

Legislation, policies and codes of practice

HEALTH, SOCIAL CARE AND EARLY years practitioners in the United Kingdom work within a **legal and ethical framework**. This means that care practitioners must follow and put into practice a range of laws, policies, codes of practice and charters in their work with service users. We look next at the different sources of equality law and the various methods through which these laws, and ethical values about what is right and wrong, and good and bad behaviour, are implemented by care organisations and care practitioners.

Sources of equality law in the United Kingdom

The laws that promote equality and protect equal rights in the United Kingdom come from a number of different sources. These sources include legislation passed by the British and European parliaments and decisions made by judges in British and European courts.

Legislation is the term given to **Acts of Parliament**, or **Statutes**, that have been passed by Parliament in the United Kingdom. A number of important pieces of legislation relating to equal opportunity and clients' rights have been enacted, or passed, by the United Kingdom Parliament. These include the Sex Discrimination Act 1975 and the Race Relations Act 1976. The way in which this kind of parliamentary legislation is developed is outlined in Figure 1.7.

Acts of Parliament set down the basic principles of law on particular issues, such as racial discrimination, in a formal, precise way. These legal principles are gradually tested and clarified when people bring cases of alleged unfair discrimination before courts of law. Judges then have to look at the facts of individual cases and decide whether and how the legal principles of the Act of Parliament can be applied. When a judge makes a decision that establishes a new legal principle, perhaps because a new situation or set of circumstances has arisen, they establish a **precedent**. This precedent, or decision, then applies to all cases in which the facts are the same as those of the original case. The series of precedents that have been established are collectively known as **case law**. The law on sex discrimination, racial discrimination and equal pay is now contained both in Acts of Parliament (The Sex Discrimination Act, Race Relations Act and Equal Pay Act, respectively) and in the case law that has been built up around each Act.

When the United Kingdom joined the European

Economic Community (EEC) in 1974, European legislation and European Court of Justice decisions became new sources of law affecting equality of opportunity issues. There are three different classes of European law affecting equal opportunities issues.

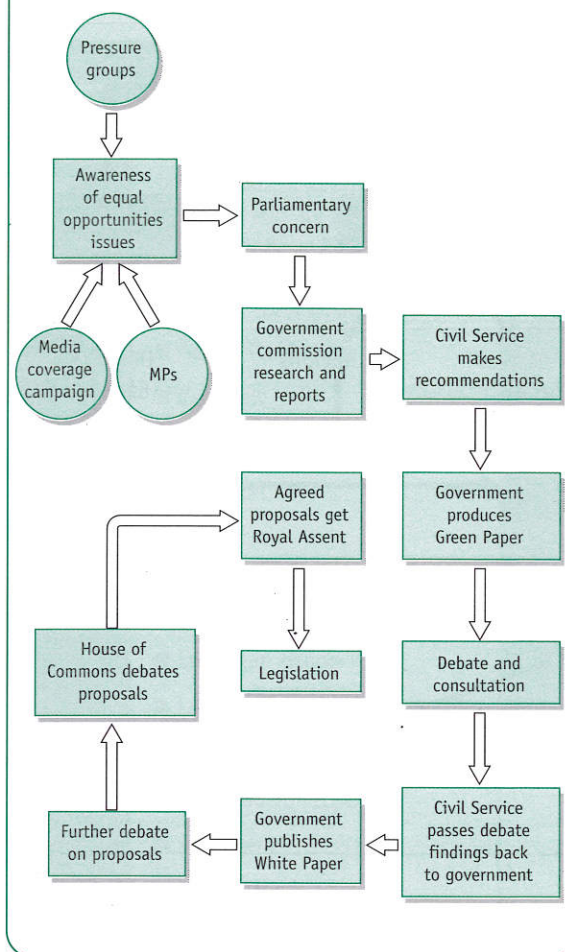
- **Regulations**, which must be applied directly and in their entirety by all Member States of the European Union. They are the strongest forms of European law.
- **Directives**, which must be applied by Member States to make their national laws compatible with all other Member States on particular issues.
- **Decisions**, which are the decisions of the European Court to whom an individual or organisation has appealed against a decision of the courts in the United Kingdom. A decision of the European Court of Justice must be followed by courts in the United Kingdom.

The EEC has now become the European Union (EU). An important legal consequence of the United Kingdom's membership of the European Union is that European law now takes precedence over the domestic law of the United Kingdom. This means that whenever there is a conflict between EU law and UK law, European law will prevail. For example, in the case of *Marshall v. Southampton and South-West Hampshire Area Health Authority* [1986], Marshall claimed that the health authority sexually discriminated against women by adopting a policy that employees should retire at the state pension ages of 60 for women and 65 for men. Although this policy was legal under domestic, United Kingdom law, it was argued and agreed by the European Court of Justice, that it was contrary to the European law (Equal Treatment Directive 76/207) on the same issue.

European law has been a major influence in the development of equality and anti-discrimination law in the United Kingdom since the 1970s. Governments in the United Kingdom have been forced to introduce a variety of measures that have improved the employment rights and opportunities of women in particular (see Figure 1.8).

Care organisations and care practitioners have to abide by and incorporate into their work the various parts of the law that seek to promote equality of opportunity and to protect the rights of individuals. They do this in a variety of ways. For example, care organisations produce policies and charters that set out

Figure 1.7: How legislation is developed



how they intend to offer their services and conduct their business. Care practitioners then have to make sure that they put the policies into practice in their work (see Figure 1.9). Policies, charters and codes of practice are discussed in more details later in the unit. Next we look at what the legislation relating to discrimination and rights actually says.

Figure 1.8: European legislation to improve women's employment rights

European legislation	Provisions
Equal Treatment Directive 76/207	Prevents discrimination on the grounds of 'marital or family status'
Employment Protection (Part-time employees) Regulations 1995	Gives all workers the same legal rights, regardless of the number of hours that they work
Pregnant Workers Directive 92/85	Gives all women the right to a minimum amount (14 weeks) of paid maternity leave regardless of their length of service
Equal Pay (Amendment) Regulations 1983	Allows women to claim equal pay for doing work that is of equal value to men employed in other jobs