On 12 June 2007 the Government published a Green Paper, “A framework for fairness: proposals for a single equality bill for Great Britain”. The Green Paper is now subject to a public consultation which ends on 4 September 2007. Although not exclusively concerned with discrimination in employment, much of the consultation deals with discrimination in the employment context. The paper has three key objectives: (i) harmonising and simplifying the law; (ii) making the law more effective; and (iii) modernising the law. In order to achieve these objectives a variety of proposals are included. Most of the proposed amendments to legislation are attempts to clarify and unify the law where different stands of discrimination legislation have developed differently over time. There is very little in the proposals which is truly innovative and most of the proposals refer to comparatively detailed provisions. Examples include:

1 **Definitions of indirect discrimination and justification**

Although these concepts exist across most of the strands of discrimination law, the definitions are not entirely consistent. For example, the test of indirect discrimination in relation to nationality is different to the test in relation to sex discrimination. The proposal is simply to unify these terms across the different strands where possible. However, this proposal does raise some difficulties, particular in the field of disability discrimination. The Green Paper proposes that the concept of indirect discrimination should not be extended into the disability field, where the existing concepts of disability-related discrimination and reasonable adjustments cover similar ground, but accepts that the concept of justification should be harmonised across all strands including disability. It is recognised that this will impose a higher burden on employers than currently exists in respect of justifying disability discrimination.

2 **Use of comparators in direct discrimination**

The proposal is that the concept of the comparator (whether real or hypothetical) should remain, despite the difficulties that this concept has created in bringing discrimination claims. The Green Paper does, however, propose that the requirement for a comparator in victimisation cases be removed entirely.

3 **Genuine Occupational Requirements and Qualifications**

While similar concepts exists throughout the strands of discrimination law, the terminology and use of the terms does differ. The proposal is to harmonise the test across all protected grounds (except disability), although the Green Paper does seek views on whether the concept should be retained in the fields of race and sex discrimination.

4 **Equal pay**

The Equal Pay Act is perhaps the most divergent of the current stands of discrimination legislation. Where as all other strands effectively impose a statutory tort, the Equal Pay Act uses an implied contractual equality term as the basis for employee protection. It also requires the existence of a real (rather than a hypothetical) comparator, and even the limitation period is different (six months rather than three). The Green Paper does not propose to tackle any of these issues, but will leave the Equal Pay Act as something of a
maverick piece of legislation, but the government proposes to update the legislation to reflect case law developments.

5 Definition of disability

To date, the test of disability has required an employee to demonstrate that one of a closed list of “capacities” has been effected, such as mobility, and dexterity or cognitive processes. The proposal is to remove this element of the test entirely so that the focus will be on the employee’s ability to do day to day tasks without reference back to the specific “incapacities”.

6 Parents and carers

Despite campaigns by both the Fawcett society and the Equal Opportunities Commission in favour of specific protection against discrimination for parents and carers, the Government considers that reliance on existing employment legislation (in particular indirect sex discrimination) has provided a focussed and proportionate way of addressing discrimination against parents and carers. It therefore rejects the proposal to create a new protected class. Similarly, the Government asks for views on whether the existing protection for married people and civil partners is now redundant and should be repealed.

7 Genetic testing and discrimination

Again, this potential new category of protection is rejected in the Green Paper.

8 General equality duties

The recently introduced equality duties in the public sector are proposed to be replaced by a single general equality duty. No similar proposal is put forward in relation to the private sector.

Please click here for the Governments summary of the Green Paper.

Please click here for the full consultation paper.