

Equality Statement:

Amendment to Employment Rights Act 1996 (s.50) by SI to include Lay Observers, Independent Prison Monitors, Independent Monitoring Board (IMB) members in the Immigration Detention Estate (IDE) and IDE IMBs for short-term holding facilities (STHF) in provision for statutory time off work to perform their public duties.

Policy summary

1. The Lay Observers require more members to maintain an appropriate level of monitoring. The Lay Observers, Independent Prison Monitors (in Scotland) and IMBs have age imbalances in favour of older age groups, which has a negative effect on diversity statistics. IMBs for prisons are already included in provision for statutory time off work, but IMBs for the Immigration Detention Estate (IDE) (also known as 'visiting committees' and referred to as such in the legislation), IDE IMBs for STHF, the Lay Observers and Independent Prison Monitors are not. This appears to be an oversight. Government intervention is required to increase Lay Observer numbers and, for those with full time employment, who tend to be younger, to provide fairer access to membership for all four groups.
2. The policy objectives are to increase diversity and encourage applications for each group and to remove disparity regarding provision for time off work between groups of volunteer prison monitors. We wish to amend the Employment Rights Act 1996 (s.50) by SI to include Lay Observers, Independent Prison Monitors, IDE IMBs and IDE IMBs for STHF in provision for statutory time off work to perform their public duties. Employers will be expected to grant time off work unless there is a good reason for not doing so. This will encourage younger applicants to these groups. Younger applicants are more likely to be full-time employed and deterred from applying due to the need to take time off work. This will increase membership for the Lay Observers and improve diversity statistics (particularly in terms of age) for all four groups.

Equality duties

Section 149 of the Equality Act 2010 ("the Act") requires Ministers and the Department, when exercising their functions, to have 'due regard' to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act;
- advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
- foster good relations between different groups (those who share a relevant protected characteristic and those who do not).

Paying "due regard" needs to be considered against the nine "protected characteristics" under the Act, namely: race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

3. We have summarised our assessment of the impacts of the reforms against each of the three limbs of the Public Sector Equality Duty (PSED) below.

A. Eliminating unlawful discrimination, harassment and victimisation and other prohibited conduct

Direct discrimination

4. Direct discrimination occurs when a policy would result in people being treated less favourably because of a protected characteristic.

5. The SI we propose is not directly discriminatory within the meaning of the Equality Act 2010 as the changes will be applied in the same way to all Lay Observers, Independent Prison Monitors and IDE IMB members (including those for STHF) irrespective of their protected characteristics. The SI will not result in people being treated less favourably because of their protected characteristics.

Indirect discrimination

6. Indirect discrimination occurs when a policy is applied in the same way to all individuals, but would put those sharing a protected characteristic at a particular disadvantage compared to those who do not share the protected characteristic.
7. The SI we propose is not indirectly discriminatory within the meaning of the Equality Act 2010. Indeed, it redresses the current discriminatory aspect of the existing legislation.
8. **Age:** Lay Observers, Independent Prison Monitors and IDE IMB members are not currently given statutory time off work to perform their duties, which is a deterrent to application from those with full time employment. This is illustrated by the fact that 79% of recent IMB appointees were over 35, and 42% over 55. Age data is only available for a third of Lay Observers, but of these 81% were over 55. 28.2% of the UK population was 55 and older at the 2011 census; 71.8% was under 55, and 47.9% was between 20 and 54.¹ Younger age groups are more likely than older age groups to have full-time employment. 64% of full time employed people are over 35 and only 16% are over 55.² Age is a protected characteristic. Therefore, our SI aims to protect younger age groups from indirect discrimination.
9. **Disability:** Lay Observer statistics indicate that 6% of active Lay Observers have declared themselves disabled, but there is no indication of response rate and so it is unreliable. Of recent IMB appointees, 83% declared no disability, 5% declared a disability, and 7% preferred not to say. However, this was based on only a 54% return rate of diversity questionnaires. Diversity statistics for Independent Prison Monitors are not recorded. 22% of the UK population reported having a disability in 2016/7.³ 45% of people at state pension age reported a disability but only 19% of working age adults. Therefore, the SI, which aims to attract working age adults rather than the retired, may reduce the percentage of members with disabilities in each organisation. We believe this is a proportionate approach since the benefits in increasing equality of access for younger, working individuals outweigh any potential disadvantages to older, disabled individuals.
10. **Race:** From an unreliably low response rate of 37%, 85% of Lay Observers are White British, 8% are Asian and 8% are Black. 70% of recent IMB appointees are White, 12% are Black, 9% are Asian and 9% prefer not to say. This is based on a low response rate of 54%. Diversity statistics for Independent Prison Monitors are not recorded. At the 2011 census 87% of the UK population identified as White, 4.9% as Asian (Indian, Pakistani and Bangladeshi), 3% as Black, 2% as Mixed/Multiple Ethnic Groups, 1.4% as Asian (Other), 0.9% as Other Ethnic Group, 0.7% as Chinese and 0.1% as Gypsy/Traveller.⁴ We do not believe the SI will disproportionately affect people of certain races or alter the racial profiles of the three organisations.
11. **Religion:** From an unreliably low response rate of 37%, 69% of Lay Observers are Christian, 23% are Not Religious and 8% are Sikh. 56% of recent IMB appointees are Christian, 35 are Atheist, 5% are Sikh and 5% prefer not to say. This is based on a low response rate of 54%. Diversity statistics for Independent Prison Monitors are not recorded. In the 2011 census 59.5% identified as Christian, 25.7% as No Religion, 7.2%

¹ 2011 Census

² Nomis, period July 2016-June 2017

³ Family Resources Survey, 2016-7

⁴ 2011 Census

as None Stated, 4.4% as Muslim, 1.4% as Hindu, 0.7% as Sikh, 0.5% as Jewish, 0.4% as Buddhist and 0.4% as other.⁵ We do not believe the SI will disproportionately affect people of certain religious beliefs or alter the religious profiles of the three organisations.

12. **Sex:** From a low response rate of 51%, 78% of Lay Observers are Male and 23% are Female. 58% of recent IMB appointees are Male and 42% are Female. This is based on a low response rate of 54%. Diversity statistics for Independent Prison Monitors are not recorded. We do not believe the SI will disproportionately affect a certain sex or increase the balance between male and female membership of any of the organisations.
13. **Sexual Orientation:** From a low response rate of 46%, 100% of Lay Observers are Heterosexual. 88% of recent IMB appointees are Heterosexual, 7% are Lesbian, Gay, or Bisexual and 5% prefer not to say. This is based on a low response rate of 54%. Diversity statistics for Independent Prison Monitors are not recorded. 2% of the UK population identified as Lesbian, Gay or Bisexual in 2016.⁶ We do not believe the SI will disproportionately affect anyone based on their sexual orientation or affect the diversity balance of the organisations in terms of sexual orientation.
14. **Other Protected Characteristics:** We do not have any significant data on the other protected characteristics within these organisations (pregnancy/maternity, gender reassignment, marriage/civil partnership). However, we do not believe our SI proposal will put people at a particular disadvantage in terms of these three protected characteristics or affect the diversity balance of the organisations in terms of these protected characteristics.
15. Even if our SI proposal could be shown to put people with a protected characteristic at a particular disadvantage, we believe it is a proportionate approach to the legitimate aim of increasing equality of access to membership of the four organisations for the largest number of people. We do not believe that any disadvantage would be significant enough to outweigh the increased equality of access to membership in terms of age.

Harassment, victimisation and other prohibited conduct

16. We do not foresee an increase or reduction in harassment, victimisation or other prohibited conduct as a result of our proposed SI.

B. Advancing equality of opportunity between different groups of persons who share a protected characteristic and those who do not

17. This part of the duty relates to the need to remove or minimise disadvantages suffered by people due to their protected characteristics, and to take steps to meet the needs of people who share a protected characteristic, where those needs are different from the needs of those who do not share that protected characteristic.
18. Our SI will minimise the disadvantage of having full-time employment for becoming a member of the Lay Observers, Independent Prison Monitors, an IDE IMB or an IDE IMB for STHF. 84% of the full time employed are under 55.⁷ The need to take time off work to perform their duties is a deterrent to this group joining the three monitoring bodies in question. Therefore, our SI advances equality of opportunity regarding the protected characteristic of age, by reducing the disadvantage for the young of being full-time employed and encouraging participation by this underrepresented group.

C. Foster good relations between different groups

19. This is the requirement to foster or encourage good relations between people who share a protected characteristic and those who do not. The prison and IDE population is

⁵ 2011 Census

⁶ Office for National Statistics, 'Sexual Identity, UK: 2016' (2017)

⁷ Nomis, period July 2016-June 2017

relatively young with only 15% of prisoners over 50 and 35% under 30. In stark contrast, 42% of recent IMB appointees were over 55 and 79% over 35.⁸ Part of the IMB, Independent Prison Monitor and Lay Observer roles is to hear and report complaints from prisoners. We believe that people in custody will be more likely to engage with monitors who are nearer to their own age and to report problems to them. Conversely, monitors may better understand problems faced by people in custody to whom they are nearer in age. We believe our SI will foster good relations between people in custody and their monitors in this way. If more problems are reported by people in custody, it provides prisons and the Government with more data on how to improve conditions. Improving conditions could foster good relations between people in custody and the prison and immigration detention estates and Government.

D. Welsh Language

20. We have considered the Ministry of Justice's Welsh Language Scheme and intend to translate the SI and this Equality Statement into Welsh.

⁸ The age breakdown of Independent Prison Monitors is not available. However, HMIP Scotland estimates that 30% of Independent Prison Monitors are retired, which implies a similarly skewed age profile in favour of older groups.