
Introduction

1. The Communication Workers Union (CWU) represents approximately 192,000 members in the postal, telecoms, financial services and related industries across the UK, the Isle of Man and the Channel Islands. We are the recognised trade union for non-managerial grades in Manx Telecom and the Isle of Man Post Office.

2. The CWU welcomes the opportunity to respond to the Isle of Man Government’s ‘Equality Act 2017 – Draft Code of Practice on Employment’ consultation.1 The fair and equal treatment of workers is a priority for the CWU, and we believe it is crucial that the Equality Act is implemented and enforced as effectively as possible.

3. We note that the Equality Act 2017 mirrors the Equality Act 2010 of the UK Parliament, and that the IoM Government has used the UK Code of Practice on Employment and Supplementary Code as the basis for the Draft Code of Practice.

4. Trade Unions in the UK made representations on revisions to the UK Code of Practice in 2009, and we succeeded in securing a number of amendments in favour of trade unions and workers at that time.2 We welcome, therefore, that these have been carried through to the Isle of Man Draft Code of Practice. They include such things as making reference to the important contribution of trade unions to equality and diversity in the workplace with a positive recommendation to consult with trade unions; making it clear that having an equality policy will assist employers to meet their compliance obligations; and highlighting the role that trade unions play in achieving gender equality.

5. However, we believe there are a number of limitations to the Equality Act itself that must be addressed. In particular, we believe the Act should include: a duty to promote socio-economic equality; the menopause as a protected characteristic; a right to flexible working rather than simply a right to request flexible working; stronger protections against sexual harassment; and more robust enforcement mechanisms. Whilst we recognise that the consultation is seeking views on the Draft Code of Practice rather than the Act, we consider

that these objectives represent important steps in helping to tackle workplace inequality and discrimination.

**Socio-economic inequality**

6. It is regrettable that shortly after coming to power in 2010, the UK coalition government abandoned Part 1 of the Equality Act 2010 on the socio-economic duty. This would have mandated public authorities such as government departments, local borough councils and education authorities to develop strategies ‘designed to reduce the inequalities of outcome which result from socio-economic disadvantage’.

7. Earlier this year, the UK Government’s Social Mobility Commission published a damning report that charts failures in education and employment policies that have caused class privilege to become more entrenched. The report concludes that those who are born privileged are likely to remain privileged, whilst those born disadvantaged may have to overcome barriers to improve their social mobility. It recommends that urgent action needs to be taken to help close the privilege gap.

8. The report welcomes the Scottish Government’s introduction of the socio-economic duty in April 2018, after the power to implement this was devolved to the Scottish Parliament in 2016. It also calls on the UK Government to introduce a similar duty in England. Wales has announced its intention to introduce the socio-economic duty, and more than 80 MPs from five different parties are calling on the UK Government to follow suit.

9. In the interests of improving social mobility in the Isle of Man, we believe that the socio-economic duty under Part 1 of the Equality Act should be included in the Isle of Man Equality Act 2017 and the IoM Code of Practice. It is disappointing that this is not mentioned anywhere in either document. Adopting this duty would help to progress the IoM Government’s objectives of tackling inequality and addressing the ‘twin-track’ economy in the Isle of Man.

**Protected Characteristics (Chapter 2)**

10. Despite the many varied effects of the menopause on women’s mental and physical health, the menopause is not currently mentioned under the Equality Act. The CWU believes that this

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7 Commencement and enforcement of the socio-economic duty – s1 of the Equality Act, EDM #591, tabled 23 November 2017, accessed at: [https://edm.parliament.uk/early-day-motion/51058](https://edm.parliament.uk/early-day-motion/51058)

8 Government is committed to fighting inequality in Manx society, minister tells MHKs, IoM Today, 1st April 2017, accessed at: [http://www.iomtoday.co.im/article.cfm?id=32810&headline=Government%20is%20committed%20to%20fighting%20inequality%20in%20Manx%20society%20%C2%20minister%20tells%20MHKs&sectionTitle=news&search_year=2017](http://www.iomtoday.co.im/article.cfm?id=32810&headline=Government%20is%20committed%20to%20fighting%20inequality%20in%20Manx%20society%20%C2%20minister%20tells%20MHKs&sectionTitle=news&search_year=2017)
must change and that the menopause should become a protected characteristic under the Act.9

11. Research has shown that many women feel ill-equipped to manage the symptoms of menopause at work. Three out of five working women between the ages of 45 and 55 who are experiencing menopause symptoms say it has a negative impact on them at work, affects their confidence and makes them feel unable to disclose their symptoms when taking sick leave.10

12. Labour has recently announced plans to break the stigma of menopause at work by requiring employers to introduce a menopause workplace policy. This would include ensuring absence procedures are flexible to accommodate menopause as a long-term fluctuating health condition; and carrying out risk assessments to consider the specific needs of menopausal women.11

13. The CWU works with employers to raise awareness of the difficulties for workers going through the menopause, and to introduce policies and procedures that support our members facing these difficulties. However, the absence of clear regulations on this issue means there are too many employers who make no provisions or allowances for their employees affected by the menopause.

14. We recognise that the existing protected characteristics provide the basis for discrimination linked to menopause to be challenged on the grounds of gender and disability, and this has been demonstrated in tribunal cases including Merchant v BT (2012) and Davies v Scottish Courts and Tribunal Service (2018). Nevertheless, we believe that the law should be strengthened in this area by including the menopause as a protected characteristic.12 This will empower women to assert their right not to be treated unfairly by their employer due to the menopause, and it will encourage employers to improve their workplace policies and procedures on this issue. We wish to see this carried through to the Isle of Man Equality Act 2017 and the Code of Practice.

Harassment (Chapter 7)

15. The UK Government is currently consulting on sexual harassment in the workplace, recognising that this is a problem that persists at an alarming rate in our society, despite the existence of legal protections under the Equality Act 2010. The Government has proposed to implement a new mandatory duty that compels employers to take all reasonable steps to prevent sexual harassment in the workplace. This would shift the emphasis away from employer liability after an incident of harassment, to a proactive duty before any unlawful conduct has taken place. The CWU supports this proposal and we agree that existing primary legislation should be amended to make provision for this new preventative duty.

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9 CWU General Conference Motion No.4 2019
11 Labour announces plans to break the stigma of the menopause at work, ibid, 20th September 2019
16. We believe that the IoM Government should look to introduce an equivalent preventative duty under the Equality Act 2017 and reflect this in the Code of Practice.

Pregnancy and Maternity (Chapter 8)

17. Although it is unlawful for an employer to treat someone unfavourably because they are pregnant or on maternity leave, evidence suggests that pregnancy and maternity still forces thousands of women out of their jobs each year. This calls for a strengthening of the Equality Act to protect women against pregnancy and maternity related discrimination. In particular, we believe there should be a right under the Act to work flexibly for pregnant women and new mothers, rather than a right to request flexible working. The current right to request allows employers too much discretion in turning down these requests, leaving many women with no option but to give up their job.

18. We believe the Isle of Man Government should introduce a more robust safety net for women who are pregnant or on maternity leave under the Equality Act 2017, which should include a right to flexible working.

Discrimination in Work Relationships (Chapter 11)

19. The CWU supports the protections under the Equality Act 2017 and the Code of Practice for contract workers, including the duty on employers to make reasonable adjustments to disabled contract workers. In broad principle terms, the CWU believes that the protection of workers should extend as widely as possible irrespective of their employment status.

Enforcement (Chapter 15)

20. We consider that the three month time limit for bringing an Equality Act claim is too short and that there is a genuine need to extend this for all types of claim under the Equality Act. We believe that a minimum six-month time limit should apply to all employment tribunal claims thereby giving parties the time they need to complete all stages of the application process.

21. We also believe there are circumstances under which it would be reasonable to extend this time limit further. The time limits are particularly unjust for new and expectant mothers, given the physical and emotional pressures on them at this time. They are also unjust for victims of sexual harassment or sexual assault, as delayed reporting is a common and entirely understandable reaction to such a traumatic incident. Establishing time limits should stem from an evidence based, trauma-informed approach that provides individuals adequate time to process what has occurred, to seek legal advice and consider their options.

22. We support the provision under the Draft Code of Practice for the Employment and Equality Tribunal to make recommendations that affect the wider workforce. We believe this is an important feature of the Equality Act that promotes justice on behalf of all workers, not just the individual claimants who bring a case to a tribunal.

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23. It is regrettable that in the UK, the Deregulation Act 2015 removed the power under the Equality Act 2010 that allows employment tribunals to make wider recommendations (that may benefit others, and not just the claimant personally) in discrimination cases.

24. We urge the IoM Government to ensure that this power is in place in the Isle of Man, as it is an effective tool in helping to tackle discrimination and promote equality in the workplace.

25. In terms of wider enforcement powers, it is essential that the IoM Government establishes an effective enforcement agency to help workers assert their rights and to ensure compliance with the law. The Equality and Human Rights Commission in the UK has been subjected to substantial funding cuts over recent years that makes its task of enforcing the Equality Act impossible. Any enforcement body in the Isle of Man must have sufficient funding and resources to carry out its role and enforce the law effectively.

26. Finally, we call on the IoM Government to promote collective bargaining as a vehicle for raising workplace standards and ensuring compliance with labour laws.

Avoiding discrimination during employment (Chapter 17)

27. On the issue of flexible working, we believe the right to apply for flexible working should be extended as a right to work flexibly for all those with caring responsibilities. As we have mentioned above, too many women returning to work from maternity leave are not able to secure flexible working and consequently are at great risk of having to leave employment. Similarly, as the burden of caring falls on increasing numbers of people in an ageing society, workers who are unable to balance their work lives are also finding they can no longer continue in their job.

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