

Focus on women

Issue 2 Summer 2005

Welcome to the second edition of the Rights of Women policy newsletter *Focus on Women*. We hope that you will find this issue just as informative and interesting as the first issue.

Once again, we would welcome any feedback or comments on this newsletter. These can be sent to Heather Beckwith, our Policy Officer, at Heather@row.org.uk

Further information and resources are available on our website at www.rightsofwomen.org.uk.

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Identity Required

The Identity Cards Bill was introduced to Parliament on 25th May 2005. The reasoning given behind the introduction of the Bill was that proposals were needed to strengthen national security and protect people's identity eg identity fraud and theft, to help tackle illegal workers and immigration abuse and to ensure that free public services are only used by those who are properly entitled to use them.

Current proposals mean that registering for an Identity Card will not be compulsory to begin with, although it is likely that compulsory registration will follow soon after the scheme is introduced.

The proposed format for the identity card is that the card will be based on biometric identifiers. Biometrics are unique identifying physical characteristics such as iris patterns, fingerprints or facial recognition. It is argued that using biometrics will make it extremely difficult for people acting in a fraudulent way to obtain more than one card.

How will it work?

Anybody over the age of 16 and who has been a resident in the UK for a minimum of 3 months will be eligible to have an ID card.

All those people who have registered and have been issued with an ID card will have their information held on a National Identity Register.

The Register will hold details such as name, address and date of birth. The Bill will strictly limit the information that can be held on the Register i.e. sensitive information such as religion, racial or ethnic origin will not be held on the Register.

What effect will this have on our service users?

For women who are on a low income or may be on benefits, the cost of applying for an identity card is very high. If the card is to become compulsory, it does not seem fair that the applicant has to bear the expense, especially as many people will already have a passport which provides much of the same information that their identity card will.



A worrying concern voiced by many minority ethnic groups is that women from Black and Minority Ethnic (BME) groups will face even more discrimination with the implementation of identity cards. Firstly, although the Bill does not currently provide such powers, if the police believe that their role is one which allows them to stop and demand to see a person's identity card, it is feared that women from BME groups will be asked to produce more often than people from white groups, therefore discriminating further. Secondly, without the production of an identity card, access to certain services and provisions may be denied, thus increasing the risk of potential discrimination.

Rights of Women have deep concerns about who will have access to the information and how any information held on the National Register will be used. For women fleeing a violent partner, protection of her identity and new address is crucial. We are obviously concerned about the possibility that sensitive information may be inadvertently passed to other Government and council departments and eventually to individuals who may assist people in "finding out" about the whereabouts of a woman who is trying to begin a new life by releasing confidential information about her, thus endangering her safety.

The Bill has yet to receive Royal Assent, which is unlikely to happen before 2008. Once the Bill has become Law, the first identity cards can be issued.

Acquiring Recognition

The Gender Recognition Act 2004 received Royal Assent on 1 July 2004. The Act gives transsexual people the legal right to live in their acquired gender and to gain legal recognition in their acquired gender.

Prior to the Act, transsexual people were not treated as being of their acquired gender in law and therefore did not have any of those rights which that specific gender may have been entitled to in Law. Their birth certificates stated that they were one gender but they were in fact living as the opposite gender. With the new Act this will change and from the date of recognition, transsexual people will be able to marry in their acquired gender and have birth certificates which recognise their acquired gender.

How to have your acquired gender recognised in law

An application needs to be made to the Gender Recognition Panel for legal recognition in the acquired gender. This application will be submitted along with any evidence as required by the panel.

The panel consists of both legal and medical members.

There will not usually be a hearing to determine a case. Most applications will be decided on the papers and evidence provided with the application.

Once an application has been successful, the applicant is issued with a full gender recognition certificate and the person's gender will become their acquired gender.

In addition to the rights mentioned above, from the date of recognition, transsexual people will be eligible for the State retirement pension and other benefits at the age appropriate to the new gender and if their birth has been registered in the UK, they will also be able to apply for a new birth certificate and/or passport in their newly acquired name and gender.

Discrimination

It is already unlawful under section 2(A)The Sex Discrimination Act 1975 (as amended), to discriminate against a person in relation to employment and vocational training on the grounds that they intend to undergo, are undergoing or have undergone gender reassignment. Under the provisions of the new Act, once a person has registered in their new acquired gender, that employee must be treated no less favourably by an employer than other employees of the same acquired sex. In addition to employers, no other person/group will be able to discriminate against a transsexual woman on the grounds of sex for any other reason.

The Gender Recognition Act ensures that a person's gender history remains confidential by defining information relating to the Gender Recognition process as "protected information". Any person who receives "protected information" in an official capacity and discloses that information without the consent of the person in question would be breaking the law. There is a list of exemptions which allows for disclosure without consent in exceptional circumstances. This can be found at S22(4) of the Gender Recognition Act.

What will this act mean for transsexual women in the long run?

Transsexual women who have received a full Gender Recognition Certificate can lawfully marry a person of the opposite sex. Without this certificate, a transsexual woman remains in the eyes of the law, male and therefore can only marry a woman.

A transsexual woman who has successfully applied for a full Gender Recognition Certificate will also be offered a new birth certificate in their acquired gender. It should however, be noted, that if necessary, a transsexual person would still be able to obtain a birth certificate in their birth gender.

Other areas where official recognition of a transsexuals new gender will have effect are areas such as pension and retirement allowances, social security benefits and inheritance.

For thousands of transsexual women in Britain, this is the first time that they will be able to receive legal recognition of their acquired gender and live their lives in that gender.

Canada and the Proposal to Introduce Sharia Law

There is a potentially worrying situation developing in Ontario, Canada, where the Government of Ontario is considering the introduction of Sharia law courts in family law disputes.

Sharia law is Islamic law based on the interpretation of the Qur'an. Canadian groups and organisations have been anxiously campaigning against this with the obvious concern being the power imbalances that the Sharia law strives to maintain at the expense of equality for women.

The Attorney General and the Minister for Women's Issues in Canada recently commissioned a report by Margaret Boyd (a former Attorney General and Minister Responsible for Women's Issues), to review the use of arbitration for family law and inheritance matters and to look at any current problems with the Canadian Arbitration Act 1991, with specific reference to faith-based arbitration. The conclusion of Ms Boyd's report was to make recommendations that Sharia law courts should be set up in Ontario in line with that Act and that faith-based arbitration should be used and encouraged.

Under the Canadian Arbitration Act 1991, family law disputes can be resolved outside the law courts by arbitrators according to their own religious and cultural beliefs. The Act was originally passed in an attempt to streamline the overloaded court system by diverting certain civil cases to arbitration. Protesters state that Family matters should never have been included under the Act's scope.

Those opposing Sharia being introduced also claim that the Ontario Government is proposing to "pick and choose" elements of Sharia for use in family arbitration without looking at the consequences or the effects that a two tier legal system comprising of secular and religious courts would have. They state that for Sharia to work appropriately or fairly, it cannot be utilised in a patchwork fashion or customised for specific countries. Religious tribunals can at present make binding rulings on family legal matters based on formal and informal religious laws, codes and values.

Problems and consequences of the Sharia law motion being passed

Which version of Sharia would be used for civil matters in Canada? The Canadian Arbitration Act simply allows any legal framework they wish. This therefore means that the parties involved may agree to very specific "strict" interpretation of Sharia or may decide on a more general approach.

The variation in definition is great. Sharia in Nigeria for example can be used to justify death by stoning. Whatever the definition, throughout countries, Sharia is strongly patriarchal and there is no unified interpretation of it.

There will be no third party overseeing proceedings and no duty to report decisions. There would also appear to be no

limitations on what can or cannot be implemented. No external body will ever know whether decisions being made are conflicting with Canadian Civil Law which they are not supposed to do and whether issues are being fairly decided upon. The equality of women in this situation is therefore seriously demised.

Many Muslim women in Canada are strongly opposed to the introduction of Sharia and the belief that its introduction will be beneficial to them. They state that the Canadian constitution protects women and children better and grants them more rights than Sharia which was devised almost exclusively by men with men's interest in mind.

Women from Muslim countries whose first language may not be English or may be poorly educated can become very isolated in their new country. They may be completely dependent on family members or members of the community who hold extremely traditional and patriarchal views. They would have no idea of their rights under Canadian Law and as such, may be placed in an extremely vulnerable position. Arbitration may seem better than what was available in their country of origin. If she is in the country on the basis of her husband's immigration status, there may be an unequal power relationship which will make it nearly impossible for the woman to refuse a request from her husband. This will mean that if he says he wants to go through the arbitration process using Sharia law, whether or not the woman agrees with this, she may feel that she has to consent.

The future?

In a unanimous vote on 26 May 05, Quebec rejected the use of Islamic tribunals in their province. The decision about whether or not to implement the motion in Ontario has been postponed with the Ontarian Government stating that they "want to make sure that we get it right". We hope that the Ontario province follows Quebec's example and can see the dangerous impact that the implementation of Sharia law would have on the lives of Muslim women in Canada.

Emails of support can be sent to the Canadian Council of Muslim Women at: hogben@kingston.net or to the provincial Ontario Premier directly at: webprem@gov.on.ca

Access to Justice Update

Following the Rights of Women's Access to Justice Meeting held in March this year, we have continued to apply pressure on the MPS and ministers to make them aware of and recognise the detrimental effect that the Government's new proposals will have on women. Prior to the General Election in May 05, we sent out letters to every single MP expressing our thoughts and concerns about the state of Civil Legal Aid Funding in the UK. We also sent a similar letter to The Department of Constitutional Affairs.

The response has been somewhat disappointing. We have had almost 30 replies to our letters although many of these took the form of simply stating that our concerns had been noted and would be investigated further.

The DCA sent us a more comprehensive response tackling each point that we made in our letter in turn. Below is a brief summary of the DCA's response and the Rights Of Women's follow up.

Regarding our first point about the reduction of the disposable income limit from £702 to £632 and how this was more likely to disproportionately affect more women than men as there were a greater number of women than men who would fall into the "lower" earnings bracket. The DCA's response was that alongside this reduction, a discretion for the disposable income limit to be waived for victims of domestic violence seeking protection from the court would be introduced. The DCA believed that this would actually improve access to Legal Aid for domestic violence victims.

Rights of Women welcomed this measure but expressed their reservations in our subsequent letter. We re-iterated our view that without a unified and agreed definition of domestic violence, it would be extremely difficult to determine who is or is not eligible for the discretion. We also wanted to know what definition of domestic violence the Legal Services Commission would be working to.

The second point that the DCA commented upon was our concern that the proposals sought to impose mediation as a prerequisite to providing legal aid funding. The DCA's only comment on this was to assure us that they had no intention of forcing the victims of domestic violence to negotiate with their abusers. Rights of Women welcome this but have

replied to the DCA stating that as mediation will still be used where the DCA believe it is appropriate, we would like to see any guidelines and safeguards which are being proposed prior to their implementation. This, we feel is necessary as domestic violence can take many different forms and it is essential that all these situations are adequately covered.

The DCA has stated that they are currently carrying out further research with regards to the proposal which would see women who are involved in contested ancillary relief litigation refused legal aid if private funding is available. We welcome the fact that the DCA has recognised that this is an area that needs to be looked at extremely carefully prior to any decision being made about whether this proposal should or should not be implemented. In our response to the DCA, Rights of Women has stated that we believe that the DCA should consult women's and other legal organisations again with regards to the issue of private funding.

In our response to the DCA's letter, we also emphasised the point that we felt that the Government needed to ensure that there is an adequate budget for civil legal aid and that the growth of the criminal legal aid budget was not at the expense of the civil legal aid budget as this is where many women are or will be affected.

In addition to this, Rights of Women have also written to all newly elected MPs to express our concerns about the current situation with regards to civil legal aid funding and urging them to ask questions in Parliament and seek changes and clarification to these proposals.

We urge groups and individual women to write to their local MPs supporting our arguments and concerns.

The Noticeboard

Rights of Women From Report to Court: A Handbook for Adult Survivors of Sexual Violence

The above handbook is now available in a handy A5 size as well as the original A4 size. As before, If you would like to obtain a copy, please send the appropriate sized Stamped Self Addressed Envelope for 71p (71p stamps covers the cost for one copy only) to Rights of Women, 52-54 Featherstone Street, London, EC1Y 8RT or it can be downloaded from our website at www.rightsofwomen.org.uk. If you are ordering more than five handbooks, please do not send stamps. Instead, enclose a cheque made payable to "Rights of Women" for the appropriate amount. We are also pleased to announce that the handbook will be available on our website from early August in a PDF format in the following languages: Chinese, French, Punjabi, Spanish and Somali.

Rights of Women are providing a free Sexual Violence Legal Advice Line to individual women and women's organisations. Information and advice on the following areas is available from the service.

■ Rape ■ Family Related Sex Offences ■ Sexual Assault ■ Trafficking ■ Child Sex Offences ■ General Criminal Legal Advice
Our female lawyers can be contacted on 020 7251 8887 (phone) or 020 7490 2562 (Textphone) on Mondays 11am – 1pm and Tuesdays 10am – 12 Noon.

Rights of Women have published a number of NEW information sheets including:

- A guide to Sexual Violence (Rape and other non-consensual offences)
- A guide to Sexual Harassment
- A guide to Lesbian Parenting and the Law
- A guide to Living Together and the Law

All of these information sheets are FREE and available by contacting us on 020 7251 6575 or they can be downloaded from our website www.rightsofwomen.org.uk

Rights of Women are currently seeking funding to publish a new Domestic Violence Handbook. The new edition will include information about the Domestic Violence, Crime and Victims Act which comes into effect late 2005.