



Parliamentary Convenor: John McDonnell MP

TUCG BRIEFING: THE EQUALITY BILL

Report Stage & 3rd Reading

People from black and minority ethnic groups are more likely to suffer poverty

The income of disabled people is, on average, less than half of that earned by non disabled people

Women are far more likely than men to be in low-paid jobs

Black women are more likely to be unemployed than any other group in the labour market

Many LGBT people still face daily discrimination and prejudice in the workplace

The trade union movement has been campaigning for a Single Equality Act to provide a clear and consistent framework of workers' equality rights for many decades.

It is disappointing that the Equality Bill has failed to provide some obvious measures to protect workers from discrimination and inequality.

Therefore, the Trade Union Co-ordinating Group (TUCG) - which brings together eight national unions (BFAWU, FBU, NAPO, NUJ, PCS, POA, RMT and URTU) representing over half a million members – has worked with a number of MPs to table amendments to improve the Bill.

PLEASE SUPPORT:

New Clause 24 Time off for Workplace Equality Representatives (*John McDonnell MP*)

This clause puts union equality representatives on the same statutory footing as other union representatives, which would make a significant contribution in strengthening workers' trade union rights.

New Clause 33 Mandatory Pay Audits (*Katy Clark MP*)

This clause introduces a requirement on employers, with 21 or more employees, to publish meaningful audits to reveal any gender pay gap.

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OTHER AMENDMENTS

Re: MINIMUM WAGE

Amendment 24 (John McDonnell MP) deletes the exemption to allow the setting of different National Minimum Wage rates for different age groups.

Re: PUBLIC SECTOR EQUALITY DUTY

Amendment 30 (John McDonnell MP) adds a duty to consult with service users and trade unions in order to establish what measures need to be taken to would strengthen the new single Equality Duty (Clause 145).

Probing Amendment 44 (John McDonnell MP) widens the definition of 'public function' in relation to the definition of public authority for the purposes of the duty. This raises the question of private companies providing public services.

Probing Amendments 25-29 & 32 (John McDonnell MP) would strengthen the new single Equality Duty (Clause 145) to mean that instead of merely being required to 'have due regard for the need to' the public authority must 'take all reasonable steps' to eliminate inequality and discrimination.

Probing Amendments 38-43 & 45-52 (John McDonnell MP) is a different way of strengthening the new single Equality Duty (Clause 145) to mean that instead of merely being required to 'have due regard for the need to' the public authority must 'pursue by all appropriate means the fostering of' the elimination of inequality and discrimination.

Re: HARASSMENT

Amendment 33 (John McDonnell MP) deletes 'on at least two other occasions', so that employers are obliged to protect workers' from any incidence of harassment by a third party.

For full text of the amendments and new clauses go to Annex One.(Page 9)





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New Clause 24 Time off for Workplace Equality Representatives *(John McDonnell MP)*

New Clause 24 introduces statutory rights for trade union Equality Representatives. The trade union movement has expressed disappointment that the Equality Bill has not made provision for statutory rights (including the right to time off) for Equality Representatives despite past indication from the Government that it was committed to '*strengthening*' their role.

Equality Representatives are given specialist training to represent and advise workers on their statutory equality rights (including equal pay) and to work with employers to tackle discrimination where it occurs. Unlike other union representatives, including union learning reps and safety reps, equality reps have no right to paid time off to do their duties and to be trained.

Health and Safety Reps have played a key role in promoting safe workplaces and ensuring compliance with the 1974 Health and Safety Act and subsequent provisions. It is logical that Equality Reps could achieve similar results in promoting equality and in assisting employers in meeting their legal obligations under anti-discrimination laws. Most unions already train workplace reps to undertake this role, but unless these reps have a recognised role in law and rights to a certain amount of time for their duties, their ability to affect change will be limited.

New Clause 24 puts union equality representatives on the same statutory footing as other unions representatives (e.g. Health and Safety Representatives), which would make a significant contribution in strengthening workers' trade union rights.

New Clause 33 Pay Audits *(Katy Clark MP)*

It is clear that if meaningful progress is to be made in ending pay discrimination then the onus must be put on employers to ensure that they are actively complying with the law. The overall gender pay gap, which compares the mean hourly rates of full-time and part-time men and women, is currently around 21 per cent, with the part-time gap being around 39 per cent. The gender pay gap actually widened between 2007 and 2008. The voluntary approach to equal pay audits is simply not working. Research from the Equality and Human Rights Commission (EHRC) shows that only 17% of employers have completed an equal pay audit.





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Mandatory pay audits should be introduced for employers to identify any disparity in pay between men and women doing work of equal value and produce action plans to rectify the anomalies. In this way any woman will be able to identify if she is being fairly and legally paid. The trade union movement has long campaigned for mandatory equal pay evaluation to be undertaken by employers, particularly in the private sector. However, the Government are still relying on this being done largely voluntarily by employers.

The Government's **Clause 75** of the Equality Bill makes provisions for a more mandatory approach to be taken in relation to pay audits. However the clause is very limited and only empowers a minister to be able to make regulations *in the future* to require employers with 250 or more employees to publish information, despite those employed by enterprises of less than 250 employees or small and medium enterprises making up around 59% of enterprise employment.

The Liberals' **New Clause 3** only covers enterprises over than 100 employees - this still excludes a large proportion of employees in the private sector.

Therefore Katy Clark MP has tabled **New Clause 33** to ensure that employers, with 21 or more employees (which relates to the trade union recognition threshold), would be obliged to produce pay audits.

OTHER AMENDMENTS

Re: MINIMUM WAGE

- **Amendment 24 (John McDonnell MP)** deletes the exemption to allow the setting of different National Minimum wage rates for different age groups.

It is extremely disappointing that Paragraph 11 of Schedule 9 provides an exemption to the protection against age discrimination in relation to the National Minimum Wage. At the moment the hourly rate that workers are entitled to is subject to age - with workers over 22 being entitled to £5.80 compared to £4.83 for workers aged 18 to 21 and £3.57 for young people.¹

¹ From October 2009





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Workers should be paid a fair rate for the job, and preservation of this discrimination only serves to underline that young workers are valued less than their older colleagues.

Amendment 24 deletes the exemption to allow the setting of different National Minimum wage rates for different age groups.

Re: PUBLIC SECTOR EQUALITY DUTY

There are now various equality duties – for race, gender and disability - on public sector organisations which have required listed public authorities to publish some kind of equality scheme.

The existing duties have failed to force public bodies to review their practices and implement reforms in the comprehensive and robust way needed. Experience with all three duties has demonstrated that compliance with the duties can become a 'box ticking' exercise in procedure.

Trade unions have been particularly disappointed by employers' disregard for the need to undertake equality impact assessments in relation to their employment policies affecting pay, job cuts and enforced relocation that has had a significant adverse impact on our women, black and minority ethnic and disabled members.

The Public and Commercial Services Union (PCS), the largest trade union in the civil service with over 315,000 members, is taking legal action against the Department for Transport over disparity in pay rates as a result of gender segregation within the department and have argued that it has failed in its duty to implement the Gender Equality Duty.

PCS also took judicial review action with regards to BERR. Originally the department argued that the trade union could not bring judicial review action because the matter was for the individuals involved and thus the route for legal action would be through an employment tribunal. Although PCS were overall unsuccessful in this case, the judge did agree that PCS had the right to bring the matter to judicial review. Therefore there is an obvious lack of clarity regarding the concrete obligations the duty puts on the public authority and what can be done in respect to enforcement.

Clause 145 introduces a new public sector duty covering all the anti-discrimination strands putting a duty on public bodies to 'have due regard' to promote equality.

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The creation of a new single public sector equality duty is generally welcomed and should ensure public authorities are providing public services to all parts of the community. However, the application of the of the existing duties have shown the need for stronger wording that places clear positive obligations on the public sector to take action to address inequality accompanied by robust enforcement mechanisms.

In examples of more progressive equality duty legislation (e.g. Northern Ireland fair employment legislation) tighter requirements are accompanied by more specific objectives. Strong penalties and enforcement mechanisms attach to very specific requirements such as private and public sector reporting and monitoring by a designated equality body. It is widely thought that the Northern Irish system has been effective in reducing the discrimination that fuelled sectarian conflict.

The TUCG has worked with John McDonnell MP to table a number of probing amendments to raise concerns around the problems of enforcement.

- **Amendments 25-29 & 32 (John McDonnell MP)** would strengthen the new single Equality Duty (Clause 145) to mean that instead of merely being required to 'have due regard for the need to' the public authority must '*take all reasonable steps*' to eliminate inequality and discrimination.
- **Amendments 38-43 & 45-52 (John McDonnell MP)** strengthen the new single Equality Duty (Clause 145) to mean that instead of merely being required to '*have due regard for the need to*' the public authority must '*pursue by all appropriate means the fostering of*' the elimination of inequality and discrimination. This refers to the CEDAW Convention, which is an UN human rights convention on the elimination of discrimination against women.
- **Amendment 30 (John McDonnell MP)** adds a duty to consult with service users and trade unions.
- **Amendment 44 (John McDonnell MP)** widens the definition of '*public function*' in relation to the definition of public authority, in order to raise the question of whether the duty applies to private companies providing public services

Re: HARASSMENT





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- **Amendment 33 (John McDonnell MP)** deletes ‘on at least two other occasions’, so that employers are obliged to protect workers’ from any incidence of harassment by a third party.

Protection against harassment of a worker by a third party (laid out in Clause 38) is welcomed in order to protect workers (e.g. such frontline public service workers) from harassment during the course of their job. Employers would be liable if they unreasonably failed to protect employees from third party harassment.

However, the clause states that a worker must be harassed ‘on at least two other occasions’ before there is duty on an employer to act.

Harassment is extremely distressing for a worker and this proviso is unacceptable.

Re: CLASS ACTIONS

The current legal framework puts the onus on the individual to bring a case after she or he has experienced discrimination.

Given that 70% of individuals who bring a discrimination claim have already left employment with that employer, the Bill contains an important provision that will enable tribunals to recommend changes to employment practices to ensure lessons are learned from individual cases and that the chance of further tribunal cases arising is minimised.

This is a welcomed step forward but trade unions have called for the ability for trade unions to take action on behalf of employees to take actions in discrimination cases.

Much pay discrimination is systemic and collectively affects a group of women, yet courts still have to hear each case individually. The financial and emotional costs are very high for an individual taking action. Representative actions would ensure that the individual employee would be less likely to be victimised.

- **Lynne Featherstone’s New Clause 4** would allow trade unions or the Equality and Human Rights Commission to apply to a court or tribunal for a representative action order in relation to a defined group of workers.

The TUCG would also like to see trade unions being allowed to apply to a court to take action against an employer for breaches of employee’s rights (as laid out under Part 5 of

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the Bill) where they have at least one member affected by the employers' actions. Rather than being on behalf of a 'defined group of workers' (i.e. for example female employees in relation to an equal pay claim) the trade union would be taking action against the employer for breaches of equality legislation. This would be particularly useful for cases relating to indirect discrimination, whereby the action would be taken regarding a general practice by the employer that disadvantages certain groups of workers but where it may be difficult to find individuals who are willing to put their head above the parapet.





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ANNEX ONE – Amendments and New Clauses

NEW CLAUSE 24 (*Time off for workplace equality representatives*)

John McDonnell
Katy Clark
Lynne Jones
Chris McCafferty
Linda Riordan
David Drew
Mike Wood
Kelvin Hopkins
Andrew Dismore MP
Alan Simpson MP

To move the following Clause:—

- (1) An employer shall permit an employee of his who is—
- (a) a member of an independent trade union recognised by the employer, and
 - (b) a workplace equality representative of the trade union,
- to take reasonable time off during his working hours for any of the following purposes.
- (2) The purposes are—
- (a) carrying out any of the following activities—
 - (i) promoting equality workplace initiatives and practices;
 - (ii) carrying out equality audits and assessments;
 - (iii) being consulted on workplace equality policies, practices and management systems;
 - (b) consulting the employer about carrying out any such activities;
 - (c) preparing for any of the things mentioned in paragraphs (a) and (b).
- (3) Subsection (1) only applies if—
- (a) the trade union has given the employer notice in writing that the





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- employee is a workplace equality representative of the trade union, and
- (b) the training condition is met in relation to him.
- (4) The training condition is met if—
- (a) the employee has undergone sufficient training to enable him to carry on the activities mentioned in subsection (2), and the trade union has given the employer notice in writing of that fact,
 - (b) the trade union has in the last six months given the employer notice in writing that the employee will be undergoing such training, or
 - (c) within six months of the trade union giving the employer notice in writing that the employee will be undergoing such training, the employee has done so, and the trade union has given the employer notice of that fact.
- (5) Only one notice under subsection (4)(b) may be given in respect of any one employee.
- (6) References in subsection (4) to sufficient training to carry out the activities mentioned in subsection (2) are to training that is sufficient for those purposes having regard to any relevant equality duty imposed by this Act or provision of a Code of Practice issued by ACAS or the Secretary of State.
- (7) If an employer is required to permit an employee to take time off under subsection (1), he shall also permit the employee to take time off during his working hours for the following purposes—
- (a) undergoing training which is relevant to his functions as a workplace equality representative, and
 - (b) where the trade union has in the last six months given the employer notice under subsection (4)(b) in relation to the employee, undergoing such training as is mentioned in subsection (4)(a).
- (8) The amount of time off which an employee is to be permitted to take under this section and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant equality duty imposed by this Act or





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provision of a Code of Practice issued by ACAS or the Secretary of State.

- (9) An employee may present a complaint to an employment tribunal that his employer has failed to permit him to take time off as required by this section.
- (10) References in subsection (2) to equality audits and assessments are to equality audits and assessments that are sufficient for those purposes having regard to the relevant equality duty imposed by this Act or provision of a Code of Practice issued by ACAS or the Secretary of State.
- (11) In subsection (2)(a), the reference to qualifying members of the trade union is to members of the trade union—
 - (a) who are employees of the employer of a description in respect of which the union is recognised by the employer, and
 - (b) in relation to whom it is the function of the workplace equality representative to act as such.
- (12) For the purposes of this section, a person is a workplace equality representative of a trade union if he is appointed or elected as such in accordance with its rules.
- (13) In this section “trade union” has the meaning given in section 5 of the Trade Union and Labour Relations (Consolidation) Act 1992.’

NEW CLAUSE 33_*(Mandatory Pay Audits)*

Katy Clark MP
Linda Riordan MP
John McDonnell MP
Diane Abbot MP
Glenda Jackson MP
Andrew Dismore MP
Dai Havard MP
Alan Simpson MP

- (1) Within six months of the day on which this Act is passed the Secretary of State shall by regulations require designated employers to conduct a pay audit and to publish information relating to the pay of its employees for the purpose of showing whether there are differences in the pay of male and female employees.

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- (2) Without prejudice to the generality of subsection (1) regulations made pursuant to subsection (1) shall require designated employers to publish information including—
- (a) the average hourly pay of male workers and the average hourly pay of female workers within its employment;
 - (b) in respect of each role within the organisation—
 - (i) the average pay awarded to workers engaged in the role;
 - (ii) the percentage of men and women engaged in that role;
 - (iii) the gap, if any, between the average hourly pay of male and female employees in that role; and
 - (iv) the average length of service of men and women engaged in that role; and
 - (c) information identifying—
 - (i) any description of activities carried out in the course of employment with the employer by any group of workers who are wholly or mainly women;
 - (ii) any descriptions of activities carried out in the course of employment with the employer by any group of workers who are wholly or mainly men;
 - (iii) the relative values of the descriptions of activities falling within paragraph (c)(i) and paragraph (c)(ii) respectively; and
 - (iv) in relation to descriptions of activities within paragraph (c)(i) and paragraph (c)(ii) which are judged to be of equal value to each other, the average hourly pay of male workers and average hourly pay of female workers carrying on those activities.
- (3) For the purposes of this section, “pay” means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or kind, which the worker receives directly or indirectly, in respect of his employment, from his employer and includes the cost to the employer of—
- (a) any pensions contributions paid by the employer in respect of the worker,

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- (b) any bonus or other performance related or incentive payment; and
 - (c) any discretionary benefit granted to a worker in connection with his or her employment.
- (4) Without prejudice to the generality of subsection (1) regulations made pursuant to that subsection shall specify the process which an employer must follow in conducting a pay audit, the form in which the information must be published, and the degree and means of publicity to be made.
- (5) In making regulations pursuant to subsection (1) the Secretary of State shall adopt best practice for promoting awareness of the nature and causes of any pay gap between persons of different genders as set out by the International Labour Organisation from time to time.
- (6) The Secretary of State shall consult with the Equality and Human Rights Commission as to how to ensure that the regulations shall reflect best practice prior to the making of the first regulations and no less than every five years thereafter and shall amend the regulations as necessary to ensure that best practice is maintained.
- (7) Without prejudice to the generality of subsection (1) regulations made pursuant to that subsection shall provide that where an employer fails to publish information as required by regulations made pursuant to subsection (1) an employer shall not be entitled to submit a material factor defence in accordance with section 64 in relation to any period for which they are in breach of their obligations under those regulations.
- (8) Where the information published by an employer reveals that there is a difference in the average pay of men and women doing relevant types of work as set out in section 59, then in any proceedings to enforce a sex equality rule or sex equality clause it shall be presumed that there is such a breach unless the employer can show a material factor defence.
- (9) Regulations made pursuant to subsection (1) may make provision for a failure to comply with the regulations—
- (a) to be an offence punishable on summary conviction by a fine not





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exceeding level 5 on the standard scale;

- (b) to be enforced, otherwise than as an offence, by such means as is prescribed.
- (10) The reference to a failure to comply with the regulations includes a reference to a failure by person acting on behalf of an employer.
- (11) Regulations made pursuant to subsection (1) shall provide that an employer must conduct a pay audit and publish information relating to the pay of its employees within six months of the coming into force of the regulations.
- (12) Regulations made pursuant to subsection (1) shall provide that where an employer (A) is able to determine the terms and conditions of employment as between another employer (B) and its employees, A shall publish the information that B would otherwise be required to publish in a way which is consolidated with the information for all other employees of A whose terms and conditions A may determine, and where A publishes consolidated information B shall not be in breach of those regulations if it does not publish any information.
- (13) A designated employer means an employer who has no less than 21 employees.
- (14) Regulations made pursuant to subsection (1) shall require designated employers publishing information in relation to the average hourly pay of employees to specify how much of the hourly rate constitutes ordinary basic or minimum wage or salary and how much, if any, constitutes other consideration and to specify the types and amounts of any such other consideration.’

PUBLIC SECTOR EQUALITY DUTY

John McDonnell MP

AMENDMENT 25

Page 91, line 18 [*Clause 145*], leave out ‘have due regard to the need’ and insert ‘take all reasonable steps’.

AMENDMENT 26

Page 91, line 29 [*Clause 145*], leave out ‘Having due regard to the need’ and insert

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‘Taking all reasonable steps’.

AMENDMENT 27

Page **91**, line **31** [*Clause 145*], leave out ‘having due regard, in particular, to the need’ and insert ‘taking all reasonable steps’.

AMENDMENT 28

Page **91**, line **40** [*Clause 145*], leave out ‘having due regard to the need’ and insert ‘taking all reasonable steps’.

AMENDMENT 29

Page **91**, line **42** [*Clause 145*], leave out ‘having due regard, in particular, to the need’ and insert ‘taking all reasonable steps’.

AMENDMENT 30

Page **92**, line **13** [*Clause 145*], at end insert—

- (6A) In determining what constitutes all reasonable steps the public authority shall consult all those potentially disadvantaged by the exercise of its functions or their representatives.
- (6B) Where the exercise of its function affects employees, the duty to consult shall include consultation with employees, trade unions and employees’ representatives.’.

AMENDMENT 32

Page **91**, line **27** [*Clause 145*], leave out ‘have due regard’ and insert ‘take all reasonable steps’.

AMENDMENT 38

Page **91**, line **18** [*Clause 145*], leave out ‘have due regard to the need to’ and insert ‘pursue by all appropriate means’.





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AMENDMENT 39

Page 91, line 29 [*Clause 145*], leave out 'Having due regard to the need to advance' and insert 'pursuing by all appropriate means the advancement of'.

AMENDMENT 40

Page 91, line 31 [*Clause 145*], leave out 'having due regard, in particular, to the need to' and insert 'pursuing by all appropriate means'.

AMENDMENT 41

Page 91, line 40 [*Clause 145*], leave out 'Having due regard to the need to foster' and insert 'pursuing by all appropriate means the fostering of'.

AMENDMENT 42

Page 91, line 42 [*Clause 145*], leave out 'having due regard, in particular, to the need to' and insert 'pursuing by all appropriate means'.

AMENDMENT 43

Page 91, line 27 [*Clause 145*], leave out 'have due regard to' and insert 'pursue by all appropriate means'.

AMENDMENT 44

Page 92, line 31 [*Clause 146*], leave out from second 'function' to end of line 32 and insert 'of a public nature'.

AMENDMENT 45

Page 91, line 20 [*Clause 145*], leave out 'eliminate' and insert 'the elimination of'.

AMENDMENT 46

Page 91, line 22 [*Clause 145*], leave out 'advance' and insert 'the advancement of'.

AMENDMENT 47

Page 91, line 24 [*Clause 145*], leave out 'foster' and insert 'the fostering of'.

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AMENDMENT 48

Page 91, line 32 [*Clause 145*], leave out 'remove or minimise' and insert 'the removal or minimising of'.

AMENDMENT 49

Page 91, line 35 [*Clause 145*], leave out 'meet' and insert 'the meeting of'.

AMENDMENT 50

Page 91, line 37 [*Clause 145*], leave out 'encourage' and insert 'the encouragement of'.

AMENDMENT 51

Page 91, line 43 [*Clause 145*], leave out 'tackle' and insert 'the tackling of'.

AMENDMENT 52

Page 92, line 1 [*Clause 145*], leave out 'promote' and insert 'the promotion of'.

THIRD PARTY HARASSMENT

AMENDMENT 33

John McDonnell MP

Page 22, line 17 [*Clause 38*], leave out 'on at least two other occasions'.

MINIMUM WAGE

AMENDMENT 24

John McDonnell MP

Page 165, line 11 [*Schedule 9*], leave out paragraph 11.



THE TRADE UNION CO-ORDINATING GROUP

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