



NEWS REPORT

Date: 31 March 2009
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Title: UK Considering Whether to Amend its Existing Disability Discrimination Law To Prohibit Indirect Discrimination on the Grounds of Disability
Country: UK

Context

Issue at stake: Whether Indirect Discrimination on the Grounds of Disability Should be Prohibited In Place of the Current UK ban on 'Disability-Related' Treatment
Ground of discrimination: Disability
Source: Consultation Document
Field: All
Legislative provisions: Disability Discrimination Act 1995

Content:

Political development: UK discrimination law currently prohibits direct discrimination on the grounds of disability, but also prohibits 'less favourable treatment' on the grounds of disability (disability-related discrimination): indirect discrimination on the grounds of disability as such is not prohibited, on the basis according to successive UK governments that the 'less favourable treatment' test used for disability-related discrimination is a more effective and clear test. However, the decision of the House of Lords (the UK's highest court) judgment in *Lewisham v Malcolm* in 2008 (Flash report 131-UK-9-Malcolm) has made it more difficult for a disabled person to show that they had been subject to 'less favourable treatment' for a reason related to their disability (disability-related discrimination), by altering the comparator requirement for disability. The UK government as part of its preparation of a single codified equality law (to be introduced in the form of a Bill in April 2009) has proposed to remedy the effect of the *Malcolm* decision by removing the current protection offered in the Disability Discrimination Act 1995 against disability-related discrimination, the scope of which appears to have been substantially limited by *Malcolm*. In its place, the government proposes prohibiting indirect discrimination against disabled persons. In addition, the government proposes that a failure to make reasonable accommodation should prevent an employer or service provider attempting to argue that a provision, practice or criterion which has a disparate impact on



persons with disabilities is objectively justified. (Direct discrimination on the grounds of disability is prohibited, as required by the Employment Equality Directive 2000/78/EC).

Internet link source and additional information: See the consultation paper, *Improving Protection Against Disability Discrimination*, at <http://www.officefordisability.gov.uk/docs/indirect-discrimination.pdf>