



RESEARCH PAPER 05/77
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Equality Bill [HL]

Bill 85 of 2005-06

This Bill is largely the same as it was at the end of the last Parliament where it reached Second Reading in the House of Commons. It was re-introduced on 18 May 2005 in the House of Lords.

The Equal Opportunities Commission (EOC), the Commission for Racial Equality (CRE) and the Disability Rights Commission (DRC) will ultimately be dissolved and replaced with a single equality body: The Commission for Equality and Human Rights (CEHR).

Discrimination on the grounds of religion or belief in the provision of goods, facilities and services, premises, education, and the exercise of public functions will be made unlawful. There are powers to extend such protection to cover sexual orientation.

The Bill will create a public sector duty to promote gender equality. Sex discrimination in the exercise of public functions will also be prohibited.

The Bill does not extend to Northern Ireland, although some amendments are made to legislation applicable in Northern Ireland. There are special provisions affecting Scotland concerning the CEHR's role of promoting human rights, equality and diversity.

A full statistical supplement to this paper can be found on the Library Intranet pages.

Vincent Keter

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Summary of main points

The *Equality Bill* as amended in the House of Lords will do four things:

- Establish the Commission for Equality and Human Rights (CEHR)
- Prohibit discrimination on grounds of religion or belief in the provision of goods, facilities and services and prohibit religious discrimination in the exercise of public functions
- Introduce a duty on public authorities to promote gender equality and work to eliminate sex discrimination and prohibit gender discrimination in the exercise of public functions
- Allow regulations to be made prohibiting discrimination on grounds of sexual orientation in the provision of goods, facilities and services.

The creation of the CEHR will not in itself change underlying equality law, but once established the body will be charged with examining the need for legislative change, in particular proposals for a *Single Equality Act* which would harmonise the law across the different groups (or “equality strands”).

There has been a long-running debate over whether it would be better to combine the existing Commissions into a single body, as has already happened in Northern Ireland. This debate has been brought to a head by the *EC Employment Directive (2000/78/EC)*. This required Member States to implement legislation banning discrimination in employment on grounds of religion or belief and sexual orientation by December 2003, and on grounds of disability and age by December 2006.

The *Employment Equality (Sexual Orientation) Regulations 2003* and the *Employment Equality (Religion or Belief) Regulations 2003* came into force in December 2003. Amendments to the *Disability Discrimination Act 1995* have been made with effect from October 2004 and new legislation outlawing discrimination on grounds of age is due in October 2006. Amendments were made in the House of Lords to allow regulation prohibiting discrimination on grounds of sexual orientation in the provision of goods, facilities and services.

As a result, three new “strands” will have been introduced into anti-discrimination legislation: religion or belief, sexual orientation and age. Few welcome the idea of three more Commissions to deal with these new strands, but at the same time many have been concerned that the specific problems facing the particular groups might be lost in a single, all-encompassing body.

The Bill allows the Secretary of State to dissolve the existing Commissions by no later than 31 March 2009. Specified functions may also be removed allowing a gradual transition. It is anticipated that the CRE will not join the CEHR until 2009. The one-off establishment costs of the CEHR are estimated at around £24m, with annual operating costs when fully functioning of around £70m.

An amendment was made in the House of Lords removing religious harassment provisions from the Bill. The Government resisted this but lost the vote.

RESEARCH PAPER 05/77

This research paper has been produced in collaboration with a number of Library staff. The relevant subject specialists are as follows:

Vincent Keter	Business & Transport Section	Employment; Equality; Small Business;
Oonagh Gay	Parliament & Constitution Centre	Constitution
Miriam Peck	Home Affairs Section	Sexual orientation: goods and services

Text of the Bill and explanatory notes are available online at:

Index: <http://www.publications.parliament.uk/pa/pabills.htm#e>

Text: <http://www.publications.parliament.uk/pa/cm200506/cmbills/085/2006085.htm>

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I Equality Commissions

A. Existing Equality Commissions

At present there are three statutory bodies charged with promoting equality in Great Britain. They are:

- The Equal Opportunities Commission (EOC) which has various powers which cover discrimination on the grounds of sex under the *Sex Discrimination Act 1975* and the *Equal Pay Act 1970*;
- The Commission for Racial Equality (CRE) which covers discrimination on the grounds of colour, race, nationality, or ethnic or national origins under the provisions of the *Race Relations Act 1976*; and
- The Disability Rights Commission (DRC) which covers discrimination on the grounds of disability under the *Disability Rights Commission Act 1999* and the *Disability Discrimination Act 1995*. Before the 1999 Act there was a statutory National Disability Council which had powers to advise the Government but not to assist individuals in legal proceedings.

The single body in Northern Ireland is the Equality Commission for Northern Ireland, established under the *Northern Ireland Act 1998* to exercise the functions formerly carried out by the Fair Employment Commission, the Equal Opportunities Commission (NI), the Commission for Racial Equality (NI) and the Northern Ireland Disability Council. The Fair Employment Commission formerly covered discrimination on grounds of religious belief or political opinion in the employment field.¹

The Regulatory Impact Assessment (RIA) which accompanies the Bill gives the annual budgets for current Commissions for 2003/04 as:²

- CRE £19,852,000
- EOC £8,810,600
- DRC £14,696,000

The RIA also gives details about the work of the existing Commissions:

3. Promotion of equality and enforcement of legislation relating to discrimination is currently undertaken by three separate Commissions – the Commission for Racial Equality (CRE), the Disability Rights Commission (DRC) and the Equal Opportunities Commission (EOC). Although the three Commissions receive

¹ For a useful survey of single equality bodies in other countries see: Professor Colm O' Cinneide, *A Single Equality Body-Lessons from Abroad*, University College London, 2003:
<http://www.cre.gov.uk/downloads/seb.pdf>

² DTI, *Full RIA, Establishment of the Commission for Equality and Human Rights*, May 2005:
http://www.womenandequalityunit.gov.uk/publications/establishment_of_cehr.doc

different levels of funding their spending allocations to various major functions is roughly the same. The following provides a rough break down of the allocation of operational resources to major functions:³

Awareness-raising and Education	44%
Strategic Law Enforcement	22.5%
Policy and Research	19.5%
Scotland and Wales	14% ⁴

4. As can be seen a large proportion of the Commissions activities are focussed on communicating with their various stakeholders and wider society. These activities promote awareness of legislation and good practice amongst individuals, employers and service providers⁵, and support the mainstreaming of equality into public bodies policy and services.

5. As well as providing information and advice to these various audiences, and promoting good practice, the Commissions also provide casework support for individuals seeking advice on discrimination matters.

- The CRE receives around 11,000 enquiries on points relating to the law each year and its website received over 12,000 visitors each month. The organisation provided casework support to 1,300 requests for assistance and supported 155 tribunal and court cases in 2002.
- The DRC's website receives up to 42,000 visitors per month. Casework support was provided to 1781 individuals in 2002, of these around half had a positive outcome. Support was provided in 55 tribunal and court cases in 2002.
- The EOC website (which includes specialist legal pages) receives around 21,000 visitors per month. The EOC provides casework support to around 1,300 individuals per year and in 2003 supported 38 cases deemed to be in areas of strategic priority.

6. Casework support can involve a range of activities including, simple advice provision; assistance with legal administration; advising clients' legal representatives or advocacy on behalf of a client. The overall work of the Commissions provides substantial assistance to individuals and organisations in obtaining information or advice on discrimination matters.⁶ In total about 250 cases of strategic significance are supported in total by the three Commissions each year.

³ Percentages of total operational cost devoted to major areas of activity. Does not include staff costs. Based on evidence provided by the DRC and EOC for 2003-04.

⁴ The activities of all functions are GB wide. This additional funding for Scotland and Wales is for the funding of activities tailored to these nations.

⁵ DRC reports an increased awareness of the Disability Discrimination Act among service providers and employers (by end 2004) of 60%; and furthermore a general increase in public awareness anti-discrimination legislation of 17% between 2002 and 2003.

⁶ Between them the Commissions provided casework support for around 4400 cases in 2002, and their websites combined receive around 75,000 visitors per month.

B. European requirements for equality bodies

There are requirements in EU law for equality institutions which Member States must meet. Article 13 of the *Race Directive* sets out the following requirements in respect of equality bodies for the promotion of equal treatment in respect of race:⁷

Article 13

1. Member States shall designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights.

2. Member States shall ensure that the competences of these bodies include:

- without prejudice to the right of victims and of associations, organisations or other legal entities referred to in Article 7(2), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination,
- conducting independent surveys concerning discrimination,
- publishing independent reports and making recommendations on any issue relating to such discrimination.

Article 8a of the *Equal Treatment Directive relating to access to employment, vocational training, promotion and working conditions* (76/207/EEC) amended by (2002/73/EC) provides for equality bodies in identical terms to the *Race Directive*.

This Directive (known as the *Equal Treatment Directive*) is currently the subject of a proposal to amalgamate, simplify and extend European law relating to gender equality. Under these proposals the requirement and responsibility of the equality bodies prescribed in the directive will be extended to cover the areas of equal pay and occupational social security schemes that were previously covered by separate directives.⁸

C. Human Rights: The Paris Principles

In 1978, the UN Commission on Human Rights decided to organise a seminar on national and local institutions to draft guidelines for the structure and functioning of national institutions for the protection and promotion of human rights. In September 1978 a series of guidelines was approved and subsequently endorsed by the Commission on Human Rights and by the General Assembly. In 1990, the Commission on Human Rights called for a workshop to be convened with the participation of national and regional institutions involved in the protection and promotion of human rights. The workshop was to review patterns of cooperation of national institutions with international institutions,

⁷ Chapter III, Article 13 of *Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin*

⁸ *Proposal for a Directive of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women, in matters of employment and occupation (recast version)* (COM (2004) 279 final)

such as the United Nations and its agencies, and to explore ways of increasing their effectiveness. The conclusions of this workshop, held in Paris in October 1991, are often referred to as the "Paris Principles". These are set out below:

Principles relating to the status and functioning of national institutions for protection and promotion of human rights

Note: In October, 1991, the Center for Human Rights convened an international workshop to review and update information on existing national human rights institutions. Participants included representatives of national institutions, States, the United Nations, its specialized agencies, intergovernmental and non-governmental organizations.

In addition to exchanging views on existing arrangements, the workshop participants drew up a comprehensive series of recommendations on the role, composition, status and functions of national human rights instruments. These recommendations, which were endorsed by the Commission on Human Rights in March 1992 (resolution 1992/54) and by the General Assembly in its resolution A/RES/48/134 of 20 December 1993, are summarized below.

A. Competence and responsibilities

1. A national institution shall be vested with competence to protect and promote human rights.

2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.

3. A national institution shall, inter alia, have the following responsibilities:

(a) To submit to the government, parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the protection and promotion of human rights. The national institution may decide to publicize them. These opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

(i) Any legislative or administrative provisions, as well as provisions relating to judicial organization, intended to preserve and extend the protection of human rights. In that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights. It shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;

(ii) Any situation of violation of human rights which it decides to take up;

(iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;

- (iv) Drawing the attention of the government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the government;
- b) To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
- c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
- d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations, and, where necessary, to express an opinion on the subject, with due respect for their independence;
- e) To cooperate with the United Nations and any other agency in the United Nations system, the regional institutions and the national institutions of other countries which are competent in the areas of the protection and promotion of human rights;
- f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
- g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

B. Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

Trends in philosophical or religious thought;

Universities and qualified experts;

Parliament;

Government departments (if they are included, these representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the government and not be subject to financial control which might affect this independence.

3. In order to ensure a stable mandate for the members of the institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

C. Methods of operation

Within the framework of its operation, the national institution shall:

1. Freely consider any questions falling within its competence, whether they are submitted by the government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner,

2. Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;

3. Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;

4. Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly consulted;

5. Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;

6. Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the protection and promotion of human rights (in particular, ombudsmen, mediators and similar institutions);

7. In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to protecting and promoting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

D. Additional principles concerning the status of commissions with quasi-jurisdictional competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

1. Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
2. Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
3. Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
4. Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations or administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

Printed at United Nations, Geneva
April 1993⁹

II Equality Law

A. Hierarchy of Equality

There are a variety of ways in which legislative provisions can address the problem of discrimination. However, due to the historical process of development in equality legislation different groups have been left with less protection than others. This phenomenon has come to be described as the “hierarchy of equality”.

In examining this question, it should be noted that different measures may be appropriate for some groups but not others (eg the duty to make reasonable adjustments for disabled people or gender recognition certification for transsexual people). The causes, extent and particular impact of discrimination may also be different for different groups and awareness is building that the overlap or intersection between the various groups or equality “strands” can often present complex problems. In addition, the forms in which discrimination manifests change over time so that legislation that was drafted to tackle a problem as it was thirty years ago may not fully address the phenomenon in its present form.

There are a variety of ways in which legislative provisions can address discrimination. The main ones are as follows:

- **Equality Commissions** – the creation of non-departmental public bodies (NDPBs) with various powers directed at amplifying the impact of discrimination legislation and promoting equality
- **Employment** – prohibiting discrimination in employment and vocational training

⁹ <http://www.unhchr.ch/html/menu6/2/fs19.htm#annex>

- **Goods and Services** – prohibition on discrimination in the provision of goods, facilities and services
- **Duty on public bodies** – duty to promote equality
- **Public functions** – prohibiting discrimination in the exercise of public functions
- **Reasonable Adjustments** – duty to make reasonable adjustments to accommodate the needs of disabled people
- **Victimisation** – protecting those who take legal action and those who support them or appear as a witness in proceedings
- **Harassment** – further separate prohibition on actions which violate a person's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for them.

The following table gives a rough outline of the extent to which some of these measures are currently available to the different groups:

	Sex	Race	Disability	Sex. Or.	Religion	Age	Trans
NDBP	EOC	CRE	DRC	Bill	Bill	Bill	EOC
Employment	Yes	Yes	Yes	Yes	Yes	Proposed	Yes
Goods & Services	Yes	Yes	Yes	Bill	Bill	No	No
Public functions	Bill	Yes	Yes	No	Bill	No	Bill
Public sector duty	Bill	Yes	Yes	No	No	No	Bill?
Victimisation (E)	Yes	Yes	Yes	Yes	Yes	Proposed	Yes
Harassment (E)	Yes	Yes	Yes	Yes	Yes	Proposed	Yes

E = employment provisions

It is possible from the above table to identify some of the remaining differences in the way the identified groups are protected:

Equality Commissions - The current race, sex and disability commissions do not cover the age, religion or sexual orientation strands. This will be addressed by establishing the CEHR.

Employment – When the age discrimination legislation comes into force all the main strands will be covered in the area of employment.

Goods and services – Protection in goods and services exists in relation to sex, race and disability, but not sexual orientation, age or transsexual people. The *Disability Discrimination Act 2005* extended the existing protection in services in various ways. The Bill will introduce goods and services protection covering religion or belief and allow regulations to be made in respect of sexual orientation. The Government have confirmed

that goods and services protection for the age strand is being considered as part of the current Discrimination Law Review.¹⁰

Duty on public bodies – At present a general public sector duty to promote equality exists for race only. The *Sex Discrimination Act 1975* contains a limited public sector duty in respect of education.¹¹ The Bill will create a general public sector duty to promote gender equality. It is not clear whether this would cover transsexual people since, as drafted, the duty to promote equality is framed in terms of “equality of opportunity between men and women”. The *Disability Discrimination Act 2005* introduced a similar public sector duty in respect of disability. Clauses of the Bill make minor amendments to this in respect of national security.

Public functions – The Bill will prohibit discrimination in the exercise of public functions in relation to sex and religion. Transsexual people would probably benefit from the provisions aimed at eliminating “unlawful discrimination”. There are no proposals to introduce provisions on discrimination in public functions in relation to age or sexual orientation. The *Disability Discrimination Act 2005* prohibits discrimination in public functions on grounds of disability.

Reasonable adjustments – There are no plans to introduce in other areas mandatory provisions similar to the duty to make reasonable adjustments for disabled people.

Victimisation – When the age discrimination legislation comes into force all the main strands will be covered by victimisation provisions.

Harassment – Most of the strands are covered by separate provisions which deal in specific terms with harassment. Of course such actions would already be covered by the general concept of discrimination. All the strands have or will receive specific provision for harassment. Existing legislation covering race, disability, religion and sexual orientation already contains such provisions. Until October 2005, the *Sex Discrimination Act 1975* did not have separate provision for harassment, but amending regulations are now in force.¹² Transsexual people will also be covered under these provisions.¹³ The proposals for age discrimination legislation due in October 2006 will also contain separate harassment provisions.¹⁴

In addition, other kinds of measures which have been proposed or upon which different groups can currently rely include:

- **Questionnaire procedure** – enabling those who believe they have suffered discrimination to obtain more information from potential respondents before taking legal action against them.

¹⁰ HC Deb 9 November 2005 c525W

¹¹ Section 25

¹² The *Employment Equality (Sex Discrimination) Regulations 2005, SI No.2467*; DTI consultation, *Equality and Diversity: Updating the Sex Discrimination Act*, 7 March 2005 (responses by 31 May 2005): <http://www.womenandequalityunit.gov.uk/publications/consultation.pdf>

¹³ Ibid, paragraph 31

¹⁴ See DTI consultation on draft Age Discrimination Regulations: <http://www.dti.gov.uk/er/equality/age.htm>

- **Positive discrimination** – exemptions (mostly in relation to training) which allow discriminatory measures intended to help disadvantaged groups.
- **Automatic unfair dismissal** – making dismissal from employment automatically unfair if it was done for a given reason (eg maternity).
- **Third party liability** – imposing liability on those who assist or procure discriminatory actions.
- **Right of request** – providing a right to request certain things of employers which they must take seriously and follow a set procedure in answering, eg flexible working; or staying on beyond retirement age.
- **Non-binding codes of conduct** – guidance which can help employers understand regulation; or assist tribunals in deciding cases; or intended as a vehicle to promote equality by non-legislative means.
- **Injunctions** – injunctions against individuals or organisations that can be shown to engage in persistent discrimination.
- **Public procurement** – anti-discrimination clauses in contracts let by the public sector or anti-discrimination qualifications and criteria in the bidding process.

There are also other measures which impact on the effect and patterns of discrimination such as the National Minimum Wage which has significant benefits for women – as the Minister for Women explained in response to a Written Question in May 2005:

The national minimum wage helps to close the gender pay gap. Around 70 per cent. of beneficiaries of recent increases were women. We will increase this further to £5.05 in October 2005 and to £5.35 in October 2006.¹⁵

In comparing the protection given to different groups in equality legislation, it is also relevant to examine how defences are framed and the nature and extent of any exemptions. Differences have arisen in the way in which legislation has been drafted to cover the different groups, for example:

- As a result of amendments made to the *Race Relations Act* to implement the *Race Directive 2000/43/EC*, indirect race discrimination is more complex than indirect discrimination in other areas.
- Sex discrimination in pay is covered by separate legislation: *The Equal Pay Act 1970*. Litigation of *Equal Pay Act* cases can be very complex and some cases have taken many years to determine. One approach has been to encourage employers to undertake equal pay reviews to ensure that pay systems are fair. There have been calls for legislation which would make equal pay reviews

¹⁵ HC Deb 26 May 2005 c173W

compulsory. This proposal is currently being considered by the Women and Work Commission.¹⁶

- The employment provisions covering sexual orientation contain exemptions in relation to employers in an organised religion who may refuse to employ lesbians, gay men and bisexuals on the basis of their convictions.
- The introduction of goods and services protection in respect of religion derives in part from a perceived anomaly arising in case law on race discrimination whereby Muslims are thought not to be defined as a racial group, and so may not be protected, whereas other groups such as Sikhs and Jews are protected. It should be noted the current *Racial and Religious Hatred Bill* is seeking to extend the racial hatred offences in the *Public Order Act 1986* to cover stirring up hatred against persons on religious grounds and to amend racial hatred provisions. Incitement to hatred has also recently emerged as a prominent concern affecting the Lesbian and Gay community, although there are no plans to legislate for this problem.¹⁷

B. A Single Equality Act

The Government have announced a commitment to introduce a Single Equality Act by the end of the current Parliament:

In the next Parliament we will establish a Commission on Equality and Human Rights to promote equality for all and, tackle discrimination, and introduce a Single Equality Act to modernise and simplify equality legislation.¹⁸

Many commentators believe that a Single Equality Body will not work without a Single Equality Act. These arguments are based on the absence of a principled justification for the fact that current equality legislation provides varying degrees of protection for the different groups. In addition to this, the accumulation of legislation has resulted in an extremely large and complex body of law which often requires great expertise to operate and interpret.¹⁹ This in turn places greater burdens on employers and tribunals leading to protracted and costly litigation without a corresponding level of social gain. For example, the TUC, in its response to a companion consultation document, *Equality and Diversity: The Way Ahead*, said:

In the interests of social justice and fairness, a single equality act should establish high and consistent standards of protection across all equalities areas. A single equality body established without the full statutory backing of fair, comprehensive

¹⁶ Women and Work Commission: *A Fair Deal For Women in the Workplace*, March 2005: http://www.womenandequalityunit.gov.uk/women_work_commission/fairdealforwomen_interim_statement.pdf

¹⁷ The "Stop Murder Music" campaign has raised particular concerns in respect of homophobic reggae music seen as inciting the murder of homosexuals: <http://www.outrage.org.uk/pressrelease.asp?ID=211>

¹⁸ Labour Party Manifesto 2005, page 112: http://www.labour.org.uk/fileadmin/manifesto_13042005_a3/pdf/manifesto.pdf

¹⁹ See: B. Hepple, M. Coussey, T. Choudhury, *Equality: a New Framework*. Report of the Independent Review of the Enforcement of UK Anti-Discrimination Legislation Oxford: Hart Publishing, 2000

and transparent equality legislation would lack authority and have trouble dealing with the expectations of different interest groups.²⁰

Similarly, the CRE put forward the following case for a Single Equality Act:

What is wrong with the current legislation?

? It is complex and inaccessible – there are 30 Acts, 38 Statutory Instruments, 11 Codes of Practice and 12 EC Directives and Recommendations, which makes it hard for employers to keep track of their responsibilities.

? It is unequal, giving more rights to some people than to others. In particular, it is still legal for suppliers of goods and services to discriminate against people on grounds of their religion, sexual orientation and age. So, for example, a Muslim family who are refused accommodation because they are Muslim have no redress, but a Jewish or Sikh family could take action because the law treats them as belonging to an ethnic group as well as a religious group. This is unfair, illogical and works against the principle of equality.

? It is confusing because it is inconsistent – key terms are still defined differently in different Acts, and the remedies victims get vary depending on the reason for the discrimination. This makes no sense to people facing discrimination and is confusing for employers.

? It is backward looking, relying on victims to challenge discrimination after the event instead of making sure institutions act to prevent discrimination happening. The only exception is the innovative and relatively new law that requires public sector bodies to take active steps to promote race equality.

What needs to change?

Ideally we need a single Act bringing everything together in a clear, straightforward way. But the key is getting the content of a new Act right. Our priorities are:

? Common, clear standards that employers and the public can understand, including consistent definitions of key terms and common and effective remedies

? A positive duty for all public bodies to promote equality for all, not just for race equality

? Protection from discrimination on grounds of sexual orientation, religion and belief and age to be extended to goods, facilities and services

? A general principle of equality: an over-riding principle of UK domestic law that no unjustified discrimination is permissible.²¹

Lord Lester of Herne Hill introduced an *Equality Bill* in the Lords on 14 January 2003. This comprehensive Bill, drawn up on the basis of extensive research under the auspices of the Odysseus Trust, proposed a single *Equality Act*, enforced by a single *Equality Commission*, which would cover all the “strands” of discrimination and all the areas in which discrimination might be outlawed. Speaking on Second Reading of the Bill, Lord Lester said:

²⁰ January 2003, TUC response

²¹ Commission for Racial Equality, *Why Britain needs a single equality act*, July 2002: http://www.cre.gov.uk/pdfs/EDF_Why.pdf

The approach of successive governments to the increasingly complex, opaque and anomalous state of the legislation has been piecemeal and minimalist. It has involved adding new layers of legislation in bits and pieces, be they to implement European Community law, to introduce half measures on disability discrimination, or, now, to give effect to the new but restricted EU equality directives. (...)

The regulations will forbid religious discrimination, sexual orientation discrimination, disability discrimination and age discrimination, but only in employment. That is not because it is right in principle to fail to tackle unjustifiable discrimination on those grounds in education, housing and the provision of services and facilities; it is simply because the framework equality directive is confined to the employment field. Without primary legislation, Parliament cannot cover these wider areas, as they are covered in the Sex Discrimination Act and the Race Relations Act. What the Government describe as their full agenda of action on equality matters, including what they call "targeted legislation" misses the important target. Without primary legislation, women will continue to face a heavier burden of proof in discrimination cases outside the employment field; a homosexual or a Muslim denied a service because of sexuality or religion will still be unable to obtain legal redress; and an elderly person, denied essential services by a health authority or local council on the ground of age, will be denied legal redress. Except in the field of race relations, there will be no positive duty on public authorities or large employers to make progress towards equality of opportunity, even though, as long ago as November 1999, the Government promised legislation to create one. To adapt the words of George Orwell, all animals will be equal, but some animals will be more equal than others.²²

Lord McIntosh of Haringey explained the Government's opposition to this "big bang" approach in his response:

I wish to say a few more words about the "big bang" theory. The noble Lord, Lord Lester, claims that there is something terribly wrong with the current law due to its inconsistencies. Of course we aim to remove unwarranted inconsistencies, but the law is different in some cases. For example, disability law is different, as has become clear this afternoon, because it is designed to tackle specific issues relevant to a particular group. The noble Lord, Lord Goodhart, made that very clear. He said that disability legislation was different because it sought to remove obstacles that exist, whereas other forms of discrimination are the other way round, so to speak.

To implement the race and employment directives, we are working hard to make the legislation coherent and easy to use. We are using the same wording for key discrimination concepts where appropriate. We will always seek to simplify the law by reducing exceptions.

The other problem with the big bang theory is that it is, in a sense, a moving target. Not only is the law in this country evolving, but so are European directives. Almost always, they evolve in a helpful direction. There have been three directives since 2000. One was on race, and another on employment deals with sex orientation, religion, disability and age. We talked yesterday about the

²² HL Deb 28 February 2003 cc 526-527

amendment to the equal treatment directive, which deals with sex discrimination.
(...)

As all those directives become law, they have to be incorporated into UK law. That means a constant succession of legislation, both primary and secondary. The noble Lord, Lord Addington, thought that the Bill would provide some sort of final solution for discrimination and that we would not be troubled with it in Parliament if the Bill were passed. I am afraid that that is not the case. The process is, will be and ought to be a continuing one. That is why we take the view that we do about the big bang theory.²³

The joint DTI and Cabinet Office press release which announced a review of discrimination legislation suggested that one of the first tasks of the CEHR would be to look at the creation of a Single Equality Act.²⁴ Similar indications from the Government were also reported in the press in October 2004.²⁵

In the Government response to consultation on the CEHR, the following was said concerning a Single Equality Act:

Equality legislation: a single equality act

76. Although the White Paper made no proposals in relation to the harmonisation of equality legislation or the introduction of a single equality act, the great majority of respondents highlighted concerns about the disparate protection provided by the existing legislative framework.

77. Many respondents commented on the inconsistency between the Government's vision of a fairer society, and the differences in scope of legislation that underpins this, and the risks this presents to the CEHR's mission. Most pressed for the Government to introduce a consistent and harmonised framework for equality.

78. Concerns were expressed however by most private sector respondents that this would distract the CEHR and Government from the important task of working with business to ensure compliance and bedding down of significant new areas of employment discrimination law.

The Government has taken a large number of steps to improve equality and combat discrimination in recent years. These include the recent introduction of regulations relating to sexual orientation and religion and belief; the forthcoming regulations on age; the widening of protection for disabled people and the forthcoming introduction of a public sector duty to promote disability equality; the Race Relations Amendment Act which introduced a public sector duty on promoting race equality and good relations; and the recent announcements of plans to introduce a public sector gender duty and legislation making it unlawful

²³ Ibid, cc 585-586

²⁴ Joint DTI and Cabinet Office Release, *Review of causes of discrimination announced*, 25 February 2005: <http://www.gnn.gov.uk/environment/detail.asp?ReleaseID=148053&NewsAreaID=2&NavigatedFromDepartment=False>

²⁵ See for example: Alan Travis, "Legislation soon for new rights body", *Guardian*, 12 October 2004

to discriminate in the provision of goods, facilities and services on the grounds of religion and belief. These will all aid the development of a fairer society.

We are beginning to consider the best mechanisms for reviewing the current discrimination legislation framework, taking into account the interests of the many different stakeholders who would be affected by any changes to the current position. The CEHR will clearly have an important role to play in this review and will separately be empowered to recommend changes to discrimination legislation as it sees fit.²⁶

C. The Burden of Regulation

The largest and most litigated body of discrimination law is in the area of employment. Protection in the provision of goods services and facilities is also clearly very significant. This means that discrimination law inevitably impacts on enterprise, in particular small firms, since small enterprises currently account for 99% of all enterprises.²⁷ A recurring complaint of the business community has been the burden placed on them by regulations and the disproportionate impact of some regulations on small firms.

Successive governments have developed regulatory policies and principles to reform or repeal outdated provisions and guide the preparation of new regulations. Among these is the requirement that part of the development of all regulation should include an assessment of their impact, in particular on small firms.

Previous Conservative Governments focussed on deregulation. Under the current Government this focus changed to “better regulation”. Various institutions are involved in the process of regulatory quality and reform. The Better Regulation Executive (formerly called the Regulatory Impact Unit) in the Cabinet Office provides scrutiny and advice; the Better Regulation Task Force (soon to become the Better Regulation Commission) concentrates on advocacy; and the Panel for Regulatory Accountability, chaired by the Prime Minister is responsible for accountability and awareness at the political centre of Government with the exception of emergency legislation and tax matters considered by the Chancellor in the course of normal budgetary processes. In addition, each Government department carries out the day to day work of co-ordinating regulatory activities and advising regulators. The Small Business Service (SBS) provides a voice for small firms within Government and is given a consultative position in the regulatory process.

A considerable amount of new regulation emanates from the European Union. The way in which these obligations are framed in domestic law can lead to over implementation or “gold plating”. This European dimension to the problem has been taken up in a variety of initiatives including the “think small first” policy embodied in the European Charter for Small Enterprises.

²⁶ DTI, *Commission for Equality and Human Rights: Government response to the consultation*, November 2004: http://164.36.38.98/equality/project/consultation_govtresponse_nov2004.doc

²⁷ *National Statistics* data for firms employing between 0 and 49 employees; <http://www.sbs.gov.uk>

Considerable emphasis has been placed on the development of Regulatory Impact Assessments (RIAs). The current policy was established in August 1998 and requires that new legislation or regulation, which has a non-negligible effect on business, charities or the voluntary sector, has to be accompanied by an RIA. Guidance has been created for regulators and policy-makers on how to prepare RIAs. In the regulatory process the “small firms impact test” is intended to ensure that attention is paid to any burden placed on small businesses.

In view of the fact that regulations can place burdens on small business which may be difficult for them to meet, there are a number of instances where exemptions have been made for small firms. For example:

- The *Disability Discrimination Act 1995* (DDA) originally excluded from its employment provisions “an employer who has fewer than 20 employees”.²⁸ However, the Act required the Secretary of State to review the threshold within four years with the power to lower (though not to raise) the threshold by order. The Labour Government reduced the threshold to 15 with effect from 15 December 1998, following the statutory review.²⁹ The threshold was finally abolished under the *Disability Discrimination Act 1995 (Amendment) Regulations 2003 SI No.1673* which came into force on 1 October 2004.
- The *Sex Discrimination Act 1975* originally excluded employment in private households and in firms employing fewer than six people.³⁰ This was repealed by the *Sex Discrimination Act 1986* following a European Court ruling.
- The *Race Relations Act 1976* exempted employment in private households.³¹ This exemption was partially repealed to comply with the *EC Directive establishing a general framework for equal treatment in employment and occupation*.³² As from 19 July 2003 the exemption only applies in respect of discrimination on grounds of colour or nationality and no longer applies to discrimination on grounds of race or ethnic or national origins.³³

In general, the complexity of discrimination law can make it hard for employers to keep track of their responsibilities. This has obvious implications from the point of view of legislative compliance.

The RIA for the Bill estimates an overall cost-saving to employers of between £2.7 and £3.4 million per year in terms of the costs associated with accessing newly formatted guidance from a single source, relative to three separate sources.

²⁸ section 7

²⁹ The *Disability Discrimination (Exemption for Small Employers) Order 1998*, SI No 2618

³⁰ section 6(3)

³¹ section 4 (3)

³² Council Directive 2000/78/EC of 27 November 2000 and Explanatory notes on the *Draft Race Relations Act 1976 (Amendment) Regulations 2002*, published for consultation in October 2002, <http://www.dti.gov.uk/er/equality/racexplanatory.pdf>.

³³ *Race Relations Act 1976 (Amendment) Regulations 2003* SI 2003/1626

D. Arguments against equality law

Some argue that equality law is in itself too interventionist and does not succeed in its objectives. For example, fundamental concerns about equality legislation *per se* were raised by Earl Ferrers in the House of Lords debates on the Bill:

Far from creating a human, contented and equal society, the Bill will produce a society in which there is antagonism, aggression and fear. Of course, that it is not its intention, but I think that that will be result. The noble and learned Lord the Lord Chancellor said that the Government wanted to build a truly equal society, but equality can produce drabness, uniformity, dullness and lack of enterprise. I remind your Lordships of what the late Lord Hailsham said so well in his book *The Dilemma of Democracy*:

"in a democracy in which uniformity is not the aim, and diversity is encouraged, each man and woman is free to join a restricted group in which he can excel and offer service. Such groups are not class conscious examples of social or intellectual or aesthetic snobbery. They are the salt of the earth. They are the church workers, the youth leaders, the club secretaries, the trade union officials, the welfare officers, the pigeon fanciers, the Scouters, the allotment holders, the members of residents' associations, the Salvation Army Captains, the exponents of almost every free activity you choose to mention, that is except the things which mean drabness, boredom, cynicism, non-involvement in society, and mediocrity in all things".

Lord Lester of Herne Hill: My Lords, does the noble Earl realise that the late and much loved Lord Hailsham of St Marylebone, a great Conservative, was one of the great supporters of discrimination laws of this kind and that, at a period when the Conservative Party was divided, he gave courageous, brave and wise leadership in that direction?

Earl Ferrers: My Lords, I have always had an immense appreciation of Lord Hailsham. He was a remarkable person, and I think that the excerpt that I have been quoting is one of the most valiant yet pertinent things that he ever said. If I may, I conclude it by reminding your Lordships that he said:

"So in my democracy"— note the word "democracy"—

"let elitism in all its multiplicity flourish. It is the leaven in the lump, the salt in the dish, the thing without which life is flat, stale and unprofitable. It is the pursuit of excellence in all its forms".

There was not much equality there—not much moulding of society there.

Equality and excellence are the opposite ends of the spectrum. I just hope that the Government will encourage excellence and enterprise and will not, whether intentionally or unintentionally, ensure their subordination. In my view, the Bill is likely to do just that.³⁴

³⁴ HL Deb 15 June 2005 c1243-44

E. European Law

The following list, which is not intended to be comprehensive, sets out some of the key European legal provisions covering discrimination:³⁵

- *Article 141 (ex119) Treaty of Rome, 1957* provides that men and women should receive equal pay for equal work or work of equal value.
- *Equal Pay Directive* - Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women.
- *Equal Treatment Directive* - Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (amended in 2002 by Directive 2002/73/EC).
- *Social Security Directive 79/7/EEC* requiring equal treatment of men and women workers in statutory schemes providing protection against sickness, invalidity, old age, accidents at work and occupational diseases and unemployment.
- *Pregnant Workers Directive* - Council Directive 92/85/EEC of 19 October 1992 concerning the implementation of measures to encourage improvements in the safety and health of pregnant workers, women workers who have recently given birth and women who are breastfeeding.
- *Burden of Proof Directive* - Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex to ensure more effective implementation of the principle of equal treatment.
- *Race Directive* - Council Directive 2000/43/EC of 29 June 2000 to lay down a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in Member States the principle of equal treatment.
- *Employment Directive* - Council Directive 2000/78/EC of 27 November 2000 prohibits discrimination on the grounds of sexual orientation, religion or belief, disability and age.

The following directives make up the “Common Framework” for equality in the EU, intended to tackle unfair discrimination on six grounds: sex; race; disability; sexual orientation; religion; and age:

- *Employment Directive 2000/78/EC*

³⁵ See: M. Bell, *Anti-Discrimination Law and the European Union*, Oxford: Oxford University Press, 2002

- *Race Directive 2000/43/EC*
- *Equal Treatment Directive 76/207/EEC*

This package of proposals was brought forward under the new Article 13 added to the Treaty establishing the European Community by the Treaty of Amsterdam agreed in June 1997.³⁶ Article 13 provides:

Article 13 (ex Article 6a)

Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

The European Commission issued a press release explaining that the November 1999 package contained a Communication and:

- (i) a Directive prohibiting discrimination in employment. This proposal outlaws discrimination on the grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation ;
- (ii) a Directive prohibiting discrimination on the grounds of racial or ethnic origin in a wider range of areas - employment, education, the provision of goods and services, social protection ;³⁷
- (iii) an action programme designed to support and complement implementation of the Directives through the exchange of information and experience and the dissemination of best practices in both legislative and non-legislative areas.³⁸

Anna Diamantopoulou, the then EU Commissioner for Employment and Social Affairs, launched the package with the following words:

Today is a milestone in the construction of a Social Europe. Discrimination blights the lives of so many of our citizens. We want to see a common level of protection against discrimination right across the European Union. We want to cooperate with and support the efforts of Member States, NGOs and the social partners. These proposals will ensure that a real difference is made to people's lives by providing victims with a clear remedy against discrimination.³⁹

³⁶ COM(1999) 565 final

³⁷ Political agreement on the "race directive" was reached on 6 June 2000, Home Office press release, 6 June 2000, *UK spearheads EU anti racism pledge*. It was adopted on 29 June 2000 - Council Directive 2000/43/EC

³⁸ European Commission press release, 25 November 1999, *Commission: a step forward for the EU – empowering victims of discrimination*,

http://www.europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=qt&doc=IP/99/895|0|AGED&lg=EN

³⁹ Ibid

The Government's proposals for implementing these measures were set out in the 2002 consultation document: *Equality and Diversity: The way ahead*.⁴⁰

The provisions covering religion or belief and sexual orientation are included in separate regulations (*The Employment Equality (Religion or Belief) Regulations 2003* SI No.1660 and the *Employment Equality (Sexual Orientation) Regulations 2003* SI No.1661).

The provisions on race discrimination were eventually included in a separate directive.⁴¹ They were implemented with effect from 19 July 2003 by the *Race Relations Act 1976 (Amendment) Regulations 2003*. The provisions on disability were implemented with effect from 1 October 2004 by the *Disability Discrimination Act 1995 (Amendment) Regulations 2003*. The provisions on age discrimination are the last which remain to be implemented.

III The Commission for Equality and Human Rights

A. Background to the Proposals

1. Government Consultations

In December 2001, the Government issued a preliminary consultation document on the implementation of the *EC Employment Directive* and the related *EC Race Directive* (2000/43/EC) – the so-called “Article 13 Directives”. This document, *Towards Equality and Diversity*, set out the Government's view that there were “in the longer term” arguments in favour of a single equality body:

7.3 We believe that, in the longer term, there are arguments in favour of a single, statutory commission offering integrated advice, guidance and support on equality matters. That would be in the interests of businesses and individuals, particularly those who are the subject of multiple discrimination. It would also help to ensure a coherent approach to equality issues across the board.

7.4 We are, however, clear that a major change of this nature cannot be achieved effectively in the short term. In particular, the Disability Rights Commission is a young organisation, established as recently as April 2000. It needs time to establish its services to support the continuing implementation of the DDA. We also want to learn from the experience in Northern Ireland where a single commission was established in the same year.

7.5 We therefore propose to develop transitional arrangements that will enable us to move towards a single commission in the longer term. Meanwhile, chapter 8 sets out how advice, guidance and support might be provided on the new grounds of discrimination.⁴²

⁴⁰ DTI website: <http://www.dti.gov.uk/er/equality/wayahead.htm>

⁴¹ Council Directive 2000/43/EC of 29 June 2000

⁴² Cabinet Office, DTI, Home Office, DWP, *Towards Equality and Diversity: Implementing the Employment and Race Directives*, December 2001, paras 7.3-7.5, <http://www.dti.gov.uk/er/equality/consult.pdf>

In a speech to an Institute of Public Policy Research (IPPR) Conference on *Equality in the 21st Century* on 15 May 2002, Barbara Roche, the Minister then responsible for equality co-ordination across Government, announced that she would be leading a Cabinet Office project “to consider in detail possible models for a single equality body”.⁴³ The results of this review were published in October 2002 in a further consultation document, *Equality and Diversity: Making it Happen*. This reported the views of a seminar attended by over 180 people from 120 organisations in July 2002:

The overall view of those attending was that a single equality body would have many benefits to offer, provided that it was established on an effective basis. It could champion equality overall; provide integrated advice both to individuals and organisations; and provide more effective means to address multiple discrimination. It would be a real force in tackling institutionalised discrimination. It needed however to be grounded in a powerful vision of equality; have robust powers and be properly resourced; and there needed to be a clear timetable and sufficient time for planning. Many emphasised the need for harmonisation of equality legislation to enable a single body to deliver fully; and that there must be no diminution of focus on the needs of individual strands, the diversity of which need to be respected.⁴⁴

It put forward three options for future structures: a single equality body and two options built on co-operation among the existing commissions – a single gateway and an overarching Commission. Although the Government did not come down definitely in favour of any one of these options, the text of the consultation document lends more support to the single equality body concept than to the other two approaches. Specifically, it points out that approaches based on the existing Commissions would have difficulty in meeting the needs of the new equality strands.

On 30 October 2003 in response to the *Making it Happen* consultation, the Government announced that it would take forward the single equality body to take responsibility for new laws on age, religion or belief and sexual orientation, and for the first time provide institutional support for human rights. The name of the proposed body – the Commission for Equality and Human Rights – was announced at this stage. It was proposed that the CEHR would promote an inclusive agenda, tackling barriers to participation and underlining the importance of equality for all in society as well as working to combat discrimination affecting specific groups.

2. Task Force

At the same time, the Government also announced the establishment of a task force to advise on developing the detail of the new body. The Task Force was made up of experts from current equality commissions and organisations, communities who will be covered by the CEHR, human rights, trade unions, business and academia. It was charged with exploring and developing options for the new body including its role,

⁴³ Cabinet Office press release, 15 May 2002, *Government to carry out biggest review of equality in 25 years*

⁴⁴ *Ibid*, para 5.3

functions, priorities, governance arrangements and structure. The Task Force was chaired by Jacqui Smith, the Deputy Minister for Women and Equality.⁴⁵

3. White Paper: Fairness for All

The Government published the White Paper, *Fairness for all*, concerning the proposed CEHR on 12 May 2004.⁴⁶ The White Paper described the vision, role, functions and powers of the proposed new Commission.⁴⁷ The DTI news release summarised the contents of the White Paper as follows:

The new CEHR will bring together work on all the different strands of equality and promote human rights. A single organisation will deliver an improved service, as it will:

- Be a stronger champion for diversity by bringing together equality experts with a range of different experiences to make policy making more inclusive;
- deal with the fact that individuals have different identities and will tackle discrimination on multiple levels. For example, an Asian woman may face more than one type of discrimination;
- promote a cohesive society, by building good relations amongst community groups, creating greater trust and understanding across society;
- be a more effective partner for individuals, public bodies, employers and communities by acting as a single, consistent source of information and advice;
- help businesses by
 - working to prevent costly tribunal cases by helping tackle the causes of discrimination and promoting awareness of equality issues; and
 - allowing employers go to one organisation for advice rather than many, saving them time and money;
- provide institutional support for human rights for the first time through its duty to promote human rights and its power to intervene as a third party. This will give the CEHR a real opportunity to drive a human rights culture throughout the public sector;
- propose a new duty to consult stakeholders on its strategic plan to ensure the Commission's work fully reflect the concerns of the communities it serves; and
- have a regional presence among communities and be more responsive to local concerns rather than maintain a single distant HQ.

⁴⁵ Full details of the task force and relevant documents are available at:

http://www.womenandequalityunit.gov.uk/equality/project/task_force.htm

⁴⁶ <http://www.dti.gov.uk/access/equalitywhitepaper.doc>

⁴⁷ DTI *Fairness for all: A new commission for equality and human rights*, May 2004 (Cm 6185) <http://www.dti.gov.uk/access/equalitywhitepaper.pdf>

The White Paper also announces the start of concrete work to implement the Government's commitment to a public sector duty to promote equality of opportunity between women and men.⁴⁸

4. Responses

The Commission for Racial Equality "unequivocally rejected" the proposals in the White Paper on the grounds that it failed the following tests:

- Is it right in principle?
- Will it work in practice?
- Is it better than what we have now?

The CRE response outlined the following specific concerns, which are detailed in the response document:⁴⁹

- 10 instances of downgrading powers or direct legal detriment; and
- 18 instances of clear detriment to equality, including unclear or unworkable proposals.

The DRC broadly welcomed the proposals, whilst raising a number of outstanding "critical concerns".⁵⁰ These can be summarised as:

- The need for harmonised anti-discrimination legislation with a common framework of rights covering all strands.
- The need to define clearly the role and remit of the designated disabled commissioner and of the Disability Committee.
- The need to achieve an effective balance between promotion and effective enforcement.
- The need for adequate resources to meet the CEHR's ambitious remit.

The EOC response to the White Paper was supportive of the proposals, which were seen as important to properly address issues arising out of the diversity of discrimination concerns.⁵¹ At the same time the EOC summarised the key matters to be addressed and said that the new body needs to be:

- grounded in an equality and human rights philosophy that celebrates Britain's diversity;
- backed up by a consistent legal framework;

⁴⁸ DTI News Release P/2004/187, *Hewitt and Falconer publish White Paper on the new Commission for Equality and Human Rights*, 12 May 2004:

http://www.womenandequalityunit.gov.uk/equality/project/cehr_pressrelease.doc

⁴⁹ CRE response to the White Paper, August 2004:

http://www.cre.gov.uk/downloads/docs/ffa_cre_response_scr.doc

⁵⁰ DRC response, August 2004:

http://www.drc-gb.org/uploaded_files/documents/20_703_FINALDRCResponsetoCEHRWPAugust604.doc

⁵¹ EOC response, August 2004:

<http://www.eoc.org.uk/cseng/policyandcampaigns/eoc%20cehr%20response%20final.pdf>

- able to fulfil a full range of roles;
- organised and resourced to work effectively in Scotland and Wales as well as in England and GB wide;
- able to deal effectively with each of the equality strands, with human rights and multiple discrimination issues, without creating a hierarchy;
- inclusive in its governance approach and have the support of key stakeholders;
- properly resourced.

Age Concern has also published a report as well as initiating a campaign to support the proposals which are seen as an important advance for the rights of older people.⁵²

The Government response set out the main points arising from the consultation exercise as follows:⁵³

- Clearly defined fundamental duties integrating its three 'pillars' of equality and diversity, human rights, and good relations between communities;
- A full suite of enforcement powers, fully matching those of the existing Commissions, following some broadening of the inquiry powers outlined in the White Paper;
- Powers and duties to make it a real force encouraging public bodies' compliance with their human rights obligations and promoting human rights generally;
- Enhancement of its independence through complete freedom in its decisions on case support, a key part of its legal strategy;
- More effective means to work with public bodies to secure improved performance of public duties through specific powers to conduct assessments;
- New tools for its good relations work, in particular powers to combat prejudice and crimes affecting communities; and a focus on race and faith communities within a wider good relations remit, assuring continuity of the vital work of the Commission for Racial Equality;
- A new duty to monitor progress on equality and human rights throughout society, set out in a periodic "state of the nation" report – so ensuring a strong evidence base for the CEHR's work;
- Well-defined powers for the Disability Committee to ensure that disabled people can steer the CEHR's disability-specific work; and
- Clear, extensive powers for the Scotland and Wales Committees to set priorities for the CEHR's work in the devolved nations.

⁵² Age Concern Reports, *Public Involvement and the Commission for Equality and Human Rights*: http://www.ageconcern.org.uk/AgeConcern/news_2956.htm

⁵³ DTI, *Commission for Equality and Human Rights: Government response to the consultation*, November 2004: http://164.36.38.98/equality/project/consultation_govresponse_nov2004.doc

The DTI press release announcing publication of the Bill gave the latest positions of the existing Commissions and other interest groups as follows:⁵⁴

Commission for Racial Equality

Trevor Phillips, Chair

"We welcome the publication of this much improved Bill and recognise the changes that have been made which will bolster the new Commission for Equality and Human Rights.

"Our concern that the timing for merging the CRE into a single equality body was not appropriate has been addressed and we are pleased to have been given an assurance that we will not be joining the CEHR until 2009.

"The CRE also welcomes the Government's recent announcement of an Equalities Review which will look at the causes of persistent discrimination and inequality, and their commitment to develop a simpler, fairer legal framework towards a single equality act. Both strands of work will inform the development of the CEHR.

"We intend to work wholeheartedly with the Equalities Review, our sister Commissions and new strands as we move towards a unified legal and institutional framework that can contribute to greater equality across Britain."

Disability Rights Commission

Bert Massie, Chairman

"The Disability Rights Commission (DRC) especially welcomes the recognition in the Bill that disabled people should have a clear and distinctive voice within the CEHR, backed up by a properly resourced Disability Committee with an effective range of delegated powers.

"The combination of a Disability Committee with executive powers and a guaranteed place on the CEHR Board for a disabled person enshrines the principle that disabled people must have a decisive role in developing and leading future work on disability rights. The inclusion of these measures in the Bill is very welcome. In areas such as transport, education and the receipt of services disabled people's experience and the circumstances giving rise to discrimination are distinctive. That distinctive experience needs to be articulated by a distinctive disability voice. The Bill creates the conditions in which the voice of disabled people can be heard.

"The review of equalities legislation announced last week complements the Bill by tackling the acute need for legislative harmonisation identified by the DRC and by many other of the CEHR's potential stakeholders. There must be rapid progress if the CEHR is to benefit fully from this important initiative."

Equal Opportunities Commission

⁵⁴ DTI Press Release P/2005/72, *Powerful equality and human rights body to operate from October 2007*, 3 March 2005:
<http://www.gnn.gov.uk/environment/detail.asp?ReleaseID=150061&NewsAreaID=2&NavigatedFromDepartment=False>

Julie Mellor, Chair

"The EOC strongly supports the Equality Bill. We have been arguing for a single champion of equality and human rights issues for several years. Not only does it make sense for individuals, employers and service providers, but from our experience we know that achieving equality for men and women requires solutions that take account of more than their gender. For example, we know from our research on poverty that Pakistani and Bangladeshi women, older women and disabled women are more likely to be poor and excluded than Pakistani & Bangladeshi, older or disabled men. Bringing together expertise on all equality issues will help deliver sex equality for all women and men.

"We also particularly welcome plans to give public bodies a duty to promote sex equality. Only by making sure our public services reflect the real needs of men and women can we make Britain a fairer place."

Age Concern

Gordon Lishman, Director General

"Age Concern has long campaigned for the Commission for Equality and Human Rights and we strongly welcome this announcement. This body has the potential to transform older people's lives and beat ageism."

Liberty

Shami Chakrabarti, Director

"There has never been a more important moment for a Commission for Equality and Human Rights in this country. This Bill is a beacon of hope for many of us and I hope that the Government will put real political will behind it."

Muslim Council of Britain

Iqbal Sacranie, Secretary General

"The Muslim Council of Britain welcomes the Equality Bill. This is a timely and necessary piece of legislation to provide institutional support for the promotion and protection of equality and human rights in Britain for all its citizens.

"We are particularly pleased that the legislation will also include new provisions on religious discrimination in the delivery of goods and services, and in public functions. This has been long overdue not just for Muslims, but for all religions and beliefs."

Stonewall

Ben Summerskill, Chief Executive

"Stonewall hugely welcomes the introduction of the Commission for Equality and Human Rights which will offer statutory protection to lesbians and gays across Britain. All of Stonewall's work addresses difference across British society and we are delighted that the new Commission will do the same."

The 1990 Trust

Karen Chouhan, Director

"The improvements in the CEHR Bill demonstrate that the voices of Black and minority communities make a difference. We will work to continue to ensure that the government listens to the voices of Black communities."

CBI

John Cridland, Deputy Director-General

"In the past, employers have been confused about who to turn to for advice on equality and diversity. Creating one point of contact for all diversity issues makes good sense for businesses and individuals. It promises to simplify the process and save time. Business has embraced diversity and the CEHR must give firms the guidance they require from day one."

TUC

Brendan Barber, General Secretary

"Too many in Britain still suffer unfair discrimination at work. They need simpler laws and effective enforcement. These must be the watchwords of the new Commission if it is to build on the work of the equality bodies it will replace and effectively tackle its new duties on age, sexuality, religion and belief."

Geoffrey Bindman

Visiting Professor of Law, University College

"I welcome the introduction of the Bill to establish a new Commission for Equality and Human Rights. I am glad that the opportunity has been taken to streamline the body's investigation procedures, eliminating some of the obstacles that the existing Commissions have faced. I hope that further improvements to anti-discrimination law will result from the Government's recently announced Discrimination Law Review."

5. The Equalities Review and the Discrimination Law Review

The Government have recently set up the Equalities Review and the Discrimination Law Review. The announcement came in a Ministerial Statement of 25 February 2005.⁵⁵ The Equalities Review was described in a press release as follows:⁵⁶

The Equalities Review, which will be chaired by Trevor Phillips and report to the Prime Minister by the summer of 2006, will:

- * investigate the social, economic, cultural and other factors that limit or deny people the opportunity to make the best of their abilities;
- * provide an understanding of the long term and underlying causes of disadvantage that need to be addressed by public policy;

⁵⁵ HC Deb 25 February 2005 cc68-70WS

⁵⁶ Joint DTI and Cabinet Office Release, *Review of causes of discrimination announced*, 25 February 2005: <http://www.gnn.gov.uk/environment/detail.asp?ReleaseID=148053&NewsAreaID=2&NavigatedFromDepartment=False>

* make practical recommendations on key policy priorities for: the Government and public sector; employers and trade unions; civic society and the voluntary sector; and

* inform both the modernisation of equality legislation, towards a Single Equality Act; and the development of the new Commission for Equality and Human Rights.

The Equalities Review has issued a call for evidence which closes on 25 November 2005.⁵⁷

The Discrimination Law Review was described in the same press release as follows:

Working in parallel to the Equalities Review, the Department of Trade and Industry will begin new work informed by the Equalities Review on the development of a simpler, fairer legal framework. Involving several government departments, the Discrimination Law Review will assess how our anti-discrimination legislation can be modernised to fit the needs of Britain in the 21st Century. This work will consider the approaches that are effective in eradicating remaining discrimination but avoid imposing unnecessary, bureaucratic burdens on business and public services.

The terms of reference for the Discrimination Law Review are available online.⁵⁸

B. The Bill: Duties and Powers of the CEHR

1. The Commission

The three key functions of the CEHR will be

- Equality
- Human Rights
- Good relations between communities

“Communities” are defined as “a group or class of persons (irrespective of whether they regard themselves as a community) who share a common attribute in respect of” age; disability; gender; race; gender reassignment; religion or belief; or sexual orientation.

Part 1 of the Bill deals with the formation, duties and powers of the CEHR and the dissolution of the existing Commissions. The constitution of the CEHR is set out in a schedule to the Bill. Some of the main points can be summarised as follows:

⁵⁷ Equalities Review: http://www.theequalitiesreview.org.uk/call_for_evidence/index.asp

⁵⁸ Discrimination Law Review terms of reference: http://www.womenandequalityunit.gov.uk/dlr/terms_of_ref.htm

- Details of the activities of the CEHR will be set out and published in a strategic plan which must be reviewed, and if necessary revised, at least every three years.
- There will be between 10 and 15 Commissioners plus the chief executive who will be a commissioner *ex officio*.
- There will be at least one Commissioner who is or has been a disabled person.
- The Secretary of State will appoint one Commissioner who knows about conditions in Scotland and one who knows about conditions in Wales.
- There are separate provisions for the appointment of Investigating Commissioners who will be charged solely with carrying out inquiries and investigations and associated enforcement. They will be appointed by the Commission.
- Advisory Committees may be established to advise the Commission or an Investigating Commissioner.
- Decision-making Committees will be established to perform delegated functions. Specific and detailed provisions are made for a Scotland Committee; a Wales Committee; and a Disability Committee.

2. Scotland

The position in respect of devolution is set out in the explanatory notes to the Bill:

335. Equal opportunities are in principle reserved to the Westminster Parliament, but the encouragement of equal opportunities is an exception to this rule and falls within the devolved competence of the Scottish Parliament. Some clauses of this Bill fall partly within the competence of the Scottish Parliament. These include clauses relating to promotion of equality and diversity in Part 1, the promotion of equal opportunities in the gender duty and duties imposing functions on Scottish Ministers in Part 3. The Scottish Parliament will be invited to agree that it is content for Parliament to legislate for Scotland in this devolved area. Human rights as a topic is neither reserved nor devolved - a human rights issue falls within the competence of the Scottish Parliament if the underlying subject matter is not reserved. The CEHR's human rights role in Scotland is intended to be limited in practice to human rights issues on reserved topics.⁵⁹

The current *Scottish Commissioner for Human Rights Bill* in the Scottish Parliament establishes a Scottish Commissioner for Human Rights to promote awareness, understanding, and respect of human rights.⁶⁰

⁵⁹ <http://www.parliament.the-stationery-office.co.uk/pa/cm200405/cmbills/072/en/05072x-e.htm>

⁶⁰ <http://www.scottish.parliament.uk/business/bills/billsInProgress/hrcommissioner.htm>

3. Duties

The CEHR is given a fundamental duty directed at social change set out in the following terms:

The Commission shall exercise its functions under this Part with a view to encouraging and supporting the development of a society in which -

- (a) people's ability to achieve their potential is not limited by prejudice or discrimination,
- (b) there is respect for and protection of each individual's human rights,
- (c) there is respect for the dignity and worth of each individual,
- (d) each individual has an equal opportunity to participate in society, and
- (e) there is mutual respect between communities based on understanding and valuing of diversity and on shared respect for equality and human rights.

Commentators on equality and human rights have often pointed to the need to do more than create rights enforceable only in litigious terms. Litigation can provide only limited scope for addressing the underlying problems which give rise to inequalities or breaches of human rights. Many people are put off by the idea of legal action and find litigation to be an unpleasant experience. This can leave problems unaddressed. At the same time small firms are finding that the costs of insuring themselves against employer's liabilities are increasing at an alarming rate.⁶¹ Measures such as the creation of public sector duties, promotional campaigns and the work of enforcement agencies are all directed at broader social change and a reduction in the many personal, economic and social costs associated with litigation.

The duties set out in Part 1 of the Bill come with powers to undertake research, publish ideas or information and conduct inquiries and concern:

- Promoting understanding, awareness and good practice
- Enforcing equality legislation
- Working towards eliminating unlawful discrimination and harassment
- Encouraging good relations between communities

In previous versions of the Bill, disability was absent from the list of attributes which constitute the definition of "communities", since a separate clause covered the relationship between disabled people and the rest of society in terms of eliminating prejudice, hatred or hostility toward them; and the elimination of "the involuntary isolation of disabled persons." However this was removed by amendment in the House of Lords

⁶¹ See: Department for Work and Pensions, *Review of employers' liability compulsory insurance*, Second stage report, 4 December 2003:
http://www.dwp.gov.uk/publications/dwp/2003/elci/dwp_employers_review04-12-2003.pdf

and disability was brought within the provisions relating to good relations between groups.⁶²

In addition, there are two further duties:

- Monitoring the law; and
- Monitoring progress.

These duties concern respectively:

- Advice and recommendations to government on the law; and
- Identifying changes, goals and factors concerning progress toward social change.

4. General Powers

The general powers given to the CEHR broadly reflect the powers of the existing Commissions although they are framed in slightly wider terms and powers which were previously available only to one equality strand will now be available to all of them.⁶³ The general principle of “non-regression” of powers has been broadly accepted by the Government, although residual concerns have continued to be voiced in the Lords.⁶⁴

A general power is given to the CEHR to undertake research and publish in these areas and to give advice and guidance on the law (other than legal advice in support of litigation).

The CEHR may also issue Codes of Practice in respect of specified legislative provisions after a process of published consultation. The issue of Codes of Practice will be subject to approval by the Secretary of State and Parliament; and in some cases the Scottish Ministers and the National Assembly for Wales.

The power is given to conduct inquiries similar those available to the existing Commissions. The Secretary of State may direct the CEHR to conduct an inquiry or the CEHR can itself decide to conduct an inquiry. One advantage over the existing structures will be the possibility of examining more than one strand of equality concern in the same inquiry.

5. Enforcement Powers

In the course of an inquiry, suspicions may develop that someone has done something unlawful. In these cases separate provisions may be invoked to investigate the person concerned. The investigation will then proceed separately and the inquiry will be precluded from pursuing the question of whether or not an unlawful act has been

⁶² Clause 10 in Bill 85 of 2005-06

⁶³ For example financial assistance under RRA section 44; or powers to keep certain legislation under review in SDA section 55

⁶⁴ HL Deb 11 July cc942 – 944; cc946 – 948; Amendment made: HL Deb 9 November cc637 – 640

committed by that person. These processes are supported by provisions criminalising unauthorised disclosures about inquiries or investigations. Investigations may also commence on the direction of the Secretary of State.

If the Commission finds that an unlawful act has been committed it may issue an “unlawful act notice” setting out the breach and requiring steps to be taken to avoid its continuation or repetition. This could include a requirement that the person prepare an “action plan” to be agreed with the Commission. In the event that a person disputes that they have committed an unlawful act, they may appeal to the appropriate court or tribunal which may affirm or annul any notice or requirement which the Commission has made.

The Commission may also enter into an agreement with the person who is thought to have committed an unlawful act as to what should be done to remedy the matter. A person may agree to the course of action proposed without admission of liability. The Commission will then undertake not to pursue the matter unless there is a failure to comply with what has been agreed.

As is the case with the current Commissions, the CEHR will be able to support litigation by individuals based on the equality enactments set out in the Bill and make arrangements for conciliation in legal proceedings. It will not be able to support free-standing human rights cases. If proceedings also concern other matters; the Commission will still be able to support those aspects as long as they “relate to a provision of the equality enactments”. However, in the course of proceedings it may happen that the position changes and the equality aspects of the case fall away. In these circumstances the power to support the litigation will come to depend on an order of the Lord Chancellor allowing support to continue. This will be available only in respect of human rights elements in a claim.

IV Human Rights

A. Background

The *Human Rights Act 1998* came into force on 2 October 2000, and section 6 places a legal obligation on all public authorities not to breach anyone’s rights under those aspects of the *European Convention on Human Rights*, which were annexed to the Act. In addition, UK courts are obliged to interpret the law in light of Convention law and are empowered in respect of primary legislation to make declarations which state that a particular Act is incompatible with human rights. In relation to secondary legislation, the courts may disapply or strike down incompatible instruments. Anyone who feels that their Convention rights have been breached can now assert them in any court or tribunal in the UK, rather than having to go to European Court of Human Rights in Strasbourg, as was previously the case, although recourse to the European Court remains. The Department for Constitutional Affairs has responsibility for human rights within Government.⁶⁵

⁶⁵ www.humanrights.gov.uk

When the *Human Rights Act* came into force the Government was considering the idea of a Human Rights Commission. The Joint Parliamentary Committee on Human Rights was set up in 2001 and began by inquiring into the case for such a commission. In March 2003 it recommended that the Government create an integrated Commission for Equality and Human Rights.⁶⁶

The case for a Human Rights Commission was summarised as follows:

In this report we consider the signs which indicate whether that culture of respect for human rights has begun to flourish in the UK since the passing of the Human Rights Act, and the evidence of whether a human rights commission could help it do so.

In the case of a measure such as the Human Rights Act, which is both new and intended to be far-reaching, the legal process does not have a reality unless people know what it is and know how to use it. Spreading knowledge and awareness of the law is an essential part of building a culture. But if it is left only to the courts, the original vision that the Human Rights Act should bring about a cultural change will not be realised. Litigation is an essential last resort in protecting the rights of the individual or groups, but it is not the most effective means of developing a culture of human rights.

Government cannot be the sole advocate of a culture of rights and responsibilities. Rights essentially mediate the relationship between the citizens and the state. A Government cannot be an impartial champion of human rights. In the course of our inquiry we found very broad support for an organisation which stands aside from government, and engages with civil society in a debate about the practical expression of the values embodied in human rights.

Parliament must defend human rights and must stand at the centre of a culture of respect for human rights, but it cannot itself do the work of educating, informing, encouraging and promoting that is needed to establish this culture more widely.

The Paris Principles, as agreed by the General Assembly of the United Nations, exhort all states to establish independent bodies which will raise public awareness of human rights, promote good practice, monitor policy developments and their impact, provide independent advice to Parliament and Government, and help those who feel that their rights have been breached or are threatened with violation. Many countries have already established independent national human rights institutions.

It is insufficient, however, to assert the case for an independent human rights commission in principle alone. It is necessary also to assess whether a commission could have the potential to make a real difference to people's lives.

We have not found evidence of the rapid development of awareness of a culture of respect for human rights and its implications throughout society, and what awareness there is often appears partial or ill-informed. We fear that the

⁶⁶ Joint Committee On Human Rights - Sixth Report, 3 March 2003:
<http://www.publications.parliament.uk/pa/jt200203/jtselect/jtrights/67/6702.htm>

highwater mark has been passed, and that awareness of human rights is ebbing, both within public authorities and within the public at large.

We took evidence from a wide range of bodies concerned in the monitoring and regulation of public authorities, and examined more directly the extent to which the growth of a culture of human rights showed itself in the practices and policies of local authorities and NHS bodies.

It is clear to us that, by and large, public authorities, and those who inspect, advise and audit them, do not give a high priority to placing respect for human rights at the heart of their policies and practices. Insufficient energy is being given to communicating a vision to public authorities to help them understand how a culture of respect for human rights might look or how it could be delivered.

There is a need for the active promotion of the understanding that Convention rights impose positive duties on public authorities. In our public services the climate of legal compliance and risk avoidance too often inhibits the development of a human rights culture. Too often human rights are looked upon as something from which the state needs to defend itself, rather than to promote as its core ethical values. There is a failure to recognise the part that they could play in promoting social justice and social inclusion and in the drive to improve public services.

The enthusiasm to make the Human Rights Act come alive as a measure which places positive duties on public authorities, and which should promote a culture of respect for human rights in every aspect of public life, needs to be rekindled. A human rights commission probing, questioning and encouraging public bodies could have a real impact in driving forward the development of that culture by guiding, advising and assisting those involved in the work of public authorities. Such a body could assist the public services by consolidating advice on compliance with rights and complement the courts by preventing breaches of rights occurring through the spread of best practice and greater awareness. Governments should be able to look on a commission as a critical friend which can help them achieve some of their more fundamental goals, including improved delivery of better public services.

Working through regulatory and representative bodies for different sectors of public activity, a commission should be able to give human rights a focus, resources and a degree of institutional stability not found recently in central government. Human rights need a home. This could provide a base from which there would be a realistic chance of devising and disseminating a more credible culture of respect for human rights.

There is evidence of an unmet need for citizens to be assisted in understanding what their rights are, how these rights must be balanced with those of others, and how to assert their rights without necessarily having recourse to litigation.

We have found widespread evidence of a lack of respect for the rights of those who use public services, especially the rights of those who are most vulnerable and in need of protection. Human rights should provide a framework within which people who need to can negotiate with public authorities for better conditions and treatment, both in individual cases and in wider contexts. But the message about what human rights can do for individuals and groups in their relations with the state is at present being only faintly heard. Much of the cause for this state of affairs can be ascribed to the absence of an independent voice able energetically

to promote and help to protect human rights in the UK. There is very widespread support for the establishment of a human rights commission which would be able to promote the principles that underlie the idea of a culture of human rights in a way that everyone can understand.

Sufficient unmet needs have been identified to establish that there is essential work for a commission to do. The development of a culture of respect for human rights is in danger of stalling, and there is an urgent need for the momentum to be revived and the project driven forward. Since the Government is committed to developing a culture of respect for human rights it has a duty of leadership. If it wills the end, it must also will the means. The resources devoted to this task are insufficient to achieve the goal that the Government desires. Precious time has already been wasted. The decision to establish an independent body for the promotion and protection of human rights must be taken now.⁶⁷

The Joint Committee on Human Rights also published its Eleventh Report of 2003/04 on the *Structure, Functions and Powers of the Commission for Equality and Human Rights*.⁶⁸ The Committee's recommendations were summarised as follows:

In March 2003 the Joint Committee on Human Rights published a report recommending the establishment of an integrated commission charged with the promotion of all the various "strands" of equality and the promotion and protection of human rights. In October 2003 the government announced its intention to proceed with the establishment of a "Commission for Equality and Human Rights". It is hoped that legislation will be passed in time to allow it to begin operating in 2006.

The JCHR warmly welcomes this decision. This report considers in more detail the functions, powers and structure of the proposed commission so far as they relate to human rights, and in it the Committee makes recommendations which it expects the government to take into account in formulating the White Paper prefiguring the legislation. They are directed at ensuring that the new body can discharge its role effectively.

Functions

The Committee recommends that the new body should have a widely drawn remit in respect of the promotion of a culture of respect for human rights, going beyond the Convention rights incorporated into UK law by the Human Rights Act. It recommends that the commission should have a role in reporting on the UK's discharge of its international human rights obligations.

The commission's role should be focused on achieving strategic change through promotion, advice, the spreading of best practice and the raising of public awareness. It should not, for the most part, be directly involved in the resolution of individual cases.

⁶⁷ <http://www.publications.parliament.uk/pa/jt200203/jtselect/jtrights/67/6703.htm#a1>

⁶⁸ The report can be found at:
<http://www.publications.parliament.uk/pa/jt200304/jtselect/jtrights/78/7802.htm>

The key role of the new commission will be working with the public sector to give practical effect to a culture of respect for human rights in the policy and practice of providers of public services. The Committee recommends that this should be achieved through close co-operation with the bodies charged with regulating, auditing and inspecting the quality of public services. It proposes a general statutory duty on public authorities to promote human rights.

The commission should also be able to guide and advise the private sector on the development of a culture of respect for human rights.

The Committee recommends that the commission should have a duty to build the capacity of the private and voluntary sectors to advise and assist individuals in understanding and asserting their rights.

It recommends that the commission should promote alternative dispute resolution as a way of avoiding litigation and pre-empting violations of rights.

The commission should have a general duty to promote good relations between communities and groups within Great Britain based on respect for the values of human rights so as to encourage the peaceful resolution of disputes.

Powers

The Committee recommends that the commission should be able to conduct public inquiries into matters of public policy relating to human rights. It recommends ancillary powers needed to make these inquiries effective.

It proposes that the commission, in addition to the power to assist as a friend of the court or to intervene as a third party in significant cases raising questions of public interest relating to human rights, should have an exceptional power to seek judicial review on compliance by public authorities with their duties under the Human Rights Act.

Structure

The commissioners should be appointed with the involvement of Parliament, and should not be chosen as "champions" of particular strands of the commission's responsibilities.

The Committee recommends special arrangements to guarantee the independence of the commission as a constitutional watchdog, while also securing its democratic accountability. These include a special relationship between the commission and Parliament.

The future

The Committee concludes that the arrangements which are now to be put in place should be regarded as transitional, until Parliament enacts a single, comprehensive Equality Act. It recommends that the enactment of such legislation should be given a high priority.

The Government response to the *Fairness for all* consultation set out the conclusion on the human rights remit of the CEHR as follows:

V Human rights

23. Respondents warmly welcomed the White Paper proposals that the CEHR's human rights functions should be central to its work. They recognised the important role it will play in promoting respect for human rights, both through underpinning CEHR's work for the equality strands, and by providing advice and guidance about human rights standards and values.

24. Some respondents argued that the CEHR should be able to seek judicial review on human rights matters in its own name. At present, section 7(1) of the Human Rights Act limits the ability to bring human rights proceedings to those who are (or would be) a victim of the alleged unlawful act. Many argued strongly that the CEHR should be able to intervene in cases as a third party. Views among respondents were mixed on whether the CEHR should support free-standing human rights cases.

25. Other points raised by respondents included proposals for a public sector duty to promote human rights, and that the CEHR should have a role in monitoring compliance with the UK's international human rights obligations.

The Government believes that the Commission's resources for its human rights activities should be focussed on promoting human rights values and standards and encouraging compliance by public authorities with the Human Rights Act, especially when other sources of support are available for human rights cases.

It is also the Government's strong belief that human rights proceedings should be brought only by those affected by the actions in question in line with the Human Rights Act s7.

However, we intend that the CEHR should have a full, strong suite of promotional powers and duties, to include:

- promoting the protection, awareness and understanding of human rights
- encouraging good practice in human rights
- encouraging public authorities to comply with their obligations under the Human Rights Act
- undertaking inquiries into the protection or understanding of human rights by public authorities
- the ability to seek leave to intervene in cases in which human rights are being argued.

The Government is not persuaded that positive statutory duties in relation to human rights, going beyond those in the Human Rights Act, are needed. The Government is currently considering the extent to which the CEHR should be explicitly empowered to contribute to reports on the UK's performance against its international human rights obligations.⁶⁹

⁶⁹ DTI, *Commission for Equality and Human Rights: Government response to the consultation*, November 2004: http://164.36.38.98/equality/project/consultation_govtresponse_nov2004.doc

B. The Bill

The Bill will give the CEHR a broad remit to promote human rights. However, it will not be able to support individual human rights cases in the same way that discrimination cases are supported. According to the Government response (quoted above) the CEHR will have “the ability to seek leave to intervene in cases in which human rights are being argued”.

This power is now set out on the face of the Bill. This was not the case in previous versions. However, it now is.⁷⁰ Under the various powers to promote human rights the CEHR will be able to appear with leave of the court in judicial review and other cases which concern human rights. This means that the CEHR will be able to apply to the court for permission to provide an expert view on a case brought by a third party, in order to assist the court in reaching a conclusion. This position is sometimes referred to in general terms as *amicus curiae* (or “friend of the court”).

The *Fairness for All* consultation explained this as follows:

Third party interventions

4.11. The existing equality Commissions have occasionally intervened in court cases to provide expert knowledge and understanding which can assist courts in making a decision. Although in principle, it is open for anyone with an interest to seek the court's permission to intervene in cases, the Government intends that the CEHR should be explicitly enabled to act in this way.

4.12. Although courts would not be obliged to accept interventions by the CEHR, this approach is intended to put beyond doubt the body's capacity in this area. It will also give a positive signal to the courts about the potential value of the CEHR's involvement. The CEHR will be able to seek leave to intervene in support of the full breadth of its remit, covering both equality and human rights.

4.13. The Government intends that these interventions should be of a strategic nature and should be closely tied to the CEHR's core aims. Intervention in human rights cases would be intended to support the development of a flourishing human rights culture in the public sector.⁷¹

The definition of “human rights” which can be promoted is an extended definition. The *Human Rights Act 1998* (HRA) enacted human rights law in domestic UK law by incorporating various articles of the European Convention on Human Rights within the text of the Act. However, not all the human rights which are available under the Convention were incorporated. The following are currently included:⁷²

- (a) Articles 2 to 12 and 14 of the Convention,
- (b) Articles 1 to 3 of the First Protocol, and

⁷⁰ Clause 30, Bill 85 of 2005-06

⁷¹ White Paper, *Fairness for All*, May 2004: http://164.36.38.98/equality/project/CEHR_WP_final.doc

⁷² Section 1, *Human Rights Act 1998*

(c) Article 1 of the Thirteenth Protocol.

The definition of “human rights” in the Bill goes beyond the Convention rights which were selected for inclusion to “other human rights”. This would include other human rights conventions and treaties and presumably, provisions of the Convention which have been omitted from the HRA, such as the remaining protocols of the Convention and Article 13 which grants individuals the right to an effective remedy for the breach of any of their Convention rights. The question has been raised as to the role of the CEHR in the various reporting requirements set out in international human rights law.⁷³

V Religious Discrimination: Goods and Services

A. The Bill

The provisions on religious discrimination will do two things:

- Prohibit discrimination in the provision of goods facilities, services and premises.
- Prohibit religious discrimination in the exercise of public functions.

A Home Office press release announced the proposals on 28 September 2004:⁷⁴

New laws to combat discrimination on the grounds of religion will be introduced by the Government, the Prime Minister announced today.

The measures will put an end to religious discrimination in the provision of goods, facilities, services and premises. They will close a loophole that currently means that while people are protected against discrimination on the basis of colour, race, nationality or national or ethnic origin, they are not protected against discrimination on the basis of religion. The measures will address an imbalance which has emerged from case law where Jews and Sikhs are afforded protection while members of other religions are not.

The Home Secretary, David Blunkett, said:

"Faith plays a vital role in people's lives – even for those who are not overtly religious. It is a strength of our society that peoples of many faiths respect each other and are able to flourish and play a valuable role in our communities. We need to protect that strength against discrimination and intolerance.

"We have already taken action to implement EU regulations against religious discrimination in employment and training, which came into force last year. We have introduced tougher penalties for racial and religious hate crime and the Crown Prosecution Service has reaffirmed its policy of prosecuting these crimes vigorously. And I have announced that we intend to look again at legislating against incitement to religious hatred when an opportunity arises.

⁷³ HL Deb 11 July cc 925 – 927

⁷⁴ Home Office Press Release reference: 302/2004, *Strengthening protection against religious discrimination*, 28 Sep 2004: http://www.homeoffice.gov.uk/pageprint.asp?item_id=1084

"But we believe there is also a need to ensure that people are not disadvantaged because of their religion. While some religious groups may be afforded a higher degree of protection from discrimination because they can also be defined by ethnic origin, this is not true for others. These measures will ensure fair and equal protection for all faiths."

Notes for Editors:

1. The provisions would ban:

- direct discrimination where a person, on grounds of religion or belief, is treated less favourably than another;
- indirect discrimination where a provision, criterion or practice has the effect of putting people of a particular religious belief at a disadvantage which cannot be justified; and
- victimisation where someone is treated less favourably than others because, for example, they have complained of discrimination or have assisted someone else in a complaint.

2. There would be exemptions, for example, for:

- faith-based schools to allow them to continue to discriminate in favour of that faith in selection policy;
- charities (this would for example allow faith-based charities to discriminate in favour of that faith in the provision of services on the grounds of religion or belief); and
- acts safeguarding national security.

3. At present the Race Relations Act and case law afford protection to some religious groups (Sikhs and Jews) from discrimination in the provision of goods and services on the grounds of race. But multi-ethnic religions (including Muslims) are not protected.

4. Both in the Government's Strength in Diversity consultation exercise on a community cohesion and race equality strategy, and in the consultation on the recent White Paper, Fairness for All (on the proposals for the creation of the Commission for Equality and Human Rights), there were calls for the extension of protection against religious discrimination.

5. The new measures would ensure that providers of goods, facilities, services or premises, would not be able to refuse to provide their goods, facilities, services etc. to someone because of their religion or belief. For example a shopkeeper would be unable to refuse to serve someone on the grounds of his or her religion or belief. However providers would not normally be regarded as being discriminatory if they refused requests to provide a wider range of goods or services in order to meet a customer's religious needs.

6. Since December 2003 it has been unlawful under the Employment Equality (Religion or Belief) Regulations to discriminate against a person on the grounds of their religion or belief in the area of employment and vocational training.

The details outlining how the Bill will achieve these objectives is set out in the explanatory notes.

B. Background

The *Race Relations Act 1976* (RRA) contains provisions which prohibit discrimination in the provision of goods facilities or services and the disposal or management of premises.⁷⁵

There have been a number of cases which have ruled on whether or not particular groups count as “racial groups” for the purposes of the legislation. For example Sikhs⁷⁶, Gypsies⁷⁷ and Jews⁷⁸ have been held to be directly covered by the race discrimination legislation, whereas Rastafarians⁷⁹ have been held in case law not to constitute a distinct racial group and so are not covered by the provisions.

Important guidance on this issue was given in the judgement of Lord Fraser in *Mandla v Dowell Lee* [1983] IRLR 209; [1983] 2 AC 548. In this case, the House of Lords determined that Sikhs did constitute a racial group. It was held that, while the word ‘ethnic’ conveyed a flavour of race it could not, within the meaning of the Act, be defined in a strictly racial or biological sense, but that it had an extended sense to include other characteristics which may be commonly thought of as being associated with common racial origin. Lord Fraser defined these characteristics in detail:

For a group to constitute an ethnic group in the sense of the 1976 Act, it must, in my opinion, regard itself, and be regarded by others, as a distinct community by virtue of certain characteristics. Some of these characteristics are essential; others are not essential but one or more will be commonly found and will help to distinguish the group from the surrounding community. The conditions which appear to me to be essential are these:—(1) a long shared history, of which the group is conscious as distinguishing it from other groups, and the memory of which keeps it alive; (2) a cultural tradition of its own, including family and social customs and manners, often but not necessarily associated with religious observance. In addition to these two essential characteristics the following characteristics are, in my opinion, relevant; (3) either a common geographical origin, or descent from a small number of common ancestors; (4) a common language, not necessarily peculiar to the group; (5) a common literature peculiar to the group; (6) a common religion different from that of neighbouring groups or from the general community surrounding it; (7) being a minority or being an oppressed or a dominant group within a larger community, for example a conquered people (say, the inhabitants of England shortly after the Norman conquest) and their conquerors might both be ethnic groups.⁸⁰

This would include those who joined the group (for example by marriage) provided that “a person who joins the group feels himself or herself to be a member of it, and is accepted by other members”.

⁷⁵ Sections 20 and 21 RRA

⁷⁶ *Mandla v Dowell Lee* [1983] IRLR 209; [1983] 2 AC 548

⁷⁷ *Commission for Racial Equality v Dutton* [1989] All ER 306; [1989] IRLR 8, CA

⁷⁸ *Seide v Gillette Industries Ltd.* [1980] IRLR 427, EAT

⁷⁹ *Crown Suppliers (PSA) Ltd v Dawkins* [1993] ICR 517, CA

⁸⁰ Reproduced from *Tolley's Discrimination Law handbook*, second edition, p 230

It is generally thought that Muslims who are united only in their religious beliefs have not been covered by the Act.⁸¹ Within the guidance given in *Mandla* it would appear that Muslims do not constitute an “ethnic group” so that direct discrimination against Muslims would not contravene the RRA.⁸² However, this understanding of discrimination law has been challenged, in particular by Lord Lester who refers to the judgement of Mr Justice Slynn (as he then was) in *Seide v Gillette Industries Ltd*:

It has been clearly established for a quarter of a century, since the decision of Mr Justice Slynn, as president of the Employment Appeal Tribunal, in 1980 in the case of *Seide v Gillette Industries Ltd*, which the noble and learned Lord may remember, that Jews are included within the Race Relations Act only as victims of racial, and not religious, discrimination. That decision was followed in the case of *Tower Hamlets London Borough Council v Rabin* in 1989 and was relied on in the House of Lords case *Mandla* in 1983. It was also shown in the New Zealand Court of Appeal case called *King-Ansell*. Jews are protected under the Race Relations Act not because they have a shared religion but because of their shared ethnicity, whether real or as perceived by anti-Semitic discriminators. Exactly the same protection applies to Muslims—I am sorry there is no Muslim Peer here today—who are protected if they have an ethnic identity as well as a religious one; for example, because of their colour or national origins. The typical anti-Semite who persecutes Jews does not usually do so because of their religion but because of what he regards as their tainted ancestry and their blood. The Nazis murdered anyone with Jewish ancestry irrespective of their religious beliefs. It is profoundly dispiriting to encounter such misunderstanding of anti-Semitism and of discrimination law and it is offensive to the memory of millions of Jews slaughtered in pogroms and in Nazi extermination camps. Jews were persecuted and exterminated on the Continent because of their actual or presumed Jewish identity or origin. They were not spared because they were atheists or agnostics.

It has even been suggested by the Minister that Jews may be removed from the protection of the Race Relations Act altogether and given protection only on religious grounds. I cannot believe that she would really do that because that would be a regressive step that would not only breach the UK's obligations under the European convention, the international covenant and the CERD, but it would also be deeply offensive to the victims of the Shoah and to the entire Jewish community. When the first Race Relations Act was enacted in 1965, with Sir Frank Soskice at the Home Office, it was done in part to combat an increase in racial anti-Semitism. It would be outrageous to withdraw that protection because Muslims as such are not a racial group. I hope that we shall not hear that suggestion again.

The true position may be summed up in this way. There is religious anti-Semitism and there is racial anti-Semitism. Before the 19th century, anti-Semitism was primarily religious in nature, based on Christian or Islamic interpretations of Judaism. That form of prejudice and discrimination is directed at the religion itself and so usually does not affect those of Jewish ancestry who have converted to

⁸¹ *Harvey on Industrial Relations and Employment Law*, Issue 167, April 2004 [848.01]

⁸² *IDS Employment Law Handbook, Race Discrimination*, April 1999, p 5

another religion. That form of anti-Semitism is covered by the religious discrimination provisions in this Bill, just as religious Islamophobia is covered.

Racial anti-Semitism is a kind of xenophobia rooted in ideas of race. Racial anti-Semitism became the dominant form of anti-Semitism from the late 19th century until today. It replaced the belief that the religion of Judaism was to be hated with the idea that Jews themselves were a racially distinct group regardless of their religious practice and that they were inferior or worthy of animosity. It is racial anti-Semitism—will the Home Office please listen and note?—that is made unlawful under the Race Relations Act, just as racial Islamophobia is covered by the Race Relations Act.⁸³

It is important to bear in mind that the RRA is a civil statute concerning unlawful discrimination rather than criminal sanctions. These are now contained separately in the *Public Order Act 1986* and concern incitement to racial hatred.⁸⁴ The *Anti-terrorism Crime and Security Bill 2001-02* included new provisions to make incitement to *religious* hatred a criminal offence, but these did not become law. The current *Racial and Religious Hatred Bill* is seeking to extend the racial hatred offences in the *Public Order Act 1986* to cover stirring up hatred against persons on religious grounds and to amend racial hatred provisions.

VI Sexual orientation: goods and services

A. The Bill

Amendments were accepted at Third Reading in the Lords giving the Government the power to make regulations in respect of discrimination on the grounds of sexual orientation.⁸⁵ A DTI press release announced these amendments as follows:

Hotels, pubs and restaurants will be banned from discriminating against lesbian, gay and bisexual people, Trade and Industry Secretary Alan Johnson announced today.

Amendments to the Government's Equality Bill, tabled by Lord Alli and Lord Lester and approved by Parliament today, will enable regulations to be made to prohibit discrimination on grounds of sexual orientation in the provision of goods, facilities and services.

Alan Johnson said:

"This Government has made significant strides towards equality for lesbian, gay and bisexual people. We have equalised the age of consent, we have outlawed discrimination at work, and we are introducing civil partnerships.

"But lesbian, gay and bisexual people can still face unacceptable discrimination in their everyday lives - for example, being turned away from hotels, or getting a raw

⁸³ HL Deb 9 November 2005 cc649 – 650

⁸⁴ Incitement to Racial Hatred was originally contained in section 6 of the *Race Relations Act 1965*. Section 5A of the *Public Order Act 1986* was inserted by the RRA

⁸⁵ Part 3 of the Bill

deal from medical or other service providers. That's simply not fair, and we're committed to putting it right."

The Equality Bill, which was debated at its 3rd Reading in the House of Lords today, would also:

- * establish the new single Commission for Equality and Human Rights (CEHR) and define its purpose and functions;
- * make unlawful discrimination on the grounds of religion or belief in the provision of goods and services;
- * create a duty on public authorities to promote equality of opportunity between men and women (the gender duty) and to prohibit sex discrimination in the exercise of public functions.

The scope of the regulations will be subject to full public consultation.⁸⁶

The amendment on grounds of sexual orientation gives the Government power to introduce the protections by regulation. There are fears that this could lead to exemptions, weakening the effect of the protection with limited scope for Parliament to intervene and compel changes. Some commentators believe this was true of the *Employment Equality (Sexual Orientation) Regulations 2003*. If regulations are made, they will be subject to affirmative resolution, although it is likely there will be consultation prior to their presentation to Parliament.

B. Background

Provisions have been in force since December 2003 protecting people from discrimination on the grounds of sexual orientation in employment and recruitment.⁸⁷ However, there is still no legislation prohibiting sexual orientation discrimination in providing goods, facilities and services. This exists for other equality strands such as disability, race and sex. There has been pressure to include this in the Bill.

Stonewall, the organisation that lobbies in support of the rights of lesbians, gay men and bisexuals have been running a campaign entitled "Give us the Goods" calling for prohibition on discrimination in the provision of goods, facilities and services to be extended to cover sexual orientation:

Stonewall strongly supports a change in the law, as soon as possible, to tackle discriminatory behaviour against lesbian, gay and bisexual people in the provision of goods, facilities and services. Discrimination of this kind impacts on the lives of men and women, simply because of their sexual orientation, on a daily basis.

The Labour Party promised in its election manifesto that it would introduce a so-called Single Equality Bill during the lifetime of this parliament. Among other things, that would make it unlawful to discriminate against lesbians and gay men in the provision of goods and services, such as hotels and insurance.

⁸⁶ DTI press release P/2005/354, *Johnson backs ban on discrimination*, 9 November 2005: <http://www.gnn.gov.uk/environment/detail.asp?ReleaseID=177182&NewsAreaID=2&NavigatedFromDepartment=False>

⁸⁷ The *Employment Equality (Sexual Orientation) Regulations 2003*; Stonewall provide information about discrimination in employment: http://www.stonewall.org.uk/information_bank/employment/default.asp

At Stonewall we know from bitter experience that even when such things are promised, you still have to fight for them - preparing the ground for months and often years in advance. That's why we started researching the evidence of need for such a move and how it might be implemented some time ago.

What we've found recently is deeply alarming. Lesbians and gay men aren't just facing the sort of discrimination that received widespread publicity last year when a gay couple were turned away from a Scottish guesthouse. They're getting second class treatment even in the provision of key public services.

One woman we've spoken to has been refused a smear test by her local NHS simply and explicitly on the grounds of her being a lesbian. A man in contact with researchers at Stonewall Scotland was referred to a publicly-funded centre to help treat a dependence on alcohol and told there, by a Christian counsellor, that he would have to "give up homosexuality" if he wanted to get better. Bromley Council in south London has announced that it will only allow gay couples to register a civil partnership by signing the register after December 5. They won't be allowed to have friends present and a celebration in the same way as heterosexual couples.

These disgraceful demonstrations of prejudice could all be put right easily. The government recently introduced the Equality Bill into the House of Lords which will outlaw discrimination against religious groups in the provision of goods and services across the private and public sectors. The Bill received Second Reading in the Lords on 15 June, and Committee stage debates are scheduled throughout July. Amending it to apply the same rules to gay people would be straightforward. That's what Stonewall will be pushing ministers, peers and MPs to do. Lesbians, gay men and bisexuals deserve the same protection from discrimination as other minority groups.

Amendments were tabled at various stages during the Bill's passage through the Lords.⁸⁸ The Government have confirmed that they are open in principle to extending the law in this way but want full consultation on the precise details within the Discrimination Law Review which is currently ongoing:

Baroness Scotland of Asthal: I have listened carefully to what has been said by my noble friend Lord Alli and by the noble Lord, Lord Lester of Herne Hill. They put the case powerfully and eloquently, and they make a somewhat unnerving alliance.

We recognise the difficulties and disparities in today's discrimination law framework and the real effect that it can have on people's day-to-day life. The debate has been helpful in highlighting that, and I am grateful to noble Lords for their contribution. We have already made a clear commitment to the principle of addressing the difficulties. It is not a question of "Why?"; we support the reasons for re-examining the law. It is a question of "How?" and "When?". The issue is not one of principle; it is, as my noble friend rightly suggested, one of method and timing.

⁸⁸ For example by Lord Alli: HL Deb 13 July 2005 cc1194 – 1198; See index of Lords Debates below.

I turn first to the "How?". In February, recognising the sort of issues that we have debated today, the Government launched a review of discrimination law. That review is well under way. The discrimination law review will be wide-ranging and comprehensive.

I was grateful to the noble Lord, Lord Lester of Herne Hill, for touching on some of the difficulties that are inherent in the amendments as currently drafted, even at first blush. Noble Lords will appreciate that even something that may seem like a basic step to extend the law must be preceded by an understanding of the potential impact on those who would be affected.

The amendments would have an impact on all businesses, all voluntary bodies and wide areas of the public sector, including schools and the health service. It would be negligent and irresponsible if we did not examine the impact thoroughly and give those who were likely to be affected an opportunity to express their views. We must also ensure that discrimination law bites in the right way, providing protection that is both necessary and appropriate. Otherwise, we risk missing the target and imposing the law where it is not needed and missing areas in which it should properly bite.

These are not simple issues. They will have to be considered thoroughly, and that is precisely the process that the discrimination law review is tasked to undertake. I know that Stonewall has already done work in the area, and I would welcome an opportunity to discuss that further with it.

Then there is the issue of "When?". The Government were elected with a clear manifesto commitment to introduce a single equality Act. Together, the discrimination law review and its recommendations for a single equality Act will take place in the lifetime of this Parliament. That is our manifesto pledge.

If it were in my gift to do so, I would be delighted to provide a more specific timetable for my noble friend Lord Alli and for the noble Lord, Lord Lester. But that, as your Lordships fully appreciate, is not within my gift. The Committee will know and understand why I cannot do that: I cannot pre-empt what will go in the Queen's Speech for a future parliamentary Session.

However, I can assure Members of the Committee that the issues they have raised will be addressed; that work is under way; that we are bound by this manifesto commitment; and that we will do all we can to look energetically at these issues. On that basis, I ask my noble friend and the noble Lord to withdraw their amendment, confident that they will give me no peace until something is done and that when we come back on Report they will have trenchant questions to ask which I, or some poor, unfortunate other Minister, will have to answer.⁸⁹

⁸⁹ HL Deb 13 July 2005 cc1194 – 1198

VII Gender equality: public sector duty

A. The Bill

The public sector provisions on gender do two things:

- Prohibit discrimination in the exercise of public functions
- Create a general duty to promote equality

This will be achieved by amending the *Sex Discrimination Act 1975* (SDA). A general public sector duty already exists (and will remain) in respect of education, under section 25 of the SDA in the following terms:

25 General duty in public sector of education

(1) Without prejudice to its obligation to comply with any other provision of this Act, a body to which this subsection applies shall be under a general duty to secure that facilities for education provided by it, and any ancillary benefits or services, are provided without sex discrimination.

At present there are public sector provisions covering race and disability discrimination only. The prohibition of sex discrimination in public functions will bring the SDA into line with section 19B of the RRA which was inserted by the *Race Relations (Amendment) Act 2000*. The *Disability Discrimination Act 2005* also extended the DDA by inserting a new section 21B into the DDA.⁹⁰

The duty on public authorities to promote equality of opportunity will be achieved by inserting a new section 76A into the SDA. The effect of this provision is similar to the duty imposed by section 71 of the RRA (as substituted by section 2 of the *Race Relations (Amendment) Act 2000*) and the duty to be imposed by the *Disability Discrimination Act 2005* which will insert new section 49A into the DDA.

B. Background

The creation of a Women and Work Commission to examine the problem of the gender pay gap and other issues affecting women's employment was announced on 24 July 2004. The Commission is chaired by Baroness Prosser and will report by Autumn 2005.

The Women and Work Commission is looking at:

- How men's and women's education and skills affect which jobs they can get;
- Promotion and career progression - the "glass ceiling";
- Women's experiences in the job market before and after having children; and

⁹⁰ See Library Research Paper RP 05/25 *The Disability Discrimination Bill*, 16 March 2005

- The different experiences of women working full-time and part-time.

The Commission published an interim statement on 8 March 2005.⁹¹ It set out how it had broken down its work, highlighted as follows:

- Labour market experience

We will tackle the different labour market factors which act as barriers to women's chances of entering and progressing through work, in particular to ensure employers make best use of the skills and potential of women returning to the labour market, particularly after the birth of a child.

We welcome the high-profile discussion of both work-life balance and childcare and look to see specific consideration given to the impact on women's pay, opportunity and skills over the lifetime in these debates, alongside other relevant impacts, not least that on the child.

- Education, careers guidance and skills

We are concerned about girls' access to information and support to make informed choices about educational subjects, training, jobs and careers. The evidence we have heard so far tells us that young people, their parents and employers want change. We have a particular role to play in examining Government thinking outlined in the reports and ensure that current developments incorporate and address some of our concerns around constraints to girls' and women's choices in order that their horizons are broadened and aspirations raised.

We are also concerned with skills shortages and access to lifelong learning, whether in or out of work, and in particular solutions for part-time workers and women returning to the labour market after childbirth.

- Occupational segregation

As our investigation progresses, we will examine the reasons why men and women do different jobs, female access to "male" jobs and what happens to women in "male" jobs. We will investigate "glass ceilings" and "sticky floors".

We will investigate how caring is valued at present and whether and how our society might value caring jobs more highly.

- Organisational practice

We will examine minimum standards (the legal framework) and how to spread best practice, including the case for equality representatives. We will review the

⁹¹ Women and Work Commission: *A Fair Deal For Women in the Workplace*, March 2005: http://www.womenandequalityunit.gov.uk/women_work_commission/fairdealforwomen_interim_statement.pdf

experience of equal pay reviews in both public and private sectors and consider the case for mandatory pay reviews.

The Women and Work Commission interim statement made the following comment on the public sector duty to promote gender equality:⁹²

33 The Women and Work Commission has been charged with paying particular attention to the public sector as a major employer of women – 64 per cent of public sector workers are women compared to just 41 per cent in the private sector. The full-time gender pay gap (based on the median) is just 10.1 per cent in the public sector compared to 21.3 per cent in the private sector. But there are still fewer women in senior management positions in the public sector and a significant degree of clustering of women into a relatively small number of occupations, with women dominating teaching, nursing and social work. And whilst the full-time gender pay gap is smaller in the public sector than the economy as a whole, of great concern to us is the fact that the part-time pay gap is just as large.

34 We welcome the Government's commitment to a public sector duty to promote gender equality. This positive step forward will lead public authorities to take proactive steps, in their roles as employers and service providers, to positively promote equality between men and women rather than solely take steps to prevent discrimination. We also welcome the explicit reference to the Equal Pay Act in the legislation which will ensure the duty covers contraventions to the Equal Pay Act and encourage public authorities to take steps to review pay systems to prevent equal pay cases from ever having to reach the courts.

We agree that in developing the specific duties, efforts must be geared towards producing a duty which is outcome focused, proportionate and non-bureaucratic. The Government's current thinking is that implementation is scheduled for December 2006. We will take a continuing interest in the development of the specifics of the gender duty which we see as key to actively enhancing opportunities and fair pay for women across the public sector within the foreseeable future and on a continuing basis.

We will investigate issues related to contracting out and procurement and the extent to which relevant equality issues can be considered during the process.

Angela Eagle MP introduced a Ten Minute Rule Bill on *Sex Equality (Duties of Public Authorities)* in November 2004:⁹³

Sex Equality (Duties of Public Authorities)

Angela Eagle (Wallasey) (Lab): I beg to move,

⁹² Women and Work Commission: *A Fair Deal For Women in the Workplace*, March 2005: http://www.womenandequalityunit.gov.uk/women_work_commission/fairdealforwomen_interim_statement.pdf

⁹³ HC Deb 3 Nov 2004 cc310-314

That leave be given to bring in a Bill to make provision in relation to public authorities for the further prevention of sex discrimination and for the promotion of equality of opportunity for men and women.

Such a duty to promote equality was introduced for race discrimination in the Race Relations (Amendment) Act 2000. The Audit Commission has since described that as the key driver for change to combat the discrimination that still exists against our black and ethnic minority communities. Likewise, the draft Disability Discrimination Bill also contains a positive duty on the public sector to promote equality—and rightly so. It is now time for the same advance to be made for women and men, and my Bill would accomplish that.

In response to this Bill Eric Forth MP said:

The worrying thing is that the hon. Lady and her Government would be the first to say that, in the context of historically low unemployment in this country, which I applaud, and the fact that this country has one of the highest proportions of women in work in the western world, any measure that even risks diminishing those conditions could be highly counter-productive. There is always a risk that, if well-intentioned measures such as the Bill are carried too far and reach too far into the workplace, they could start to have a counter-productive effect. That danger cannot be over-stated.

VIII Equality Strands

A. Overview

Discrimination law currently covers the following main areas:

- Sex
- Race
- Disability
- Age
- Religion
- Sexual Orientation
- Transsexual People

Other strands which could be identified are not specifically protected but may in some cases be covered under existing legislation:

- Children – The rights of children come under general human rights provisions. The CEHR will be also able to take account of the *International Convention on the Rights of the Child*.
- Carers of adult dependents – The current *Work and Families Bill* gives an order making power which will allow flexible working rights to be extended to carers.
- Parents – Are covered in many cases under the SDA and *Employment Rights Act 1996*. The employment rights of parents are closely connected with equality law,

although the issues are often more to do with work life balance than discrimination.⁹⁴

- Gypsies and travellers – Are covered under race discrimination provisions.
- Height and Weight – Not covered, but there is evidence that discrimination on these grounds can be a problem.⁹⁵
- Genetic – This is an issue which may arise more frequently in the future with increases in the use of genetic testing.⁹⁶

Discrimination legislation in the UK has emerged over an extended period of time and has been derived both legally and conceptually from diverse sources. For example, race discrimination law in the UK owes something to US civil rights law. More recent strands have emanated from European directives.

The result is a large and complex body of law of uneven texture which often requires specialist legal expertise to understand. Much of it has been driven by an underlying need for social change. However, the most common legislative response to this need has been to create rights for individuals to sue for compensation as victims of discrimination. The extent to which this has been an effective response to the underlying problem has been questioned.⁹⁷ Discrimination claims have comparatively the lowest success rates at employment tribunals.⁹⁸ In light of survey results on matters such as the gender pay gap and the social and economic position of ethnic minorities, many commentators have expressed disappointment at the progress made so far toward an equal society.

There is also recognition that the categories outlined above can intersect in complex ways, creating particular problems which need to be addressed. One example of this is the intersection between gender and race. A recent report published by the Fawcett Society outlined the racial dimension to gender pay gap.⁹⁹ Another area which has attracted recent attention is the intersection between race and religion. Due to developments in the case law on race discrimination it has emerged that Muslims have very limited protection under race discrimination law because they are not defined as a racial group. This has also had implications for criminal law on incitement to racial hatred.

B. Race

The *Race Relations Act 1976* (RRA), as amended, makes it unlawful to discriminate against anyone on grounds of race, colour, nationality (including citizenship), or ethnic or

⁹⁴ It has been suggested that family friendly rights may encourage discrimination:

<http://www.personneltoday.com/32194.article>

⁹⁵ <http://www.personneltoday.com/32212.article>

⁹⁶ See: HGC, *Inside Information, Balancing interests in the use of personal genetic data*, May 2002: http://www.hgc.gov.uk/UploadDocs/DocPub/Document/insideinformation_summary.pdf

⁹⁷ Bob Hepple, *Have twenty five years of the Race Relations Acts in Britain been a failure?* Chapter in *Discrimination: The Limits of the Law*, UCL 1992

⁹⁸ Employment Tribunals Service, *Annual Report and Accounts 2003-2004*, page 23: <http://www.ets.gov.uk/frame.htm>

⁹⁹ Kate Bellamy; Dr. Katherine Rake, *An audit of women's economic welfare in Britain today*, Fawcett Society, March 2005, page 29: <http://www.fawcettsociety.org.uk/documents/Auditfullreport.pdf>

national origin. The *Race Relations (Amendment) Act 2000*, imposed general duties on many public authorities to promote equality of opportunity and good race relations. The *Race Relations Act 1976 (Amendment) Regulations 2003* implemented the *Race Directive 2000/43/EC* and provided a new definition of indirect race discrimination as well as specifically covering racial harassment. They set out new rules on the burden of proof in discrimination cases and removed the previous exemption covering racial discrimination in employment in a private household.

The RRA applies to employment, training, housing, education and the provision of goods, facilities and services. It is also unlawful for public bodies to discriminate while carrying out any of their functions.

It is important to note that racial harassment and abuse are offences under the criminal law, particularly if they involve physical violence. Inciting racial hatred is also a criminal offence. It is a criminal offence to publish and disseminate materials such as leaflets and newspapers which may incite racial hatred. Such matters should be reported to the police.

The Commission for Racial Equality give the following useful definition of race discrimination:

The Race Relations Act is concerned with people's actions and the effects of their actions, not their opinions or beliefs. Racial discrimination is not the same as racial prejudice or 'racism'.

Prejudice literally means 'pre-judging' someone - knowing next to nothing about them but jumping to conclusions because of some characteristic, like their appearance.

Racism is the belief that some 'races' are superior to others - based on the false idea that different physical characteristics (like skin colour) or ethnic background make some people better than others.

Discrimination occurs when someone is treated less favourably on grounds of their colour, race, nationality or national or ethnic origin. It is not necessary to prove that someone intended to discriminate against you: it is sufficient only to show that the outcome of their action was that you received less favourable treatment.¹⁰⁰

Racial discrimination takes three different forms. It may be direct, indirect or "victimisation" of a person who has made or supported a legal claim of race discrimination.

Under section 3(1) RRA, racial discrimination is defined as discrimination on grounds of "colour, race, nationality or ethnic or national origins". Separate provisions cover religious discrimination in employment which does not specifically come under the Act in England,

¹⁰⁰ http://www.cre.gov.uk/legaladv/rra_discrim.html

Scotland and Wales, although it may sometimes amount to indirect discrimination against a racial group.¹⁰¹

Direct discrimination is less favourable treatment of a person on discriminatory grounds. Indirect racial discrimination may fall into one of two categories. The first is on grounds of *colour or nationality*; the second is based on *race, ethnic or national origin*. There is a subtle difference between the two arising from the way in which the European *Race Directive* was phrased and accordingly implemented in UK law.

There are some exceptions to the provisions. The most substantial of these relate to training and positive action to redress a pre-existing inequality.

A report in 2003 on the participation of people from ethnic minorities in the labour market revealed 10-15% higher unemployment rates for ethnic minorities.¹⁰² A separate report showed that 67% of people from ethnic minority communities live in the 88 most deprived districts in England compared to 37% of the white population.¹⁰³

C. Sex

It is generally accepted that women still earn less than men, although some commentators question whether there are differences in wage growth.¹⁰⁴ Current estimates for the gender pay gap stand at 17.2% (percentage difference between mean hourly earnings of men and women working full-time). However, some believe that the median measure is more suitable than the mean for expressing the gender pay gap in the UK because of the skewed distribution of earnings data.¹⁰⁵

A DTI press release of 10 November 2005 commented on the pay gap in the following terms:¹⁰⁶

Minister for Women Tessa Jowell today welcomed the Office of National Statistics announcement of a fall in the gender pay gap.

Mrs Jowell said:

"It is excellent news that the gender pay gap is now at its lowest level in 30 years since the introduction of the Equal Pay Act.

"In 1975, women earned 70p for every £1 a man received, while today women receive 83p.

¹⁰¹ See *Employment Equality (Religion or Belief) Regulations 2003 SI No. 1660*

¹⁰² Prime Ministers Strategy Unit, Cabinet Office, *Ethnic Minorities and the Labour Market*, 2003

¹⁰³ *Strength in Diversity: Towards a Community Cohesion and Race Equality Strategy*, 2004.

¹⁰⁴ See Alan Manning and Helen Robinson, *Something in the way she moves: a fresh look at an old gap*, Oxford Economic Papers 56 (2004), 169-188. "The bulk of the full- to part-time gap is explained in terms of the fact that women working part-time are much more likely to be entrants to the labour market."

¹⁰⁵ The median is the value below which 50 per cent of employees fall.

¹⁰⁶ DCMS Press Release, *Jowell Hails Reduction in Gender Pay Gap*, 10 November 2005

"The pay gap has fallen from 17.4% in 1998 to 13.2% in 2005. Women now earn an average of £9.82 an hour and men £11.31 an hour.

"But there is obviously still more to be done. This shows that government policies to address the reasons why the pay gap has existed for so long are working: the minimum wage, flexible working, and better maternity and paternity leave.

"But there is no room for complacency; we must close the pay and skills gap further to ensure women have higher lifetime earnings and higher pensions.

"Our next step will be to take forward the recommendations from the Women and Work Commission's Report, which we look forward to receiving in January."

Notes to editors

1. ONS figures are available at: <http://www.statistics.gov.uk/>
2. The gender pay gap is measured by the median hourly earnings of full-time employees, excluding overtime.
3. The median gender pay gap has fallen from 17.4% in 1998 to 13.2% in 2005. The median is the value at which 50 per cent of employees fall below and 50 per cent fall above.
4. The mean gender pay gap has fallen from 30% in 1975 to 17.2% in 2005; there were no median comparisons in 1975.
5. For further information about the Government's proposals for extending maternity and paternity provisions, see: <http://www.dti.gov.uk/er/workandfamilies.htm>
6. Further information about the work of the Women and Work Commission is available at: http://www.womenandequalityunit.gov.uk/women_work_commission/index.htm

Women represent a higher proportion of those in lower-skilled occupations and part-time employment. There is also currently significant concern about discrimination against women on grounds of pregnancy.¹⁰⁷

Some of the causes of the gender pay gap were outlined in a survey publicised by the Equal Opportunities Commission (EOC):¹⁰⁸

Why is there still a gender pay gap?

In 1991, the EOC's Equal Pay Taskforce identified three main causes of the gender pay gap:

¹⁰⁷ EOC Research, *Pregnant and Productive* 2005

¹⁰⁸ EOC campaign statistics: <http://www.eoc.org.uk/cseng/policyandcampaigns/timetogeteven.asp>

Discrimination in pay systems Women being paid less than men for doing the same job as a man or a job requiring the same level of skill, effort and responsibility as a job done by a man

Occupational segregation: large groups of women are concentrated in a narrow range of low paid jobs such as cleaning, catering and caring

Caring responsibilities the responsibility for looking after children and other relatives falls on women more than men, which affects their progression at work.¹⁰⁹

The *Sex Discrimination Act 1975* (SDA) prohibits sex discrimination against individuals in the areas of employment, education, and the provision of goods, facilities and services and in the disposal or management of premises. The *Equal Pay Act 1970* gives the right to the same contractual pay and benefits as a person of the opposite sex in the same employment. Both of these Acts came into force in 1975.

The *Sex Discrimination (Election Candidates) Act 2002* enables political parties, if they wish, to adopt positive measures to reduce inequality in the numbers of men and women elected as representatives of their party. UK political parties have adopted various kinds of quota schemes to address the fact that women are still poorly represented in UK politics. Currently 18% of MPs are women. The proportion is higher in the Scottish Parliament, Welsh Assembly and European Parliament, but lower in the Northern Ireland Assembly, Local Authorities and the House of Lords.

The Sex Discrimination Act 1975 (Amendment) Regulations 2003 provided for Chief Constables to be liable in the same way as ordinary employers for sex discriminatory acts committed by officers in their force in the course of their employment and extended the law to cover sex discrimination committed after the termination of employment.

Regulations came into force in October 2005 implementing the amended *Equal Treatment Directive* (2002/73/EC); clarifying the law on indirect discrimination; inserting definitions of harassment on grounds of sex, harassment on grounds of gender reassignment, and sexual harassment into the SDA; and clarifying that pregnancy and maternity, paternity and adoption leave are covered under SDA.¹¹⁰ The consultation on these changes ended on 31 May 2005.¹¹¹

The *Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000* gave part-time workers the right to the same rates of pay (pro rata) and conditions of employment as full time employees doing the same work. The regulations implemented the European *Part-Time Work Directive* 97/81/EC. A part-time worker has the right to request a written statement from the employer explaining any treatment which the worker thinks is less favourable than full time employees. Complaints can be made to an employment tribunal.

The Fawcett society has taken up the issue of women's pensions and in collaboration with Age Concern has launched a campaign on this issue:

¹⁰⁹ EOC campaign statistics: <http://www.eoc.org.uk/cseng/policyandcampaigns/timetogeteven.asp>

¹¹⁰ The *Employment Equality (Sex Discrimination) Regulations 2005*, SI No.2467

¹¹¹ DTI, *Equality and Diversity: Updating the Sex Discrimination Act*, 7 March 2005

Pensions

Older women today are facing a considerable pensions gap: for every pound of income received by men in a pensioner couple, women receive less than 32 pence. Female single pensioners are one of the poorest groups of the older population, and currently nearly a quarter live in poverty. More than twice as many older women as men are reliant on the means-tested Minimum Income Guarantee (MIG).

The issue of pension provision is of major concern for both women and men, but too often pensions have been designed without taking into account the differences between women's and men's lives.

The Fawcett Society and Age Concern have joined forces to run a campaign on women and pensions. We share the view that the levels of hardship currently experienced by older women in the UK are intolerable. And, unless the Government acts now, many younger women will face an old age in poverty just as their mothers and grandmothers did.¹¹²

The *Employment Act 2002* introduced various measures aimed at helping parents maintain access to employment and achieve a better balance between their work and home lives. It is hoped that this will have a positive impact on the pay gap by helping women return to the labour market. The Act also introduced an equal pay questionnaire with the intention of making it easier to tackle pay discrimination in the workplace.¹¹³ The EOC encourages employers to undertake equal pay reviews to highlight inequalities and hopefully address them without the need for enforcement or litigation. The current *Work and Families Bill* contains various provisions allowing regulations to be made extending statutory leave and pay for parents. The intention is to increase the period of Statutory Maternity Pay to 39 weeks by April 2007 as a step toward 52 weeks by the end of the Parliament. Additional unpaid paternity leave will be introduced after further consultation. This leave could be paid if certain conditions are met.

Although the *Sex Discrimination Act 1975* (SDA) outlaws most forms of sex discrimination in the provision of goods, services and facilities, it is still legal for genuinely private clubs to make different facilities available for men and women. Various Bills have been introduced intended to outlaw sex discrimination in private clubs. Robert Walter MP introduced the *Sex Discrimination (Amendment) Bill 2001-02* under the Ten-Minute Rule on 11 December 2001.¹¹⁴ Lord Faulkner of Worcester's *Sex Discrimination (Amendment) (No 2) Bill [HL] 2001-02* received a Second Reading in the Lords on 13 March 2002 and was passed by the Lords on 17 June 2002. Although introduced in the Commons on the same day, it made no further progress and fell at the end of the session. The Government supported the Bill "in principle". However, despite press reports suggesting otherwise, it did not give a commitment to make Parliamentary time available for the Bill and it failed to make further progress.

¹¹² Fawcett Society: http://www.fawcettsociety.org.uk/Campaign_Pay.htm

¹¹³ HC Deb 6 October 2003 c995W

¹¹⁴ MP for North Dorset

The *Sex Discrimination (Clubs and Other Private Associations) Bill 2003-04* was originally a Handout Bill available to MPs successful in the ballot for Private Members' Bills, but was not picked up by any of them. However, it was presented by David Wright MP as a Ten Minute Rule Bill on 9 March 2004, and it subsequently succeeded in getting a Second Reading on 14 May. This was because the Government supported it at that stage. A Regulatory Impact Assessment was accordingly published. The Bill did not progress beyond Committee stage in the Commons.

D. Disability

The *Disability Discrimination Act 1995* (DDA) prohibits discrimination against disabled people in the areas of employment; the provision of goods, facilities and services; premises and education; and provides for regulations to improve access to public transport. The *Disability Discrimination Act 1995 (Amendment) Regulations 2003* and the *Disability Discrimination Act 1995 (Pensions) Regulations 2003* both implement the EC *Employment Directive* (or "general framework" Directive) 2000/78/EC.

Disabled people face numerous barriers in employment and in accessing goods and services. In many ways this equality strand is different from others and has required different legislative measures. In terms of employers and providers of goods and services, other kinds of discrimination law are structured around prohibitions. Disability legislation is unique in that it places mandatory requirements on employers and service providers to make adjustments to accommodate the needs of disabled people. There are also differences in how the prohibitions operate in terms of the way in which comparisons should be drawn.¹¹⁵

The *Disability Discrimination Act 2005* amended and extend the *Disability Discrimination Act 1995* in response to the 2001 *Towards Inclusion* consultation document. The Act delivers the remainder of the Government's response to the recommendations of the Disability Rights Task Force. It introduces new rights in the areas of transport and the functions carried out by public authorities. It will also strengthen and extend the DDA by introducing or extending provisions on letting premises, private clubs and local councillors. The definition of disability in the DDA is extended to bring more people within its coverage. The *Disability Discrimination Bill* which preceded the Act was first published as a *Draft Disability Discrimination Bill* in December 2003, this draft Bill was subject to pre-legislative scrutiny by a Joint Committee of both Houses of Parliament.¹¹⁶

E. Age

There are currently no legislative provisions in force covering age discrimination. Regulations are due to come into effect in October 2006. The Government published a consultation paper on age discrimination in the workplace in July 2003.¹¹⁷ This arose out of the need to implement the *EC Directive establishing a general framework for equal treatment in employment and occupation* (2000/78/EC) which was adopted on 27

¹¹⁵ See *Clark v. Novacold Ltd* [1999] ICR 951, CA

¹¹⁶ See Library Research Paper RP 05/25 *The Disability Discrimination Bill*, 16 March 2005

¹¹⁷ DTI consultation, *Age Matters*, July 2003: http://www.dti.gov.uk/er/equality/age_consultation.pdf

November 2000. The purpose of this Directive, commonly called the “Employment Directive”, is to prohibit discrimination in employment on the grounds of religion or belief, disability, age or sexual orientation. The age discrimination strand of the directive must be implemented by December 2006.

In the meantime the Government have initiated a campaign called “Age Positive” to encourage employers to adopt non-ageist employment practises. This was accompanied by the publication in 1998 of a voluntary Code of Practice: *Age Diversity at Work, A Practical Guide For Business*. This code was updated in 2002.

A prominent concern that has arisen relates to retirement age. It is important to stress that the “retirement age” and the “pension age” are not synonymous. The retirement age is the age at which one can be required to leave work. The pension age is that age at which one can start to draw an unreduced pension. At present, employers are within their rights to lay down mandatory retirement ages in contracts of employment. The full details of the way in which this will be affected by the age discrimination legislation are still under discussion. However, the Government have confirmed that compulsory retirement ages will become unlawful unless they can be objectively justified. A Ministerial Statement on 14 December 2004 by Patricia Hewitt confirmed the Government’s final decision in favour of a national default retirement age of 65 together with a right for employees to request working beyond the set retirement age. The decision to have a national default retirement age will be reviewed after five years. Mandatory retirement will be outlawed below 65 unless the employer can objectively justify their action:¹¹⁸ Recent consultations on these provisions entitled “Coming of Age” closed in October 2005.¹¹⁹

Another area of concern has been the upper and lower age limits on statutory protection for unfair dismissal and entitlement to statutory redundancy pay. A challenge was launched against the legality of upper age limits in the case of *Harvest Town Circle Ltd v Rutherford*, where a man dismissed at the age of 67 argued that there was no objective justification for the rule prohibiting people over the normal retiring age from claiming unfair dismissal and that it affected more men than women (in other words it amounted to indirect sex discrimination). The case was appealed to the Court of Appeal who gave judgement on this case on 3 September 2004 dismissing the appeal.¹²⁰ It is possible that reference may yet be made to the European Court of Justice.¹²¹ The House of Lords have accepted an appeal in this case.

There has been much discussion about the “ageing workforce”. Many developed countries, most notably Japan, are facing a demographic increase in the proportion of older people in their societies. Much of this can be attributed to the so called “baby boomer” generation following the surge in birth rates after the Second World War. This has prompted concerns ranging from pension provision to labour supply. A frequent question that arises is whether people should be encouraged to work longer. At the

¹¹⁸ HC Deb 14 December 2004 cc127 - 130WS

¹¹⁹ <http://www.dti.gov.uk/er/equality/age.htm>

¹²⁰ *Rutherford & Another v. Secretary of State for Trade and Industry* [2004] EWCA Civ 1186; Full text of judgement: <http://www.bailii.org/ew/cases/EWCA/Civ/2004/1186.html>

¹²¹ “Ruling gives over-65s new work rights”, *Financial Times*, 24 August 2002

same time there is a perception that younger workers face a degree of economic exclusion and negative perceptions about their abilities at work.

F. Religion

The *Employment Equality (Religion or Belief) Regulations 2003* came into force in December 2003 and prohibit discrimination in employment and vocational training on the grounds of religion, religious belief or similar philosophical belief.

Prior to December 2003 there was no law against discrimination on religious grounds in Great Britain except the *Fair Employment and Treatment (Northern Ireland) Order 1998* which outlaws both direct and indirect discrimination “on the ground of religious belief or political opinion” in employment in Northern Ireland.

The *Race Relations Act 1976* (RRA) prohibits discrimination on racial grounds and this has been used to protect certain religious groups that also constitute a distinct ethnic group. The RRA applies in employment as well as in other fields.

Indirect discrimination occurs when people from a particular racial group are less likely to be able to comply with a requirement or condition and that requirement cannot be justified on non-racial grounds. The provision, criterion or practice could be applied to everyone, but may put people of the same race or national or ethnic origin at a particular disadvantage. For example, action taken by an employer which causes detriment to Muslims as a class may amount to indirect discrimination against a particular racial group, if the majority of the Muslims affected are from a defined ethnic group.¹²² For example, a regulation (such as a prohibition on women wearing headscarves or trousers) which adversely affects Muslims might well constitute indirect discrimination because of the ethnic make up of the Muslim community in Great Britain or the particular geographical region in question.

G. Sexual orientation

On 13 December 2001 the Government issued a consultation document seeking views on the implementation of the *Employment Directive*.¹²³ On 22 October 2002, draft implementing regulations were published. The *Employment Equality (Sexual Orientation) Regulations 2003* came into force in December 2003 and prohibit discrimination in employment and vocational training on the grounds of sexual orientation.

There was formerly a ban in the armed forces on the employment of gays and lesbians, but this was lifted on 12 January 2000, following the European Court of Human Rights (ECHR) judgment of 27 September 1999 in the cases of *Lustig-Prean & Beckett v The United Kingdom* and *Smith & Grady v The United Kingdom*.¹²⁴ The ECHR ruled that the

¹²² *JH Walker Ltd. v Hussain* [1996] IRLR 11, EAT. See also *Hussain v Midland Cosmetic Sales plc* (9 May unreported) EAT.

¹²³ Cabinet office, DTI, Home Office, DWP, *Towards Equality and Diversity: implementing the employment and race directives*, 13 December 2001, available on the DTI website at: <http://www.dti.gov.uk/er/equality/consult.pdf>

¹²⁴ Statement by Geoffrey Hoon, Secretary of State for Defence, HC Deb 12 January 2000, cc 287-288

British armed forces' ban was a breach of Article 8 of the European Convention on Human Rights (right to respect for private and family life). The Article provides that:

1 Everyone has the right to respect for his private and family life, his home and his correspondence.

2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Some people who have suffered discrimination on grounds of their sexual orientation have tried to bring cases under the *Sex Discrimination Act 1975* (SDA) more recently quoting the *Human Rights Act* (HRA) in support. However, these cases were not successful.

Baroness Turner of Camden tried on three occasions to introduce *Sexual Orientation Discrimination Bills* which would have extended the scope of the *Sex Discrimination Act* to cover sexual orientation.¹²⁵

There were also a number of unsuccessful attempts by Liberal Democrats to amend the *Employment Relations Bill 1998-99* during its passage through Parliament to outlaw discrimination on grounds of sexual orientation in employment.

H. Transsexual people

The *Sex Discrimination (Gender Reassignment) Regulations 1999* extend the provisions of the *Sex Discrimination Act 1975* on employment and vocational training to include discrimination on gender reassignment grounds.

The *Gender Recognition Act 2004* provides for the legal recognition of transsexual people in their acquired gender for the purposes of registration and marriage.

Transsexual people first gained protection from discrimination in employment under the SDA in the case of *Chessington World of Adventure v X*.¹²⁶ This case applied the decision of the European Court of Justice in the case of *P v S and Cornwall County Council* which held that discrimination for reason related to a gender reassignment breaches the *Equal Treatment Directive*.¹²⁷ The ECJ judgement in *P v S* was as follows:

In view of the objective pursued by Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and

¹²⁵ *Sexual Orientation Discrimination Bill [HL] 1994/95*, second reading debate, 14 July 1995; *Sexual Orientation Discrimination Bill [HL] 1995/96*, second reading debate, 6 March 1996; *Sexual Orientation Discrimination Bill [HL] 1997/98*, second reading debate, 5 June 1998, HL Deb 639-660

¹²⁶ *Chessington World of Adventure v X* [1997] IRLR 556

¹²⁷ *P v S and Cornwall County Council* Case C-13/94; *Sex Discrimination Act 1975* sections: 1(1)a, 5; *EEC Equal Treatment Directive 76/207*: Articles 1(1), 2(1), 3, 5(1)

women as regards access to employment, vocational training and promotion, and working conditions, Article 5(1) of the Directive precludes dismissal of a transsexual for a reason related to a gender reassignment.

The Joint Committee on Human Rights examined the draft *Gender Recognition Bill* during pre-legislative scrutiny of the Bill. The Gender Trust submission to the Joint Committee highlighted the absence of protection for transsexuals in the provision of goods and services in the following terms:

2.18 Members of the trans community have no protection under English law against discrimination in respect of the provision of goods and services. It is apparently legal, for example:

- (a) to have a “no transsexuals” policy at a shop or restaurant (as regards customers)
- (b) to refuse an elderly trans person a place at a care home as a resident
- (c) to decline private medical services to a transsexual person because they are transsexual
- (d) to require a trans person to pay more for goods or services or to refuse services altogether
- (e) to refuse to let premises to a transsexual person (including in principle also erecting a “no transsexuals” sign at the door).¹²⁸

The TUC and Press for Change are currently campaigning to have a goods and services provision added to the Bill.¹²⁹ A Parliamentary Question on 10 November confirmed that the Government are considering this matter within the Discrimination Law Review:

Lynne Jones To ask the Secretary of State for Trade and Industry if he will make a statement on protection against discrimination for transsexual people in the provision of goods and services. [25613]

Meg Munn: The Government will address the issue of protection against discrimination for transsexual people in the provision of goods and services as part of the Discrimination Law Review.¹³⁰

IX House of Lords

A. Amendments and debates

1. Constitutional concerns

The House of Lords Select Committee on the Constitution set out various concerns about the constitutional implications of the proposed Commission in a letter from its chairman Lord Holme which may be summarised as follows:¹³¹

¹²⁸ Gender Trust Submission to the Joint Committee on Human Rights:

<http://www.gendertrust.org.uk/jchr.php>

¹²⁹ Unison Press Release, *New Rights to Equality of Access for Lesbian, Gay and Bisexual People Long Overdue*, 10 November 2005: http://www.unison.org.uk/asppresspack/pressrelease_view.asp?id=741

¹³⁰ HC Deb 10 November 2005 c689W

¹³¹ Letter from Lord Holme to the Lord Chancellor, 21 June 2005:

- A widely drafted fundamental duty of the CEHR, together with a semi-autonomous Commission with an unprecedented range of powers and duties may raise questions of democratic accountability
- The power of the CEHR to apply a human rights yardstick to legislation which offers a parallel to the powers of review by the courts but without the safeguard of judicial independence
- The diversity of the CEHR's powers and duties may be too onerous for effective operation
- No provision for the parliamentary approval of the CEHR's strategic plan
- Extent of independence of the CEHR, given the Secretary of State's wide discretion with regard to appointments; codes of practice; and inquiries
- A plethora of accountability arrangements to a variety of Government departments involved: Trade and Industry; Constitutional Affairs; Work and Pensions; and Home Office
- Questions relating to the suitability of the Non Departmental Public Body (NDPB), described in Cabinet Office guidance as follows:

The term 'NDPB' has been in existence since 1980 when it was coined by Sir Leo Pliatsky in his 'Report on Non Departmental Public Bodies'. An NDPB is described as:

“ A body which has a role in the processes of national government, but is not a government department, or part of one, and which accordingly operates to a greater or lesser extent at arm's length from ministers.”¹³²

Concerns were voiced on various occasions in Lords debates about the fundamental duty of the CEHR and claims were made that the duty is drafted so widely that the CEHR would effectively be immune from judicial review. This idea was challenged in very strong terms by Lord Lester who argued that an examination of the established grounds for judicial review does not bear this out.

The definition of public authority in the HRA was raised, as many regard the case law to have given an overly restrictive definition which excludes various bodies such as care homes from coverage.¹³³

http://www.parliament.uk/parliamentary_committees/lords_constitution_committee/cwm.cfm

¹³² Cabinet Office, *Non Departmental Public Bodies A Guide for Departments c) Policy and characteristics of an NDPB*:
http://www.civilservice.gov.uk/improving_services/agencies_and_public_bodies/publications/doc/NDPB-guide_2004/c_policy-characteristics.doc

¹³³ See Joint Committee on Human Rights Seventh Report of 2003-04, *The Meaning of Public Authority under the Human Rights Act*, 3 March 2004, HL 39/HC 382:
<http://www.publications.parliament.uk/pa/jt200304/jtselect/jtrights/39/3902.htm>

2. Religious harassment

The Government lost a division on the clauses providing for religious harassment. Lord Lester tabled an amendment which succeeded in removing these provisions from the Bill. He did so on the grounds that the provisions are unsatisfactory as drafted and that this question needs to be considered in greater detail by the Discrimination Law Review.

3. Sexual orientation

Initially there was nothing in the Bill specifically giving new protections to the sexual orientation strand. A regulation making power has now been included.

4. Disability and other strands

Changes have been made to the position of disability in the Bill with regard to the promotion of good relations between communities and other duties. Formerly there was separate provision for the disabled community. This has been taken out and disability added to the general provisions on groups. Since the Bill was last debated in the Commons at the end of the last Parliament, new provisions have been added which make technical changes to the public sector duty in relation to disability.

Various amendments were tabled to give specific reference to strands or provide for lists of strands. These were resisted by the government on the basis that the CEHR should not be restricted in this way. One example of this which was raised on more than one occasion was children. It was clarified that the rights of children and the *International Convention on the Rights of the Child* would be covered by the Bill as it stands.

B. Index of debates

The following section is a general guide to the relevant topics debated at various stages in the Bill's progress through the House of Lords following its introduction in the Lords on 18 May 2005.

a. *Second Reading*

HL Deb 15 June 2005 cc1219 – 1308

Lord Falconer of Thoroton 1219 – 1224

Baroness Miller of Hendon 1224 – 1230 Timing of the Bill before a Single Equality Act; independence of CEHR; Fundamental duty of CEHR; costs of CEHR; care homes and human rights; age discrimination

Lord Lester of Herne Hill 1230 – 1235 Single Equality Bill; single equality commission; judicial review in human rights cases; religion and belief; duty to promote gender equality; equal pay; definition of "public authority"

Lord Bishop of Southwell 1235 – 1237 CEHR; religion and belief

Baroness Lockwood 1237 – 1240 Gender Equality

Earl Ferrers 1240 – 1244 Fundamental duty of CEHR

Baroness Falkner of Margravine 1244 – 1246 Discrimination law; incorporation of CRE into CEHR; independence of CEHR; communities

Lord Rix 1246 – 1248 Learning disabilities; disability community relations

Lord Ashley of Stoke 1248 – 1251 CEHR; Disability Committee; enforcement of human rights; Single Equality Act

Baroness Carnegy of Lour 1251 – 1253 CEHR; Scotland

Baroness Thomas of Walliswood 1253 – 1255 Gender duty; definition of “public authority”; transgender people; pay gap; discrimination in goods and services provision; transition to CEHR

Lord Parekh 1255 – 1259 Independence of CEHR; remit of CEHR; relationship between equality and human rights; local networks; definition of “public authority”; incorporation of CRE into CEHR

Baroness Greengross 1259 – 1262 Age discrimination

Baroness Turner of Camden 1262 – 1264 Equal Opportunities Commission; equality law

Lord Addington 1265 – 1266 Disability discrimination

Baroness Howells of St Davids 1266 – 1267 Race Relations; equality law

Baroness O’Cathain 1268 – 1272 Fundamental duty of CEHR; costs of CEHR; religion

Lord Ousley 1272 – 1275 Single Equality Act; fundamental duty of CEHR; Crown exemptions; definition of “public authority”; incorporation of CRE into CEHR; discrimination

Baroness Massey of Darwin 1275 – 1278 Children; age equality

Baroness Walmsley 1278 – 1281 Children’s rights

Baroness Gale 1281 – 1283 Wales

Baroness Howe of Idlicote 1283 – 1286 CEHR

Baroness Whitaker 1286 – 1288 Civil service; cultural change; balance of rights; codes of practice

Baroness Wilkins 1288 – 1290 Disability rights

Lord Dholakia 1290 – 1295 Race relations; equality legislation

Lord De Mauley cc1295 – 1299 Equality strands in a unified Commission; fundamental duty of CEHR; judicial review and *ultra vires*; effect on business

Baroness Ashton of Upholland 1299 – 1308 Government response

b. Committee

HL Deb 6 July 2005 cc633 – 730

633 – 646 Independence of CEHR from government; Electoral Commission model; an Appointments and Oversight Committee

646 – 652 Commissioners to be representative of communities; quota systems; committee systems

652 – 672 Disability; the Disability Committee and Commissioners; Disability Rights Commission; disabled community; independent living; disability rights

672 – 679 Children; United Nations Convention on the Rights of the Child

679 – 682 Trade union and employer representation in CEHR

682 – 685 Gender and race relations representation in CEHR

685 – 691 Devolution; Scotland and Wales Committees in CEHR

719 – 720 Communities

721 – 723 CEHR: Allocation of priorities, activities and resources to different strands

723 – 729 Independence of CEHR; Non Departmental Public Body; Reports of CEHR

729 – 730 Disclosure; **amendment**

HL Deb 11 July cc883 – 899

844 – 888 Independence of CEHR; Ministerial duty to uphold independence of CEHR

888 – 891 Powers of CEHR to promote equality;

891 – 894 Sexual orientation: discrimination in the provision of goods, facilities and services

895 – 898 Public interest and independence in exercise of CEHR powers

918 – 919 Human rights

919 – 922 Rights and responsibilities

- 922 – 923 Children’s rights; International Convention on the Rights of the Child
- 923 – 925 Involuntary isolation of communities; segregation and inclusion
- 925 – 927 Reporting and compliance with international treaties
- 927 – 931 Independence of CEHR; Powers of Secretary of State
- 931 – 933 Fundamental duty of CEHR; monitoring progress
- 933 – 935 CEHR; information and advice; Small Business
- 935 – 936 Codes of practice
- 936 – 938 CEHR; inquiries; cooperation with Office of Fair Trading; discriminatory operation of markets; super-complaints under the *Enterprise Act*; Citizens Advice Bureau
- 939 – 942 Investigations; reasonable grounds to commence investigations
- 942 – 944 Unlawful Act Notice; regression of existing commission powers; enforcement through courts
- 944 – 946 Applications to Court by CEHR in cases of persistent discrimination; section 73 *Sex Discrimination Act*; streamlined process
- 946 – 948 Legal assistance; duty of CEHR to consider all applications for assistance; regression from current powers
- 948 – 955 Legal assistance; assistance to be available to respondents as well as claimants; small business; access to justice; *Steel and Morris v UK* (“McLibel” trial); disciplinary and grievance procedures; employment tribunal claims
- 970 – 973 Legal assistance; restriction to equality cases; human rights cases; continuing support for combined discrimination and human rights case where discrimination element falls away
- 973 – 974 Legal assistance; costs; *Legal Aid (Scotland) Act 1986*; **amendment**
- 974 – 977 Judicial review and other legal proceedings; human rights cases
- 977 – 978 Inquiries, investigations and assessments; **amendment**
- 978 – 982 Equality and human rights enactments; other employment legislation; part-time workers rights; maternity and paternity rights; *Employment Rights Act 1996*
- 982 – 983 Transfer of property; transfer of undertakings regulations (TUPE)
- 983 – 984 Estate Agents Act 1979; discrimination; **minor and technical amendments made**

HL Deb 13 July cc1105 – 1208

1105 – 1108 Religion and belief; definition of religion and belief; Humanist Association

1108 – 1110 Religion or belief; definition; belief in the supreme nature of the Jedi Knights not protected

1110 – 1116 Age; marital status; transgender status; protection from discrimination in the provision of goods, facilities and services

1116 – 1122 Religious discrimination; discrimination against someone of the same religion; definition of harassment

1122 – 1124 Definition of indirect discrimination

1124 – 1132 Religion or belief; harassment; religious objects, books, practices or observances

1132 – 1135 Religion; provision of goods, facilities and services; equal access of children to play facilities and services

1135 – 1136 Exceptions to religious discrimination provisions; small scale landlords; **amendment**

1136 – 1137 Exceptions for faith-based schools; acts necessary having regard to the nature of faith schools; **amendment**

1137 – 1141 Exception for faith based schools; harassment of schoolchildren

1142 – 1143 Faith based schools; unfilled school places

1143 Faith based schools; devolution Scotland and Wales

1143 – 1146 Local education authorities and education authorities; discrimination and harassment

1147 – 1156 Public authorities; civil marriage registrars; social workers and conscientious objection to gay or transsexual marriage or adoption

1156 – 1159 Public authorities; definition of public authority; exception for immigration decisions by entry clearance officers

1159 – 1161 Public authorities; harassment exemption; provision of goods and services by public authorities; **amendments**

1161 – 1162 Discriminatory practices; indirect discrimination

1162 – 1165 Organisation relating to religion or belief; commercial organisations

1165 – 1170 Organisations; religion or belief; public functions

1182 – 1187 Religious ethos; girl guides

1187 – 1189 Amendment of exceptions

1189 – 1191 Religious discrimination; National Security; solicitors' rights of audience in Scotland

1191 Religious discrimination; validity and revision of contracts; **amendment**

1192 Police; Serious and Organised Crime Agency; discrimination legislation; **amendment**

1192 – 1193 Crown application; **amendment**

1193 Interpretation; definition of charities in Scotland

1194 – 1198 Discrimination on grounds of sexual orientation; provision of goods, facilities and services; sexual orientation of discriminator; exemption in immigration cases; discrimination law review

1198 – 1200 Prohibition of discrimination; public authorities; sexual harassment

1200 – 1202 General duty to promote gender equality; carers; fathers; flexible working for carers of adult dependents

1202 – 1205 Public authorities: general statutory duty; other strands; age; sexual orientation; religion or belief

1205 – 1208 Public authorities; care standards; HRA definition of public authority; Leonard Cheshire case

c. Report

HL Deb 19 October 2005 cc751 – 876

751 – 761 Constitution of CEHR; **amendment**

761 – 766 CEHR: A Greater London Committee

766 – 769 Disability: community provisions; **amendment**

769 – 774 Disability and mental health

774 – 777 CEHR; Equality Committees

777 – 782 Fundamental duty of CEHR; social engineering; **amendment**

782 – 785 CEHR; national security; disclosure; **amendments**

785 – 788 CEHR; rights and responsibilities

788 – 790 Independence of CEHR

790 – 795 Human Rights; Convention on the Rights of the Child

796 – 800 Injunctions against persistent discrimination; **amendment**

800 – 802 Legal assistance; continuing support in combined human rights and equality cases; **amendment**

802 – 803 Legal assistance; indemnity insurance in relation to compromise agreements; **amendment**

803 – 805 CEHR; intervention in judicial review proceedings; Disapplication of victim test in section 7(1) *Human Rights Act 1998*; **amendment**

805 – 806 Enquiries, investigations and assessments; power to compel material; disclosure; **amendment**

806 – 807 Public sector duties; **amendment**

807 – 814 Legal assistance; respondents to CEHR investigations

814 Delegated Powers and Regulatory Reform Committee amendment; procedure for statutory codes of practice; **amendment**

815 – 817 Religion or belief; definitions

817 – 818 Discrimination; discriminators with same religion or belief as victim of discrimination; **amendment**

818 – 819 Definition of indirect discrimination; **amendment**

819 – 821 Religious harassment; “effect”

821 – 828 Religious harassment; religious objects; manifestation of religious beliefs or practices; symbols or artefacts

828 – 832 Religious harassment; removal of religious harassment provisions from the Bill; premises; educational establishments

848 – 849 Religion or belief; general exceptions; worship in schools; **amendment**

849 – 851 Religion or belief; educational establishments

851 – 852 Delegated Powers and Regulatory Reform Committee amendment; power to create exceptions; **amendment**

852 – 856 Religion or belief; immigration exceptions; **amendment**

856 – 857 Religion or belief; exceptions; Scottish enactments; **amendment**

857 – 860 Religious discrimination; employment and membership exemptions

860 – 861 Organisations relating to religion or belief; unlawful restrictions; **amendment**

861 – 862 Organisations relating to religion or belief; Charity Commissioners; **amendment**

862 – 864 Organisations; Scout and Guide Associations; **amendment**

864 National Security; **amendment**

865 – 866 Organisations; definition of charity in Scotland; **amendment**

866 – 871 Discrimination on grounds of sexual orientation

871 – 873 Public sector gender duty; Sexual harassment; **amendment**

873 – 874 Public sector gender duty; code; **amendment**

874 – 876 Public authorities; care standards; *Leonard Cheshire* case

d. Third Reading

HL Deb 9 November 2005 cc620 – 679

620 – 627 Human Rights; children's rights; Children's Rights Alliance;

627 – 637 (and 644) Sexual orientation: Discrimination in goods and services; **amendments**

637 – 640 Non-regression of statutory power to provide legal assistance; **amendment**

640 – 644 Legal assistance for respondents to CEHR investigations

644 – 645 Disability Rights Commission transitional commissioner's role; **amendment**

645 – 648 Religion or belief; harassment; "purpose or effect"

648 – 667 Amendment to remove religious harassment; Discrimination Law Review; Their Lordships divided: Contents, 216; Not-Contents, 126; **amendment**

671 – 674 Religion or belief; immigration decisions

675 – 676 Organisation relating to religion or belief

677 – 679 Discrimination on grounds of sexual orientation; power to make regulations; **amendment made**

Appendix 1: Organisations and Contacts

GENERAL

Children's Rights Alliance (CRAE)

94 White Lion Street
London N1 9PF
Tel: 020 7278 8222
Fax: 020 7278 9552
Email: info@crae.org.uk
<http://www.crae.org.uk>

Equal Opportunities Commission

Arndale House
Arndale Centre
Manchester M4 3EQ
Tel.:0845 601 5901
Fax: 0161 838 1733
E-mail: info@eoc.org.uk
<http://www.eoc.org.uk/index.asp>

Liberty

21 Tabard Street
London SE1 4LA
Tel: 020 7403 3888
Fax: 020 7407 5354
Email:info@liberty-human-rights.org.uk
www.liberty-human-rights.org.uk

Confederation of British Industry

Centre Point,
103 New Oxford Street,
London WC1A 1DU
Tel: 020 7379 7400
<http://www.cbi.org.uk/>

Discrimination Law Association

PO BOX 6715,
Rushden,
Northamptonshire NN10 9WL
Tel: 01933 228742
Email: info@discrimination-law.org.uk
<http://www.discrimination-law.org.uk/>

International Labour Organisation

4 Route des Morillons
CH-1211 Geneva 22
Switzerland
<http://www.ilo.org/>

Department for Trade and Industry

1 Victoria Street,

London SW1H 0ET

Equality and Diversity website: <http://www.dti.gov.uk/er/equality/index.htm>

The DTI employment relations website also has a list of useful links:

<http://www.dti.gov.uk/er/links.htm>

Trade Union Congress – Equality information

Congress House,

Great Russell Street,

London, WC1B 3LS

Tel: 020 7636 4030

Fax: 020 7636 0632

Email: info@tuc.org.uk

<http://www.tuc.org.uk/equality/index.cfm>

European Union – anti-discrimination campaign

<http://www.stop-discrimination.info/index.php?english>

RACE

Commission for Racial Equality

St Dunstan's House

201-211 Borough High Street

London

SE1 1GZ

Tel. 0207 939 0000

Fax 0207 939 0001

E-mail: info@cre.gov.uk

<http://www.cre.gov.uk/index.html>

Business in the Community/Race for Opportunity

137 Shepherdess Walk

London

N1 7RQ

Tel: 0870 600 2482

Email: information@bitc.org.uk

<http://www.bitc.org.uk>

Centre for Research in Ethnic Relations

University of Warwick

Coventry

CV4 7AL

Tel.: 024 7652 4869 / 4324

http://www.warwick.ac.uk/fac/soc/CRER_RC/index.html

Ethnic Minority Foundation

Boardman House
64 Broadway,
Stratford
London E15 9NG
Tel.: 020 8432 0300
Fax.:020 8432 0318
<http://ethnicminorityfund.org.uk/html/index.asp>

Home Office – Race, Equality & Diversity website

<http://www.homeoffice.gov.uk/comrace/race/index.html>

Institute of Race Relations

2-6 Leeke Street
London WC1X 9HS
Tel.:020 7837 0041
Fax.:020 7278 0623
Email: info@irr.org.uk
<http://www.irr.org.uk/about/index.html>

Runnymede Trust

Suite 106
London Fruit & Wool Exchange
Brushfield Street
London E1 6EP
Tel.:020 7377 9222
Fax.:020 7377 6622
Email: info@runnymedetrust.org
<http://www.runnymedetrust.org/>

DISABILITY

Disability Rights Commission

DRC Helpline
Freepost MID 02164
Stratford-upon-Avon
CV37 9BR
Telephone 08457 622 633
<http://www.drc-gb.org/>

Employers' Forum on Disability

Nutmeg House
60 Gainsford Street
London,
SE1 2NY
Tel: 0207 403 3020
Fax: 0207 403 0404
<http://www.employers-forum.co.uk/www/index.htm>

European Disability Forum

Rue due Commerce 39-41
B-1000 Brussels
Belgium
Tel.: (+32) 2 282 4600
Fax: (+32) 2 282 4609
<http://www.edf-feph.org/en/welcome.htm>

AGE

Age Concern

Age Concern England
Astral House
1268 London Road
London SW16 4ER
Tel: 020 8765 7200
Fax: 020 8765 7211
Email: InfoDep@ace.org.uk
<http://www.ace.org.uk/>

Age Positive

Department for Work and Pensions
Room W8d
Moorfoot
Sheffield
S1 4PQ
Email: agepositive@dwp.gsi.gov.uk
<http://www.agepositive.gov.uk/index.cfm>

Campaign Against Age Discrimination in Employment (CAADE)

395 Barlow Road
Broadheath
Altrincham
Cheshire
UK WA14 5HW
Tel.:0161 941 2902
Email: caade@caade.net
<http://www.caade.net/>

Employers Forum on Age

Floor 3, Downstream
1 London Bridge
London
SE1 9BG
Tel: 0845 456 2495
Fax: 0207 785 6536
Email: efa@efa.org.uk
<http://www.efa.org.uk/>

Help the Aged

207-221 Pentonville Rd

London N1 9UZ

Tel.: 020 7278 1114

Fax.: 020 7278 1116

Email: info@helptheaged.org.uk

http://www.helptheaged.org.uk/CampaignsNews/_default.htm#age

SEXUAL ORIENTATION

Outrage!

PO Box 17816

London

SW14 8WT

Tel.: 020 8240 0222

<http://outrage.nabumedia.com/>

Stonewall

46 Grosvenor Gardens

London, SW1W 0EB

Tel: 020 7881 9440

Fax :020 7881 9444

Email: info@stonewall.org.uk

<http://www.stonewall.org.uk/>

Lesbian and Gay Employment Rights (LAGER)

Unit1G,

Leroy House,

436 Essex Road,

London N1 3QP

Tel: 020-7704 2205

Fax: 020-7704 6067

MEN/WOMEN

Council of Europe – Equality between Men and Women

http://www.coe.int/T/e/human_rights/equality/

DTI – Women and Equality Unit

35 Great Smith Street

London

SW1P 3BQ

United Kingdom

Tel.: 0845 001 0029

Email: mailto:info-womenandequalityunit@dti.gsi.gov.uk

<http://www.womenandequalityunit.gov.uk/>

Equal Opportunities Commission

Arndale House
Arndale Centre
Manchester M4 3EQ
Tel.:0845 601 5901
Fax: 0161 838 1733
E-mail: info@eoc.org.uk
<http://www.eoc.org.uk/index.asp>

European Union – information on gender equality

http://europa.eu.int/comm/employment_social/equ_opp/index_en.htm

European Women’s Lobby

18 Rue Hydraulique
B-1210 Brussels
Email: ewl@womenlobby.org
<http://www.womenlobby.org/DocList.asp?SectionID=7&LangName=english>

Fawcett Society

1-3 Berry Street
London EC1V OAA
Tel:020 7253 2598
Fax:020 7253 2599
Email: <mailto:info@fawcettsociety.org.uk>
<http://www.fawcettsociety.org.uk/>

Kingsmill Review of Women’s Pay and Employment (reported to Govt in 2003)

<http://www.kingsmillreview.gov.uk/>

ManKind Initiative (rights for men)

Municipal Building
Corporation Street
Taunton TA1 4AQ
Tel.:0870 794 4124
<http://www.mankind.org.uk/>

Parity: Equal rights for UK men and women

David Yarwood, Hon Secretary
'Constables'
Windsor Road
Ascot SL5 7LF
<http://www.parity-uk.org/>

Soroptimist International of Great Britain and Ireland (Women’s issues)

127 Wellington Road South
Stockport
Cheshire SK1 3TS
Tel: 0161 480 7686
Fax:0161 477 6152
<http://www.soroptimistinternational.org/index.html>

Women's National Commission

1 Victoria Street
London SW1HP 0ET
Tel.:020 7215 6933
Fax.:020 7215 2840
Email: wnc@dti.gsi.gov.uk
<http://www.thewnc.org.uk/>

TRANSSEXUAL PEOPLE

Press for Change

BM Network, London WC1N 3X
<http://www.pfc.org.uk/index.htm>

The Gender Recognition Panel

(Established under the *Gender Recognition Act 2004*)
PO Box 6987
Leicester LE1 6ZX
Tel: 0845 355 5155
Email: GRP Enquiries
<http://www.grp.gov.uk/>

Gender Identity Research and Education Society (GIRES)

Melverly, The Warren,
Ashted,
Surrey KT21 2SP
Tel: 01372 801554
Fax: 01372 272297
<http://www.gires.org.uk/>

The Gender Trust

PO Box 3192, Brighton BN1 3WR
Tel: 01273 234024
Email: info@gendetrust.org.uk
Helpline: 07000 790347 Tue-Thu 9am-5pm and Mon, Tue, Thu & Fri 7pm-10pm
<http://www.gendertrust.org.uk/index1.htm>

FTM Network

BM Network, London WC1N 3XX
Helpline: 0161 432 1915
Wednesday evening between 8pm and 10.30pm
<http://www.ftm.org.uk/>

Appendix 2: Discrimination Legislation

Sex Discrimination

Sex Discrimination Act 1975 (SDA)

Prohibits sex discrimination against individuals in the areas of employment, education, and the provision of goods, facilities and services and in the disposal or management of premises

Equal Pay Act 1970

The right to the same contractual pay and benefits as a person of the opposite sex in the same employment

Sex Discrimination (Election Candidates) Act 2002

Enables political parties, if they wish, to adopt positive measures to reduce inequality in the numbers of men and women elected as representatives of their party

The Sex Discrimination Act 1975 (Amendment) Regulations 2003

Provides for Chief Constables to be liable in the same way as ordinary employers for sex discriminatory acts committed by officers in their force in the course of their employment and extends the law to cover sex discrimination committed after the termination of employment

Employment Equality (Sex Discrimination) Regulations 2005, SI 2005/2467

With effect from 1 October 2005 – implement the amended *Equal Treatment Directive (2002/73/EC)*; clarify the law on indirect discrimination; insert definitions of harassment on grounds of sex, harassment on grounds of gender reassignment, and sexual harassment into the SDA; clarify that pregnancy and maternity, paternity and adoption leave are covered under SDA

Race Discrimination

Race Relations Act 1976

Makes it unlawful to treat a person less favourably than another on racial grounds

Race Relations (Amendment) Act 2000

Covering public authority functions not previously covered by the RRA, plus a general duty on specified public authorities to promote race equality

The Race Relations Act 1976 (Amendment) Regulations 2003

Implements the Race Directive 2000/43/EC

Disability Discrimination

Disability Discrimination Act 1995

Prohibits discrimination against disabled people in the areas of employment, the provision of goods, facilities, services and premises, education; and provides for regulations to improve access to public transport to be made

The Disability Discrimination Act 1995 (Amendment) Regulations 2003

The Disability Discrimination Act 1995 (Pensions) Regulations 2003

Both implement the EC *Employment Directive 2000/78/EC*

Disability Discrimination Act 2005

Amends and extends the *Disability Discrimination Act 1995* in response to the 2001 *Towards Inclusion* consultation document

Age Discrimination

*Age Matters*¹³⁴

There are currently no legislative provisions in force. Regulations implementing the age discrimination strands of the *Employment Directive 2000/78/EC* are due in October 2006 prior to the December 2006 deadline for national implementation of the directive.

Religion

Employment Equality (Religion or Belief) Regulations 2003

Prohibit discrimination in employment and vocational training on the grounds of religion, religious belief or similar philosophical belief

Sexual Orientation

Employment Equality (Sexual Orientation) Regulations 2003

Prohibit discrimination in employment and vocational training on the grounds of sexual orientation

Transsexual People

Sex Discrimination (Gender Reassignment) Regulations 1999

Extends the provisions of the *Sex Discrimination Act 1975* on employment and vocational training to include discrimination on gender reassignment grounds

The Gender Recognition Act 2004

Provides for the legal recognition of transsexuals in their acquired gender for the purposes of registration and marriage

¹³⁴ http://www.dti.gov.uk/er/equality/age_consultation.pdf

Appendix 3: Abbreviations

CEHR – Commission for Equality and Human Rights

EOC – Equal Opportunities Commission

CRE – Commission for Racial Equality

DRC – Disability Rights Commission

RRA – *Race Relations Act 1976*

DDA – *Disability Discrimination Act 1995*

SDA – *Sex Discrimination Act 1975*

EqPA – *Equal Pay Act 1970*

HRA – *Human Rights Act 1998*

BME – Black and Minority Ethnic Community

LGBT - Lesbian, Gay, Bisexual and Transgender community

NDPB – Non-Departmental Public Body

SBS – Small Business Service

RIA – Regulatory Impact Assessment