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Women and Equalities Committee's inquiry on ensuring strong equalities legislation after EU exit

Response from the Employment Lawyers Association

9 November 2016

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INTRODUCTION

The Employment Lawyers Association ("ELA") is a non-political group of specialists in the field of employment law and includes those who represent Claimants and Respondents/Defendants in the Courts and Employment Tribunals. It is therefore not ELA's role to comment on the political merits or otherwise of proposed legislation, rather to make observations from a legal standpoint. ELA's Legislative and Policy Committee ("the L&P Committee") and the working party set up to respond to this particular consultation are made up of both Barristers and Solicitors, working in private practice and in-house, who act for both Claimants and Respondents. The L&P Committee meets regularly for a number of purposes including to consider and respond to proposed new legislation.

The working party was co-chaired by Kate Ewing of UNISON and Paul McFarlane of Weightmans LLP. The working party members are listed at the end of this document.

ELA has confined itself to its area of competence: employment law. We have not looked at other areas where equalities laws are influenced by Europe, such as social security.

I: Legislation

A. What aspects of equalities legislation could be affected when the UK leaves the EU? This could include implications for the Equality Act 2010 as well as other regulations and legislation that have an impact on those with protected characteristics (Age, Disability, Gender reassignment, Marriage and civil partnership, Pregnancy and maternity, Race, Religion and belief, Sex and Sexual orientation).

1. ELA's submission in relation to the impact on legislation of leaving the EU will examine legislation and those protected characteristics where we consider there to be a likelihood of a particular impact of leaving the EU. We would note however that there is a potential impact on all aspects of equality law in the UK.

2. The Equality Act 2010 consolidated pre-existing UK primary and secondary equality legislation. Some of this legislation had preceded European equality measures. Some of it had been implemented in the UK in order to comply with European law. The Equality Act now operates to ensure that all EU Equality Directives are implemented in domestic law, including the Equal Treatment Race Directive, the Equal Treatment Framework Directive and the recast Equal Treatment Directive on equal treatment between men and women[1].The Equality Act prohibits direct and indirect discrimination, harassment and victimisation. Elements of the Pregnant Workers[2] and Parental Leave Directives[3] are contained in the Employment Rights Act 1996. Repeal of primary legislation would have to pass through Parliament and appears unlikely to be immediate.

3. EU equalities law is also contained in secondary legislation that may be susceptible to revocation. Further secondary legislation implementing EU Directives (such as the Part Time Workers Directive where loss of protection would be likely to have a particular adverse impact on women (see also paragraph 18 below). Any revocation of EU-derived rights in these areas might have an indirect effect on equality.

4. The overarching role of the EU has been fundamental in the development, and in some instances, introduction of various strands of equality law in the UK. Consequently, the loss of this overarching structure could be potentially significant. The mere existence of equality law does not guarantee equality. The effectiveness and enforceability of those laws is central to the elimination of discrimination in the workplace and society more generally.

5. The extent to which both primary and secondary legislation will lose the guidance on interpretation provided by decisions of the CJEU is discussed in further detail in our submission in Sections B and C below. Absent decisions from the CJEU applying in UK law, it is possible that a more restrictive interpretation of the Equality Act will prevail than with respect to past CJEU jurisprudence, future decisions or both.

[1] (2000/43/EC, 2000/78/EC and 2006/54/EC)
[2] (92/85/EEC)
[3] (2010/18/EU)

6. Leaving the EU may also mean that the UK does not adopt future EU initiatives, such as the proposed directive relating to women on boards and the European Accessibility Act (as there will be no compulsion to do so). This could result in a divergence of protections between the UK and the EU and could result in lesser protections for UK citizens and residents.

7. Whilst there may not be political will to repeal the Equality Act at present, there are concerns that other measures could be introduced which could have an adverse impact on UK equality rights. The introduction of a statutory cap on compensation (as we see with unfair dismissal claims) is currently prevented by the EU principle of effectiveness (see also paragraph 35 below). On leaving the EU, the UK would no longer be prevented from introducing a cap on compensation and this could have a significant practical effect on the ability of those who experience discrimination to enforce their rights which could in turn have an impact on equality in wider society. Additionally, such a cap may have a disproportionate impact on workers with certain characteristics placing them at greater disadvantage.
8. We examine below, by way of example, protections in relation to specific protected characteristics, which have been impacted by the EU and which could be impacted by leaving the EU. This is not intended to be an exhaustive analysis.

Disability discrimination

9. UK legislation protecting against disability discrimination pre-dates EU requirements[4] but it is also the case that UK protection has expanded because of EU law and jurisprudence. Before the Framework Directive, the Disability Discrimination Act did not extend to employers with fewer than 20 employees or outlaw direct discrimination. CJEU judgments have caused the UK to widen the protections of domestic disability legislation, for example in relation to associative discrimination.[5]

10. The duty to make reasonable adjustments could be vulnerable to repeal or substantial amendment if seen as placing unnecessary burden on business, particularly small businesses. The absence of EU oversight could undermine measures aimed at balancing the rights and ability to participate in the workplace of workers with disabilities and the costs to business in meeting those rights.

Pregnancy and maternity rights

[4] Disability Discrimination Act 1995
[5] eg protection against "associative discrimination" following *Coleman v Attridge law* [2008] ICR 1128

11. Similarly protections for women in the workplace have been enhanced by EU requirements. For instance, protection against pregnancy discrimination is derived from a CJEU decision[6], which recognised pregnancy as a condition unique to women and did not require a comparator in order to succeed in a pregnancy discrimination claim. The Equality Act follows this approach.

12. Workers are also currently protected from dismissal on the grounds of pregnancy by the Employment Rights Act[7] and the Maternity and Parental Leave etc. Regulations 1999[8]. Other EU derived rights in relation to pregnancy flow from the Pregnant Workers Directive which provides pregnant workers with the right to attend ante-natal appointments on full pay, to take a minimum of 14 weeks maternity leave before or after childbirth and to take at least 2 weeks leave after childbirth.

13. The UK implemented the Directive with the Maternity and Parental Leave Regulations 1999, which currently provide for a more generous 26 weeks of ordinary maternity leave and a further 26 weeks of additional leave[9]. The right to time off for ante-natal care is contained in the Employment Rights Act[10]. Unpaid parental leave required by the Parental Leave Directive is contained in the Maternity and Parental Leave etc. Regulations 1999[11]. Maternity pay is a UK right, implemented by the Statutory Maternity Pay Regulations 1986 under the Social Security Act 1986 and the Social Security Contributions and Benefits Act 1992. It is notable that successive UK governments have expanded the scope of many of the non-EU derived "family friendly" rights, such as the introduction of shared parental leave.

14. There are stringent health and safety rules under the Pregnant Workers Directive relating to pregnant and breastfeeding women, including assessing risk, exposure to chemicals, biological agents, night-working or a harmful physical environment. While wholesale repeal of these provisions appears unlikely, the absence of EU oversight raises the possibility that these provisions could be amended or limited in a way which would not have previously been permissible. This could have the effect on lessening the protections for pregnant and breastfeeding workers.

[6] *Webb v EMO* C-32/93 [1995] ICR 1021
[7] s99
[8] Reg 19 and 20
[9] Reg 4
[10] s55
[11] Reg 13 and 14

Other areas which could be impacted

15. The areas of sex discrimination and equal pay law have domestic origins[12]. Both have however been shaped very considerably by EU law[13].

16. For instance, protection against indirect sex discrimination is closely connected with legislation relating to issues which impact particularly upon women, for example flexible working[14] and part time employees[15] (itself as a result of the Part Time Workers Directive[16]).

17. Equal pay legislation is domestic in origin[17] and now enshrined in the Equality Act so appears unlikely to be targeted for reform immediately post leaving the EU. However, some commentators speculate that it may become an area for review because of its direct and significant cost to business. Equal Pay legislation has been significantly shaped by EU law that has resulted in amendments to UK legislation[18].

18. By contrast, age was the final protected characteristic to receive protection from unlawful discrimination in the UK[19]. Without the background of UK derived legislation and with less political consensus around protections against discrimination in this field, this protected characteristic may be vulnerable to repeal or amendment[20].

II: Courts, Case law and Appeals

B. Which institutions, organisations and processes are best placed to ensure that the UK maintains and develops its legislation and policies designed to support those with protected characteristics?

[12] Sex Discrimination Act 1975
[13] for example *Webb v EMO* [1995] ICR 1021 on pregnancy discrimination, or *Coote v Granada* C-185/97 [1999] ICR 100 on post employment victimisation or *Barber v Guardian Royal Exchange* Case 262/ 88, [1990] IRLR 240 on equal pay and retirement benefits.
[14] Flexible Working Regulations 2014
[15] Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000
[16] 97/81/EC
[17] Equal Pay Act 1970
[18] such as *Barber* Case 262/ 88 [1990] IRLR 240, which ruled that pensions fell within the scope of EU equal pay principles, and *Levez* [1999] ICR 521, which ruled that certain procedural elements of the UK's access to equal pay remedies were inadequate
[19] By way of the Employment Equality (Age) Regulations 2006
[20] See, by way of an important age discrimination case Kucukdevici -v- Swedex GmbH ECJ C-555/07 [2010] IRLR 346 on the principle of non-discrimination, horizontality and age discrimination.

19. There is a very real risk that following the EU exit, the absence of the EU's “supreme jurisdiction” over the UK will mean that the continuing development of equality principles and protections will slow.

20. Within the UK interest groups such as charities, lobbyists and non-governmental bodies campaign and raise awareness to ensure that equality principles remain at the forefront of the government agenda. Trade unions also play an important role in advocating for equality in the workplace and civil society.

21. Select committees are commissioned by government to review different areas of political concern. Their reports are public and usually require a response from government. There are also various Commissions whose role it is to review and suggest law reform, an example being the Equality and Human Rights Commission (see section H) whose role is to promote and enforce equality law. ACAS also has an important role to play, by producing various guidelines and good practice information that are regarded highly by the court system.

22. However, individually and collectively these bodies and institutions cannot expect to replace the policy, legislative and judicial roles of the EU institutions and the CJEU. They may have persuasive effect and influence but will be unable to compel Government action.

C. What impact will the European Court of Justice's decision have in the UK post-Brexit?

23. Following the UK’s withdrawal from the EU, the short answer is that decisions of the CJEU will remain persuasive but will no longer be binding. For cases arising before the point of withdrawal, including those arising during the negotiating period after Article 50 is triggered, decisions of the CJEU will remain binding as they do now. That will mean an interim period where pre-withdrawal cases are being heard and EU law considered and applied as it is now.

24. Once the UK has withdrawn and CJEU rulings remain of persuasive value only, this may give rise to arguments that CJEU precedents should not be followed as a matter of course, or that a particular precedent should no longer be followed in relation to a point arising in a given case. The very possibility of such arguments will open up uncertainty on a statute-by-statute and point-by-point basis. It is appears likely that the

courts would wish to act to promote legal certainty and would likely seek good reason to depart from the current understanding of the law, including insofar as mandated by the CJEU.

25. Domestic courts and tribunals will also no longer be able to make preliminary references to the CJEU and this will result in the loss of guidance on the meaning and application of the law. Consequently, even if following the CJEU jurisprudence on a persuasive basis, the inability of the UK courts and tribunals to seek guidance may lead to a divergence in domestic case law from that of the EU which could impact on the development and application of equality laws and in circumstances where the persuasive impact of the CJEU jurisprudence is lessened because of that divergence.

26. If Parliament passes a 'Great Repeal Act', the courts may see that as an indication that the status quo is to be preserved unless Parliament indicates otherwise. In that case, the courts would be likely to continue to refer to and apply CJEU decisions. In any event, in relation to EU-derived statutes that remain in force, it is arguable that the legislative intent of those statutes is to give effect the relevant Directive and that decisions of the CJEU including those made after the UK's withdrawal should continue to be applicable.

D. What is the ongoing role of the European Convention on Human Rights and the European Court of Human Rights in enforcing UK equality law/legal decision making processes?

27. The UK leaving the EU should not, of itself, impact on the position of the UK as it relates to the European Convention on Human Rights ("the Convention") or the European Court of Human Rights ("ECtHR"). The UK's membership of such institutions is separate to its membership of the EU and one would expect that the ongoing role of the Convention and the ECtHR in enforcing UK equality law/legal decision making processes will be the same as it is currently.

28. The Convention and the ECtHR have an indirect influence on UK equality law/legal decision making processes because the UK must give effect to the Convention rights. These are incorporated into UK Law by the Human Rights Act 1998 ("HRA 1998") and UK courts and tribunals must take into account ECtHR decisions when determining a question in connection with a Convention right (section 2 HRA 1998).

29. However, the role of the Convention and the ECtHR in enforcing UK equality law/legal decision making processes is very limited.

30. Firstly, the ECtHR enforces the Convention as between citizens and emanations of the state. It does not enforce UK equality law, nor does it enable private individuals to bring claims against other private individuals for alleged breaches of equality law.

31. Further, although the Convention contains a prohibition on discrimination (in Article 14), that prohibition relates only to the application of the other convention rights. It is not a general prohibition, protection or freedom in respect of equal treatment. In this respect, UK equality law goes much further than the Convention, and therefore much further than the ECtHR can go in terms of the impact of their decisions. In addition, the Convention and the ECtHR for the most part are dealing with the other Convention rights, not relevant to UK equality law.

32. In the employment context, the Convention and the ECtHR's role is further diluted because of the limited application of Convention rights to the employment sphere and the lack of jurisdiction of the ECtHR to hear disputes between private persons.

33. Finally, the idea that the UK might repeal the HRA 1998 and withdraw from the Convention has been openly discussed by members of the present UK government. This is unconnected to the UK leaving the EU, but would in all likelihood mean a lack of any role for the Convention and the ECtHR in relation to UK equality law.

E. Will there be a legal gap post-Brexit that would disadvantage UK citizens who want to appeal decisions taken by the UK courts?

34. Post leaving the EU, UK citizens will still be able to appeal decisions regarding cases under the Equality Act up to the Supreme Court. However, the CJEU has shown itself to be more progressive on equalities issues than the UK courts are when interpreting EU Directives and implementing legislation[21].

35. The CJEU plays an important oversight role in clarifying and interpreting EU equality law. This is particularly valuable in relation to the complexities and nuances of

[21] By way of example only see Webb v EMO Air Cargo (UK) Ltd (C-32/93) on pregnancy discrimination and Coleman v Attridge Law and another C-303/06 in which the court developed the concept of associative discrimination

workplace discrimination. These cases have been litigated through the domestic courts up to the CJEU which has played an important role in clarifying where the lines are to be drawn in interpreting the rights of individuals and balancing so called conflicting rights[22].

36. Further, the interpretative obligations on the UK courts to give effect to EU law (the Marleasing[23] duty), currently requires the UK courts to add words to domestic legislation in order to achieve conformity with EU law: This is a much more onerous and far reaching duty than the courts would have to comply with other treaties in the absence of the jurisdiction of the CJEU. The UK courts tend to employ a technical interpretative role. Inevitably, this obligation will also fall away. Individual rights are further protected by A19 requiring remedies sufficient to ensure effective legal protection of EU rights, as well as the right to an effective remedy before the Tribunal. An example of that protection was evident in Marshall no 2 (which provided for unlimited compensation to be available to a victim of discrimination).

37. Without EU law, the CJEU and the interpretive obligations on UK courts, or this protection on remedies, UK citizens will have lost the significant protection they currently have to ensure our EU founded equality obligations are complied with by the UK courts.

III: Embedding Equalities

F. Is it necessary to further embed equalities legislation into the UK law on leaving the EU?

38. Equality constitutes a fundamental constitutional right under EU law[24] and is enshrined within many Treaty provisions[25], as well as the Charter of Fundamental Rights[26]. Article 2 of the Treaty on European Union unequivocally states that "the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law

[22] Coleman v Attridge Law and another C-303/06
[23] Marleasing SA v La Comercial Internacional de Alimentacion SA C-106/89
[24] Case C149-77 *Defrenne v Société Anonyme Belge de Navigation Aerienne (SABENA)* [1978] 3 C.M.L.R. 312
[25] Treaty of European Union (TEU), Articles 2, 3, 9, 21; Treaty on the Functioning of the European Union (TFEU) Articles 8, 10, 18, 19, 45, 153, 157
[26] See Premable, Articles 10, 20-26

and respect for human rights including the rights of persons belonging to minorities". The fundamental nature of equality has been encapsulated in many CJEU decisions which have had a significant impact on equality law across Member States, including the UK, through extending a purposive and broad interpretation of substantive equality[27].

39. There is no domestic UK equivalent to this constitutional underlying objective, notwithstanding the arguments made occasionally as to the rise of a partial constitutionalisation of equality. In domestic common law, equality exists as a formulistic principle underlying the doctrine of parliamentary sovereignty, namely that there is a right to 'equal liberty' before the law[28]. EU law, and the interpretation of the fundamental nature of equality at the heart of the EU legal order has supported and expanded the substantive principle of equality within the UK.

40. It is true that in some aspects, the UK has gone further than the minimum required under EU Directives when it has transposed and consolidated EU law into domestic law, such as the inclusion of a public sector equality duty under the 2010 Act and the introduction of shared parental leave. However, without the supranational protection that the EU provides, both through the framework of its Directives, the Commission and the scrutiny of the European Parliament, as well as through the interpretation mechanism of the CJEU itself, the UK will lose the fundamental nature of equality as a constitutional principle.

G. What role will the European Convention on Human Rights play?

41. This response should be read in conjunction with response F above. There will be a continued role of the European Court of Human Rights post leaving the EU, so long as the Human Rights Act is not abolished, and that domestic law continues to incorporate the European Convention on Human Rights. However, the Convention and the Strasbourg Court should not be viewed as a substitute for the fundamental protections currently provided by the EU. Article 14 is non-discrimination provision, which can only

[27] For just a few examples, see *Enderby v Frenchay H.A* [1993] IRLR 591, C-127/92, [1993] EUECJ C-127/92, on equal pay; *Webb v EMO* [1995] ICR 1021 on pregnancy discrimination; *Coleman v Attridge* **[2008] IRLR 722** on associative discrimination and disability; *Barber v Guardian Royal Exchange* Case 262/ 88, [1990] IRLR 240 on equal pay and retirement benefits; Kucukdevici -v- Swedex GmbH ECJ C-555/07 [2010] IRLR 346 on the principle of non-discrimination, horizontality and on age discrimination specifically.

[28] See, for example, Baroness Hale in *Ghaidan v Godin-Mendoza* [2004] 2 A.C. 557 at para.132, and Lord Hoffman in *Arthur JS Hall v Simons* [2002] 1 AC 615: *'the fundamental principle of justice [which] requires that people should be treated equally and like cases treated alike'.*

be used in conjunction with other Articles as an accessory provision rather than as a standalone protection.

42. Discrimination case-law has not been substantively developed by the Strasbourg court[29], particularly in respect of the definitions of discrimination law whereas EU law has provided a stronger and more coherent approach, particularly with regard to indirect discrimination and justification. The highly developed case-law of the CJEU has remained the focal point for both direct and indirect discrimination, where it has fallen within the competence of the EU jurisdiction and its replacement is not easily resolvable by reference to the under-developed jurisprudence of Strasbourg with respect to Article 14.

H. What is the role of the EHRC?

43. The EHRC is a non-departmental government body, established by Act of Parliament (the Equality Act 2006, which also sets out the EHRC's statutory remit). It is funded by Government, but is otherwise independent of Government and has a dual remit in respect of equality and human rights. It is the regulatory body responsible for enforcing both the Equality Act and the observance of human rights in the UK, although its responsibilities and powers are qualified in matters that involve devolved powers to Scotland. As an 'A' status National Human Rights Institution accredited by the United Nations (UN) it is answerable to the UN in respect of the UK's human rights record.

44. The EHRC discharges its role by providing advice and guidance, publishing information and undertaking research and by discharging various enforcement powers, including investigations and court actions, including bringing or participating in legal action against the Government itself. Save for a few limited exceptions, the Commission may only assist in legal proceedings relating to the Equality Act 2010, a domestic statute.

45. The dual remit of the EHRC enables it to discharge its role holistically and to ensure that the monitoring and enforcement of equality and human rights is co-ordinated and coherent. It does mean however that its resources, the amount of which are determined by the Secretary of State, must be applied to both aspects of its role and to all nine characteristics that are now protected under the Equality Act 2010.

[29] See, for example, the very limited expansion of indirect discrimination concepts, in DH cv Czech Republic 47 EHRR 3.

46. In 2011, the government embarked on a consultation to reform the EHRC as part of its commitment to review the value for money of public bodies. The response to the consultation, published in 2012, identified the two core areas in which the EHRC could add value: as a national expert on equality and human rights issues and a strategic enforcer of the law and guardian of legal rights. Non-core responsibilities were removed from the EHRC's remit in line with the conclusion of this review. In particular a new Framework Directive was put in place to establish tighter financial control on the EHRC from the government. Reflecting in part the removal of grants relating to non-core functions, the EHRC's budget was reduced from £36.9 million in 2012/3 to £17.1 million at the end of 2015/16.

47. In the wake of leaving the EU the role of the EHRC will remain undiminished, unless and until there are reductions in its statutory responsibilities. It is possible that the need for its services, particularly in supporting strategic litigation, may increase if the uncertainties about continued role CJEU equality case law give rise to the need for issues of national importance to be tested in the courts.

48. It will remain important for the robustness of the framework of equality and human rights law within the UK that the EHRC or similar body retains its independence from Government, its regulatory role and its enforcement powers to the importance of its role. In order to do this it must be adequately resourced.

I. How do other countries ensure strong protection for equalities legislation and rights?

49. There are a broad range of systems in existence in non EU countries. A common theme is extensive protection for women both in terms of gender based discrimination and protection from dismissal during pregnancy. Whilst equal pay/the gender pay gap is an area of focus, in many cases, it does not appear as high profile as it is in the UK. Many countries include protection for political beliefs as well as religious and philosophical belief.

50. A number of countries have broad protection but exclude age discrimination legislation. The UK appears to be unusual in having discrimination legislation contained within one piece of legislation, and has a relatively high level of protection against discrimination in the workplace. The levels of compensation which can be awarded

here and the frequency of claims, despite the introduction of Tribunal fees, appears to be very high compared to other jurisdictions.

51. In a small number of countries, there are also criminal sanctions for breach of equality legislation and rights (although in practice, these are rarely enforced) and in others, the right to reinstatement where a dismissal is found to have been "unfair" including on discriminatory grounds. Whilst not often enforced, this is something used to press for higher compensation. In a number of countries, "compensation" is not necessarily limited to financial loss but is intended to be more punitive.

52. Excluding other EU countries (which must implement applicable Directives and interpret consistently with decisions of the CJEU) specific examples include the following:-

53. Norway is in the EEA and has to follow much of the body of EU law in relation to equality matters. Although compensation is uncapped in Norway, reports of discrimination awards are rare because other forms of protection for employers (including in relation to dismissal) are so strong.

54. Switzerland is in the Single Market but not the EEA. It has specific gender discrimination legislation and a separate 'Code of Obligations' with broad protections including any physical difference. Compensation is capped at 6 months' pay and the burden on employees to prove discrimination is high so freestanding discrimination claims are rare.

55. Turkey, which aspires to EU accession has extensive anti-discrimination legislation in place which is growing (but excludes age discrimination), although compensation is capped at 4 months' pay. There is a right for both parents to request to work part time until their child is school age. CJEU decisions are often followed by the Supreme Court.

56. Australia has extensive protection against discrimination with 16 protected characteristics but enforcement is complicated, with separate State and Federal legislation and systems (capped and uncapped compensation respectively), and victimisation is covered under a separate Fair Work Act.

57. New Zealand also has extensive protection with regard to discrimination although there are two avenues for enforcement: (i) via the NZ Human Rights Commission and (ii) court. Recently, the Commission has been favoured over the employment courts by

employees as in a number of cases, they have awarded higher damages. The Commission is also very active in making submissions during drafting of new legislation affecting employee rights e.g. its endorsement of the extension of paid parental leave.

58. The US also has the Equal Employment Opportunities Commission which is often the "first stage" in the process for discrimination claims. The EEOC will reach a view as to whether a claim has probable cause. Such a finding does not prevent a subsequent legal claim however, in practice, only a very small number of claims are brought where such a finding is made.

59. South Africa has very broad protection against discrimination, including on "any other arbitrary ground". Whilst compensation is capped, the court has wide ranging powers to make recommendations including publication of financial awards made and public apologies. The reputational damage/stigma attached to a discrimination claim is a significant concern to employers, particularly (unsurprisingly) race claims. For the same reason, in relation to pay inequality, the focus is on race rather than gender.

60. One of the least regulated systems is Singapore where protection is limited to the dismissal of a worker during pregnancy which is an offence. Maternity leave of 16 weeks is only available to Singaporean nationals who are married. Other countries where there is a similar lack of regulation or where rights are rarely enforced include India, Mexico, KSA and Malaysia. This is due in some cases to the burden of proof being entirely on the complainant.

J. What role could the Office for Disability Issues and the Government Equalities Office play in promoting and strengthening equalities post Brexit?

61. The ODI is a part of Government. Its stated objective is to support the development of policy directed at removing inequality between disabled and non-disabled people. It supports the role of the Minister of State for Disabled People (who is responsible for cross-government disability issues and strategy), develops and monitors the cross-government disability strategy and co-ordinates the implementation of the UN Convention on the Rights of Persons with Disabilities across government. The ODI has also played a role in assisting the Disability Action Alliance, which itself assists in connecting Disabled People's Organisations with government departments. Since 2012 the ODI has been joined with the Disability Directorate and has had no separate budget allocated to it.

62. The GEO is also part of Government. It has a similar cross government role to the ODI, but currently focuses on strategy and legislation related to women, sexual orientation and transgender equality. In particular it is responsible for supporting and implementing international equality measures in the UK, including but not limited to commitments which the UK holds as a member of the European Union. The GEO is a sponsor of the EHRC.

63. It is clearly important that after Brexit there remains a framework within Government for ensuring that equality issues are given appropriate consideration by policy makers and legislators. It is likely that in the period following Brexit there will be uncertainty arising from the complex interaction between domestic and EU equality law. Protection and strengthening of the standards already achieved in the UK will depend on effective monitoring and regulation (which will fall within the remit of the EHRC). It will also depend on policy makers remaining responsive to the equality implications of policy and legislation and on the ability of UK citizens to understand and enforce their rights through properly resourced advice services. There is a potential role for the GEO and the ODI in both these areas although their lack of independence may ultimately inhibit their overall effectiveness in delivering equality.

K. What policy and/or legislative changes should be made to ensure that the UK is well placed to support strong equalities legislation and processes outside the EU?

64. The Committee may wish to consider a commitment to respecting and protecting equalities should be made by the UK government so that these provisions are fully embedded in law upon an exit from the EU in order to preserve their core nature and provide essential assurances and guarantees to UK citizens that their right to equality will not be weakened in consequence of an exit.

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