

UPDATE FOR THE ROTA LED WINNING THE RACE COALITION – DECEMBER 2009

Leader of the house summary of the issues raised and the governments answers - Second Reading in the Lords 15/12/09

Baroness Royall of Blaisdon: My Lords, this has not just been an interesting and wide-ranging debate, in many ways it has been a celebration of equality. As my noble friend Lord Alli said, we have come on an extraordinary journey together over the last few years. My noble friend Lady Turner and others reminded us not to overlook how far we have come—we should be proud not only of our achievements, but of those of our forefathers and foremothers.

Concerns have been expressed that the Bill nurtures the culture of individualism. I, too, would be concerned if that were the case, but it is not. The Bill is about the right to be different and the right to be equal. It is about enabling individuals to fulfil their potential as members of their communities and of wider society, a society that will be healthier in economic and social terms as a consequence of the Bill, a society that will be more socially just. I will remember the Social Justice Commission, so ably chaired by my noble friend Lord Borrie. Perhaps we are getting there in the end. It has taken some time, but we are getting there.

The noble Baroness, Lady Miller of Hendon, rightly said that we need a culture change as well as legislative change. It is indeed good to have her back on her feet. The noble Baroness, Lady Warzi, mentioned the proposal made by my noble friend Lord Rooker about a certificate stating which Commons amendments had been debated. I share her enthusiasm for that proposal, but that is for the future, it is not for the present and the present Bill.

Yes, we all want to address the root causes of equality, that is precisely what this Government have been striving to do over the last 12 years and we have achieved a lot. We have tax credits for children, we have enabled many pensioners to come out of poverty, we have got Sure Start, the minimum wage—I could go on—but there is so much more to be done. I recognise that, and the Bill will help not least with the socio-economic duty, which I believe will have a real impact, but to bridge the gap between rich and poor. I am grateful for the support from my noble friend Lady Kennedy of The Shaws. It is not a panacea, it is not a magic wand, but it will help.

To the noble Baroness, Lady Young of Hornsey, I say that we are expecting the guidance to be published, or made available before Committee stage. I was expecting the views of noble Lords opposite on Clause 1, but I was disappointed to hear the views of the Liberal Democrat Benches, particularly as I understand that

15 Dec 2009 : Column 1510

their colleagues in the Commons voted in favour of that. That is what I was informed earlier; forgive me if I am wrong.

UPDATE FOR THE ROTA LED WINNING THE RACE COALITION – DECEMBER 2009

Many views have been expressed about the gender pay gap and I well understand the frustration expressed by my noble friend Lady Gould that 2013 seems distant, but we very much hope that before that date, companies will voluntarily publish gender pay gap information. I had an encouraging letter from the chair of the Equality and Human Rights Commission yesterday, in which he said,

"I can confirm that we are close to an acceptable solution relating to voluntary proposals that will be supported by the TUC, the CBI and other employer representatives".

I think that that is good news. I recognise that many among us favour mandatory equal pay audits and we will discuss this further in Committee, but no one should doubt our unswerving commitment to narrowing the pay gap. I must tell the noble Baroness, Lady Morris, who I know is passionate about these issues also, that it is not true that parts of the Bill are going to be dropped.

The noble Baroness, Lady Warsi, asked whether the Human Rights Commission would publish the gender pay gap measures before Committee. As I mentioned, we think that we are getting towards some sort of agreement between the parties and we hope that the proposals will be published in January, but it is, of course up to the Commission to decide exactly when publication will take place.

Many noble Lords, including the noble Lord, Lord Lester, the noble Baronesses, Lady Greengross and Lady Howe of Idlicote, and others, expressed concern that the Bill will not remove the default retirement age, which the 2006 age employment regulations permitted and which was the subject of an unsuccessful legal challenge. As noble Lords will know, the Government have responded to those concerns by bringing forward their planned review of the default retirement age. The review will take place next year. On 15 October, we announced that we are calling for evidence to be submitted by 1 February 2010 to inform the review. One issue that has been raised in submissions of evidence received so far is that it would be unfair for the default retirement age to be set at an age lower than the state pension age. Of course, changes to the state pension age are not envisaged to begin until 2026. However, I want to place on the record that, whatever the outcome of the review, the Government agree that it would not be tenable to have a situation where the default retirement age was lower than the state pension age.

I come to Saga, which was mentioned by the noble Earl, Lord Ferrers, and my noble friend Lord Davies of Coity. Our position is clear: as my honourable friend stated in the other place, there will be a specific exception for age-related holidays, such as Saga, but it will not be in the Bill. It will be in regulations, and I will ensure that during the passage of the Bill, we set out in writing exactly what the regulations will provide. I assure all those who benefit from Saga holidays that they will be able to continue to enjoy them and that

UPDATE FOR THE ROTA LED WINNING THE RACE COALITION – DECEMBER 2009

the exceptions will come into force at the same time as prohibitions in the Bill. Therefore, there is no question that people will not be covered.

15 Dec 2009 : Column 1511

Earl Ferrers: My Lords, can the Minister add a bit to that and confirm that the exception will be in the regulations, not the guidance?

Baroness Royall of Blaisdon: My Lords, it will be in the regulations.

The noble Baroness, Lady Murphy, asked about the timetable for implementing the age discrimination ban in services and public functions. We are aiming for the legislation to be in force in all sectors, including health and social care, in 2012. She also talked about positive action and said that candidates are never truly equally qualified. "Equally qualified" does not mean that each candidate has the same level or number of GCSEs, A-levels, diplomas or degrees. It means "qualified" in the sense of fit or suitable. In that sense, there may be a range of people who are equally fit or suitable to do a job, and there must be no blanket rule to appoint candidates with protected characteristics.

I now come on to religion. I heard the deep concerns expressed, and I shall attempt to address some of them. Like the right reverend Prelate the Bishop of Chester, I will read the speech of the noble Baroness, Lady Afshar, with care. Of course, the Government recognise the important role that faith plays in shaping the values of millions of people in this country. Before I turn to the most reverend Primate, I should say to my noble friends Lord Warner and Lord Macdonald of Tradeston, the noble Lord, Lord Lester, and other noble Lords that I listened carefully to the views they expressed about the public sector duty and religion or belief, and I will consider them carefully.

The most reverend Primate, the noble Baronesses, Lady Cumberlege and Lady O'Cathain, and other noble Lords asked whether the Equality Bill narrows or removes the employment exceptions for organised religions and religious organisations. It will not change the existing legal position regarding churches and employment. It clarifies the existing law to ensure that a balance is maintained between the right of people to manifest their religion and the right of employees not to be discriminated against because of a protected characteristic, such as sexual orientation. The most reverend Primate asked whether priests would not be covered by the Bill's definition of employment for the purposes of organised religion because they do not wholly or mainly spend their time leading or assisting in the observance of liturgical or ritualistic practices, and he cited the case of the priest in Cockermouth, I think it was. To clarify, the term "wholly or mainly" involves leading or assisting in the observance of liturgical or ritualistic practices. In paragraph

UPDATE FOR THE ROTA LED WINNING THE RACE COALITION – DECEMBER 2009

2(8) of Schedule 9, it is not intended to mean simply that 51 per cent or more of time spent must be spent on those activities to be covered by the definition. It should be interpreted as leading or assisting in the observance of liturgical or ritualistic practices being a major or fundamental part of the job. It is unlikely that a court or tribunal would consider a priest not to be in employment for the purposes of an organised religion. In addition, the Solicitor-General made it clear during Public Bill Committee that the definition in the Bill is intended to cover ministers of religion.

I was also asked whether the Bill inadvertently narrowed the exception for organised religion under

15 Dec 2009 : Column 1512

paragraph 2(8) of Schedule 9. That is not correct. The Equality Bill will not alter the scope of the current law which allows an exception in the case of employment for the purposes of an organised religion. These exceptions include ministers of religion plus a small number of posts outside the clergy, including those who exist to promote and to represent religion. The exception allows requirements to be made of these employees related to sex, being married or in a civil partnership, gender reassignment and sexual orientation. For example, a church may require a priest to be unmarried and celibate, but could not impose similar requirements on other employees, such as accountants.

The noble Baroness, Lady Young of Hornsey, and others spoke of faith schools. We believe that they provide a spiritual ethos as well as a strong moral education and it is this ethos which is so important to parents. In order to maintain their religious character, it is common sense that they must be able to appoint teachers of the same faith. When we are talking about religion, there are occasions where to be of a certain belief is demonstrably of the utmost importance to a particular role or post. When we look at faith schools and, in particular, voluntary aided faith schools, the Government feel that the question of religion is potentially relevant to any members of the teaching staff because all teachers at these schools may be called on to play an active role in maintaining that strong religious ethos.

My noble friend Lord Alli asked whether it would be right for civil partnerships to be able to take place on religious premises. I, too, celebrate the fourth anniversary of the enactment of the civil partnership legislation. I note the fact that the right reverend Prelate said that he would be happy to discuss these issues. But we believe that civil partnerships were established by this Government to provide an equal provision for same-sex couples to that provided for opposite-sex couples within civil marriage, as the right reverend Prelate said. Neither civil marriages nor civil partnerships can take place in religious premises and it is important that that parity remains. The issue was debated at length during the passage of the Civil Partnership Act and the Government see no need to revisit it now.

UPDATE FOR THE ROTA LED WINNING THE RACE COALITION – DECEMBER 2009

On disability, I have listened carefully to the views expressed by the noble Baroness, Lady Campbell, my noble friend Lady Wilkins, the noble Lord, Lord Low, and others about the public sector equality duty under Clause 148. I am considering this issue carefully. Of course, there must be no going back and no regression. We are clear that this clause does not take us back, but I want to ensure that that is clear for all public authorities and everyone else concerned. Hence, my further consideration.

I believe that we have strengthened the reasonable adjustment provisions in the Bill. We have introduced a common lower threshold of substantial disadvantage and have removed the possibility of justifying a failure to make a reasonable adjustment. I should like to discuss the issue of costs further with noble Lords. My noble friend is right that for too long we did not do anything about disabled people and housing. Now we are doing something and I celebrate that too.

15 Dec 2009 : Column 1513

My noble friend Lady Wilkins spoke about Clause 15 and discrimination arising from disability-the Malcolm clause-which introduces a knowledge requirement. The judgment of the House of Lords was unanimous in that knowledge of a disability must be a factor in determining where there has been a disability-related discrimination. We believe that it is right to reflect that in legislation rather than rely on case law.

The noble Lord, Lord Low, expressed concerns about special educational needs and, I believe, auxiliary aids in education. We have commissioned Ofsted to review all special educational needs and disability provision in schools to look at how well the existing policies are meeting the needs of disabled people and those with special needs. I know that Brian Lamb, chair of the Special Education Consortium, has just conducted an inquiry into parental confidence in the system in schools and his findings will be published tomorrow. One recommendation will be that schools should be subject to the duty to provide auxiliary aids. Therefore, we are considering this recommendation.

My noble friend Lady Gibson spoke of trade union equality representatives. The Government are grateful for the receipt of the TUC's helpful report on this and will consider it carefully. I should like to take the opportunity to make clear that my right honourable friend the Solicitor-General was misinformed when referring to the TUC's report on Report in the Commons. The final TUC report was indeed received prior to the debate in the other place.

My noble friends Lord Morris and Lord Parekh and the noble Lord, Lord Ouseley, raised the important issue of procurement. They suggested that we

UPDATE FOR THE ROTA LED WINNING THE RACE COALITION – DECEMBER 2009

should have a contract compliance for public procurement like in America. In situations where a public body has entered into a contract, we do not agree that any and every breach of discrimination law should automatically result in the termination of that contract. Any decision to terminate a contract must be proportionate and in accordance with the terms of that particular contract, and a breach of the law may be inadvertent or minor and easily rectified. However, good contract compliance would mean that in serious cases the contract may well be terminated.

My noble friend Lady Gould and the noble Lord, Lord Lester, raised the issue of protection against pregnancy and maternity discrimination in education in schools. We are clear that pregnant pupils and those who are new mothers are best supported on an individual basis in schools and, under the equality duty in the Bill, schools will have to advance equality of opportunity between pregnant pupils or new mothers and others, and to foster good relations between the two groups. At the same time, we are sympathetic to the arguments for extending legal protection against discrimination to pregnant schoolgirls and school-age mothers and we are giving this further consideration.

The noble Lord, Lord Lester, asked about the impact on the editorial independence of public sector service broadcasters. We have no intention of encroaching on public service broadcasters' editorial independence. It is our view that broadcasting output and editorial functions are not public functions for the purposes of the Bill. To the noble Lord, Lord Adebawale, I would

15 Dec 2009 : Column 1514

say that in respect of the public sector equality duty, we intend to add more bodies to the list of public bodies covered by the duty. When we do so, we will add the BBC and Channel 4, but we will explicitly exclude their broadcasting and output functions. We are also considering bodies such as the Arts Council because at present the Bill lists only the core public bodies which must be included as a minimum-government departments, local authorities, education bodies. We are talking further to the additional bodies that we would like to add to the list.

My noble friends Lord Morris, Lady Gould, and others, suggested that the Bill should have a purpose clause. We share the aim of those who call for a purpose clause—that is to say, clear legislation—but we do not think that a purpose clause would achieve that.

The noble and right reverend Lord, Lord Harries, raised the issue of caste, as did the noble Baroness, Lady Flather, to whom we are grateful for sharing her personal experiences. I will look into the issue of caste further. We believe that further detailed work would need to be carried out to test the assertions of the study produced by the Anti-Caste Discrimination Alliance since much of the study relies on anecdotal evidence. We consider that at this stage a sensible approach is for a research project to be undertaken on caste

UPDATE FOR THE ROTA LED WINNING THE RACE COALITION – DECEMBER 2009

discrimination. Indeed, the ACDA report itself calls for the Equality and Human Rights Commission to do this. The Government are currently in discussion with the HRC about this recommendation.

I was delighted to see the noble Lord, Lord Avebury, in his place. I have noted his concerns about Scottish Gypsies but we are clear that while the judgment relating to the Scottish Gypsy Travellers has gone to appeal, it has set a precedent for public authorities to recognise them as a minority group.

I noted the dismay of the noble Baroness, Lady Deech, about Clause 45. I think she means Clause 47. The reason for its inclusion is completeness. The clause carries forward existing legislation. It is encouraging to hear of progress towards equality in any area of work, but it is not the same as giving areas of work a complete exemption.

My noble friend Lady Pitkeathley mentioned carers, as did others. The Bill protects carers by protecting people who associate with those who are elderly or disabled. I do not believe that protection against indirect discrimination and entitlement to reasonable adjustments as a separate characteristic for protecting carers is the way forward. We have enough protected characteristics based on what people are rather than what they do, but I am sure we will come back to that in Committee.

My noble friend Lady Billingham spoke of the need for more women in sport. We celebrate that. To my noble friend Lord Graham I say thank you for a splendid speech and we will discuss it further in due course.

I noted the concerns expressed by the noble Baroness, Lady Northover, as well as her enthusiasm for other parts of the Bill, including all-women shortlists. I am glad that the noble Baroness, Lady Howe of Idlicote, is now a convert. My noble friend Lady Gale has

15 Dec 2009 : Column 1515

great experience in these issues. The sunset clause is dispiriting, but, from her calculations, it seems to be necessary.

The noble Lord, Lord Lester, the noble Baroness, Lady Northover, and my noble friend Lady Gould expressed concern that the Bill does not cover homophobic bullying in schools. We recognise that this is a problem and that Stonewall and others have done great work on it, but, in any situation that we can envisage, it would be unlawful discrimination for anyone working in a school to bully a pupil because of their sexual orientation. However, the evidence shows that the real problem in schools is pupil-on-pupil bullying, which is not covered by discrimination law. There would therefore be no practical benefit to extending harassment protection for children in schools.

My noble friend Lady Howells made many important points to which we will return. I say to her that the new single equality duty in the Bill is designed to

UPDATE FOR THE ROTA LED WINNING THE RACE COALITION – DECEMBER 2009

focus public bodies on achieving real equality outcomes for disadvantaged groups. It is aimed particularly at moving away from a tick-box approach and a lot of process, which has been the criticism levelled at the existing race equality duty in particular.

Representative action was mentioned by the noble Lord, Lord Wallace of Tankerness, and others. We recognise that introducing representative actions could bring benefits both for individuals bringing claims under the Bill and potentially also for defendants faced with multiple claims. However, it would be premature

15 Dec 2009 : Column 1516

to legislate for representative actions now. In our view, Section 7 of the Employment Tribunals Act 1996 contains the power to make regulations or procedures to enable equal pay claims to be made in representative proceedings. Introducing representative actions would be a significant change. If we decided to legislate in this way in the future, a full and open debate should be held on the issue. We are committed to continuing to look at this and are considering recent research, which will inform our next steps.

Many other points were made in today's debate. I give a commitment to respond in writing to noble Lords where at all possible. We have already considered a huge number of issues, but I know that we shall consider them in detail in the weeks to come. I look forward to our future debates. I am not seeking to curtail scrutiny, amendments or debates, but I simply urge noble Lords to focus on what is in the Bill, because it will be a challenge to make as much progress as we can in the time available to us. As the noble Lord, Lord Lester, said, we need to be disciplined.

This is an important Bill which is powerful in its aims and wide-ranging in its ambitions. It is a Bill which is a crucial element in achieving our aspiration of a country committed to being free of unjustifiable discrimination. That is an ambition worth pursuing; I believe that it is an ambition which we all share.