Submission from the Centre for Diversity Policy Research and Practice, Oxford Brookes University to the House of Commons Women and Equalities Committee inquiry on Ensuring strong equalities legislation outside the EU.

Professor Lucy Vickers - lrvickers@brookes.ac.uk
Professor Simonetta Manfredi - smanfredi@brookes.ac.uk

1. Many elements of the Equality Act 2010 are based on EU law and so could become vulnerable when the UK leaves the EU. Some elements of the Equality Act 2010 may be especially vulnerable because the protections introduced are based entirely on EU provisions and have had less time to become entrenched in UK law. Many of the provisions on disability and race were introduced in advance of EU law provision which now cover the area. Recent protection on sexual orientation equality have been introduced to accord with EU law, but ‘home grown’ provisions such as those on equal marriage would suggest that the government would be unlikely to repeal these areas of law. Provisions on gender equality, while originally based on EU law, have become embedded in UK law and are generally accepted. It would probably be politically unacceptable for any government to repeal them.

2. The main areas which would seem to us to be most vulnerable are the more recently introduced protection against discrimination on grounds of religion or belief and age, which have proved more contentious. For these grounds, there is a less clear consensus about their inclusion as equality grounds, meaning that it may be more acceptable to repeal them. In addition, the equal value provisions of the equal pay sections of the Equality Act were originally introduced in order to comply with EU law, and there may well be a lack of consensus in the business community about whether they should be retained. Furthermore, the protection of maternity benefits and some child care related rights such as parental leave, are based on EU laws, and could become vulnerable if viewed by the government as an unnecessary cost to business, especially small business.

Another area rooted in EU law is that of positive action. Section 159 in the 2010 Equality Act was introduced to bring UK law in line with European law developments in relation to the use of positive action measures. The legitimacy of such measures, is established in Article 157(4) of the TFEU which states that: “With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member States
from maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers”.

These measures are of key importance to tackle structural disadvantage but they may be perceived as a form of reverse discrimination and therefore are particularly vulnerable to repeal.

3. It should be noted that elements of the UK Equality Law such as protection of equality in the provision of goods and services in relation to religion and belief and sexual orientation, shared parental leave requirements, etc. go beyond what is required by EU law. One might assume that they are therefore not vulnerable to change. However if the Government moves away from seeing protection for equality as being an important feature of a fair society, and instead reverts to its former view of seeing the Equality Act 2010 as a form of ‘red tape’ (subject to the ‘red tape challenge’), these forms of protection could also become vulnerable to repeal.

4. Research undertaken by members of the Centre for Diversity Policy Research and Practice has highlighted the effectiveness of the religion or belief legal framework (see EHRC Research Report 97: Review of equality and human rights law relating to religion or belief).

5. Other research has highlighted some of the challenges faced by the introduction of non-discrimination on grounds of age (see publication list of the Centre for Diversity Policy Research and Practice).

6. It is therefore essential to embed the existing equalities framework into UK law on leaving the EU. A precedent for embedding equality into the legal framework can be found in the legislation setting up the devolved administrations.