



The Equal Rights Trust

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Rt Hon David Cameron MP
Prime Minister
10 Downing Street
London
SW1A 2AA

27 June 2011

Dear Prime Minister

Re: Red Tape Challenge and the Equality Act 2010

I write on behalf of The Equal Rights Trust (ERT) to express our concern at the inclusion of the Equality Act 2010 in the government's *Red Tape challenge* exercise. ERT is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice. In the exercise of this mission, we undertake research on emerging issues in equality law, make regular submissions to governments concerning the implementation and enforcement of these rights, work to develop the capacity of civil society actors to advocate for improved protection of these rights, and collect and disseminate information on developments in equality law, including emerging best practice.

ERT has consistently supported the Equality Act and the unified approach to equality it seeks to secure: we believe that the Act is a necessary step towards combating discrimination and reducing inequality in Great Britain. We note the significant number of informative and authoritative submissions from other organizations arguing against the inclusion of the Equality Act in the Red Tape Challenge and against repeal or amendment of the Act. We support and endorse those arguing, *inter alia*, that the Act is necessary to ensure effective protection of vulnerable groups; that the Act harmonises and streamlines the law in this area, in a way which improves protection and provides clarity for both business and public bodies; and that there is a strong business case for promoting equality.

This letter does not seek to repeat these arguments, but to complement them by focusing in particular on the international dimension of the decision to include the Act in this review, something which we are particularly well placed to do, given our position as an international equality organization based in London. In this respect, we would like to address two issues: (i) the role which the Equality Act plays in ensuring the UK's compliance with its legal obligations under international human rights conventions to which the state is party; (ii) the impact which repeal or emasculation of the Act would have outside of the UK.

The Act is the key mechanism through which the UK complies with its international legal obligations to respect, protect, fulfil and promote the rights to equality and non-discrimination

Unlike many other regulations and legislation included in the Red Tape challenge, the Equality Act deals with a critical area of human rights protection. As such, the Act is of a substantively different order of legislation, without which the United Kingdom would be unable to meet its obligations under international and EU law. For this reason, we submit that to include the Act in a review aimed at reducing “red-tape” – and to consider repealing or amending the Act, or any of its provisions, pursuant to such a review – is highly inappropriate.

The United Kingdom is obliged by a number of international conventions to provide effective protection against discrimination and promote equality on a range of grounds. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which the UK is a party, require states parties to ensure that persons can enjoy the rights provided therein “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹ The European Convention of Human Rights (ECHR)² and the Convention on the Rights of the Child (CRC)³ contain similar provisions. The Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of Discrimination Against Women (CEDAW), and the Convention on the Rights of Persons with Disabilities (CRPD) contain specific provisions to ensure that persons enjoy equality irrespective of race, sex or disability. Crucially, these conventions require not only that the state should itself refrain from discrimination, but that it should protect people within its jurisdiction against the discriminatory acts of other private individuals and organisations. In the UK, this protection is found in the Equality Act. Most of these treaties also specifically require the state to put in place legislation to prohibit discrimination in the public and private spheres. For example, the ICCPR requires states to ensure that “the law prohibits discrimination and to guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁴ Similar obligations are enshrined also in CERD,⁵ CEDAW⁶ and CRPD⁷ in respect of race, sex and disability respectively. Without the Equality Act and its protections, the UK government would fail to meet its obligation to ensure that persons have effective legal protection from discrimination, as required by these instruments.

These conventions do not simply oblige the state to refrain from, and to prohibit, discrimination. In addition, they require measures aimed at addressing *de facto* inequality to fulfil the right to substantive equality. They also require that legal protections against discrimination are made effective through appropriate enforcement mechanisms and remedies. Therefore, even those provisions found in the Equality Act which go beyond what is required by the EU directives may be necessary if the UK is to comply with its obligations under the international human rights conventions. A number of the treaty bodies responsible for interpreting the scope and effect of these conventions have clearly stated that the obligation to fulfil the right to non-discrimination requires states to take steps to address problems of substantive inequality. The Committee on Economic, Social and Cultural rights stressed this point repeatedly in its recent General Comment on the application of the right to non-discrimination under CESCR:

“Eliminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations. States parties must therefore

¹ International Covenant on Economic, Social and Cultural Rights, Article 2; International Covenant on Civil and Political Rights, Article 2.

² European Convention of Human Rights, Article 14.

³ Convention on the Rights of the Child, Article 2.

⁴ International Covenant on Civil and Political Rights, Article 26.

⁵ Convention on the Elimination of All Forms of Racial Discrimination, Article 5.

⁶ Convention on the Elimination of Discrimination Against Women, Article 2(b).

⁷ Convention on the Rights of Persons with Disabilities, Article 5(2).

immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or de facto discrimination...

States parties should ensure that strategies, policies, and plans of action are in place and implemented in order to address both formal and substantive discrimination by public and private actors in the area of the Covenant rights. Such policies, plans and strategies should address all groups distinguished by the prohibited grounds and States parties are encouraged, amongst other possible steps, to adopt temporary special measures in order to accelerate the achievement of equality.”⁸

Examining the range of measures which states parties are required to adopt and implement in order to fulfil this obligation, the Committee refers to economic policies, teaching and education policies and the need for public and private institutions to be required by law to adopt action plans to address discrimination.⁹ Thus, it can be seen that in addition to being necessary to meet the obligation to respect and protect the right to non-discrimination as provided in these instruments, the Equality Act is an essential tool for meeting the obligation to fulfil the right.

The Act is an important symbol of the United Kingdom's commitment to human rights, and is considered an exemplar by those campaigning for improved equality law around the world

As discussed above, ERT is an international equality organization based in London. As such, we believe we are able to offer a particular insight into the perception of the UK equality legislation around the world, and the impact which repeal of the Act, or any of its protections, would have internationally. The Equality Act represents a laudable attempt to provide comprehensive protection from discrimination within a unified framework. While ERT and others have proposed – and continue to support – amendments to the legislation which we believe would ensure that the Act is better able to achieve its express purpose, we believe that the present Act is a progressive, modern equality law which stands as an exemplar to other states.

Working with civil society, the media and governments in 15 different states to promote the adoption of equality legislation, ERT has repeatedly drawn on the Equality Act as a best practice example. In recent months, a number of our partners in civil society organizations have expressed their surprise and disappointment that while they are campaigning to improve protection from discrimination – often in challenging and dangerous environments – the UK is considering measures which would reduce the protection from discrimination provided by the Equality Act. ERT believes that the repeal or emasculating of the Equality Act would not only damage the UK's reputation on the international stage as a state committed to human rights, but would also undermine the efforts of those campaigning for equality in other jurisdictions.

The Equality Act is an important symbol of the UK's commitment to human rights generally, and equality in particular, values which underpin the country's reputation abroad, and its ability to speak authoritatively about human rights with foreign governments. ERT would submit that the UK should be proud of the fact that its legislation is widely perceived as a leading example of effective equality law, and further that it is being relied upon as an example by those working to combat discrimination. We believe that any attempt to revise or amend the Act to reduce the level or scope of protection found therein would seem inconsistent to those governments where the UK is – directly or indirectly – seeking to promote the protection of human rights.

⁸ Committee on Economic, Social and Cultural Rights, *General Comment 20 on non-discrimination in economic, social and cultural rights*, E/C.12/GC/20, 2009, Para. 8 and Para. 29, available at: <http://www2.ohchr.org/english/bodies/cescr/comments.htm>.

⁹ *Ibid.*, Para 29.

Measures to improve the Act

If the Act is to be amended at all, ERT would urge the government to strengthen, rather than weaken, the Act's provisions. The Act could be strengthened by including an open, rather than a closed list of protected characteristics, extending and implementing provisions relating to multiple discrimination, extending positive duties to the private sector, making positive action mandatory in appropriate circumstances, providing protection against harassment related to religion and belief and sexual orientation experienced outside of work and against harassment related to gender reassignment in schools, improving access to justice by allowing representative actions, improving the procedures for bringing an equal pay claim, allowing non-employment cases to follow a simpler, less expensive procedure, and ensuring remedies have a broad impact, by extending the circumstances in which a court or tribunal can make recommendations, and making recommendations enforceable. To amend the Act other than to strengthen the protection it provides would, we submit, both place the UK at risk of violating its international legal obligations, and serve to undermine the UK's reputation for protecting fundamental human rights.

For these reasons, in addition to those made by others, we submit that repeal of the Act, or amendment of its provisions in such a way as to reduce the scope of its protections or the measures pertaining to its enforcement, would be a serious error.

If you require any assistance in further developing your policy on this matter, I place the expertise of The Equal Rights Trust at your disposal.

Yours sincerely



Dimitrina Petrova
Executive Director
Equal Rights Trust

CC: Rt Hon Dr Vince Cable MP, Secretary of State for Business, Innovation and Skills
Rt Hon Theresa May MP, Home Secretary and Minister for Women and Equalities
Lynne Featherstone MP, Minister for Equalities
Rt Hon William Hague MP, First Secretary of State, Secretary of State for Foreign and Commonwealth Affairs