participate. The scheme was also used by over 80,000 people in its first year and recent research showed that over 80% of participants in early conciliation were satisfied with the service.

Recommendation 39
The Civil Procedure Rules should be amended to apply Qualified One-Way Costs Shifting to discrimination claims under the Equality Act 2010.
(Paragraph 402)

Government response

Legal aid remains available for discrimination cases through the Civil Legal Advice Gateway.

As set out in paragraph 43 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2010 (LASPO), legal aid is available for legal advice and representation for cases alleging unlawful discrimination, harassment or victimisation under the Equality Act 2010 or a previous discrimination enactment, which can arise in a variety of contexts from consumer to education to employment matters.

Legally-aided advice for discrimination matters is provided through the Civil Legal Advice service, which has been designed to be as accessible as possible. Subject to the needs of the user, the service offers a free telephone interpretation service; Minicom, text relay and British Sign Language delivered via webcam for deaf and deafened clients; call-back services for clients, access to a freepost service and provision of correspondence in various formats (for instance Braille, large font and easy read). Each user is assessed by specialists in order to determine whether remote advice is suitable – if not, they are directed to a face-to-face legal aid provider. We continue to monitor the range of adaptations offered in order to ensure users can access the Civil Legal Advice service.

The Government has also developed a digital tool, which makes clear when legal aid is available, including for discrimination matters. The tool signposts those not eligible for legal aid to alternative sources of advice. We are now working with key partners in the advice sector to raise awareness of the tool and to ensure it features prominently in their frontline services.

In implementing Lord Justice Jackson's recommendation on Qualified One Way Costs Shifting (QOCS) for personal injury claims, the Government said that it would keep the case for extending QOCS to other areas under review. This report assists that consideration but is not conclusive. The Government would need to consider carefully the arguments in favour and against the extension of QOCS in different categories of law, including whether QOCS was the right way forward to address any access to justice issues. The Civil Justice Council is also doing some work on this issue. In any event, the Government is committed to undertaking a post-implementation review of Part 2 of the LASPO Act in 2018. Access to justice considerations, including whether QOCS should be extended to other categories of law, will be addressed as part of that review.

Recommendation 40
The Government should reinstate the statutory questionnaire procedure.
(Paragraph 410)

Government response

The current voluntary approach to asking and responding to questions about discrimination in the workplace and service provision came into effect on 6 April 2014. The Government has no plans to introduce new legislation reinstating the statutory questionnaire; evidence showed that this originally simple procedure was frequently misused in a way not envisaged when it was introduced in the 1970s to ask employers extensive detailed questions, often requiring legal assistance with responses.

Questionnaires can still be used by employees and service users to ask for information and can continue to play an important role in clarifying whether a breach of the Equality Act has taken place. A free guide explaining the process, including advice for both employers and employees on how to use the questionnaire effectively, was produced by Acas in 2014 in association with the Government Equalities Office, business organisations, trade unions, discrimination law experts and equality organisations. This questionnaire can be used to help resolve situations at an early stage and both employment tribunals and county courts are able to take account of the information provided by a questionnaire during a case.

Recommendation 41
We recommend that the Government restore the power of tribunals to make wider recommendations with a view to preventing discrimination experienced by the claimant from happening to others. (Paragraph 416)

Government response

The Government has no plans to reinstate the tribunals' power to make wider recommendations. We do not believe that this repeal damaged tribunals' ability to have a longer-term impact on the extent of discrimination in society. Use of the power was only identified in 2% of the cases the Equality and Human Rights Commission tracked over the five years the power was in force and no compelling argument or evidence for retention was offered in responses to the consultation in 2012. Research suggests that employers who have lost cases are just as likely to have improved their practices without being given a wider recommendation (the Survey of Employment Tribunal Applications 2013 found that 47% of all employers taken to tribunal did make specific changes following a case).

Tribunals continue to have the power to make recommendations on the complainant's behalf. They also retain their ability to make observations in their judgments or make suggestions about how an employer might improve their practice to avoid breaching the Equality Act in the future.

Recommendation 42
The Government should consider changing the law to allow charities and other bodies which do not themselves have a legal interest to bring proceedings in the interests of classes of disabled people who are not themselves claimants. This would enable them to remedy action already taken by a public authority or to prevent anticipated action. (Paragraph 434)

Government response

The Committee acknowledges (para 429) that representational groups can already bring some group action equality claims in equal pay claims and that judicial review claims can also be brought in matters in which the groups they represent have an interest. Significant cases challenging Government decisions that affect disabled people have already been brought in this way – for example R(Mencap) v Parliamentary and Health Ombudsman (2011) concerning the approach of the Ombudsman to reasonable adjustments cases.

Therefore, groups can, to a considerable extent, take remedial action against a public authority or prevent anticipated action by public authorities.

Recommendation 43
Section 14 of the Equality Act 2010 on dual discrimination should be brought into force forthwith. (Paragraph 439)

Government response

The Government is considering the future of the uncommenced provisions in the Equality Act 2010. We note however that in the case of dual discrimination, the 2010 Act Impact Assessment states that allowing dual discrimination *"represents a significant change to the [existing] model of discrimination laws. There is a risk of unforeseen consequences"*. The Government is concerned that introduction of a dual discrimination prohibition could result in considerable new complexity in the system for employers, employees, service providers, customers and the courts with potentially minimal actual benefit in terms of new protection. In the case of disability, section 14 if commenced would not apply to reasonable adjustments, indirect discrimination, discrimination arising from a disability, harassment or victimisation, so its use and impact as far as disabled people are concerned is likely to be particularly limited.

Recommendation 44
We recommend restoring the Equality and Human Rights Commission's power to arrange the provision of conciliation services for non-employment discrimination claims. The service specification should provide for a range of delivery methods to ensure it is accessible, including provision of face-to-face conciliation, and the service should take direct referrals from the Equality Advisory and Support Service or its replacement. (Paragraph 450)

Government response

We note the Coalition Government's view that the conciliation service, which the EHRC provided until 2012, was not a core function. It was expensive and yet accounted for very low volumes of cases – in its final year of operation, the conciliation service dealt with 51 cases at a cost of £216,000 or about £4,000 per case. We do not therefore agree that the EHRC's core functions should include the provision of individual conciliation services, which would in any case require primary

legislation. It would be open in any case to the EHRC, on receipt of an individual complaint, to raise the matter with the party concerned, with a view to establishing whether an unlawful act has been committed. The EASS will also seek to resolve issues informally on behalf of those who contact them.

Recommendation 45
We recommend that the Government amend the mandates of those regulators, inspectorates and ombudsmen that deal with services most often accessed by disabled people to make the securing of compliance with the Equality Act 2010 a specific statutory duty. (Paragraph 461)

Government response

The Government is committed to bringing forward draft legislation in this session of Parliament about the establishment of a Public Service Ombudsman (PSO). This PSO will combine the jurisdictions of the Local Government Ombudsman and the Parliamentary and Health Service Ombudsman. Rather than making any piecemeal changes now, it would be better to consider these matters as part of the establishment of the remit of the PSO. The Government notes however, that the Local Government Ombudsman, for example, considers complaints about maladministration, which includes a failure to comply with statutory provisions, such as those contained in the Equality Act 2010. It is therefore arguable that ombudsmen are already fulfilling this requirement.

Recommendation 46
We recommend 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 462)

Government response

See response to recommendation 45 - this will be a matter for consideration when the Public Service Ombudsman is established.

Recommendation 47
We recommend that section 4(2) of the Licensing Act 2003 be amended to make a failure to comply with the Equality Act 2010 a ground for refusing a licence. (Paragraph 473)

Government response

The Equality Act 2010 places requirements on employers and businesses to comply with its statutory requirements not to discriminate against staff or customers and the Government believes this offers sufficient protection. It would be inappropriate for the Licensing Act 2003 to duplicate the requirements of the Equality Act 2010, just as it would be inappropriate to include other pieces of legislation such as the Health and

Safety at Work Act 1974 or the Noise Act 1996, all of which place requirements and responsibilities on licensing authorities and licensees.

The Minister for Disabled People has however held a roundtable with representatives of the hospitality industry, including the licensed trade, to discuss how to increase accessibility for disabled people. This event resulted in pledges from members of the hospitality industry to implement best practice on a voluntary basis. The Government will keep this situation under review.

Recommendation 48
We endorse the recommendation of the Law Commission "that the Secretary of State require holders of taxi and private hire driver licences and dispatcher licences to comply with the Equality Act 2010 as a condition of the licence." (Paragraph 480)

Government response

We already expect all taxi and private hire vehicle operators subject to the Equality Act 2010 to comply with the general duties on making reasonable adjustments and, where applicable, on accepting the carriage of assistance dogs. Once sections 165 and 167 of the Equality Act have been commenced we will expect compliance with these duties, and will encourage licensing authorities to take proportionate enforcement action where they are infringed.

We welcome the Law Commission's recommendations in relation to the licensing of taxis and private hire vehicles, including those specifically aimed at improving the accessibility of services for disabled passengers. We continue to consider this comprehensive report, and will respond formally to the Law Commission in line with our protocol with them, once this process has concluded.

Recommendation 49
We recommend that all local authorities should exercise their powers of persuasion and coercion so that no drivers are licensed unless they have had disability awareness training, and no taxis are licensed unless they are wheelchair accessible. Where the driver or operator fails to comply with the Equality Act 2010, local authorities should be prepared to take action against the licence. (Paragraph 481)

Government response

Taxis and private hire vehicles (PHVs) play a key role in enabling many disabled people to remain independent, and the assistance provided by their drivers is especially important in facilitating this. It is partly for this reason that we will be proceeding with the commencement of sections 165 and 167 of the Equality Act 2010, requiring drivers to provide assistance to wheelchair users and not charging them extra. Supporting the introduction of these duties, we will provide local authorities with guidance on their implementation and enforcement, and will consider carefully the case for recommending drivers undergo appropriate training. We will

also stress the need for a proportionate approach to enforcement, conscious of effect of infringements on disabled people's confidence and ability to travel.

We do not agree that all taxis should be required to be wheelchair accessible however. Doing so would place disproportionately high burdens on the taxi industry and would result in a fleet which, although accessible to wheelchair users, may not be accessible to some ambulant disabled people (and older people) for whom such vehicle designs can present a challenge. We are however considering the Law Commission's recommendations with regard to the licensing of taxis and private hire vehicles, which include recommendations relating to taxi accessibility, and will respond when this process has concluded.

Recommendation 50
Local authorities must ensure that building control officers, whether or not employed by them, have access to the necessary expert advice to monitor compliance not just with Part M of the Building Regulations, but also with the Equality Act 2010. (Paragraph 491)

Government response

The Government agrees that it is important for buildings to be accessible, and statutory guidance in Approved Documents suggests ways of complying with the requirements of Part M (Access to and use of buildings) of the Building Regulations. It is for Building Control Bodies to advise as to whether the solutions proposed are reasonably compliant.

Building control bodies can be either a Local Authority, or an accredited approved inspector, usually in the private sector, though some local authorities also operate as approved inspectors outside their areas.

Building Control Bodies should be familiar with the requirements of Part M of the Building Regulations but are at liberty to seek more expert advice if they believe it would be beneficial, or necessary in determining reasonable compliance. In most circumstances it would be expected that building control inspectors would be suitably competent to assess compliance without such additional advice.

It is not the responsibility of building control officers to monitor compliance with the Equality Act, although the relevant duties for public bodies, employers and service providers will of course still apply. The Department recognises nevertheless that compliance with the access requirements of Part M requires that developers and building control bodies are mindful of the needs of disabled persons.

Recommendation 51
We believe that other local authorities should follow the example of London and revise their planning policy to require a significant proportion of new dwellings to be wheelchair accessible or wheelchair adaptable (standard M4(3)), and all other new dwellings to comply with optional standard M4(2). (Paragraph 496)

Government response

The National Planning Policy Framework (NPPF) is clear that local planning authorities should plan to create safe, accessible environments and promote inclusion and community cohesion. This includes buildings and their surrounding spaces. Local planning authorities should take account of evidence that demonstrates a clear need for housing for people with specific housing needs and plan to meet this need.

Planning Practice Guidance issued in March 2015 states that, based on their housing needs assessment and other available datasets it will be for local planning authorities to set out how they intend to approach demonstrating the need for Requirement M4(2) (accessible and adaptable dwellings), and / or M4(3) (wheelchair user dwellings), of the Building Regulations. There is a wide range of published official statistics and factors which local planning authorities can consider and take into account.

Government believes that local planning authorities remain best placed to determine the extent to which provision of more accessible housing is necessary and appropriate in their local area, and have appropriate powers to introduce development plan policies to meet these needs, having regard to the National Planning Policy Framework, Planning Guidance and other relevant matters.

Recommendation 52
Local authorities and other licensing bodies are uniquely well placed to deal with many of the problems which prevent disabled people from enjoying life to the full. When exercising their licensing powers and their powers under the Building Regulations, they should always bear in mind their obligations under the public sector equality duty—revised, we hope, in accordance with our recommendations—to take all proportionate steps to eliminate discrimination and to advance equality of opportunity. (Paragraph 498)

Government response

When exercising any decision making power, it is to be expected that local authorities, who are accountable to their electorate, would consider the needs of their communities. This includes when undertaking a role as a licensing authority.

It is incumbent on all public bodies to act in accordance with the public sector equality duty imposed on them by the Equality Act, and Government would fully expect this to be the case in terms of the manner in which Local Authority Building Control Bodies operate. This would include suitable recognition of the duty to eliminate discrimination and to advance equality of opportunity.

Recommendation 53

Schools should be encouraged and supported to make the kinds of adjustments that can help to address the educational inequalities faced by disabled children and young people, including those whose disability gives rise to challenging behaviour. This is undermined by Regulation 4(1) of the Equality Act 2010 (Disability) Regulations 2010, and we recommend that the Regulations are amended so that a tendency to physical abuse of other persons ceases to be treated as not amounting to an impairment for the purposes of the definition of 'disability'. (Paragraph 503)

Government response

Our Special Educational Needs and Disability (SEND) Code of Practice makes it clear that teachers should look beyond disruptive or challenging behaviours to determine whether there are underlying issues or disabilities and put appropriate support in place. The revised SEND category of Social, Emotional and Mental Health difficulties reflects this and gives examples of the sorts of underlying difficulties that pupils might have.

The department's exclusion guidance also sets out that early intervention measures should include an assessment of whether appropriate provision is in place to support any SEN or disability that a pupil may have. It makes clear that schools should consider the use of a multi-agency assessment for pupils who display persistent disruptive behaviour, which could include pupils who have unidentified SEN. Schools should arrange such assessments when concerns arise rather than waiting for a specific trigger.

Although there remain strong public policy reasons behind the excluded behaviours, the Government has listened to the issues raised by the Committee and will consider how the exemption around 'a tendency to physical abuse of other persons' applies to those under 18 in an education context.

Recommendation 54
It is unfortunate that the Ofsted and Care Quality Commission consultation on the inspection of local areas' effectiveness in "identifying and meeting the needs of children and young people who have special educational needs and/or disabilities" did not make mention of the Equality Act or schools' and others' duties under it. This ought to be remedied in the development of the inspection framework and inspection handbook. (Paragraph 506)

Government response

This inspection framework will include references to the Equality Act and schools' and others' duties under it.

Recommendation 55
The inclusion of equality matters in the Common Inspection Framework on education, skills and early years is welcome. Ofsted's inspection methodology

will also need to be adequate to identify where schools are practising informal exclusion or internal segregation of disabled pupils. (Paragraph 507)

Government response

Ofsted is bound by the public sector equality duty, its strategic plan and its organisational values to advance equality through its inspection of schools. Equality is integral to the inspection framework and the promotion of equality of opportunity for all pupils underpins the school inspection framework.

An evaluation of how effectively the school actively advances equality of opportunity, tackles discrimination and fosters good relations will contribute to the key judgements. A key aspect in relation to equality to be inspected and reported on is how well the school is promoting the pupils' spiritual, moral, social and cultural development.

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