

dti

**FAIRNESS FOR ALL: A NEW
COMMISSION FOR EQUALITY
AND HUMAN RIGHTS**

White Paper

IN ASSOCIATION WITH:

DEPARTMENT FOR CONSTITUTIONAL AFFAIRS
DEPARTMENT FOR EDUCATION AND SKILLS
DEPARTMENT FOR WORK AND PENSIONS
HOME OFFICE





The DTI drives our ambition of 'prosperity for all' by working to create the best environment for business success in the UK. We help people and companies become more productive by promoting enterprise, innovation and creativity.

We champion UK business at home and abroad. We invest heavily in world-class science and technology. We protect the rights of working people and consumers. And we stand up for fair and open markets in the UK, Europe and the world.

IN ASSOCIATION WITH:

DEPARTMENT FOR CONSTITUTIONAL AFFAIRS
DEPARTMENT FOR EDUCATION AND SKILLS
DEPARTMENT FOR WORK AND PENSIONS
HOME OFFICE



WOMEN AND EQUALITY UNIT

The Women and Equality Unit works to reduce barriers to social participation, improve legislative and institutional frameworks for equality and support economic opportunities for women.



Fairness For All: A New Commission for Equality and Human Rights

Presented to Parliament by
the Secretary of State for Trade and Industry and
the Secretary of State for Constitutional Affairs
by Command of Her Majesty
May 2004

©Crown Copyright 2004

The text in this document (excluding the Royal Arms and departmental logos) may be reproduced free of charge in any format or medium providing that it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the document specified. Any enquiries relating to the copyright in this document should be addressed to The Licensing Division, HMSO, St Clements House, 2-16 Colegate, Norwich, NR3 1BQ.
Fax: 01603 723000 or e-mail: licensing@cabinet-office.x.gsi.gov.uk

Foreword

Equality and human rights underpin our vision of a modern, fairer and more prosperous Britain. Discrimination simply has no place in our society. Extending opportunities to all means removing unfair barriers. Delivering prosperity for all means harnessing the skills and potential of every member of society, whatever their background.

The good news is that, while there is a great deal more work to do, we have come a long way towards these goals in recent decades. Our existing Commissions – the Commission for Racial Equality, the Disability Rights Commission and the Equal Opportunities Commission – have helped transform society's attitude to equality and discrimination. The progress we have made so far is a tribute to their staff and Boards, past and present.

But it is because of the solid foundations now in place, the change in outlook they have helped bring about, but also the changing nature of the remaining challenges we must overcome, that our equality institutions must evolve as well. This White Paper sets out our proposals to meet this task. The proposed new single Commission for Equality and Human Rights (CEHR) will be responsible for promoting equality throughout our whole society.

The new Commission will also, for the first time, provide institutional support for human rights. This underlines our strong belief in the importance of human rights including their position at the heart of public service delivery. We cannot achieve our vision of high quality public services for all if those services do not respect individuals' rights to dignity, privacy and respect.

The proposals in this White Paper build on the discussions of the CEHR Task Force, chaired by the Rt Hon Jacqui Smith MP, Deputy Minister for Women and Equality. We are indebted to its members for their willingness to share their expertise and wealth of experience to help us build a more socially inclusive society in which everyone is equally valued and everyone has the chance to contribute.

Rt Hon Tony Blair MP
Prime Minister

Contents

Foreword	1
Contents	3
Glossary	7
The White Paper	8
Purpose of the White Paper	8
How to respond	8
Additional copies	9
Confidentiality	9
Help with queries	10
1. Vision	11
Responding to new challenges	13
The benefits of a single Commission	16
The role of the CEHR	18
Equality of opportunity	19
Challenging discrimination	19
Promoting human rights	20
Promoting citizenship and a cohesive society	21
Principles for the CEHR	22
2. Engaging and working with stakeholders	24
A duty to consult stakeholders	26
3. The functions of the CEHR	28
Encouraging awareness and good practice on equality and diversity	29
Promoting awareness and understanding of human rights	30
Promoting equality of opportunity	32
Working towards eliminating unlawful discrimination and harassment	34

Promoting good relations among different communities	35
Keeping discrimination and human rights legislation under review	36
A source of expertise on equality and human rights	37
4. Tools to promote change	38
General inquiries	38
Codes of practice and guidance	39
Third party interventions	40
Challenging discrimination	41
Strategic enforcement of discrimination legislation	41
Supporting cases	41
Combined discrimination and human rights cases	42
Settling disputes	43
Investigation and enforcement powers	43
Named investigations	44
Issuing non-discrimination notices	45
Application for court injunctions	45
Powers to enforce public sector duties	46
Binding agreements in lieu of enforcement	46
Powers proposed for the CEHR that are not being pursued	47
5. The governance of the CEHR	49
The Chair	50
The Board	50
Committees of the Board	52
Accountability and independence	53
Funding	53
6. Promoting good relations	54
Promoting good relations between different communities	55
Grant-giving powers to support local organisations	56
Delivering strategically	57

7. Supporting key customers	58
Supporting individuals	60
Providing information and advice	61
Case support and legal representation	62
Supporting businesses	64
Listening to business needs	64
Small businesses	65
Services that support businesses	65
The CEHR's regulatory role	67
Supporting the public sector	68
Delivering CEHR services for the public sector	69
Providing information, advice and guidance	70
Working with inspectorates and standard-setting agencies	70
The CEHR as a resource for the public sector	71
Public sector duties	72
Enforcing public sector duties	72
Regional delivery	73
8. Regional arrangements of the CEHR	74
CEHR regional activities	75
Developing the CEHR's regional presence	76
9. The Scottish and Welsh dimensions	78
10. Preparing the way	82
Bringing in the new strands	82
Developing shared understanding	84
Building on the experience of the existing Commissions	84
Specific arrangements for disability	85

11. The road to implementation	87
Managing the transition	88
The Bill	89
Establishment of the shadow CEHR	89
Launch day	90
Appendix A Summary of relevant legislation	91
Appendix B Regulatory Impact Assessment	98
Appendix C Evaluation of the impact of the CEHR on different groups	126
Appendix D Cabinet Office Code of Practice on Consultation – summary of consultation criteria	132
Appendix E CEHR Task Force: terms of reference & membership	133

Glossary

ACAS	Advisory, Conciliation and Arbitration Service
CAB	Citizens Advice Bureaux
CEHR	Commission for Equality and Human Rights
CLSP	Community Legal Service Partnerships
CRE	Commission for Racial Equality
DDA	Disability Discrimination Act 1995
DRC	Disability Rights Commission
DRCA	Disability Rights Commission Act 1999
ECHR	European Convention on Human Rights
EOC	Equal Opportunities Commission
ETS	Employment Tribunal Service
EqPA	Equal Pay Act 1970
GB	Great Britain
HRA	Human Rights Act 1998
JCHR	Joint Committee on Human Rights
LGA	Local Government Association
MOU	Memorandum of Understanding
NDPB	Non Departmental Public Body
OCA	Office of the Commissioner for Public Appointments
OFSTED	Office for Standards in Education
R/B Regs	The Employment Equality (Religion or Belief) Regulations 2003
RDAs	Regional Development Agencies
REC	Race Equality Council
RIA	Regulatory Impact Assessment
RRA	Race Relations Act 1976
RRAA	Race Relations (Amendment) Act 2000
SBC	Small Business Council, Department of Trade and Industry
SBS	Small Business Service
SDA	Sex Discrimination Act 1975
SEN	Special Educational Needs
SHRC	Scottish Human Rights Commission
SMEs	Small and medium-sized enterprises
SO Regs	The Employment Equality (Sexual Orientation) Regulations 2003
TUPE	Transfer of Undertakings (Protection of Employees) Regulations

The White Paper

Purpose of the White Paper

The purpose of this White Paper is to set out the Government's proposals for the Commission for Equality and Human Rights (CEHR) in detail, including its role, duties and powers, and outline the way in which it will deliver to its key stakeholders. It also sets out the anticipated next steps towards establishment.

We welcome comments on any aspect of this document, and especially the areas where specific comments are invited. Where possible please supply evidence in support of your views.

How to respond

When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

The deadline for responses is **6 August 2004**. A response can be submitted by letter, fax or email to:

**CEHR Project Team
Women and Equality Unit
Department of Trade and Industry
35 Great Smith Street
London SW1P 3BQ**

F: 020 7276 2323

E: equality.project@dti.gsi.gov.uk

Additional copies

Additional copies of this document may be made without seeking permission. Further copies of the White Paper, including in the alternative formats described below, can be obtained from:

DTI Publications Orderline

ADMAIL Publications

London SW1W 8YT

T: 0870 1502 500

F: 0870 1502 333

Textphone: 0870 1502 100

www.dti.gov.uk/publications

An electronic version can be found at www.womenandequalityunit.gov.uk. A Welsh version can be found at this address.

Other versions of the document in Braille, large print, other languages, for people with learning difficulties or on audio cassette are available on request. If you have a visual impairment and wish to respond orally, please telephone 020 7276 6111.

Confidentiality

Your response may be made public by the DTI. If you do not want all or part of your response or name made public, please state this clearly in the response. Any confidentiality disclaimer that may be generated by your organisation's IT system or included as a general statement in your fax cover sheet will be taken to apply only to information in your response for which confidentiality has been requested. Responses may also be considered by the CEHR Task Force (for membership see Appendix E). You should state clearly in your response if you do not wish your response to be made available to Task Force members.

We will handle any personal data you provide appropriately in accordance with the Data Protection Act 1998.

Help with queries

Questions about the policy issues raised in the White Paper can be addressed to:

Ian Shaw or Fiona Walker

**CEHR Project Team
Women and Equality Unit
Department of Trade and Industry
35 Great Smith Street
London SW1P 3BQ**

T: 020 7276 2043 or 0207 276 6111

F: 020 7276 2323

E: equality.project@dti.gsi.gov.uk

If you have comments or complaints about the way this consultation has been conducted, these should be sent to:

Louisa Renwick

**Consultation Co-ordinator
Department of Trade and Industry
Room 723
1 Victoria Street
London SW1H 0ET**

E: louisa.renwick@dti.gsi.gov.uk

A copy of the Code of Practice on Consultation is in Appendix D.

1

Vision

- 1.1.** On 30 October 2003, the Government announced its intention to establish a single Commission for Equality and Human Rights (CEHR). This announcement followed the consultation – **Equality and Diversity: Making It Happen**¹ – which launched the most significant review of equality institutions in Great Britain in a quarter of a century.
- 1.2.** The Government believes that fairness for all is the basis for a healthy democracy, economic prosperity and the effective delivery of our public services. Equality and human rights therefore matter to all of us, not just those who experience discrimination and unfair treatment.
- 1.3.** Our existing Commissions – the Commission for Racial Equality (CRE), the Disability Rights Commission (DRC) and the Equal Opportunities Commission (EOC) – have laid an excellent foundation on which we can build. They have, separately and together, deepened our understanding about the nature of discrimination, and dedicated themselves to dismantling the unjust barriers that hinder different groups from achieving their full potential. The progress we have so far made on challenging discrimination and promoting equality is a tribute to their staff and Boards, past and present.

1 'Equality and Diversity: Making it happen', DTI, October 2002:
http://164.36.253.98/equality/project/making_it_happen/cons_doc.htm

- 1.4.** We have made good progress in the 30 years since the first equality Commissions were established. But change is not happening quickly enough, and the extent of the future challenges we anticipate mean that fresh thinking and new approaches will be needed. A step change in how we promote, enforce and deliver equality and human rights is now necessary if we are to achieve the prosperous and cohesive society we seek.
- 1.5.** More of the same will not be enough to respond to these challenges, and deliver the changes we seek at the pace necessary. The existing powers of the equality Commissions, together with additional new powers and duties, will strengthen the suite of tools available to the CEHR, enabling it to be more effective. These will include:
- a new duty on the CEHR to consult stakeholders on its strategic plans;
 - regional arrangements to promote tailored delivery of the CEHR's work;
 - powers to promote human rights, including powers to undertake general inquiries;
 - powers to promote good practice and enforce the law in the new areas of discrimination legislation covering sexual orientation, religion or belief and age;
- 1.6.** Innovative and creative thinking will be needed to ensure that the CEHR delivers for everyone, whatever their identity, wherever they work and wherever they live. A focus on outcomes, as well as processes, policies and practices, will be an important aspect of these new approaches, making sure that the CEHR delivers real improvements in our day-to-day lives. More coordinated strategies will improve all the groups protected by discrimination legislation, and embed a culture of human rights in our workplaces, our public services and our communities.

Responding to new challenges

- 1.7.** The changing nature of our society poses significant, complex and new challenges to social, economic and political life. The new Commission will be better equipped than our current arrangements to respond to these challenges:
- Although more women form part of the work force than ever before, they still earn significantly less than their male counterparts, are concentrated in lower-skilled occupations and part-time employment. Women are more likely than men to have caring responsibilities for dependents, and this can have a significant impact on their choices and opportunities.
 - Minority ethnic communities account for around 8% (4.5 million) of the total UK population. Residentially clustered in urban conurbations, 70% of minority ethnic communities live in the 88 most deprived areas. Some ethnic groups experience much higher unemployment and lower pay than the population at large. Due to their younger demographic profile, ethnic minorities are projected to account for over half the growth in Britain's working age population over the next decade.²
 - There are around 10 million disabled adults (22% of the adult population) in Great Britain who are likely to be covered by the Disability Discrimination Act. While 6.9 million of these are of working age, disabled people are nearly seven times as likely as non-disabled people to be out of work and claiming benefits. Furthermore, disabled people are twice as likely as non-disabled people to have no qualifications and half as likely to be in further or higher education. The built environment can also be a barrier to disabled people's participation. Health and social care, and public transport are areas where disabled people can experience real difficulties in accessing services.

2 Ethnic Minorities and the Labour Market, Prime Minister's Strategy Unit, Cabinet Office, 2003. <http://www.number-10.gov.uk/su/ethnic%20minorities/report/index.htm>

- By 2006 there will be more people aged 55-64 than people aged 16-24 for the first time. 45-59 year olds will form the largest group in the labour force by 2006.³ Older people – who already experience discrimination in the labour market – will need choices and opportunities to continue in work and save for their retirement. Younger workers can be disadvantaged in the labour market because of assumptions made about their lack of ability and experience. In areas other than employment, there are the challenges of promoting civic participation and engagement of young people. Further modernisation and improvements to public services will be necessary to ensure that the needs of children and young people, and an ageing population, are met.
- Discrimination against lesbians, gay men or bisexuals is still prevalent in our society. One survey of secondary school teachers found that 82% were aware of homophobic verbal bullying in their school.⁴ Homophobic harassment and violence in Britain continues to affect the lives of lesbians, gay men and bisexuals, and many are fearful or lack confidence in reporting such incidents to the police.
- The majority of the UK population, just over three quarters, report having a religion with over 70% identifying themselves as Christian. A significant minority (over 15%) have no religious affiliation. Most faith groups believe that employers do not respect or understand their religious customs. Muslim, Sikh and Hindu organisations report that their members frequently experience unfair treatment in education, employment, housing, criminal justice and local government.⁵

1.8. Globalisation and migration are increasingly established features of modern Britain. More than at any time in our past, employers are recruiting from a global pool of candidates, and developing services

3 Data sourced from The Employers Forum on Age website. <http://www.efa.org.uk>

4 Playing it Safe: Response of Secondary School Teachers to Lesbian and Gay Pupils, Bullying, HIV and AIDS Education and Section 28. Terence Higgins Trust, 1997

5 Religious Discrimination in England and Wales. Home Office 2001. <http://www.homeoffice.gov.uk/rds/pdfs/hors220.pdf>

and products for the global market. Migration brings enormous benefits to society and our economy, and is an important element in the strategy to address gaps in the labour market. The movement of people across national boundaries, into and out of the UK, means that ensuring their successful integration, through promoting inclusive, cohesive communities based on a common culture of shared values, will be even more pressing.

- 1.9.** These social and demographic changes, and our deepening understanding of the nature of discrimination, reveal the potential cost – to us all – of the injustice and divisions caused by prejudice and discrimination. Government, employers and service providers in the private, public and voluntary sectors will need to rise to the challenge of responding effectively to this increasing diversity, and building a society that is inclusive.
- 1.10.** Greater diversity in our society poses a significant challenge to how we shape and promote the shared values that underpin citizenship. While respecting and celebrating our differences, citizenship will need to promote wider ownership of these common values and a shared sense of belonging. Human rights, establishing basic values for all of us, will play an increasingly important role in this, providing a language we can all share. This language is one that means something to, and is useful for, all people no matter what social group they belong to.
- 1.11.** Human rights are based on an idea of fairness for all, establishing basic principles of dignity, respect and protection for everyone, regardless of our differences. Human rights are not just for those who experience discrimination. They are inclusive and affect everyone. Human rights will give the work of the CEHR a real impact at ground level. The promotion of a wider culture of respect for human rights will also be important in developing strategies to promote good relations between different groups of people, building and encouraging cohesive communities. Increasing awareness and understanding of human rights within the public sector will support

the Government's wider work to enhance the way in which public services are delivered so that they can meet the needs of all users.

- 1.12.** Britain itself has changed significantly since the first equality Commissions – the CRE and the EOC – were established nearly 30 years ago. Devolution has provided a new political settlement in Scotland and Wales, creating new contexts within which work on equality and human rights must operate. The different political, social and cultural environments, and the provisions for promoting equality of opportunity within the Scotland Act and the Government of Wales Act will have important implications for these nations.
- 1.13.** The Government is responding to these challenges, both through new laws to advance equality, and programmes to tackle barriers to participation and reduce disadvantage. One such measure was the extension of protection against discrimination in employment and vocational training to the grounds of sexual orientation, religion and belief in 2003⁶, with similar protection on grounds of age to be introduced in 2006. There is a clear need to provide coherent and integrated support to individuals who have rights under discrimination legislation, and to organisations which will have responsibilities for compliance.

The benefits of a single Commission

- 1.14.** The establishment of a single Commission for Equality and Human Rights will be an important response to the new challenges of the twenty-first century.

6 In respect of education, these regulations apply to vocational training provided by Further Education and Higher Education providers, and not schools.

- 1.15.** In order to function effectively, the CEHR will need to ensure that expertise and focus is maintained in each of the areas for which it has responsibility, and with each of the protected groups⁷ that will have an interest in its work.
- 1.16.** A single body will bring many important benefits.
- A single organisation will be a **strong and authoritative champion** for equality and human rights. The CEHR will be well positioned to drive the change we seek, making dignity and respect, fair treatment and social justice core values in our society. The CEHR will incorporate a depth of expertise on specific areas of discrimination, while also being able to cast a wide net across all equality and human rights issues.
 - Through a **cross-cutting approach**, a single organisation will be better able to tackle barriers and inequalities affecting several groups, and identify and promote strategic solutions.
 - A single organisation will **benefit individuals** seeking advice and support on all discrimination issues and information on human rights, in an accessible and user-friendly way. Providing a single point of contact, for individuals and for the agencies and organisations to which they turn for advice, will deliver real benefits for everyone.
 - In its policies and approach, a single organisation will be better equipped to address the reality of the many dimensions of an individual's identity, and therefore **tackle discrimination on multiple grounds**.
 - A single organisation will be better able to meet the needs of employers and service providers, providing a **single access point**

7 In this document, we use the phrase "protected groups" to mean the following groups of people to the extent that they are – or soon will be – protected by discrimination legislation in respect of less favourable treatment based on particular characteristics or personal circumstances: men and women; people of different racial groups; people who have or have had a disability; people of different sexual orientations; people of different religions or beliefs (including those who do not have a religion or belief); people of different ages; and people who intend to undergo, are undergoing, or have undergone gender reassignment.

to information, advice and guidance on the full breadth of equality and human rights issues.

- A single organisation will be more effective at promoting **improvements to the delivery of public services**. It will provide guidance and support on human rights good practice and compliance, and can take a cross-cutting seamless approach on the full breadth of equality issues on a sector by sector basis with, for example, health authorities, local government and education providers.
- A single organisation will also provide an opportunity to pursue a more **coherent approach to enforcing discrimination legislation**. The CEHR can ensure, for example, that when it takes action to tackle unlawful discrimination in one equality area it also takes the opportunity to ensure improvements in the other areas of discrimination.
- A single organisation will be able to work to **promote good relations among different communities**, building trust and understanding that will contribute to a more cohesive society.
- A single organisation will combine the strengths of the existing Commissions with the expertise from key organisations representing the new equality strands, **identifying and promoting creative responses** to the challenges and opportunities it will face.

1.17. The CEHR will be more than the sum of its parts. It will be a centre of excellence, in research and knowledge, across the full breadth of its equality and human rights spectrum. It will be able to generate cross-strand learning and information sharing, applying principles and advances in one area of equality work to others, and delivering this in a coherent and integrated way.

The role of the CEHR

1.18. If the CEHR is to succeed, it will need to demonstrate its impact on the day-to-day lives of individuals, as well as on the policies and practices of organisations and government to promote fairer

outcomes. While those experiencing discrimination will benefit directly from its work, a society based more firmly on equality and human rights will deliver benefits for everyone.

Equality of opportunity

- 1.19.** The CEHR will work to promote understanding of equality and human rights as important for everyone and as key foundations of a fair, successful and cohesive society. Central to this will be its work, including through public education, to tackle the barriers that prevent people from making their full contribution, to promote good practice to the private, public and voluntary sectors and to help make public service more responsive to diverse needs.
- 1.20.** In some public services and private sector firms, the business case for diversity is well understood. Recognising the different needs of potential customers, and the value in treating individuals with dignity and respect, has already begun to bring real benefits – in broadening markets, customer satisfaction and employee retention – for some of those leading the field. The CEHR will play an important role in widening understanding and appreciation of the benefits that diversity can bring, and work with organisations to help realise these.

Challenging discrimination

- 1.21.** As a regulatory body, with a duty to work towards eliminating discrimination under the discrimination legal framework (see Appendix A), the CEHR will be an important guarantor for individuals who experience unlawful discrimination. Rights are of little value unless they are given effect by others, especially employers and service providers.
- 1.22.** The CEHR will play a key role in challenging unlawful discrimination both through the services that it provides directly, and through enabling and supporting other organisations which work to help individuals secure their right to fair treatment. It will encourage the provision of accurate and high quality information, advice and support through a wide variety of sources, provide alternatives to tribunals

and courts for settling disputes and, in some circumstances, provide legal representation and support to individuals, particularly where their cases test important areas of the law or are likely to have a significant wider impact.

Promoting human rights

- 1.23.** Many respondents to the **Equality and Diversity: Making it Happen** consultation made a powerful case for the inclusion of human rights functions within the remit of a single equality body.
- 1.24.** In March 2003, the Joint Committee on Human Rights (JCHR) also recommended that human rights and equalities functions should be integrated within one body. In their Sixth Report⁸, the Committee noted that there was much in common between the work required for the promotion of equality and that required for the promotion and protection of human rights. Importantly, the JCHR went on to note that there were also differences between equality and human rights: “Unjustifiable discrimination needs to be tackled by detailed measures, which may not always be appropriate to the promotion and protection of wider human rights.”
- 1.25.** Having considered the JCHR report, and the responses to **Making it Happen**, the Government concluded that the new body should play an important role in promoting a culture of respect for human rights through providing systematic advice and guidance to public bodies. It will help public bodies move forward from bare compliance, to using good human rights practice to encourage even better public services. By providing systematic guidance and advice, the CEHR has the potential to make a real contribution to fair and effective public services.

8 The Case for a Human Rights Commission. House of Lords & House of Commons Joint Committee on Human Rights, March 2003.
<http://www.publications.parliament.uk/pa/jt200203/jtselect/jtrightts167/6702.htm>

- 1.26.** Assistance with human rights can be of particular benefit to those who may have greater difficulty in accessing services and asserting their rights such as disabled people and older people. Public services that are better equipped to recognise and meet the needs of each individual will help us all.
- 1.27.** The CEHR will also play a role in promoting human rights as a framework of core values that can underpin cohesive communities. This framework provides a useful tool in resolving potentially conflicting rights, using principles of proportionality and reasonableness.

Promoting citizenship and a cohesive society

- 1.28.** If equality and human rights values are to be core values of our society, the CEHR will need to work at local and community levels as well as on a national and GB-wide basis. Creating a society that is cohesive and at ease with itself, that is able to respect and celebrate differences while at the same time recognising and challenging discrimination or unfair treatment, will be an important mission for the CEHR.
- 1.29.** The CRE already has a significant programme of work, delivered through the network of Race Equality Councils and others, that supports the Government's wider race equality and community cohesion objectives. This important aspect of local race equality work will be carried forward into the CEHR's remit.
- 1.30.** Supporting local community activities that promote common core values, create a shared understanding of citizenship and help build cohesive, inclusive communities will also be important to other groups who have rights under discrimination legislation. The CEHR will, therefore, develop its support for local initiatives to take a broad and inclusive approach, using human rights values to underpin its work.

Principles for the CEHR

- 1.31.** The work of the CEHR will be underpinned by core principles and values. These are:
- 1.32. Leadership:** The CEHR will influence and lead wider debate on equality and human rights, discrimination, diversity and the challenge of building a cohesive inclusive society. It will be balanced in its approach, using its role as both a regulator and a promoter of good practice to become an authoritative and respected voice on equality and human rights issues, policies and practices.
- 1.33. Partnership:** The CEHR will not be able to succeed in its mission alone. It will need to add value to the work of others and engage partners to help deliver its objectives. It will need to be sensitive to the needs of those who have a responsibility to comply with the law (employers and service providers in the private, public and voluntary sectors) while also championing the rights of individuals and communities who experience prejudice and discrimination.
- 1.34.** The CEHR will need to be grounded in the communities it serves, working alongside interest groups and their organisations in the **voluntary and community sectors**. It will recognise and value their expertise and experience, and develop a constructive partnership with them. The CEHR will engage closely with the communities and groups that have an interest in its work, but will not take on the advocacy role that is properly theirs. The CEHR will also be sensitive to the local, regional and national dimensions of its work across the whole of GB. Rather than take a one-size-fits-all approach, it will need to adapt and tailor its approaches to reflect these differences.
- 1.35. Open and transparent:** In order to make its relationship with stakeholders meaningful, the CEHR will be committed to consulting widely with all its stakeholders, including groups which experience discrimination, employers and service providers in the public and private sectors, and voluntary and community organisations. The CEHR may need to make difficult decisions and will need to be open

and transparent in developing its strategic priorities, its policies and its practices to ensure trust and credibility with all its stakeholders.

- 1.36. Strategic:** Demand for the CEHR's services is likely to be high and its resources will be necessarily limited. It will, therefore, need to ensure that it can maximise the impact of its expertise and experience. This will mean operating strategically, developing its work (including enforcement) in a way that delivers the most benefit, and adds value to the activities and work of others.
- 1.37. Effective:** The CEHR will have a flexible range of enforcement and promotion tools at its disposal and will need to use them effectively and proportionately. It will need to be exemplary in its practices, and take account of the needs of all its stakeholders. It will seek to achieve fairer outcomes, rather than develop bureaucratic processes, to help drive its work on equality and human rights.
- 1.38. Efficient:** As a publicly funded body, the CEHR will need to ensure it is efficient in the use of its resources, acting with integrity and probity at all times.

2

Engaging and working with stakeholders

- 2.1.** To be effective, the CEHR will need to successfully engage with a very wide range of stakeholders in its work at the outset, inviting them to join an ongoing dialogue about the organisation's priorities and ways of working. The CEHR's approach to working with stakeholders must be inclusive, promoting the message that equality and human rights matter to everyone, so that there is wide awareness, ownership and understanding of its work. It will need to be valued and credible with all sections of society and have relevance and impact well beyond traditional equality communities of interest.
- 2.2.** To lay the foundations for this approach, a Task Force was set up in December 2003 to advise Government on the role, functions, priorities and activities for the new body⁹. The Task Force includes representatives of the existing equality Commissions, the new discrimination strands of sexual orientation, religion or belief and age, and members with a particular interest in human rights. It also includes representatives of business, the trade unions and local government as well as people from Scotland and Wales, and other interests.
- 2.3.** The Task Force has played a valuable role in helping shape Government's thinking on the CEHR and will continue over coming

9 Full details of the membership of the Task Force, and its terms of reference, are set out in Appendix E.

months to advise on the priorities for the new body. Groups and parties who have not had the opportunity to participate in the Task Force process have been encouraged to feed in their views through a website devoted to the CEHR on which all Task Force documents have been published.¹⁰

- 2.4.** The Government is also committed to continuing to work with expert bodies on key issues in the period before the CEHR is established. We have been working closely with the **existing equality Commissions** – the CRE, the DRC and the EOC – to ensure the CEHR is able to learn from and build on their arrangements and experiences.
- 2.5.** We are working closely with **key stakeholders representing the new anti-discrimination strands** (religion, belief, sexual orientation, and age) to develop effective mechanisms for ensuring their needs are met by the new Commission. An integral part of this approach will be to provide effective support for the new regulations on sexual orientation and religion or belief, and the forthcoming regulations on age. This will be an important aspect of the run-up to the establishment of the new Commission. Further details are set out in Chapters 10 and 11.
- 2.6. Voluntary and community sector organisations**, particularly those led by and working for individuals who experience discrimination, will be crucial to the CEHR's success. The CEHR must have an ongoing dialogue with these organisations to ensure that its work remains grounded in the experiences of discrimination. These organisations frequently have a strong advocacy role and are often better able to reach and support isolated and disaffected individuals, strengthening their ability to contribute actively to society. The new Commission will need to be aware that, in some sectors, organisations will need support to build their ability to engage with the CEHR.

10 CEHR Task Force papers can be found on the Women and Equality Unit Website <http://164.36.253.98/equality/project/task-force.htm>

- 2.7. Trade unions, and employers and service providers in the private and public sectors**, also have an important role to play as partners in delivering the CEHR's mission. They have provided insight and input, through the Task Force and elsewhere, on how the CEHR can best develop a constructive and mutually beneficial relationship with organisations to promote compliance with the law.
- 2.8.** Working with **partners** to deliver its objectives will be a distinctive feature of the CEHR's working style. It will seek to add value to systems already in place, improving the quality and range of information and advice available across the full range of equality and human rights issues. It will lead and influence others to achieve wide engagement on equality and human rights issues, and work through existing networks to ensure that information and support is delivered through known and trusted providers.
- 2.9.** In addition to communicating with stakeholders already engaged in equality and human rights issues, the CEHR will need to pay particular attention to developing **new approaches**. As part of its relationship with business, it will need to find new ways to reach out to, and support, small and medium sized enterprises (SMEs), using innovative approaches and working through intermediaries. It will also need to develop effective ways of working with individuals and groups who might not currently be aware of their rights, and with organisations who may not appreciate their responsibilities under the law.

A duty to consult stakeholders

- 2.10.** We intend to place the CEHR under an obligation to produce and **consult on a strategic plan**. This will underpin the CEHR's commitment to partnership working and will give all its stakeholders the opportunity to be involved in the development of its work plans, ensuring that the interests of all the equality strands and human rights are fully involved. The CEHR will clearly set out how, when and with whom, it intends to consult.

- 2.11.** The CEHR will need to consider how to make its consultations timely, accessible and interactive, ensuring that it genuinely listens to groups and individuals. Its consultations will also need to meet good practice benchmarks, set out in a number of statutory and non-statutory codes such as those issued by the Better Regulation Task Force and the Cabinet Office. In Scotland, it will also need to take account of relevant guidance issued by the Scottish Executive. The Commission will need to evaluate its approach regularly to make sure that consultations are effectively informing its work.

QUESTION 1

How can the CEHR ensure that all stakeholders have meaningful opportunities to shape its priorities and how it works?

3

The functions of the CEHR

- 3.1.** The legislation to establish the Commission for Equality and Human Rights is intended to equip it with a strategic and balanced set of duties and powers. Duties will place the CEHR under an obligation to carry out a particular function. Powers will enable the organisation to deliver its functions.
- 3.2.** This chapter sets out the key duties and powers – covering both equality and human rights – that the CEHR will have to support its work in promoting and delivering change. The powers that will support the CEHR’s regulatory role are set out in Chapter 4.
- 3.3.** The CEHR’s duties and powers have been developed using those of the existing equality Commissions as a baseline. In respect of the CEHR’s regulatory role, the powers currently available to the existing Commissions will be retained. Where appropriate, however, we propose to equip the CEHR with modern powers and duties to apply across all the equality strands, enable the CEHR’s human rights remit, and take into account proposed developments in discrimination law, such as the public sector duty on disability discrimination.¹¹

¹¹ The proposed public sector duty on disability is set out in the draft Disability Discrimination Bill. See Appendix A for more information.

- 3.4.** The CEHR will carry out the following core functions:
- Encouraging awareness and good practice on equality and diversity;
 - Promoting awareness and understanding of human rights;
 - Promoting equality of opportunity between people in the different groups protected by discrimination law;
 - Working towards the elimination of unlawful discrimination and harassment;
 - Promoting good relations among different communities, and between these communities and wider society.¹²
- 3.5.** Additional responsibilities will include:
- Keeping relevant legislation under review; and
 - Acting as a centre of expertise on equality and human rights.

Encouraging awareness and good practice on equality and diversity

- 3.6.** The CEHR will act as a champion, undertaking a wide range of activities, to deliver its functions of encouraging good practice and awareness on equality and diversity. Examples of this type of work could include initiating and leading debate on the impact of diversity for sustainable economic growth or contributing to the debate about citizenship values that might be reflected in the national curriculum. The CEHR will also be able to undertake work to promote better understanding of the costs of discrimination and to combat stereotyping and negative images associated with particular groups. Importantly, the CEHR will be able to go beyond working with the groups that are specifically protected by discrimination law.

¹² Different communities refers to communities of the protected groups set out in paragraph 3.18.

- 3.7.** A key role for the CEHR will be bringing together work related to several different aspects of equality such as age and sexual orientation, or race and gender. The CEHR will be able to respond to the complexity of individual and group identities which are rarely defined by a single feature. For example, the CEHR could work to increase labour market participation among under-represented groups such as Pakistani and Bangladeshi women.
- 3.8.** The CEHR will also be able to help address situations where there are challenges to social integration, and conflicts between different sets of rights. Human rights principles can offer a way to balance rights and encourage communication between diverse individuals and communities. The CEHR will promote awareness of this approach and better understanding of what a culture that respects human rights really means.

Promoting awareness and understanding of human rights

- 3.9.** The CEHR will promote awareness and understanding of human rights. Incorporating human rights values, such as privacy and dignity, is an important part of improving public service delivery. We expect that the CEHR will spread good practice and promote support for human rights throughout the public sector, including to private sector bodies carrying out public functions and services.
- 3.10.** The Human Rights Act 1998 (HRA) came into force in 2000, and its underlying purpose is to embed a true culture of respect for human rights throughout our society. Many public authorities are falling short of best practice in implementing the HRA and making full use of the opportunities it affords. An Audit Commission survey last year showed that over half of public authorities have no systematic arrangements to do this.¹³ The JCHR's Sixth Report of March 2003

13 Human Rights: Improving public service delivery. Audit Commission, 2003.
<http://www.auditcommission.gov.uk/Products/NATIONAL-REPORT/FDE9C6A9-7DAF-4cd3-B21E-21E9E13E1D43/HumanRights-report.pdf>

emphasised the need for more active promotion of the HRA and the benefits of integrated promotion of human rights and equality.

- 3.11.** The CEHR will be active in helping to embed a culture of respect for human rights, so that everyone can be confident of fair and decent treatment. The goal will be to move from bare compliance with the HRA to using good human rights practice as a way to improve service provision.
- 3.12.** The focus of the CEHR's work in this area will be on the provision of information and guidance to public authorities on compliance with the HRA and on mainstreaming good practice. To support this, it will provide a general advice facility for the public along helpdesk lines. We envisage that human rights promotion will be integrated into the CEHR's broader work. The CEHR will work in 'light touch' partnership with public sector inspection bodies to develop criteria relating to human rights in their performance assessment frameworks.
- 3.13.** The CEHR will also play a role in promoting public awareness and understanding of human rights, and the responsibilities associated with them, including those arising from the international agreements on human rights to which the UK is a signatory.
- 3.14.** The CEHR's work to improve compliance in public authorities will have at its legal core the rights and obligations set out in the HRA. Where the CEHR uses statutory powers in relation to human rights functions, for example for general inquiries, it will do this in relation to the HRA.
- 3.15.** Promotion will be central to the CEHR's human rights role. Increasing public authorities' understanding of the contribution of human rights to effective public service delivery, and awareness of their legal obligations, will be key to achieving a culture that respects human rights.
- 3.16.** Under the HRA, human rights issues can already be raised in any court or tribunal. Courts and tribunals are required to act compatibly with human rights and individuals who wish to bring cases under the

HRA can apply for legal aid. Accordingly the CEHR will not, therefore, need powers to support cases under the HRA. As part of encouraging good practice, the focus for the CEHR will be the development of values and standards through examples of best practice, and the dissemination of relevant court case results.

3.17. The powers that will provide the legal framework for the CEHR's human rights work are described in Chapter 4.

Promoting equality of opportunity

3.18. The CEHR will promote equality of opportunity between the people in the following groups:

- men and women;
- people of different racial groups;
- people of different sexual orientations;
- people of different religions or beliefs (including those who do not have a religion or belief);
- people of different ages;
- people who intend to undergo, are undergoing, or have undergone gender reassignment.

3.19. In addition the CEHR will have a duty to promote the equalisation of opportunities for disabled people. This function, provided for in the Disability Rights Commission Act (1999) (DRCA), reflects the 1995 Disability Discrimination Act (DDA). The DDA differs from other discrimination law in that it grants rights only to disabled people, whereas the Race Relations Act, for example, grants rights to people of all racial groups. The CEHR will also have a specific role to encourage good practice in the treatment of disabled people, again reflecting the duty provided for in the DRCA.

3.20. The work that the CEHR will do with individuals, businesses, education providers and the public sector to promote equality of

opportunity and human rights will centre on providing – directly and through various channels – information, advice and guidance on the requirements of the law, and on good practice. These activities are described in detail in Chapter 7.

- 3.21.** The new Commission will be able to use specific legal tools to help embed its work to promote equality of opportunity. These are described in detail in Chapter 4.
- 3.22.** An important aspect of the CEHR’s work to promote equality of opportunity will be raising awareness and promoting change on strategic equality issues. These may be issues specific to a particular group – for example improving disabled people’s access to services – or issues relevant to several groups such as working with inspectorate bodies to develop and monitor equality and human rights compliance indicators.
- 3.23.** The CEHR will make clear in its work the differences between what is required by law (compliance) and what is encouraged as good practice.
- 3.24.** The CEHR will need to take a targeted approach. It will be a strong voice working for fairer outcomes, engaging with central and local government, regional agencies, and working with the private and voluntary sectors through a range of means.
- 3.25.** The CEHR will be able to act in a broad range of areas relevant to the protected groups, not just those where there is specific legislative protection. So, for example, we expect the CEHR to encourage good practice in the provision of goods and services to help prevent unfair treatment on grounds of sexual orientation, religion or belief, and age.
- 3.26.** The CEHR will also be able to provide general guidance on good practice in areas that discrimination law does not cover. For example, it could help service providers develop approaches that are designed to better meet the needs of older people or members of different religious groups. We will expect the CEHR to act proportionately in

this area and to work in partnership with the sectors concerned. It will need to avoid placing burdens, for example, on bodies such as schools or hospitals, or duplicating existing work.

- 3.27.** The CEHR's awareness raising and public education activities will include the UK's obligations under a range of international agreements on equality and human rights. Even though these are not binding parts of domestic law, the UK seeks to comply with them and they should form part of the CEHR's broader awareness work.

Working towards eliminating unlawful discrimination and harassment

- 3.28.** The CEHR's duties and powers in relation to eliminating unlawful discrimination will closely reflect those of the current equality Commissions. The CEHR will undertake work in this area in respect of all the major pieces of discrimination legislation:¹⁴

- The Equal Pay Act 1970
- The Sex Discrimination Act 1975
- The Race Relations Act 1976
- The Disability Discrimination Act 1995
- The Employment Equality (Sexual Orientation) Regulations 2003
- The Employment Equality (Religion and Belief) Regulations 2003
- The proposed Employment Equality (Age) Regulations when they come into force (late 2006).

- 3.29.** The general provisions of each statute are summarised in Appendix A.

¹⁴ Some of these pieces of legislation have been amended significantly since they were first enacted including, for example, by the Race Relations (Amendment) Act 2000. The CEHR's role will relate to the legislation as amended.

3.30. The CEHR's activities in this area will focus on advising individuals of their rights under discrimination law and how to secure them, including how to bring proceedings. The CEHR will also support a number of cases with potential strategic impact. It will work with organisations to encourage others to improve their practices. The detail of how the CEHR will approach this information, advice and guidance giving role with each of its key customer groups is set out in detail in Chapter 7.

Promoting good relations among different communities

3.31. The CEHR will promote good relations among different communities, particularly those of different races, religions or beliefs. CEHR activities in this area will also include good relations between these communities and wider society.

3.32. This duty will be an important and integral part of the CEHR's wider mission to deliver a step-change in promoting equality and diversity, and a culture of respect for human rights, in our communities. To succeed, the CEHR will need to make a real difference to people's day-to-day lives, and its good relations functions will be an important aspect of this endeavour.

3.33. The CEHR will contribute to wider Government objectives on community cohesion, in part through providing support to local projects that promote dialogue and understanding between different communities and groups. This will be particularly important in respect of race and faith communities, where the CEHR will inherit and build upon the work of the CRE. It will maintain the CRE's programme of supporting local projects delivered through the Race Equality Councils and other bodies and, over time, will extend this to cover other strands. More details are set out in Chapter 6.

Keeping discrimination and human rights

legislation under review

- 3.34.** The CEHR will have a responsibility to keep the working of discrimination legislation and the HRA under review. It will need to consider the effectiveness and adequacy of these statutes and, if necessary, make recommendations or proposals to the relevant Secretary of State for changes. In practice this will draw on the CEHR's role as a centre of legal expertise on discrimination and human rights law. It will also give a statutory footing to the role we expect the body to have in maintaining an ongoing and close awareness of how discrimination and human rights law is working in practice.
- 3.35.** In addition to this specific duty, the CEHR will also be able to give Ministers advice or make proposals on any aspect of current or proposed law that relates to any part of its remit. This would enable the CEHR, for example, to advise that a particular feature of a proposed piece of employment legislation could result in indirect discrimination against women, or would cause particular difficulties for disabled people.
- 3.36.** The CEHR will be able to give advice on good practice in relation to the protected groups including the practical application of any law that impacts on their equal opportunities or on the treatment of disabled people. The CEHR's role in this respect will not be confined simply to discrimination legislation and related good practice.
- 3.37.** As described in Chapter 9, the CEHR will be able to provide advice to the Scottish Executive and the Welsh Assembly Government on new or existing legislation as part of its continuing relationship with these bodies.
- 3.38.** Responsibility for the scrutiny of proposed new legislation for compatibility with the HRA will, however, remain with the JCHR.

A source of expertise on equality and human rights

- 3.39.** The Government is keen that the CEHR should be a centre of excellence and expertise on equality and human rights issues. Through research and analysis of individual cases it will develop a sophisticated understanding of the barriers to equality, respect for human rights and full participation in society, and draw together a **strong evidence base** that takes account of the full range of economic, social, cultural and demographic factors. The CEHR's accumulated knowledge and information will support its work across the board to foster wider understanding of equality and human rights issues.
- 3.40.** The CEHR will be able to carry out **training, educational and outreach activities** such as holding seminars and conferences to broaden understanding of a wide range of issues related to equality and human rights and the causes of discrimination.
- 3.41.** The CEHR will also have a power to make **financial grants** to other organisations to fund projects or other activities that support its work, including its good relations remit.

4

Tools to promote change

- 4.1.** It will be important for the new Commission to have legal tools that equip it to work strategically to secure change and improvement in specific areas, and empower it to take targeted action to enforce the law where needed.
- 4.2.** Generally, these powers will support the CEHR's work on both equality and human rights, although it will have specific powers relating to the enforcement of discrimination legislation. There will not be additional enforcement powers relating to human rights legislation for the reasons explained in paragraph 3.16.

General inquiries

- 4.3.** The CEHR will have a power to carry out general inquiries into issues of public interest relevant to the groups protected by discrimination legislation and to human rights. This will enable the CEHR to explore and research problem areas in depth, identifying barriers to good practice and making recommendations. The aim of general inquiries will be to develop and promote improved practice in response to particular areas of concern and may focus on specific sectors. The CEHR's power to conduct general inquiries will extend to the discrimination, equal opportunities, good relations and human rights parts of its remit.

- 4.4.** This model of general inquiries has been developed to build on the success of similar work undertaken by the existing Commissions, such as the CRE's 2003 investigation into race equality in prisons, the DRC's recently completed investigation into the accessibility of websites for disabled people and the EOC's current enquiries into pregnancy dismissal and occupational segregation in apprenticeships. However the CEHR's powers will have a much broader base, allowing it to look at issues that might affect two or more protected groups, as well as focussing on one equality strand when appropriate.
- 4.5.** The CEHR will be able to initiate these inquiries either independently or at the request of the Secretary of State. The CEHR will be required to publish terms of reference before launching an inquiry, and will publish reports at the end of the process, which could include recommendations for changes to policies, practices or legislation. General inquiries will not target individual bodies.
- 4.6.** To ensure that it can obtain sufficient information to conduct a thorough and useful investigation, the CEHR will be able as a last resort to apply to the Secretary of State for permission to compel third parties to provide certain information relevant to the inquiry.

Codes of practice and guidance

- 4.7.** The CEHR will be able to publish statutory **codes of practice** on complying with one, several or all areas of discrimination law. It will work in partnership with employers and service and education providers to develop these codes, which will explain in clear terms the requirements of the law and how this might be given effect. The codes will help employers and providers to fully understand their responsibilities, distinguishing clearly between legal obligations and good practice that may go beyond this. The CEHR will also be able to update existing codes of practice issued by the CRE, DRC and EOC.
- 4.8.** The Commission will be able to bring together its work in different areas of discrimination by developing new codes of practice which are tailored for a particular sector or field. For example, the CEHR

could work in partnership with the retail or hospitality sector to develop a code covering all areas where there are legislative obligations.

- 4.9.** The CEHR will be able to prepare new codes of practice either on its own initiative or at the request of the relevant Secretary of State. It will have to consult with interested parties before it issues a code and publish it in draft so that members of the public can comment on its proposals. The draft code will then be sent to the relevant Secretary of State for approval before it is laid before Parliament.
- 4.10.** While a failure to comply with recommendations set out in a code of practice will not in itself be unlawful, courts and tribunals will take any relevant provisions of a code into account when making decisions about whether discrimination has occurred.

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 enabled to act in this way.
- 4.12.** Although courts would not be obliged to accept interventions by the CEHR, our 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.

Challenging discrimination

Strategic enforcement of discrimination legislation

- 4.14.** While the CEHR will work to forestall litigation by promoting awareness of legal obligations and good practice, and their positive benefits for individuals, companies and organisations, it will have a range of legal tools to support its regulatory role.
- 4.15.** The CEHR will take a strategic approach to the use of its enforcement tools relating to unlawful discrimination and harassment. It will use these tools as a lever for broader change. For example, it will support some individual cases that will lead to a clearer understanding of the law or have a widespread impact in securing fairer treatment for individuals.¹⁵ It will also have powers to tackle cases of serious and persistent discrimination. This section describes the activities which the CEHR will be able to undertake in relation to all discrimination law.

Supporting cases

- 4.16.** The CEHR will have the power to support individuals bringing cases under discrimination legislation. As with the current Commissions, the CEHR will provide **direct case support** to a limited number of individuals. When deciding which cases to support, the CEHR will need to pay particular attention to whether they:
- Raise a question of principle;
 - Affect large numbers of people; or
 - Flag up the need for legislative change.
- 4.17.** Giving particular attention to individuals whose cases meet these criteria will enable the CEHR to operate strategically, ensuring that it

¹⁵ In 2000/01, the three Commissions supported a combined 300 or so discrimination cases, as compared with more than 20,000 employment discrimination cases that came before tribunals.

makes effective use of its resources available. It will need to ensure that its practical experience and expertise is continuously developed in all areas of discrimination law. This will be especially important for new areas of discrimination legislation, where case law will need to be developed.

Combined discrimination and human rights cases

- 4.18.** The CEHR will have explicit powers only to support cases under discrimination legislation. It will not have powers to support free standing human rights cases. Where relevant, however, it will be able to draw on human rights arguments in those discrimination cases it supports, reflecting the obligation on public authorities to act compatibly with the rights enshrined in the HRA¹⁶ and to interpret legislation so that it is compatible with these rights. This will continue the practice of the existing Commissions where discrimination cases involve human rights issues.
- 4.19.** A small number of discrimination cases may arise where human rights arguments have been drawn on but where the discrimination argument underlying the case has fallen away, leaving a human rights issue of strategic concern to the CEHR. While the strict application of the principle that the CEHR should not support free-standing human rights cases would mean that these cases should be pursued in other ways, there have been proposals that the CEHR should be able to continue its support in such circumstances.

QUESTION 2

We would welcome views on whether the CEHR should be able to continue support for cases which have drawn on both discrimination and human rights arguments, after the discrimination element of the case has fallen away.

¹⁶ The rights set out in the European Convention of Human Rights are described in Appendix A.

Settling disputes

- 4.20.** Conciliation services can play a vital role in resolving individual disputes quickly and efficiently. They can offer a more accessible and less expensive alternative to litigation and tribunals. The DRC's powers to make arrangements for conciliation in disability discrimination cases related to goods, facilities, services and education, and the ACAS conciliation services for employment discrimination cases, have proven the usefulness of this approach as an alternative to legal proceedings.
- 4.21.** When the CEHR is established, ACAS will continue to provide conciliation services for cases within the jurisdiction of the employment tribunals. The CEHR will be empowered to arrange for the provision of conciliation services in disputes related to discrimination in the provision of goods, facilities, services and education,¹⁵ and the exercise of public functions. If it decides to establish a conciliation service, the CEHR will make decisions about which disputes are referred to a conciliator. The conciliation service itself would, however, be delivered by an independent provider to ensure that information about the case is properly protected and would not be available to CEHR staff who may later become involved in supporting a case.
- 4.22.** Consistent with the approach proposed for supporting HRA litigation, it is not envisaged that the CEHR's conciliation service will be available for freestanding HRA cases. Discrimination cases with a human rights dimension (see 4.18 and 4.19 above) would however be eligible.

Investigation and enforcement powers

- 4.23.** To be successful, the CEHR must be able to tackle effectively deep-rooted and systematic discrimination as well as helping individuals to secure their rights.

17 In practice this will mean cases that might be taken under Section 66 of the SDA; Section 57 of the RRA, Sections 25(1), 28I, 28N, 28V of the DDA; Regulation 31 SO Regs, and; Regulation 31 R/B Regs.

Named investigations

- 4.24.** Under its duty to work towards the elimination of unlawful discrimination, the CEHR (like the existing equality Commissions) will have powers to conduct named investigations into unlawful acts of discrimination or harassment. Named investigations are a tool for occasional use to allow suspected cases of serious discrimination to be explored.
- 4.25.** To carry out an investigation into a named person,¹⁸ the CEHR must have reasonable suspicion that an unlawful act of discrimination or harassment has taken place. This will ensure that named persons are not subject to undue intrusion where there is no reason to suspect that they have behaved in an unlawful way. Suspicion that unlawful acts may have occurred could be formed by reports to the CEHR from victims of discrimination or harassment, by reports from third parties, or from cases ruled on by courts or tribunals.
- 4.26.** The CEHR will be required to draw up terms of reference and give the named person the opportunity to make representations.
- 4.27.** During the course of the investigation, the CEHR will have the power to obtain information relevant to the investigation from the named person.
- 4.28.** Following the investigation, the CEHR will publish a report setting out its conclusions on the question on which the investigation was focused. The CEHR might also issue wider recommendations.
- 4.29.** In addition to conducting an investigation into unlawful acts, the CEHR will be able to undertake a named investigation to ascertain:
- whether or not any requirement imposed by a non-discrimination notice (see paragraph 4.31 and 4.32) in the previous five years has been, or is being, complied with; or

¹⁸ Named person includes individuals, companies and organisations.

- whether or not an undertaking in a binding agreement with the CEHR (see paragraph 4.35 to 4.39) has been, or is being, complied with.

4.30. The CEHR will be able to decide when to carry out these latter types of investigation and will not be required to establish that certain circumstances have occurred to trigger its taking action in this way.

Issuing non-discrimination notices

4.31. If the CEHR concludes that unlawful discrimination or harassment has taken place, the CEHR will be able to serve a notice on the named person requiring the discrimination to stop. Non-discrimination notices will also be able to require the named person to prepare an action plan, setting out the steps the named person will take to stop the discrimination taking place over a specific timetable. The CEHR will monitor this and, if during a period of five years from the issue of the notice, it considers that the requirements of the action plan are not being fulfilled, will be able to apply to a court to enforce it.

4.32. Named persons subject to non-discrimination notices will be able to appeal against the notice to an employment tribunal in the case of unlawful acts falling within its jurisdiction, or to a county or sheriff court for any other acts. The notice will become final following the Court's determination of the appeal.

Application for court injunctions

4.33. The CEHR will be able to apply to the courts for an injunction where it believes that there is **persistent discrimination**. The CEHR will be able to apply directly to a county or sheriff court, where it believes that a named person is likely to carry out further acts of unlawful discrimination or harassment unless restrained. The CEHR will only be able to use this power if the body that the CEHR is seeking to restrain has, within the last five years:

- been served with a non-discrimination notice which has become final; or
- been found to have committed an unlawful act by a court or tribunal.

Powers to enforce public sector duties

4.34. The CEHR's powers to enforce the public sector duty on race and, in time, disability and gender are set out in paragraphs 7.56-7.58

Binding agreements in lieu of enforcement

4.35. Not every case of suspected unlawful discrimination is best handled through a named investigation. Where a company or organisation is willing to work with CEHR to achieve improvement, alternatives to formal action may be as effective.

4.36. The CEHR will have a power (similar to that of the DRC) to enter into a **binding agreement** with a named person instead of taking enforcement action for unlawful discrimination or harassment. Binding agreements can apply in respect of all discrimination legislation (set out in paragraph 3.30). The purpose of this is to secure change without formal enforcement action, an approach which can be useful when a company or organisation recognises that their practices need to improve and is prepared to cooperate with CEHR to achieve this.

4.37. A company or organisation may agree to enter into a binding agreement in circumstances where the CEHR would otherwise be able to conduct a named investigation. The company or organisation would not have to accept that an act of discrimination or harassment had taken place in order to enter an agreement, but simply make a commitment to take action to improve their practices.

4.38. The CEHR will also be able to draw up a binding agreement if it is carrying out, or has completed, a named investigation and has

concluded that discrimination has taken place. If the agreement is entered into while an investigation is being carried out, then that investigation will be suspended.

- 4.39.** The binding agreement, which can be private between the two parties, will require an action plan to be agreed which sets out the steps the company or organisation will take to improve their practices, procedures and other matters over a specific timescale. If, in due course, the CEHR considers that the named person is not carrying out the undertakings set out in their action plan, then the CEHR will be able to apply to the courts to enforce the action plan.

Powers proposed that are not being pursued

- 4.40.** Some respondents to **Equality and Diversity: Making It Happen** suggested that a new Commission should have some powers in addition to those with which the Government intends to equip the CEHR. These were the role of amicus curiae friend of the court, the ability for the new body to be able to take class or representative actions, and hypothetical test cases. The Government has considered these proposals carefully and has concluded they would not be appropriate for the CEHR.
- 4.41.** Some respondents suggested that the new Commission should be able to act as an **amicus curiae**. An amicus curiae, or friend of the court is usually appointed by the Attorney General at the request of the court to act as an expert and impartial adviser. The Government will have the capacity to undertake this role, and will not need an express power to do so. The term (amicus curiae) is also sometimes used to describe the process by which a person can 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. The Government intends that the CEHR should explicitly enabled to act in this way as set out in paragraphs 4.11-4.13.
- 4.42.** We also received a number of suggestions that the CEHR should be able bring legal proceedings in its own name on behalf of individuals

who have experienced unlawful discrimination or harassment. At present, such **representative actions** (which appeared to include the concept of **class actions**) are not generally used in the courts and tribunals in Great Britain. We considered whether changes should be made to the court and tribunal procedures in respect of discrimination and concluded that this issue goes wider than the role of the CEHR, and will need to be considered in that broader context. If changes to the law are made in the future to allow representative actions in discrimination cases, then the CEHR will be able to act in a representative capacity without express powers.

- 4.43.** Finally, it was suggested that the new Commission should be able to take **hypothetical cases** where it would be useful to clarify points of law. However, as neither the European Court of Justice, nor European Court of Human Rights, nor domestic courts, consider hypothetical cases (it is very difficult for a court to reach a useful decision in the absence of particular facts), there is no scope for this suggestion to be taken forward by the CEHR.

5

The governance of the CEHR

- 5.1.** Like the existing equality Commissions, the CEHR will be an executive non-departmental public body (NDPB). To be effective, it will need to establish itself as a legitimate and authoritative organisation, with a voice that is independent of the Government of the day. It will need to be both a champion for equality and human rights, and a regulator working towards the elimination of unlawful discrimination. The governance framework of the body will be key in enabling the CEHR to deliver this extensive remit, and will be set out in statute.
- 5.2.** The Audit Commission has defined corporate governance for public sector bodies as being “the framework of accountability to users, stakeholders, and the wider community, within which organisations take decisions, and lead and control their functions, to achieve their objectives.”¹⁹ In practice, the CEHR will need strong leadership, effective ways to engage with its stakeholders, and clear accountability to Government and the public.

¹⁹ Corporate Governance: Improvement and trust in local public services. Audit Commission, 2003 <http://www.auditcommission.gov.uk/Products/NATIONAL-REPORT/7374209E-8060-4218-B4B2-2CCF2FD490C5/CorporateGovernance.pdf>

The Chair

- 5.3.** The Chair of the CEHR will be recruited in line with the requirements of the Office of the Commissioner for Public Appointments (OCPA). The appointment of the Chair will be approved by the Prime Minister.

The Board

- 5.4.** The Board of the CEHR will be made up of 10-15 members, appointed by the relevant Secretary of State, in line with OCPA requirements. The Board will be primarily non-executive and part-time, focused on keeping a strategic oversight of the Commission. In keeping with modern practice and the move towards unitary boards (which include members of an organisation's senior management team) the CEHR's Chief Executive, whose appointment will be approved by the Secretary of State, will also be a member on the Board.
- 5.5.** The key roles of the Board will be to:
- develop and champion a common vision and purpose for the CEHR;
 - provide effective leadership and decision-making;
 - be outward-facing and ambassadorial;
 - act as a catalyst for change;
 - develop its own identity and common culture, rather than being simply a collection of separate interests.
- 5.6.** The Board of the CEHR will be responsible for recruiting its Chief Executive (with the approval of the Secretary of State), as well as senior staff members who will be responsible for the operational management of the body. It is envisaged that the first round of appointments to the Board and recruitment of key members of staff will take place after Royal Assent is given to the Act which establishes the CEHR, but before it assumes all its functions.

This will facilitate the body's ability to operate effectively from day one. Further details on this process are set out in Chapter 11.

- 5.7.** It is important that the make up of the CEHR's Board gives it a wide range of knowledge, experience and expertise to draw upon. Members of the CEHR Board will need to possess core skills such as decision-making and leadership experience; capacity to act as a Board member at GB level; strategic management experience; and a sound understanding of, and commitment to, promoting equality and human rights.
- 5.8.** It will be essential for the Board to reflect the communities that it serves, but it will not be made up of separate champions for each of the equality areas and human rights. Instead, Board members will contribute to achieving a collective understanding of, and approach to, the key areas of interest and sectors that the CEHR will serve. The Government acknowledges the importance of the Board including members who, between them, will have direct experience and knowledge of the equality strands and human rights, and of working with community and voluntary sector organisations, small and large businesses, the public sector, and trade unions.
- 5.9.** This approach will therefore be underpinned by an obligation on the relevant Secretary of State to have due regard to the desirability of ensuring a broad range of experience and expertise in the issues that fall within the CEHR's remit and the communities it serves, when making appointments to the Board.
- 5.10.** Drawing on the provisions within the DRCA for the appointment of DRC Board members who have, or have had, a disability, there will also be a statutory requirement on the Secretary of State to ensure that at least one person who has, or has had, a disability is appointed to the Board of the CEHR. This person will be expected to contribute to the corporate approach of the Board, rather than act as a champion for disability issues.

- 5.11.** To ensure that full and proper account is taken of devolved issues (as set out more fully in Chapter 9), one Board member will be appointed in agreement with Scottish Executive Ministers who has special knowledge of Scotland, and one appointed in agreement with the National Assembly of Wales who has special knowledge of Wales.
- 5.12.** The CEHR will also be able to appoint additional Board members to oversee the conduct of general inquiries and named investigations. Such appointments will only last for the duration of the inquiry or investigation and any related enforcement action.
- 5.13.** Provision will also be made for the appointment to the CEHR Board of additional **transition** Commissioners from the existing equality Commissions, as set out in Chapters 10 and 11.

Committees of the Board

- 5.14.** The CEHR Board will have the power to establish committees to support or assist with any of its functions. This will ensure the CEHR is able to make the best use of others' expertise and experience in developing its work. Committees may help the CEHR engage with key communities of interest, or bring together expertise in a particular area of work e.g. working with public health authorities. They may have an advisory role, or the Board may wish to delegate certain decision-making functions.
- 5.15.** Members of any CEHR Committees will be appointed by the Board and may be drawn from the Board or staff, or be external appointees.
- 5.16.** Committees will be accountable to the Board and will need to work within the wider strategic, policy and budgeting framework of the CEHR.
- 5.17.** Committee arrangements for Scotland and Wales are addressed in Chapter 9.

- 5.18.** In its first years of operation, we also anticipate the establishment of a disability committee. Further details on this are set out in Chapter 10.

Accountability and independence

- 5.19.** As an executive NDPB, the CEHR will operate within the standard framework setting out relationships between Government departments and NDPBs. This lays out clear systems and processes including the requirement for a management statement for the CEHR to be agreed between it and its sponsor department. In practice, the CEHR will also work closely with a number of Government departments who have an interest in issues on which the CEHR is working. An announcement about which Government department will sponsor the CEHR will be made in due course.
- 5.20.** The CEHR will be held to account by Parliament through the requirement for the Secretary of State to lay its annual report before both Houses of Parliament. It could also be scrutinised by a Select Committee within whose remit it was included, if Parliament decided that this would be appropriate.

Funding

- 5.21.** The CEHR will be funded through grant in aid provided by the Secretary of State of the sponsor Department. Final funding for the CEHR will depend on the outcome of the Spending Review 2004 and on departmental allocations. Its accounts will be audited by the National Audit Office and will be laid before Parliament annually. The CEHR will be empowered to charge for services as it considers appropriate.
- 5.22.** Externally appointed members of the Board and its committees will be remunerated and reimbursed for expenses incurred in the course of their work for the CEHR.

6

Promoting good relations

- 6.1.** The CEHR clearly has an important role in working towards the elimination of discrimination through its enforcement and promotion roles. Focusing on these roles alone, however, will not be enough if the CEHR is also to contribute to the Government's wider strategic goal of promoting cohesive communities. This requires the CEHR to have the capacity to engage at a local level with communities, groups and individuals.
- 6.2.** The CRE, alone amongst the existing equality Commissions, has a duty to promote good relations between people of different racial groups.²⁰ This duty has enabled the CRE to develop an important programme of grant-supported work at local and community level, supporting community cohesion objectives. Through the network of Race Equality Councils (RECs) the CRE has supported activities that, for example, promote leadership and civic participation amongst young people and women in minority ethnic communities. It has enabled the CRE to support outreach services for disaffected and isolated groups, such as Gypsy and Traveller communities. It has also

20 The CRE's good relations duty is set out in Section s43(1)b of the Race Relations Act 1976: "To promote good relations between people of different racial groups." This duty applies to the CRE and is distinct from the good relations duty on public bodies, set out the Race Relations (Amendment) Act 2000 which requires public bodies to have due regard to the need to promote good relations between people from different racial groups. The duty proposed for the CEHR would not impact on this latter public sector duty and public bodies will still be required to have regard to the promotion of good relations on grounds of race.

given the CRE powers to tackle difficult issues of conflict and tension in communities divided along ethnic or faith lines, alongside its equality work. These programmes of work will be an important part of the overall approach of the CEHR and will continue once the new Commission is established.

- 6.3.** Extending the CRE's duty to promote good relations to cover other protected groups, will also be potentially important for other communities. It is proposed, therefore, that the CEHR will have a statutory duty to promote good relations among the different communities protected by discrimination legislation and between these communities and wider society. The CEHR will focus its activities where such action is appropriate and will add value.

Promoting good relations between different communities

- 6.4.** The extended good relations function will give the CEHR the voice it needs to play a leading and influential role in national and GB-wide debates. This role will provide the CEHR with the capacity to assist in the process of mediating conflicts between communities, such as the public order disturbances in Bradford, Burnley and Oldham in 2001. It will give the CEHR the locus to comment on, react to, or bring insight and experience to, emerging or pressing policy issues on race equality, faith communities and other equality and human rights fields.
- 6.5.** Promoting understanding between groups of people at local level will contribute to creating the culture change necessary within the social and community contexts in which people interact. The CEHR's human rights remit will play a significant role, providing tools and concepts to help find solutions in areas where rights may conflict. The CEHR will be well placed to lead the debate in developing a commitment to shared values that underpin communities.

Grant-giving powers to support local organisations

- 6.6.** Like the CRE, the CEHR will have the power to award grants to other organisations operating at local level. The CEHR will be able to use its grant-making powers to support local projects with a good relations or equality remit, delivered by voluntary or community organisations with robust systems of accountability and transparency, and where projects are clearly defined. This builds on the approach of the CRE.
- 6.7.** Being closer to the communities they serve, such organisations are well placed to undertake important work in response to meeting local needs, and addressing issues of local concern. The CEHR will play a key role in supporting the work of these organisations, and ensuring that its own work is informed by their experiences.
- 6.8.** The network of RECs provides a good foundation for the CEHR's support at local level. The CEHR will continue to support important local race equality work through this network, and a range of other voluntary organisations, consistent with the approach adopted by the CRE. Current levels of support for race equality work at the local level will therefore be protected for the foreseeable future.
- 6.9.** The CEHR will also wish to explore opportunities to support innovative and creative projects that involve organisations working in partnership across more than one equality area, developing shared understanding and positive relationships on a cross-community basis. The CEHR's grants will help bind communities, promoting shared appreciation and commitment to diversity, human rights, and tackling discrimination.
- 6.10.** Using its powers to influence other funding bodies, the CEHR will help leverage the resources potentially available to local voluntary organisations.

- 6.11.** The CEHR will also be able to work in partnership with third parties through contractual arrangements, commissioning or contracting services or projects that support the CEHR's overall mission.

Delivering strategically

- 6.12.** Across Britain, the CEHR will work with Government departments, public authorities, local government and others, to ensure that mainstream programmes to promote community cohesion and social inclusion objectives are meeting the needs of diverse groups across the CEHR's full range of interests.
- 6.13.** Developing its regional presence (see Chapter 8), the CEHR will also be well-placed to promote networks of community and voluntary organisations working on equality and human rights issues, encouraging the sharing of knowledge and information, assisting them in accessing funding, and helping regional funding bodies to better understand equality and discrimination issues.
- 6.14.** Regional representatives of the CEHR will also be well placed to develop relationships with local and regional media and opinion-formers, helping to ensure a balanced and informed debate on issues relating to discrimination and unfair treatment.

QUESTION 3

What other areas of activity should the CEHR support at local level to further its overall mission to promote good relations between different communities?

7

Supporting key customers

- 7.1.** The CEHR will work to build common values and respect for equality and human rights across the range of its work and to ensure compliance with discrimination legislation. It will be important for it to tailor its approach when working with key customers in order for it to be successful in delivering this mission.
- 7.2.** This chapter sets out the ways in which the Commission will work with **individuals, businesses, and the public sector**. It gives details of the specific approaches to service delivery that we intend the CEHR to take, and how its basic functions – such as giving information and advice about the law – will be adapted for each group. This will ensure that the Commission can provide effective support to all its customers.
- 7.3.** In Chapter 6 we set out arrangements for the CEHR to work with, and support the work of, voluntary organisations operating at local and community levels on good relations and equality projects. **Voluntary and community sector organisations** often have an important role in speaking for under-represented and excluded groups. They can act as pathfinders for involving users in the design of front line services and also play a key role in delivering them. They will, therefore, be key partners in delivering aspects of the CEHR's work, either informally or through more formal contractual arrangements. The experience and expertise of these organisations, and the communities they serve, will be an important complement to the new Commission's work. The

CEHR will need to offer them accessible consultation so that they can help inform the development of the CEHR's own strategic priorities. In its relations with voluntary bodies, the CEHR will need to take account of the Compact concluded in 1998 on relations between Government and the voluntary and community sector, and its associated codes of practice.²¹

- 7.4.** This chapter also sets out how and when we expect the CEHR to work in **partnership** with other organisations to maximise the impact of the services it provides. The new body will respond to the demand for co-ordinated and comprehensive information and advice delivered via known and trusted routes. It will support regional, local and sector-specific organisations, helping and enabling them to respond to the needs of their clients, and making good use of the CEHR's own regional network. This will ensure the CEHR operates strategically, delivering the greatest possible benefit to the widest range of groups.
- 7.5.** The CEHR will be required to consult widely on its strategic plans and will need to develop effective, meaningful and appropriate ways to communicate with all of its customer groups. To do this successfully it will need to understand the competing pressures and time constraints of those who use its services and be a good listener. The CEHR will also need to comply with good practice standards for consultation.
- 7.6.** The functions and legal powers underpinning the Commission's services to individuals, businesses and the public sector are set out in the following sections. The CEHR will make full use of its regional network to help deliver these services, as outlined in Chapter 8.

QUESTION 4

We would welcome comments on the strategies for working with individuals, businesses and the public sector that are set out in this chapter.

21 The Compact on Relations between Government and the Voluntary and Community Sector in England, Home Office, 1998. <http://www.homeoffice.gov.uk/comrace/active/compact/index.html>

Supporting individuals

- 7.7.** Ensuring that individuals who have experienced unlawful discrimination or harassment are effectively supported will be a key role for the CEHR, providing new assistance in the areas of sexual orientation, religion or belief and age and building on the work of the existing equality Commissions.
- 7.8.** Providing high quality information and advice will be at the core of the CEHR's services to individuals. The CEHR will provide a first class information and advice service directly to individuals, while also working in partnership with other advice giving organisations to support their work. As well as serving individuals this way, the CEHR will also be able to provide them some further direct support, including help with bringing cases to court in some instances. It will focus this support where it will have most impact in tackling discrimination in society at large and promote beneficial change in practices and attitudes.
- 7.9.** An important element of the way that the CEHR works will be its capacity to better reflect the reality of people's identities. Individual identities usually have several dimensions, for example their race and sexual orientation, or gender and age, or faith and whether they are disabled. The CEHR, in its policies and approach, will provide more effective support generally, and particularly in cases of multiple discrimination, by providing information, advice and guidance across the full range of discrimination law.
- 7.10.** The CEHR will use many strategies to tackle discrimination and barriers to participation, with benefits for individuals and their quality of life, to complement its legal enforcement activities. Its work to mainstream equality and human rights in public services and promote good practice to employers and service providers will help ensure that diverse needs are better met. These activities will be supported by public education and awareness work to foster understanding of equality and human rights as important for all.

Providing information and advice

- 7.11.** Helping to ensure that high quality information and advice is available to individuals on their rights and the remedies open to them will be a high priority. The need for locally accessible advice was strongly emphasised in responses to the **Equality and Diversity: Making it Happen** consultation last year.
- 7.12.** The CEHR will provide high quality, user friendly information and advice to individuals on their rights under discrimination and human rights law and how to improve the situation when these rights are breached. It will bring together information on all aspects of discrimination legislation so that people can go to one place to access the full range of information they might need.
- 7.13.** The CEHR will use a variety of communication channels, including a website, helpline and materials in a variety of accessible formats including in a range of languages. It should aim to be an exemplar of innovation and good practice. Its services will respond to diverse customer needs, for example, the particular needs of disabled people, and draw on the CEHR's specialised knowledge wherever needed. Importantly, the CEHR will also signpost individuals to local sources of information, advice and support and so link them with 'face to face' support wherever it can.
- 7.14.** The CEHR will be one provider among many of information, advice and support to individuals. Many individuals look first for advice close to hand, turning to their local Citizens Advice Bureau (CAB), trade union representative or their employers' human resources or personnel staff. In addition, Community Legal Service Partnerships (CLSPS), the Advisory, Conciliation and Arbitration Service (ACAS), and private practice solicitors also offer information and advice to individuals. Parent Partnership Services (set up by local education authorities) provide advice and support to parents of children, including those with disabilities. The CEHR will work in partnership with these advice providers to help ensure that individuals are better

able to access high quality and accurate advice regardless of where they seek it.

- 7.15.** To facilitate this, the CEHR will establish a second-tier support service for front-line advisers in partner organisations. A key feature of this service will be to enable front-line advisers in other organisations to clarify points of law and access up-to-date information from CEHR staff. This will build on the approach already pioneered by the existing Commissions, for example the EOC's website for legal practitioners. In this way, the CEHR can add value and maximise the impact of its own expertise and experience.
- 7.16.** A number of respondents to **Equality and Diversity: Making it Happen** expressed concerns about the patchy nature and variable quality of information currently available through existing advice providers. The CEHR will have a significant role to play in helping to improve the quality of advice provided to individuals on discrimination issues, working to increase awareness, understanding and knowledge within agencies such as CLSPS and CAB. This approach will aim to ensure that these organisations are able to provide accurate and helpful advice about legislation to all their clients.
- 7.17.** Details on the CEHR's role in relation to conciliation services is set out in paragraphs 4.20-4.22.

Case support and legal representation

- 7.18.** The CEHR will have powers to provide **direct case support**, set out in paragraphs 4.16 and 4.17, in particular where cases raise questions of principle, or flag up the need for legislative change or where the outcome might affect large numbers of people.
- 7.19.** Being involved in cases selected using these criteria will ensure that the CEHR has current, practical experience of cases which are defining people's experiences of discrimination and keep the new Commission in touch with the needs of its individual customers. This will also be very important in building up knowledge and

expertise on the newly legislated discrimination areas of religion or belief, sexual orientation and, in time, age. The way that case law develops over the next few years will be important in defining both public understanding of the law in this area, and the way that tribunals and courts handle cases brought on these grounds.

- 7.20.** In keeping with the approach of the current Commissions, the CEHR will not be expected to provide support across the board to all individuals with discrimination claims. This would risk opening up unmanageable demand and overwhelming the CEHR. Working to support partner advice giving organisations will be a more effective approach.

Supporting businesses

- 7.21.** The establishment of a single organisation to champion equality, diversity and human rights meets the strong call from the business community for a more joined-up approach to these issues. This is an opportunity for the new Commission to create strong, proactive relationships with private sector employers and service providers to maximise progress towards equality.
- 7.22.** To deliver this, the CEHR will work in partnership with business wherever possible, promoting improved equality awareness and better practice across the private sector. It will develop new ways to work with both large and small firms, providing straightforward and joined-up high quality information and advice and will take a balanced and strategic approach to enforcement activity. This approach will combat perceptions in the past that the existing Commissions' key role in relation to business was only to enforce legislation.

Listening to business needs

- 7.23.** The CEHR will need to establish itself as authoritative and credible in the eyes of private sector employers and service providers, showing a clear understanding of business needs, priorities and concerns. The Government expects members of the CEHR board and senior management team to include people with **experience of business** and management to help ensure that, as an organisation, it is equipped to engage constructively. This will pave the way for the CEHR to have an open, trusted and flexible dialogue with organisations in the private sector.
- 7.24.** To encourage this dialogue, the new body will need to develop channels to communicate with and listen to businesses and use existing networks to ensure that information and support is delivered in an effective and efficient way. The CEHR will encourage businesses to respond to **consultations** on its strategic aims and priorities. It will also assess the impact and specifically seek the views of large and

small firms on any proposals that it is considering which could have a significant effect on the private and/or public sectors.

Small businesses

7.25. It will be essential for the CEHR to respond to the specific needs of small businesses, a sector which represents 99% of firms in the UK and accounts for 52% of annual total turnover.²² Evidence shows that, partly because of constraints on their time and resources, small businesses' information needs are often different from those of large organisations, requiring basic information on compliance with their legal obligations. Many prefer to seek this advice from trusted day-to-day advisers such as accountants, banks and lawyers. The CEHR will need to work with these intermediaries and others to enable the provision of accurate, joined-up information and specialist expertise that small businesses want.

Services that support businesses

7.26. The CEHR will focus on helping businesses to achieve compliance with the law both as employers and service providers. To achieve this, it will need to provide business-specific information and guidance in a range of formats. This will include developing materials targeted at specific sectors and sizes of business so that information can be presented in a familiar context as well as in accessible and straightforward language. This integrated approach will be underpinned through the CEHR's powers to issue statutory codes of practice for specific sectors that set out detailed guidance on practical measures to achieve compliance with discrimination legislation.

7.27. These tools could be delivered in a range of ways including a dedicated business channel on the CEHR website, ensuring that helpline support is backed up with appropriate expertise, and through quality assuring training events and materials provided by other

22 **Government Action Plan for Small Businesses**, Small Business Service, January 2004.
<http://www.sbs.gov.uk/content/7-strategies/ActionPlan.pdf>

organisations. Awareness of this support should be boosted at a local and regional level.

- 7.28.** Alongside this work to increase understanding of, and compliance with the law, the CEHR will actively promote the business case for diversity and the benefits that good practice can bring. A positive and proactive approach to diversity can enable firms to be more inclusive in their dealings with employees and customers alike, equipped to address the social and demographic challenges of the future. The CEHR will encourage wide understanding and ownership of equality and human rights issues in the private sector, providing practical and targeted guidance to pave the way for companies who want to do all that they can to treat their staff and customers fairly and with respect. The CEHR will also be able to work to develop a database of good practice case studies, encouraging employers and service providers to work together to share best experiences, test out ideas, and promote diversity.
- 7.29.** At present, businesses wanting advice and information on equality issues go to a multiplicity of providers, especially existing private sector one-stop shops.²³ Moreover, many businesses, especially SMEs, will only seek advice through existing close networks or localities, on a need-to-know basis or when a specific problem arises.
- 7.30.** The Commission will respond to these preferred ways of working and act as part of a network of providers to deliver its services. This will mean working with business representative organisations such as professional bodies and sector-based umbrella organisations, as well as trade unions, to deliver advice and support.
- 7.31.** It will also be important for the CEHR to work with and through other public sector bodies such as Regional Development Agencies, the Small Business Service (and its Business Link brand) and ACAS. This approach will avoid duplication of effort and allow full account to

²³ Such as specialist legal advisers, trade associations, or Croners (a provider of business information, advice and support).

be taken of the need to deliver services in different local and sectoral contexts. The CEHR's regional delivery arrangements, set out in Chapter 8, will enable this closer engagement.

The CEHR's regulatory role

- 7.32.** It will be essential for there to be a clear separation between promotion and enforcement activities within the CEHR. Businesses need to be confident that approaching the Commission for advice on improving their practices will not result in their being exposed to enforcement action. The CEHR will need to develop and communicate clear, publicly declared procedures for how it will deal with information gathered as part of a request for advice and guidance.
- 7.33.** The new Commission will be expected to make full use of its range of tools to work flexibly with businesses that want to achieve legal compliance. These might include binding agreements in lieu of enforcement action (see paragraphs 4.35-4.39) or making use of conciliation services. The CEHR will only use formal enforcement actions as a last resort, and will adhere to the Government's Enforcement Concordat²⁴ which asserts the importance of principles such as openness and proportionality in determining enforcement activity.
- 7.34.** It will be important, however, for the CEHR to be able to deal effectively with 'rogue' firms who wilfully avoid complying with the law. The new Commission will have effective tools at its disposal to address these instances. These will include a power to conduct named investigations into companies where the CEHR believes acts of discrimination or harassment may have taken place, and powers to ensure that action is taken. The CEHR will also have powers to support cases in areas identified as strategic priorities, such as clarifying the law in new or untested legislation.

24 The Principles of Good Enforcement, Policy and Procedures. Regulatory Impact Unit, Cabinet Office, 1998.

<http://www.cabinetoffice.gov.uk/regulation/docs/pst/pdf/concord.pdf>

Supporting the public sector

- 7.35.** The public sector is made up of over 40,000 organisations, including local government authorities, schools, prisons, Government departments and NHS Trusts. Together they represent the UK's largest employers and service providers.
- 7.36.** Ensuring that public services are able to meet the needs of all service-users, operating in a customer-focused, efficient and sensitive way, is an integral part of wider Government efforts to modernise public service delivery. Equality and human rights are key values that underpin this reform programme.
- 7.37.** In common with employers and service providers in the private and voluntary sectors, public services are required to comply with discrimination legislation. In addition, public services are required to respect people's rights under the HRA and the public sector duty on race equality. The Government intends to introduce a similar public sector duty on disability, through its draft Disability Discrimination Bill and, in time, a public sector duty on gender.
- 7.38.** A significant and increasing number of private enterprises, contracted to carry out or deliver services to the public, are also subject to some of the legislative framework which applies to the public sector, including the HRA.
- 7.39.** Public services, and those contracted to carry out public services, are therefore key partners if the CEHR is to succeed in its mission to embed equality and human rights as core values in society. Proactive and constructive relationships, with intermediary organisations and the bodies that govern or inspect individual organisations, will be very important.

- 7.40.** The Government expects the CEHR Board and senior management team to include those with experience of public sector delivery and management. This will ensure that, as an organisation, the CEHR is equipped to engage in an open, trusted and constructive way with public bodies.

Delivering CEHR services for the public sector

- 7.41.** The CEHR will have a key role in encouraging all equalities and human rights considerations to be mainstreamed throughout the public services. As a single body with competencies across the breadth of discrimination and human rights legislation, the CEHR is well-placed to do this in a way that is more efficient for public bodies themselves.
- 7.42.** The CEHR will also need to be sensitive to the demands placed on public bodies, and work to ensure it delivers its services to the public sector in a co-ordinated and strategic way. Serving as a single source of advice will, in itself, assist with this process. Ensuring that the CEHR's work focuses on fairer outcomes, rather than bureaucratic processes, will also be important.
- 7.43.** With such a large number of potential customers in this area of its work, the CEHR will need to ensure it supports public services in a strategic and efficient way. Making use of the media, sector-specific publications and journals, and working with public sector training providers will all be important ways of maximising the CEHR's reach with limited resources. Innovation and creativity, as well as targeted and focused activity, will be central to the CEHR's effectiveness.
- 7.44.** The CEHR will need to respond to the specific needs of those responsible for providing children's services, such as education and health and social care, taking into account the changes being introduced through the Children Bill which includes the creation of an independent Children's Commissioner. In particular, the CEHR will need to take into account the wide range of institutions in the education sector ranging from large further and higher education institutions to small nursery schools. The CEHR will encourage

education bodies and others with responsibilities for children's services to respond to consultations on its aims and priorities, and will specifically seek their views on any proposals that it is considering which could have a significant impact on the education sector.

- 7.45.** The CEHR's approach to the public sector will be to support organisations, as employers and service providers, in:
- encouraging compliance with their discrimination and human rights legislative obligations;
 - promoting and sharing good equality and human rights practices in public service delivery.

Providing information, advice and guidance

- 7.46.** Public bodies, and the umbrella organisations that coordinate or govern them, have developed expertise and experience in delivering advice and guidance on legal compliance, especially on discrimination legislation, in a sector-specific and user-friendly way. The CEHR will work in partnership with these resources and initiatives, contributing its own specialised expertise and knowledge.
- 7.47.** However many public authorities have limited understanding or appreciation of their obligations under the HRA and some are vulnerable to legal challenge. The CEHR will play a key role in developing and disseminating sector-specific and user-friendly guidance, working in partnership with key public bodies, to promote compliance and good practice in this area.

Working with inspectorates and standard-setting agencies

- 7.48.** Working in partnership with inspectorates and standard-setting agencies such as the Audit Commission, the NHS Confederation, the Local Government Association, HM Inspectorate of Prisons, HM

Inspectorate of Constabulary, and the Office for Standards in Education (OFSTED), the CEHR will be crucial in helping to promote, encourage and develop performance measures and standards in equality and human rights.

- 7.49.** This will build on the work of the current Commissions in, for example, developing the Equality Standard in conjunction with the Employers Organisation for Local Government.²⁵ The Equality Standard provides a framework through which local authorities can promote and sustain good equality practice and address their legal obligations under discrimination law.
- 7.50.** In this way, the CEHR will be able to ensure that its expertise and knowledge is maximised through the efficient use of its own resources, mainstreaming equality and human rights compliance through the day-to-day functions of other agencies and organisations.

The CEHR as a resource for the public sector

- 7.51.** The CEHR will be well placed to serve as a resource for Government departments, public sector bodies, and their representative organisations. It will be able to develop a databank of good practice case studies in sector-specific areas of public service, creating a reservoir of experience on which individual public bodies can draw.
- 7.52.** The CEHR will also be able to promote cross-sector learning, applying lessons learned in local government, for example, to challenges faced by the health service.
- 7.53.** The CEHR will be independent but have close and productive relationships with all key Government departments. It will be able to make use of its networks and relationships with Government to inform policy-making, performance measurement and delivery frameworks.

²⁵ The Equality Standard for Local Government. Employers' Organisation for Local Government. <http://www.lg-employers.gov.uk/diversity/eSat/index.htm>

- 7.54.** This contribution will help enable Government departments to mainstream equality and human rights considerations into policy making and legislative processes at the outset, and ensure these are carried through to front-line delivery.
- 7.55.** Utilising this reservoir of experience, the CEHR can develop sector-specific toolkits, guidance and training services that tackle particularly difficult areas of equality and human rights work, or that raise the standards of current service provision in certain areas.

Public sector duties

- 7.56.** The CEHR will inherit the CRE's role in respect of the public sector duty on race equality and good race relations introduced by the Race Relations (Amendment) Act 2000. This will be a priority area of work for the CEHR.
- 7.57.** The Government has published a draft Disability Discrimination Bill which sets out provisions for a new duty on public bodies to promote equality of opportunity for disabled people. The CEHR will play an important role in encouraging compliance and good practice by public bodies under the new disability duty.
- 7.58.** The Government now intends to take concrete steps to implement its longstanding commitment to introduce a duty on public bodies to promote equality of opportunity between women and men. The next step is detailed preparatory work on the shape of a duty, in which it will be important to learn from the experience of other public sector duties, so as to provide a firm basis for its introduction in due course.

Enforcing public sector duties

- 7.59.** The CEHR will have a distinctive role to play in enforcing public sector duties. Both the race equality duty and the planned disability duty follow a two-part structure, where specific duties are set out in secondary legislation to assist public bodies to comply with the general duties set out in primary legislation. We intend to maintain

the enforcement model introduced by the Race Relations (Amendment) Act, and to extend the same model to the planned disability duty.

- 7.60.** The CEHR will therefore have powers to issue and enforce compliance notices where it is satisfied that a body has failed to comply with specific duties. In addition to the CEHR's ability to seek judicial review when it believes a body is failing to fulfil its duties, the Government is considering whether there are other appropriate mechanisms to enforce the general duty.
- 7.61.** Public bodies will benefit from the coherent approach of the CEHR in respect of public sector duties on race and disability. The CEHR will be well placed to also provide advice on good practice in respect of other strands in the course of its work in this area.
- 7.62.** We recognise the continuing debates about public sector duties. We expect the CEHR, through its experience of monitoring and evaluating the race (and, in time, disability and gender) duties, to be able to contribute to the wider discussions about the role of public duties as mechanisms through which more equal outcomes can be secured.

Regional delivery

- 7.63.** The CEHR will make full use of its regional infrastructure (see Chapter 8) to support its public sector stakeholders.
- 7.64.** Governance and coordinating agencies for the public sector are increasingly regionalised, and representatives of the CEHR in the regions will be well placed to drive delivery of the CEHR's services in a regionally-sensitive way.
- 7.65.** The regional delivery of CEHR's services to the public sector will ensure that account is taken of existing support services and public sector needs, enabling the CEHR to tailor its work on a regional basis. This will ensure that the CEHR's support to the public sector is responsive and sensitive to regional, local and sector-specific priorities.

8

Regional arrangements of the CEHR

- 8.1.** Responses to **Equality and Diversity: Making it Happen** indicated a strong desire for more local and regional responsiveness in the delivery of the new body's equality and human rights work. Respondents believed that a regional presence would help to prevent any new Commission becoming out of touch with regional priorities, and facilitate a greater engagement with individuals, employers and service providers, and voluntary and community sector organisations.
- 8.2.** At present, only the CRE has a regional presence, with four offices in London (also serving the south of England), Birmingham, Leeds and Manchester. The DRC and the EOC both have a significant presence in Manchester.
- 8.3.** To facilitate the effective and efficient delivery of the CEHR's work, the new Commission will have a presence in each of the nine English regions. Arrangements for Scotland and Wales will also need to be appropriately developed.
- 8.4.** In developing its regional arrangements, the CEHR will be sensitive to regional needs and identify how and in what capacity it is best able to develop partnerships to deliver its functions at regional level. The scale and nature of its regional activity will also need to reflect the resources available. To achieve this, the CEHR will need to be strategic and creative in its approach, and learn from experience as it evolves.

CEHR regional activities

- 8.5.** The CEHR's regional presence will help the organisation develop relationships and partnerships with its key customer groups – individuals, businesses, trade unions, voluntary and community sector organisations, and public services – in delivering the CEHR's core functions.
- 8.6.** The CEHR's regional network will help deliver the new Commission's strategic priorities in a way that is responsive and sensitive to local and regional needs, rather than through a one-size-fits-all or overly-centralised approach. It will position the CEHR to respond effectively to the increasing regionalisation of public service delivery, and to wider Government policies such as regeneration, economic development and community cohesion.
- 8.7.** A regional network will also enable the CEHR's strategic planning process to take full account of regional developments and priorities, identified through its relationship with key stakeholders and customers.
- 8.8.** The CEHR's regional presence will ensure it is able to develop and maintain partnerships for delivering its work to key customers. Making effective use of existing networks will be an important mechanism for efficient and strategic delivery. The CEHR's regional activities could include:
- developing productive relationships with Business Links, Chambers of Commerce and Regional Development Agencies to influence SMEs and promote compliance and good practice in this sector;
 - developing strategic relationships with, for example, Learning and Skills Councils, Local Strategic Partnerships, or ACAS regional offices, to promote awareness and understanding;
 - fostering networks of voluntary, community and statutory organisations who already play a critical role in raising awareness and promoting compliance and good practice on equality and human rights;

- supporting local organisations to deliver equality and human rights projects, including those it will inherit from the CRE focusing on race equality.

Developing the CEHR's regional presence

- 8.9.** A number of regions already have strong networks of voluntary, community and statutory organisations working towards eliminating discrimination and promoting equality and human rights. Some regions are beginning to develop the capacity to engage organisations and individuals in networks to take forward this area of work. Yet in still others, little activity is being carried out to support the broad culture change of embedding equality and human rights values within society.
- 8.10.** The CEHR's regional presence will need to be sensitive to the activity and work of others, taking care to ensure it makes strategic use of its own resources to secure effective and efficient outcomes. Where significant activities and networks already exist, or where expertise and experience is held by those already operating in the field, the CEHR will need to shape its regional work so as to add value and enhance this work through partnership arrangements.
- 8.11.** Where initiatives are less well developed, or beginning to emerge, the CEHR's strategic role may be to promote and support further activity and development, either directly through its own officers, or through partnership arrangements.
- 8.12.** The CEHR's presence will not, therefore, be through the establishment of a one-size-fits-all approach, with stand alone offices and staff in each of the nine regional areas in England, and appropriate regional coverage in Scotland and Wales. This would be resource intensive, and risk duplicating some existing arrangements. It would not be consistent with the strategic added-value approach of the CEHR, nor an efficient use of public funds.
- 8.13.** Instead the CEHR will explore partnership, contractual arrangements and co-location, or combinations of these, to effectively deliver

activities at regional level. There may be, for example, potential to co-locate staff within other organisations that have a regional presence such as Regional Development Agencies. This would enable the CEHR to play a direct role in areas where regional needs are not well served by others. In regions where there is already significant work being undertaken by others, it may work in partnership through contractual arrangements to carry out CEHR priorities and activities. The CEHR could also pilot new initiatives, and carry out projects that meet specific regional needs, through its grant-making powers, contractual arrangements or direct delivery by CEHR staff.

- 8.14.** The guiding principles for the development of the CEHR's regional presence will be strategic and flexible delivery, respecting and recognising the experience and expertise of others and understanding regional needs.

QUESTION 5

What other activities should the CEHR carry out at regional level? Is the mixed approach – contracts, partnerships and co-location – an appropriate way to develop the CEHR's regional presence?

9

The Scottish and Welsh dimensions

- 9.1.** The CEHR will work to support equality and human rights across the whole of Great Britain,²⁶ but a key priority will be responding to the particular needs of both Scotland and Wales.
- 9.2.** Since devolution, distinct political and legal contexts for equality and human rights have evolved in Scotland and Wales. While most equality legislation is, and is likely to remain, reserved to the UK Parliament at Westminster, both the Scottish Parliament and the National Assembly for Wales have tackled equality issues as an integral part of their policymaking and legislative approach, especially in the way in which devolved public services are delivered. This reflects specific provisions in the Scotland Act and Government of Wales Act.²⁷
- 9.3.** The CEHR's structure and operational work must support this approach and enable effective interplay between work at GB-wide and devolved levels. The overall strategy for the CEHR should reflect and be informed by Scottish and Welsh priorities and experience.

26 The Equality Commission for Northern Ireland was established under the Northern Ireland Act in 1998. On 1 October 1999, the Commission took over the functions previously exercised by the Commission for Racial Equality for Northern Ireland, the Equal Opportunities Commission for Northern Ireland, the Fair Employment Commission, and the Northern Ireland Disability Council.

27 Scotland Act 1998, Schedule 5, Part 2, Section L2; Government of Wales Act 1998, Sections 48 and 120.

- 9.4.** The key features of the CEHR which will enable this approach are:
- The **establishment of offices** of the CEHR in Scotland and Wales to help the body maintain close working relationships with both the devolved administrations and intermediary organisations delivering services locally;
 - Provision in legislation for the **appointment to the CEHR Board** of one Board member with special knowledge of Scotland and one with special knowledge of Wales. These appointments will be made with the agreement of the Scottish Executive Ministers and the Welsh Assembly Ministers respectively to underpin close working with the Commission;
 - Provision in legislation for the **establishment of a Scotland committee and a Wales committee** to set priorities for and oversee the work of the CEHR in Scotland and Wales;
 - A requirement for the CEHR to prepare **reports on its activities in Scotland and Wales** to be laid before to the Scottish Parliament and the National Assembly for Wales respectively. This will help the CEHR to work in partnership with the Scottish and Welsh administrations on their equality work.
- 9.5.** The presence of CEHR offices in Scotland and Wales will enable the Commission to build on the close and co-operative relationships which the Scottish and Welsh offices of the existing Commissions have developed with institutions and organisations in the respective countries. These offices will also be a channel for engaging in dialogue with distinct stakeholder and customer groups in Scotland and Wales, recognising that the CEHR will need to be responsive to needs which are specific to each country.
- 9.6.** The Scotland and Wales committees will have delegated powers of decision-making on matters relating to the CEHR's work in the devolved equality context, and an advisory role in other areas. They will be able to monitor and review work that is under way. They will provide specific Scottish and Welsh perspectives on the development of GB priorities and their delivery in Scotland and Wales. The two

committees will be chaired by the CEHR Board member who has detailed knowledge of the nation concerned who will be accountable to the CEHR Board for ensuring close co-ordination of activities with the rest of the CEHR. The committees will be the major source of advice and expertise within the CEHR on Scottish and Welsh matters and be the main support to the designated Commissioners.

- 9.7.** The Commission will be able to work with the devolved Scottish and Welsh administrations to support activities which promote equality of opportunity. This will extend to allowing the CEHR to be involved in work related to equality of opportunity as set out in the Scotland Act 1998²⁸ and the Government of Wales Act 1998²⁹ (which are broader concepts than the six protected groups covered by existing discrimination legislation).
- 9.8.** The existing Commissions provide advice to the Scottish Executive on the equality impact of policy and proposed legislation, as do other organisations. The CEHR, through its Scottish office, will be able to continue this practice, as well as providing the Scottish Executive with advice more generally, although it will be for the Scottish committee to determine how the Scottish office of the CEHR should balance this work with its other priorities.
- 9.9.** Similarly, in Wales, we anticipate that the CEHR will play a role in assisting the Equality of Opportunity Committee of the National Assembly in ensuring that the Assembly Government adopts a coherent approach to meeting its equality commitments.
- 9.10.** It will be important for the CEHR to have an effective working relationship with bodies concerned with equality and human rights in

28 Equal opportunities is defined by the Scotland Act 1998 as "...the prevention, elimination, or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions."

29 The Government of Wales Act places a duty on the National Assembly for Wales to have "due regard to the principle that there should be equality of opportunity for all people" in the conduct of its business and exercise of its functions, and to make appropriate arrangements to ensure that these duties are met.

Scotland and Wales. The Scottish Executive is currently developing proposals for the establishment of a Scottish Human Rights Commission (SHRC) and it will be important for the CEHR to have an effective relationship with this body. We have worked closely with the devolved administration and non-governmental organisations in Scotland in developing our proposals and will continue to work with the Scottish Executive during the consultation process and beyond.

- 9.11.** The expectation is that the SHRC will take a clear lead in promoting human rights in devolved policy areas (such as education, health, local government, transport and criminal justice) in Scotland, while the CEHR will act in non-devolved areas. To ensure that this division of responsibilities works well in practice, it will be important for the two bodies to work together to develop a detailed understanding of how their roles inter-relate. We anticipate that a Memorandum of Understanding (MOU) between the CEHR and the SHRC will be put in place setting out the respective roles of the two bodies and that this will be supported by close ongoing cooperation between the Scottish office of the CEHR and the SHRC. The CEHR may also wish to consider negotiating MOUs with other relevant bodies in Scotland, such as the Commissioner for Children and Young People.
- 9.12.** In Wales, the CEHR will need to have effective working relationships with the Children's Commissioner for Wales, the Welsh Language Board (Bwrdd yr Iaith Gymraeg) and the proposed Older People's Commissioner for Wales and may want to consider negotiating MOUs with these bodies.

10

Preparing the way

- 10.1.** In order to be effective in the first years of its operations, the CEHR will need to ensure that the expertise and experiences of its different communities of interest are properly reflected.
- 10.2.** This will necessitate arrangements in advance of the establishment of the CEHR, as well as tailored provisions in its first years of operations. This chapter sets out the ways in which this will be achieved.

Bringing in the new strands

- 10.3.** An important part of building the CEHR will be to encourage the existing Commissions and representatives of the new strands to work together between now and the establishment of the CEHR. By identifying areas where they can work jointly together, and fully involving them in the preparatory work for the new body, understanding should grow, and lead to the development of trust and a shared culture to underpin the new body.
- 10.4.** The establishment of the CEHR will provide, for the first time, institutional support for the new discrimination regulations on sexual orientation and religion or belief, enacted in December 2003. It will also provide support for the provisions on age discrimination when these are introduced in late 2006.

- 10.5.** The new strands of sexual orientation, religion or belief and age have not had the same institutional support that has been in place for race, gender and disability through the existing equality Commissions. As we approach the establishment of the CEHR, and in the first years of its operation, particular attention will be needed in these new areas. This will include:
- the **development of expertise and experience**; with the new regulations, particularly the evolution of a body of case law to support interpretation in employment tribunals;
 - **raising awareness and understanding**; among individuals who have rights under the new regulations, and the organisations that represent their interests;
 - **support for employers** in the private, public and voluntary sectors, who have new responsibilities under these regulations, to ensure compliance and good practice;
 - effective mechanisms for **evaluating how the regulations are working** on the ground, to identify strategic priorities for the CEHR in respect of the new strands.
- 10.6.** The Government's Age Advisory Group and, more recently, Age Task Force were established to advise on matters relating to the implementation of the age strand of the European Employment Directive, and to support Government in developing the guidance that will sit alongside this legislation.
- 10.7.** We intend similarly to continue to engage those who have an interest in the sexual orientation and religion or belief regulations, to evaluate the support available – to individuals and employers – for ensuring compliance and good practice, to identify key issues affecting the embedding of the legislation, and to advise on unmet needs. We expect to make available further funding in the coming year to continue support for raising awareness and providing information and advice, in order to promote compliance.

- 10.8.** The Government will continue working closely with representatives of new strand organisations, and others with an interest in the new employment regulations, to map the path towards establishment of the CEHR, ensuring that their needs are clearly identified and that support provided in the interim fits coherently with the longer term perspective.

Developing shared understanding

- 10.9.** As we approach the establishment of the CEHR, it will be important for the existing three Commissions and representatives from the new areas of discrimination law, to work closely together to develop a shared understanding and identify opportunities for adding value to existing arrangements. In working jointly together, they will build on their strengths and specialisms, as well as building trust and a shared culture that will support a smooth transition into the new body. This will be particularly important in areas such as the CEHR's work in promoting good relations between different communities. An understanding of how this might apply to specific groups and communities will need further exploration, drawing in community-based and community-led organisations

Building on the experience of the existing Commissions

- 10.10.** The existing Commissions are an important resource of expertise, experience and knowledge for the CEHR. As well as the activities to develop a shared and common understanding between Commissions in the run-up to the establishment of the new body, we have considered ways in which the CEHR might build on their work in its first years of operation.
- 10.11.** To ensure continuity and transfer of expertise from the CRE, DRC and EOC, three **transition commissioners** will be nominated by the Chairs and appointed by the Secretary of State. Arrangements for transition commissioners are set out in more detail in Chapter 11.

Specific arrangements for disability

- 10.12.** The CEHR will need to reflect the current arrangements for the DRC and the legal requirement that people who have, or have had, a disability make up at least 50% of the Disability Rights Commission, including its Chair or Deputy Chair.
- 10.13.** The Government recognises that – partly because disability legislation does not follow the pattern of the other discrimination legislation including, as it does, the recognition that ‘reasonable adjustments’ are often needed to deliver equal opportunities for disabled people – some specific arrangements and expertise will be required in the new Commission to deliver its remit in this area. This will be especially important in its first years of operation. In particular, an effective framework will need to be in place to ensure continuity of relevant expertise and experience to implement the complex and significant programme of disability legislation which will come into force over the next several years, and provide continuity with the DRC’s work.
- 10.14.** In line with the CEHR Board’s general power to establish Committees to assist with specific functions, there will be a provision in the CEHR’s legislation for the establishment of a disability committee for a period.
- 10.15.** The Chair of the disability committee will be appointed by the Secretary of State from among the members of the CEHR Board and will be a person who has, or has had, a disability.
- 10.16.** At least 50% of the membership of the disability committee will be made up of people who have, or have had, a disability and will be appointed by the Board, in consultation with the Chair of the disability committee. We would expect the membership to reflect disability as it intersects with other strands such as age, ethnic origin, sexual orientation or gender, as well as a range of disability interests, so that the committee can ensure wider understanding of disability issues and how they link with other areas of the CEHR’s work.

- 10.17.** The legislation will require a mandatory review after a period of five years of the continuing case for a disability committee. The review will specify the length of any further term for the committee.
- 10.18.** The committee will be accountable to the CEHR Board who will be responsible for ensuring that work overseen by the disability committee is a coherent part of the CEHR's overall strategy and policy.
- 10.19.** The committee will be empowered by the CEHR Board to have decision-making authority in respect of setting strategy, developing policy and monitoring delivery for specific areas of the Commission's disability work. These areas will focus on aspects distinct to disability including reasonable adjustment as it applies to access to facilities, goods, services and in particular the built environment. The committee's remit will also cover access to education and transport for disabled people. Many of the issues involved in these policy areas have no obvious counterpart with other equality strands.
- 10.20.** The committee will need to ensure that its activities offer benefits to the wider work of the CEHR by helping to ensure understanding of and linkages with disability issues. It will be expected to contribute effectively to cross-strand work wherever this is appropriate, as well as having a role in ensuring that disability issues are taken into account across the full breadth of the Commission's activities.
- 10.21.** The establishment of the disability committee will not affect the CEHR's commitment to working with and for all the equality strands. The CEHR's Board will be responsible for ensuring that its work and priorities are balanced across all the equality strands and that the maximum possible benefit is gained from the opportunity that the CEHR will have to do both cross-cutting and strand-specific work, bringing together priorities from across the full range of equality issues.

11

The road to implementation

The transition process

- 11.1.** The CEHR will not be fully operational before the end of 2006 at the earliest. We anticipate a sequence of steps between now and the launch day of the CEHR, when it will take on its full statutory responsibilities:
- Establishment of a steering group, to begin shortly and continue for 12-18 months. The steering group will manage the planning and implementation of the key milestones towards launch day.
 - Passage through Parliament of the bill to establish the body, as soon as Parliamentary time allows.
 - Establishment of the CEHR, in the period following Royal Assent to the bill. The CEHR will, at this stage, exist in a shadow form until it is launched on a fully operational basis. The shadow CEHR will include the appointment of its Chair and some Board members, and recruitment of its Chief Executive and some senior management.
 - Launch day of the CEHR, when it takes on its full statutory and operational responsibilities and the existing Commissions are wound down.

- 11.2.** We appreciate the concerns of the staff of the existing Commissions about what the new arrangements will mean for them. We will work to minimise uncertainty and ensure that decisions about transitional arrangements and regular progress updates are communicated to staff.
- 11.3.** The skills and experience of staff in the existing Commissions will be a key ingredient in ensuring a smooth process from transition through to establishment of the CEHR and beyond. Staff in the existing Commissions will receive all the protections specified in the TUPE³⁰ regulations.

Managing the transition

- 11.4.** We recognise the major change management challenges of a smooth and successful transition process. Our approach will build on the Government's experience of managing similar processes, and the lessons learnt.
- 11.5.** A transition group will be set up to oversee and manage this process. This group will consist of representatives from the three existing Commissions, representatives from the new strands, and Government officials from the key sponsoring departments.
- 11.6.** In its first 12 – 18 months, this group will undertake detailed planning of the transition process. Its role will be to provide direction and momentum for the operational aspects of establishing the CEHR, and the transition from the existing Commissions. It will help to foster cooperation between members and begin building a shared culture.

The Bill

- 11.7.** The establishment of the CEHR will require primary legislation, and we intend to bring a Bill before Parliament as soon as time allows. The Bill will allow for the creation of the new Commission and set out its remit, duties and powers, as well as include provisions to wind down the existing statutory equality Commissions and allow the transfer of staff and property to the new body.

Establishment of the shadow CEHR

- 11.8.** In the period following Royal Assent to the Bill, we propose to establish the CEHR. Since the Commission will not assume full operational powers, it will exist in a shadow form, or Commission-in-waiting. The full CEHR will develop and grow from this. Establishment of the shadow Commission will commence with the formal appointment of the Chair and some Board members to form a shadow Board. The shadow Board will take forward the next stages of work over a period of 12 – 18 months.
- 11.9.** The shadow Board will also include the three additional **transition commissioners**, one from each of the existing equality Commissions, as described in paragraph 10.11. This will ensure that, in this crucial transitional phase, the new CEHR Board's work is informed at the outset by the experience and expertise of the existing Commissions. It will also provide a level of continuity between the CEHR and the CRE, DRC and EOC.
- 11.10.** The appointment of the shadow Board will enable the early development of a shared understanding of its leadership role, and shaping of a coherent organisational culture. The shadow Board will play a key role in promoting closer or joint working between the existing Commissions and new strand organisations, for example in legal strategy, corporate support services, or engagement with voluntary and community organisations.

11.11. The shadow Board will be able to recruit its Chief Executive and senior management team at this stage, and take decisions about practical measures such as location of the CEHR, and fitting out of accommodation. It will also build up work with the new strands, and on human rights.

Launch day

11.12. Launch day for the CEHR will not take place before the end of 2006 at the earliest.

11.13. By launch day, the full complement of CEHR Board members will have been appointed, including at least one who is disabled or has had a disability. The transition commissioners for the CRE and EOC will continue to serve as CEHR Board members after launch day.

11.14. On launch day, the CEHR will assume its full statutory responsibilities, and the existing equality Commissions will close.

Appendix A

Summary of relevant legislation

Discrimination legislation

Sex (including gender reassignment and marriage)

There are two main pieces of legislation dealing with sex discrimination: the Equal Pay Act 1970 (EqPA) and the Sex Discrimination Act 1975 (SDA). The SDA prohibits discrimination in relation to employment (but not terms and conditions while in employment, which are covered by the EqPA), education, housing and the provision of goods, facilities and services.¹

The different types of discrimination covered by the SDA are sex discrimination, gender reassignment discrimination, married persons discrimination and victimisation.

The purpose of the EqPA is to eliminate discrimination as regards pay and other terms and conditions between men and women doing equal work.

¹ Gender reassignment discrimination is only prohibited in relation to employment and vocational training, and married persons discrimination is only prohibited in the employment field.

Race

Race discrimination and harassment is made unlawful under the Race Relations Act 1976 (RRA), as amended by the Race Relations (Amendment) Act 2000 (RRAA) and the Race Relations Act 1976 (Amendment) Regulations 2003. The RRA prohibits discrimination in relation to employment, education, housing and the provision of goods, facilities and services and in the exercise of other public functions (subject to limited exceptions).

The RRA also places a general duty on specified public authorities to work towards the elimination of unlawful discrimination and to promote equality of opportunity and good relations between persons of different racial groups in carrying out their functions. This is known as the 'general statutory duty on race'. In practice, this means that listed public bodies must take account of racial equality in the day to day work of policy-making, service delivery, employment practice and other functions.

The general statutory duty is supported by specific duties to help public authorities meet the general statutory duty. Under these duties, certain public authorities have to prepare and publish a Race Equality Scheme. This Scheme should explain how they would meet both their general and specific statutory duties, including by:

- assessing whether their functions and policies are relevant to race equality;
- monitoring their policies to see how they affect race equality;
- publishing results of their consultations, monitoring and assessments;
- making sure that the public have access to the information and services they provide;
- training their staff on the new duties.

Public authorities are also subject to specific duties in respect of their employment activities.

A failure to comply with the general or specific statutory duties would be unlawful in public law terms, but would not be an unlawful act of discrimination within the meaning of the RRA.

Disability

Disability discrimination is covered by the Disability Discrimination Act 1995 (DDA). It only prohibits discrimination against disabled people, and contains no equivalent prohibition in relation to those who are not disabled. The DDA does not follow the pattern of direct and indirect discrimination used in the SDA and RRA. Instead, it prohibits unjustified less favourable treatment for a reason relating to a person's disability. The DDA also creates a duty to make reasonable adjustments in certain circumstances. An unjustified failure to make a reasonable adjustment is a form of discrimination.

The DDA prohibits discrimination in relation to employment, education, the provision of goods, facilities and services and, to a limited extent, public transport.

A draft Disability Discrimination Bill has been published for pre-legislative scrutiny in the 2003/04 Parliamentary session. The Bill proposes to extend the DDA to cover functions carried out by public bodies; introduce a new duty on public bodies to promote equality of opportunities for disabled people; take a power to bring within scope of the DDA the use of transport vehicles by disabled people; require those who let or manage rented premises to make reasonable adjustments to their policies and practices; extend the definition of disability to cover more people with HIV, cancer and multiple sclerosis. In addition, the draft Bill contains measures which bring within the scope of the DDA larger private members clubs and which give disabled local councillors protection against discrimination by the local authorities of which they are members. The Government has announced that when the full Bill is introduced it will include measures to set an end date for rail vehicle accessibility and to introduce regulations on the refurbishment of rail.

Sexual orientation

The Employment Equality (Sexual Orientation) Regulations 2003 prohibit direct, indirect discrimination and harassment on the grounds of sexual orientation in the fields of employment and vocational training. They also prohibit victimisation where a person is treated less favourably by reason that he has taken certain action in relation to the regulations. Their general pattern follows that of the SDA and RRA. These regulations came into force on 1 December 2003.

Religion or belief

The Employment Equality (Religion or Belief) Regulations 2003 prohibit direct, indirect discrimination and harassment on the grounds of religion or belief in the fields of employment and vocational training. This includes discrimination on the grounds that the individual has no particular religion or belief. They also prohibit victimisation where a person is treated less favourably by reason that he has taken certain action in relation to the regulations. The regulations' general pattern follows that of the SDA and the RRA, and they are very similar to the sexual orientation regulations mentioned above. These regulations came into force on 2 December 2003.

Age

The EC Employment Directive also requires Member States to prohibit age discrimination by December 2006. The Government is currently drafting regulations. It is anticipated that they will come into force in October 2006. The regulations will prohibit direct, indirect discrimination and harassment on the grounds of age in the fields of employment and vocational training.

Forthcoming amendments to discrimination legislation

There are a number of areas of discrimination legislation which will be amended shortly.

Disability Discrimination Act 1995 (Amendment) Regulations 2003

The Disability Regulations make a number of amendments to the DDA in order to implement aspects of the Employment Directive. A major change is that in those areas, direct discrimination will be prohibited in very similar terms to those of the SDA's prohibition of direct sex discrimination. It will no longer be possible to justify less favourable treatment which amounts to direct discrimination. Nor will there be a defence of justification for a failure to make reasonable adjustments. The regulations also introduce the concept of harassment related to disability, remove the small firms exemption and restrict the circumstances in which discrimination for a reason related to disability can be justified.

The regulations introduce new powers for the DRC in relation to complaints about discriminatory advertisements and pressure and instructions to discriminate.

These amendments to the DDA will all come into force on 1 October 2004.

Draft Disability Discrimination Bill

The draft Disability Discrimination Bill will create some new functions for the DRC in connection with the general duty on public authorities to promote equality of opportunity for disabled people.

Regulations to amend the DDA in relation to further and higher education

The Government is preparing a separate set of regulations which will amend Part 4, Chapter 2 DDA to implement the Employment Directive's requirements in relation to disability and vocational training provided by institutions of further and higher education.

Human Rights Legislation

European Convention on Human Rights (ECHR)

The 1950 European Convention on Human Rights (ECHR) is a binding international agreement that the UK helped to draft and has sought to comply with for half a century. It contains a number of basic civil and political rights. These include:

- The right to life (Article 2);
- Prohibition of torture or inhuman or degrading treatment or punishment (Article 3);
- Prohibition of slavery and forced labour (Article 4);
- Liberty and security of person (Article 5);
- Fair trial (Article 6);
- Prohibition of retrospective criminal laws (Article 7);
- Respect for private and family life, home and correspondence (Article 8);
- Freedom of thought, conscience and religion (Article 9);
- Freedom of expression (Article 10);
- Freedom of peaceful assembly and freedom of association, including the right to join a trade union (Article 11);
- The right to marry and found a family (Article 12); and
- Non-discrimination in the enjoyment of these rights and freedoms (Article 14).

The First Protocol to the ECHR guarantees further rights:

- Protection of property (Article 1);
- The right to education (Article 2); and
- The right to free elections (Article 3).

The Human Rights Act

The Human Rights Act 1998 (HRA) aimed to create domestic legal remedies for breaches by public authorities of the European Convention on Human Rights (ECHR). Since coming into force on 2 October 2000, the Act has made rights from the ECHR (the Convention rights) enforceable in the UK's courts, providing a much quicker and simpler means of redress than the previous arrangements. Cases can be dealt with in a UK Court or tribunal, and do not have to go to court in Strasbourg. The Act also gives people a clear legal statement of their basic rights and freedoms.

The Human Rights Act requires all public bodies to ensure that everything they do is compatible with Convention rights unless an Act of Parliament makes that impossible. It also requires all UK legislation to be interpreted in a way that fits with these rights, wherever possible. If a Court declares that it cannot interpret legislation this way, it will be up to Parliament to decide what to do to deal with this situation.

Appendix B

Partial Regulatory Impact Assessment of a proposed CEHR

Purpose and Intended Effect of Measure

- 1.** It is proposed to establish a new body – the Commission for Equality and Human Rights (CEHR) - to promote and enforce Great Britain’s discrimination legislation and to promote a culture of respect for human rights. It will carry forward the work of the existing Equal Opportunities Commission, Commission for Racial Equality, and Disability Rights Commission and take on similar responsibilities for new legislation coming on stream to outlaw discrimination in employment and vocational training on grounds of sexual orientation, religion or belief and age. It will also have responsibility for the promotion of human rights.
- 2.** The proposal to establish the CEHR will not include proposals to reform or change the underlying discrimination and human rights legislation which this new body will promote and, in the case of discrimination, enforce. Therefore, the body of UK discrimination law will remain as before.
- 3.** The CEHR’s human rights promotional work will focus on provision of advice and guidance to public authorities in order to encourage progress from bare compliance to good practice so as to improve public service standards for the benefit of all their customers.

Purpose of Regulatory Impact Assessment (RIA)

4. This partial Regulatory Impact Assessment is to accompany the White Paper, concerning the creation of the CEHR. Issues concerning the establishment, financing, resourcing and management of the CEHR are still under active consideration, and are likely to remain so for a few months. Therefore, we have only been able to outline in qualitative terms, the risks, options and benefits of setting up the CEHR. The full RIA, that will accompany the Bill setting up the CEHR, will contain estimated costing and benefits.

Next steps

5. Between now and the publication of the Bill and full RIA, the CEHR Project Team will be seeking to make progress on: (i) continuing policy development; (ii) setting in place arrangements for planning and managing the transition to the CEHR; and (iii) encouraging the current Commissions and new strand organisations to co-operate and identify working synergies as well sorting out operational/procedural issues of concern.

Background

The Current Equality Commissions

6. Promotion of equality and enforcement of legislation relating to discrimination is currently undertaken by three separate Commissions – the CRE, the DRC and the EOC. As well as providing information and advice to individuals, employers and service providers, and promoting good practice, the Commissions also provide casework support for individuals seeking advice on discrimination matters. 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 Commissions also actively support a number of strategic cases

(around 250 in 2002²), which equates to around three per week, that are believed to have strategic significance.

New Legislation

7. New legislation came into effect in December 2003 giving effect to an EC Directive making discrimination in employment and vocational training on the grounds of sexual orientation and religion or belief unlawful. Similar legislation is planned for age in 2006. Government has committed itself to providing institutional support for this legislation, which falls outside the responsibilities of the current equality Commissions (CRE, EOC and DRC).

Devolution

8. Great Britain's discrimination legislation is reserved, and the CEHR will therefore have a GB-wide remit. The CEHR's approach and arrangements will however reflect the legal and constitutional settlement of devolution, and the distinct social, economic, cultural and historical circumstances of Scotland and Wales, as well as the specific Scottish/Welsh approaches to equality since devolution.

The need for a single Commission for Equality and Human Rights

9. The Government is committed to increasing choice and opportunity and tackling discrimination, as key elements in realising a fair, prosperous and cohesive society based on respect for individual worth and dignity. It is also looking to identify ways to tackle the costs that discrimination and unequal opportunities generate. The Prime Minister's Strategy Unit report of 2003 on the participation of ethnic minorities in the labour market illustrated the gap between white and non-white participation in employment, pointing to higher

2 Cases supported by the equality Commissions in 2002: CRE 155; DRC 55; EOC 38.

unemployment rates for ethnic minorities by some 10-15% among other findings. While the pay gap between men and women has recently been slightly reduced, it is still significant. The employment rate of disabled people is far below that of non-disabled people. It is estimated that the costs of age discrimination to Gross Domestic Product could be in the order of billions of pounds per year.³ The overall lost output from these exclusions has not been quantified, but the potential gains from reversing it are self-evident. Indicators of social participation also suggest that the groups above figure large in many categories of disadvantage, with the welfare costs and ultimately risks to social cohesion this implies.

- 10.** In order to facilitate the promotion of equality and human rights, good practice on an integrated basis in both the public and private sectors, a single commission is required to communicate with a clear and coherent voice. A respected, credible CEHR will be able to develop effective partnerships with businesses and public bodies in order to drive change that is of benefit to all and inspire confidence in those individuals seeking confirmation of their rights or suffering discrimination.
- 11.** Creating institutional support for human rights is a major step in helping to advance the underlying aim of the Human Rights Act, which is to help build a culture of respect for human rights in the UK, spearheaded by public authorities. The need for such institutional support for human rights was recommended by the Joint Committee on Human Rights (JCHR) in its sixth report.⁴ The JCHR also felt that such support should be integrated with that proposed for equality. The bringing together of equality and human rights in the CEHR reflects a vision that together they can underpin a fair, prosperous and cohesive society where there is opportunity for all and where all can reach their potential.

3 Partial Regulatory Impact Assessment for Age Discrimination Legislation. DTI, 2003. www.dti.gov.uk/er/equality/agediscrim_RIA.pdf

4 The Case for a Human Rights Commission. House of Lords & House of Commons Joint Committee on Human Rights March 2003. <http://www.parliament.the-stationery-office.co.uk/pa/jt200203/jtselect/jtrightts/167/6702.htm>.

The CEHR's Functions

12. The CEHR's core functions will be:
- i. **Encouraging awareness and good practice on equality and diversity**, through awareness campaigns, research, and contributing to initiatives such as citizenship education.
 - ii. **Promoting equality of opportunity** between people in the different groups protected by discrimination law through:
 - a. providing information, guidance and advice on legislative obligations and good practice;
 - b. providing a single point of contact for all customers in the public, private and voluntary/community/charity sectors;
 - c. developing support and tools for employers and service providers;
 - d. working with strategic partners in order to provide high quality advice;
 - e. working with the public sector on the duties on public bodies to promote equality of opportunity;
 - f. conducting general enquiries to identify and respond to emerging policy challenges.
 - iii. **Working towards eliminating unlawful discrimination and harassment** set out in the relevant legislation and supporting individuals, through providing advice on their rights and how to secure these, and enforcement action comprising support for a limited number of cases of strategic impact and undertaking formal investigations into cases of discrimination or harassment.
 - iv. **Promoting awareness and understanding of human rights**, involving promotion of a culture of respect for human rights by providing advice and guidance to public authorities, to improve

compliance with the Human Rights Act⁵ and promote good practice, providing helpline information and advice to the public and contributing to public education.

- v. Promoting good relations** among different communities and between these communities and wider society. The CEHR will play a role in community cohesion through providing support to local initiatives and promoting dialogue and understanding between different communities and groups, and practical work in these areas. This will build on the work of the CRE performed under its current statutory obligation to promote good relations between different racial groups.

Risk Assessment

- 13.** The proposal to establish the CEHR responds to the following problems:
 - a)** The Government views equality, diversity and human rights as core values for a prosperous and cohesive society but there is limited understanding of those values. This is apparent from the high levels of discrimination still experienced in the UK; e.g. women still earn much less on average than their male counterparts and unemployment is more likely amongst younger and older groups.
 - b)** There is a good deal of evidence that many businesses, especially SMEs,⁶ have little awareness of their obligations under discrimination legislation. At present, advice on race, gender equality and disability is provided by the three equality Commissions. There are no equivalent institutions providing advice on sexual orientation, religion or belief or age.

5 Human Rights: Improving public service delivery. Audit Commission, 2003.
<http://www.auditcommission.gov.uk/Products/NATIONAL-REPORT/FDE9C6A9-7DAF-4cd3-B21E-21E9E13E1D43/HumanRights-report.pdf>

6 Evaluation of Government Employment Regulations and their Impact on Small Businesses. Small Business Council, March 2004.
<http://www.sbs.gov.uk/content/sbc/rigreport.pdf>

- c)** There is a need to provide integrated support to employers and individuals as the new legislation, which makes it illegal to discriminate in employment and vocational training on the grounds of sexual orientation, religion or belief and age comes into effect, in order that effective embedding takes place. In particular, the regulations for age could have a major impact on the labour market, and will require employers to make significant changes to their practices.
- d)** Discrimination can be particularly damaging for individuals who face more than one type of discrimination. Because the existing commissions are organised around single issue/equality strands, they have not been equipped to deal with multiple discrimination.
- e)** Discrimination prevents many from full participation in society, in the social as well as economic sphere, with detriment to their quality of life.
- f)** While progress is being made, there is a good deal of evidence that public services are not sufficiently responsive to the needs of particular groups, or sufficiently accessible to them.

14. The risks of not establishing a single Commission are:

- a)** Continued poor awareness by many employers of their obligations under discrimination law, in particular under the new legislation, leading to poor compliance and failure to achieve the legislation's objectives. This is likely to be particularly acute for the regulations outlawing discrimination in employment on grounds of age, which will have a major impact on employers.
- b)** As a result, greater exposure of employers and service providers to legal action, involving court cases which impose costs on employers and the court and tribunal system.
- c)** Endemic poor practice and poor levels of information about the new regulations are likely to increase the risk of court judgments

based on incorrect interpretation of the new legislation/regulations and potential cost burdens on employers as a result.

- d)** Poor awareness of rights by individuals, and lack of support in securing them, will mean that discrimination is likely to continue leading to failure to achieve the government's policy objectives.
- e)** Duplication of effort and administration spending by the current Commissions as well as the loss of all six strands benefiting from shared experience and/or best practice. None of the savings, realised by the creation of the CEHR, would be enjoyed.
- f)** Continued inconsistent compliance with the HRA, resulting in a failure to harness the benefits a flourishing human rights culture could bring to the delivery of public services.
- g)** No improvement in public service provision resulting in continued poor quality services and increased risk of court action from individuals.
- h)** Failure to secure the gains set out below from provision of a single, coordinated source of advice and guidance on all discrimination and equality matters.

Options

Option 1 – Do nothing

The “old” equality strands where comprehensive discrimination exists will continue to be served by the existing Commissions. The new strands of sexual orientation, religion or belief and age will receive no institutional support, nor would human rights.

- 15.** Apart from not imposing costs that would be associated with familiarisation with the new Commission, on the private and public sectors (detailed in paragraphs 50 and 55) there are no additional benefits from this option. It would fail to address any of the problems set out above.
- 16.** The new strands, of age, religion or belief and sexual orientation, would not receive the substantial benefits of institutional support enjoyed by the established equality areas of race, gender and disability. As there would be no commissions empowered to promote both awareness of these regulations and alternatives to resolving disputes through the courts, there would be no perceivable reduction in the number of cases arising from breaches of the legislation.
- 17.** The Government’s objective of institutional provision for the promotion of human rights would not be met.

Option 2 – New Commissions for each new equality strand and human rights

Following the existing model for the three old strands of a Commission for each main equality strand, three additional Commissions would be established to provide institutional support for each of sexual orientation, religion or belief and age. A separate Commission would be established to deal with the promotion of human rights.

- 18.** This option would bring the benefit of dedicated provision of institutional support for each group covered by equality legislation and human rights. It would however pose the following risks:
 - Failure to benefit from the economies of scale and synergies arising from a single organisation, including the promotion of good practice on equality and diversity to employers and service providers would not be realised.
 - The potential failure to tackle discrimination cases effectively.
- 19.** A desk study conducted by officials in 2002 provided an estimate of the broad order of magnitude of running costs for a single body, and compared them with the estimated costs of six separate commissions. The conclusions were that a single body could have significantly lower costs (15-25%) than those of six separate Commissions. This compares with the then current (2001/02) operating costs of the three Commissions of £40m.⁷ The costs of a separate human rights commission would need to be added to this.

⁷ Total running costs for the three current Commissions for 2003/04 is around £43 million.

Option 3 – a single equality and human rights commission

Establish a new body to cover promotion and enforcement of all strands of equality where legislation exists and to promote human rights and equality more generally to employers, business, the public sector and individuals.

20. A single body provides the opportunity to promote equality and human rights and tackle discrimination in an integrated way, covering all equality strands.

Benefits and Cost

21. The section below sets out the costs and benefits associated with the establishment of the CEHR. These estimates are generally not amenable to quantitative measurement as the CEHR will tend to produce small changes in other regulatory impacts, e.g. through bringing some reduction in the number of cases being brought to new tribunals under the new regulations for religion or belief, sexual orientation and age. Such effects are hard to assess, and some benefits, such as the quality of public services or the quality of life for individuals are intangible.

Benefits

22. The CEHR would ensure the projection of a common message and understanding of the benefits of diversity and respect for human rights for all sections of society. A single commission will be better able to serve the individuals and communities it is charged to protect than could several disparate bodies; will act as a more effective partner for business by acting as a single, consistent source of information and advice, and speak with a single, clear voice on equality matters; and will be able to drive change in service provision

within the public sector through embedding a culture that respects equality and human rights. Such a body would also use resources more flexibly and cost effectively, avoiding duplication of facilities, and promote cross fertilisation of ideas and best practice. It provides the most efficient and cost effective way of providing support for the six equality strands and human rights.

- 23. There will be no direct compliance costs** on employers or service providers as the creation of the CEHR introduces no new regulatory legislation. The CEHR will provide advice and guidance regarding how public authorities and businesses can be compliant with the relevant legislation and therefore avoid potential litigation. Any widened powers for the new body are discussed in the Enforcement and Sanctions section.

Benefits for Employers (private, public and voluntary sector)

- 24.** The CEHR would deliver more effective and joined up information and advice on compliance with discrimination law, and good practice, covering all six equality strands. Employers will have to deal with only one body promoting and enforcing equality and human rights legislation and best practice, not several. High quality advice delivered through a high quality help line/web service, backed by appropriate literature will mean that employers can access the information they need much more easily and quickly, reducing the costs of compliance.
- 25.** Increased partnership-working, building upon the experiences of the current Commissions, to improve information provision through business intermediaries, including regional and local bodies, will also improve access to information and guidance.
- 26.** Employers will find it easier to comply with the new regulations on sexual orientation, religion or belief and age through targeted information and support. The CEHR should deliver clearer, more accessible advice to employers in order to make them more aware of their legal obligations. This increased awareness should leave

employers open to less litigation claims leading to fewer tribunal cases and therefore reduced costs of compliance. This is particularly the case for regulations on age being introduced in 2006, which are recognised as having a very major impact on the labour market. The extent of these reductions cannot be easily quantified. Estimates of the potential numbers and total costs of tribunals resulting from the new equality legislation can be found in the respective RIAs for age⁸, sexual orientation⁹ and religion or belief.¹⁰ The average cost to employers of an employment tribunal application is about £2,000. However, discrimination cases tend to involve more management time and higher legal costs, making the total costs to employers closer to £4,000 per application. Any reduction in the number of cases, through the promotional and awareness raising activities of the CEHR, would therefore bring tangible benefits for employers.¹¹

- 27.** Claims of discrimination by employees often have an adverse effect on the work place. 54% of employers who have experienced claims of discrimination felt that it had some negative effect on the workplace e.g. damaged workplace relations, lower output or adverse effect on reputation.¹² Through working in strong, proactive partnerships with employers to improve equality practice, in ways the current Commissions have not been able, the CEHR would aim to lower the number of discrimination claims.
- 28.** The CEHR will be able to provide a voluntary conciliation service for discrimination cases not involving employment. This would save time and potential costs both for the individual and business or

8 Partial Regulatory Impact Assessment for Age Discrimination Legislation. DTI, 2003.
http://www.dti.gov.uk/er/equality/agediscrim_RIA.pdf

9 Full Regulatory Impact Assessment for Employment Equality (Sexual Orientation) Regulations 2003. DTI, 2003.
http://www.dti.gov.uk/er/equality/ria_amend_sexor.pdf

10 Full Regulatory Impact Assessment for Employment Equality (Religion or Belief) Regulations 2003. DTI, 2003
http://www.dti.gov.uk/er/equality/ria_amend_relig.pdf

11 Survey of Employment Tribunal Service Applications 1998. DTI, 1998

12 *ibid*

organisation concerned as disputes would be resolved without going to court. As already stated a discrimination case typically costs an employer £4,000. The DRC-sponsored conciliation service closed 161 cases in 2002, therefore potentially saving employers £644,000. Although the costs of this service would be met primarily by the CEHR, the body will have the option to recover the costs of this service from the business or organisation concerned. The DRC sponsored service requires overhead funding of approximately £150,000 per year. The DRC pays £250 for each conciliation meeting. Conciliation processes of this kind take substantially less time than court proceedings, which is to the benefit of both the individual and business/organisation.

- 29.** Employers should benefit from better understanding of the business case for diversity, which will be promoted more effectively both by the CEHR itself and multiplier organisations with which the CEHR will work such as Chambers of Commerce and Business Link. This should lead to a better match of skills to jobs leading to efficiency gains, especially lower staff turnover, the average cost of which in the UK in 2003 was £3,900 per leaver.¹³ A further gain may be an increased ability to market products more effectively to a broader customer base. Businesses with a diverse workforce are likely to attract a wider customer base and increase their ability to penetrate new potential markets.¹⁴
- 30.** Coherent guidance produced by the CEHR will make the responsibilities and duties of private businesses performing contract work on behalf of the public sector clear.
- 31.** Provision of a clear framework of the new regulations and of good practice associated with them for the courts will lower the risk of judgements determining the interpretation of the regulations in a

13 Labour Turnover: Survey Report. Chartered Institute of Personnel and Development.

14 Business Case for Diversity and Equality, Women and Equality Unit, DTI, 2003.
http://164.36.253.98/research/bus_case_div.pdf

potentially burdensome way, at odds with the Government's original intentions in passing the legislation. Judgements of this kind can result in additional costly burdens for employers.

Benefits for Individuals

- 32.** The CEHR will produce more effective information and guidance covering all discrimination rights that should equip people more effectively to secure these rights and thus participate fully in employment and other aspects of society. This will particularly be the case for the new legislation on age, sexual orientation and religion or belief. Local access to high quality advice and support will be improved through the CEHR's work to support other advice providing organisations such as CAB and the Community Legal Service Partnerships.
- 33.** The RIAs for the new regulations estimated that the benefits they would bring through the additions to income and increased employment levels of the groups concerned which amounted to £51 - 91 million.¹⁵ Some proportion of this will only be realised if a body such as the CEHR is in place to promote and enforce legislation.
- 34.** Through the promotion of best practice and provision of more coherent guidance than is currently available to employers, the CEHR would seek to lower the number of discrimination claims made. While experiencing discrimination is distressing in itself the process of making a claim results in further adverse effects for the individual concerned. 44% of claimants in discrimination cases experienced stress as a result, 25% felt the process damaged their employment prospects and 23% felt it worsened relationships with their family and friends. Only 9% felt it caused no difficulties.¹⁶

15 £9-12 million for sexual orientation (see Full Regulatory Impact Assessment for Employment Equality (Sexual Orientation) Regulations 2003); 9.25 million for religion and belief (see Full Regulatory Impact Assessment for Employment Equality (Religion and Belief) Regulations 2003; and £33.9 – 69.0 million for age (see Partial Regulatory Impact Assessment for Age Discrimination Legislation).

16 Survey of Employment Tribunal Applications. DTI, 1998. <http://www.ets.gov.uk>

35. People will benefit from better employment conditions through improved practice by employers as a result of the body's promotional work.
36. Many public sector organisations currently fail to see the benefits of using human rights as a vehicle for service improvement. High quality, modern services which recognise the needs of their customers and respond to their requirements will be encouraged through the interaction of the CEHR with the public sector.
37. Individuals will be able to seek quicker redress for multiple discrimination more effectively than at present. Though the law will still be framed in terms of discrimination on specific grounds, it will be easier to obtain support for cases of multiple discrimination.

Benefits for the Public Sector (as service providers)

38. Coherent provision of advice to the public sector, building on the CRE's use of guidance and support in relation to the duty on the public sector to promote equality of opportunity for race created by the Race Relations (Amendment) Act 2000 (RRAA), in order to promote equality good practice more generally, would help the public sector to better mainstream equality and meet the needs of diverse users.
39. Through effective promotion by the CEHR of the obligations on them created by the HRA, public service providers will be encouraged to develop strategies to ensure their service provision is compliant with the HRA, avoiding legal challenge and associated costs:
 - a. Improving the way human rights are observed in the delivery of public services will particularly raise treatment standards for vulnerable groups, such as elderly and disabled people, but it is relevant to all in society.
 - b. Embedding and mainstreaming of equality and human rights awareness and good practice in public sector employment and

services, encouraging a voluntary approach to the adoption of good practice where no statute applies, so that users needs are better met. As part of this strategy, training of public service managers and executive boards regarding equality and human rights would become more integrated within general development programmes. Currently training of this kind is often undertaken as a one-off separate event, rather than it being an integrated part of service programmes.¹⁷ It is assumed public authorities regularly review and update their training regimes and therefore changes would be made as part of this routine.

- 40.** It is expected modest savings in court costs could be realised through the impact of the CEHR's promotional work in reducing the number of cases brought to tribunals.¹⁸ This impact cannot be quantified. Fewer applications to employment tribunals will also represent a cost saving to the Exchequer. Each application costs the Employment Tribunal system about £910 to process.¹⁹

Benefits for Society

- 41.** The CEHR's work overall will make a contribution to the social cohesion of all groups within society, by tackling discrimination and inequality in a more strategic way and promoting the vision of a society based on equality of opportunity and respect for the dignity of each person.
- 42.** More effective tackling of discrimination and barriers to social participation should lead to increased social cohesion and productivity.

17 Human Rights – Improving Public Service Delivery. Audit Commission, 2003.
<http://www.auditcommission.gov.uk/Products/NATIONAL-REPORT/FDE9C6A9-7DAF-4cd3-B21E-21E9E13E1D43/HumanRights-report.pdf>

18 The number of discrimination Employment Tribunal Service applications in 2002/03 on grounds of gender was 25,980, on grounds of race 4,238 and on grounds of disability 4,630. The number of cases anticipated for the new discrimination grounds has been estimated at 14,000 (RIAs for Employment Equality Regulations and partial RIA for Age Discrimination Legislation).

19 ETS Annual Report and Accounts 2002/03. ETS, 2003
<http://www.ets.gov.uk>

43. Stakeholder groups concerned with equality issues will find it easier to interface with the CEHR. The existence of a single body will allow for more effective, joined-up communication with and between the various stakeholder groups and government.
44. The CEHR's role in promoting good relations among different communities, and between these communities and wider society through flexible support to local initiatives, will help build trust and confidence between communities and help to develop a stronger sense of British identity and citizenship. Currently, of the three commissions only the CRE plays a role in this field through its work in promoting good relations between people of different racial groups.
45. Promotion of culture change through working to combat negative stereotypes and increase public understanding, through generic or equality-strand specific (e.g. age or race etc) campaigns, and support for citizenship education.

Costs

Public expenditure implications

46. There will be one-off costs in establishing the new body and drawing the three current Commissions into it. Cabinet Office guidance concerning the creation of Non-Departmental Public Bodies will be followed in the establishment of the new body. These costs are currently being assessed.
47. Annual expenditure on the new body is likely to be rather higher than that of the existing Commissions,²¹ given its broader remit but this will depend on the balance between efficiency savings made and the costs of serving three new client groups and promoting human rights. However there will be scope for efficiency savings, particularly in

20 Annual Budgets for current Commissions for 2003/04: CRE £19,852,000; DRC £14,696,000; EOC £8,810,600.

corporate and support services, on a continuing basis through reduced expenditure on overheads in one body as opposed to three.

- 48.** There may be changes in the skills mix and geographical location of offices of the new body that may have implications for existing Commission staff, though government would seek to minimise any adverse impacts.

Costs for Employers (private, public and voluntary sector)

- 49.** Defending cases brought with the support of the new body (new only for the three new strands). Given the CEHR's strategic approach, the number of cases will be small and limited to those which will clarify the law or have a wide impact. A proportion of these cases will be brought whether or not the CEHR gives support.
- 50.** While the CEHR will introduce no new legislation and employers should already be following existing equality guidance, there will be a cost to employers of reading new guidance or seeking initial advice from the CEHR. While the cost of reading guidance in respect of legislation regarding the new equality strands has already been taken into account in other RIAs,²¹ there will be additional costs to businesses in the time taken to familiarise themselves with guidance issued by the CEHR (although this will impose no new statutory requirements). Reading and understanding this guidance would cost each business around £39 assuming it takes two hours to assimilate the information.²² In 2002 there were 1,167,530 businesses with employees in the UK, assuming this number is still similar, the total cost to business of reading the guidance would therefore be approximately £45.5 million. However this guidance is likely to cover

21 The total cost to employers of reading and understanding new guidance regarding sexual orientation and religion and belief regulations was estimated to be £28 million. Towards Equality and Diversity: Detailed RIA. DTI 2001; Amendment to Employment Equality (Sexual Orientation) Regulations 2003; Amendment to Employment Equality (Religion or Belief) Regulations 2003.

22 The average hourly wage of private sector middle management is £19.58. New Earnings Survey 2003. NOMIS, April 2003.

all areas of equality and human rights and so may offer an overall saving in time and cost spent in reading guidance related to each individual strand. Furthermore, the guidance would be designed to inform employers of their obligations and advise them on taking steps to avoid potential legal breaches and therefore litigation.

- 51.** Employers will be encouraged to act on codes of practice published by the CEHR, which explain the law and give guidance on compliance. It is difficult to estimate the costs concerned especially since they are likely to involve changes in employer practice where the impact is likely to vary considerably between employers. Examples of recommended practice might include:
- i.** Recognising the importance of certain holidays for religious staff;
 - ii.** Altering the nature of family away days to better include lesbian or gay staff;
 - iii.** Recognising the crucial role that older staff can play and initiating programmes to recruit/retain more.
- 52.** Co-operating in formal investigations undertaken by the new Commission (new only for the three new strands).

Costs for the public sector (as service providers):

- 53.** The new body would promote good practice regarding equality and non-discrimination within public sector service provision and would also promote and enforce the current duty on public bodies to promote equality of opportunity for people in different racial groups, and the forthcoming public duty regarding disability. The enforcement of the public duty is an activity already performed by the CRE, and will be by the DRC and so no additional costs will be realised though these activities with the creation of the CEHR.

- 54.** Staff in public sector service delivery require training to raise awareness of and promote change regarding equality and human rights issues in order for the authorities to be able to fully comply with their legal obligations. This could range from basic awareness raising, as part of induction training, for all staff, through to more intensive training for those who require a detailed understanding of the HRA. It is expected that this training will, through the CEHR working in partnership with coordinating organisations (such as the Local Government Association and the NHS Confederation), become increasingly incorporated in the general training and development programmes of public bodies, minimising additional costs.
- 55.** Human Rights good practice guidance for public bodies would be produced by the CEHR. The guidance model would be likely to follow the form of the non-statutory 'How to' guides issued by the CRE in relation to the RRAA. There would be a cost to service providers in reading the guidance. Assuming it takes 2 hours for a public sector manager to read and assimilate such guidance each authority would spend around £36 understanding this information.²³ While most public authorities already display good human rights practices, and therefore may not have to alter practices significantly, there is a large proportion of authorities which have not made adequate attempts to comply with the HRA. As the CEHR, through its promotional activities will attempt to indirectly increase compliance with the HRA in the public sector there will be significant costs to public authorities which need to improve their human rights practice.
- 56.** The CEHR will be able to apply to the court to intervene in cases brought by third parties covering equality and human rights, in furtherance of its functions. This ability is currently available to any body, including the current Commissions, and clarifying this ability in statute would impose no additional cost. The current Commissions have found interventions of this kind a useful, strategic tool.

²³ The average hourly wage of public sector middle management is £18.10. New Earnings Survey 2003. NOMIS, April 2003.

Society

57. There are expected to be no costs to society in general.

Individuals

58. There are expected to be no costs to the individual.

Competition Assessment

59. Because of the nature of the remit of the CEHR commission there will be no effect on competition. A competition filter has been performed that indicated a competition assessment is unnecessary.

Enforcement and Sanctions

60. The CEHR will have an enforcement role for anti-discrimination legislation. It should be noted however that the main route for securing redress against unlawful discrimination is through individuals bringing actions to employment tribunals, or in non-employment cases to the county courts. In 2002/03 about 25,000 applications were registered by Employment Tribunals which included claims of discrimination. The CEHR's enforcement role, like those of the current Commissions, will be complementary and secondary.
61. It is envisaged that the CEHR's enforcement actions, like those of the current Commissions, will be sparing, and limited to strategic interventions that will have a broad impact, whether through supporting test cases to clarify the law, undertaking occasional thematic enquiries into a broad area where practice needs improving, or investigations into certain specific cases of damaging and serious discrimination (the current Commissions have only undertaken a very small number of such inquiries). The costs of these inquiries would be fully covered by the CEHR. The CEHR would produce recommendations for improvement as a result of these inquiries but would possess no power to enforce them.

- 62.** The CEHR's enforcement powers will be closely modelled on those of the existing Commissions, with modernisation where appropriate (power to support cases; power to conduct investigations; power to issue and enforce non-discrimination notices; power to enter into binding agreements in lieu of enforcement; power to seek an injunction in respect of persistent discrimination). It is intended that these will provide the Commission with a suite of powers to allow it to effectively enforce the various pieces of anti-discrimination legislation. It will have wider powers in respect of certain areas of equality protection, as follows:
- a.** As an alternative to resolving disputes through the courts, it is proposed that the CEHR should be able to provide a voluntary conciliation service for discrimination cases not involving employment, thus saving time and costs for the parties involved and the courts. This would build on DRC's experience since 2000 in providing a similar service. The DRC's power to provide a conciliation service will be widened to cover other discrimination areas (covered in more detail in paragraph 25).
 - b.** The CEHR will be able to apply to the court to intervene in cases brought by third parties covering human rights as well as equality, in furtherance of its functions. This clarification of a currently held power is covered in more detail in paragraph 56.
- 63.** The CEHR will take on an enforcement role for the first time, in respect of sexual orientation and religion or belief and, in due course, age. It is the Government's intention that the enforcement framework should be consistent across equality legislation.
- 64.** It is expected that the CEHR will work with relevant public sector co-ordinating organisations and inspectorates to encourage them to incorporate proportionate and appropriate measures of equality and human rights good practice in performance frameworks for which they are responsible. As these bodies regularly review the performance frameworks they impose upon public authorities it is not considered that this will impose any substantial additional cost.

Monitoring and Review

65. As a NDPB the CEHR will be subject to the usual NDPB management framework. It will be required to set out its proposed priorities and work programme in advance, consult on these with stakeholders and agree its strategic plans with Ministers. It would be held to account for its performance against the priorities in this plan. The CEHR will be required to perform regulatory impact assessments for any major changes in its functions and powers.

Consultation With Small Business: the Small Firms Impact Test

66. Small businesses tend to be less aware of discrimination legislation than larger firms, and are therefore more likely to be at risk from tribunal cases, especially from those brought under the new legislation for age, sexual orientation and religion or belief. The CEHR will benefit small firms by providing a single source from where advice can be obtained on every aspect of equality and discrimination. This will ensure much easier access to information for small firms than the current situation of three separate equality Commissions. The CEHR will also actively promote equality and human rights best practice to small firms, working through the organisations and intermediaries that small businesses know and trust.
67. An online consultation with SMEs regarding statutory support for equality has been performed as part of the wider **Equality and Diversity: Making It Happen** consultation. The exercise produced 456 responses.
68. There was a clear demand among respondents for a single equality body that would act as a single point of contact for businesses, providing information on all equality legislation and offering other forms of support such as training, awareness raising and conciliation services. 70% of respondents thought the option of single equality body would be more beneficial than either a single gateway to

numerous Commissions or an overarching Commission directing separate equality bodies.

- 69.** Respondents were asked to cite concerns regarding the creation of a single equality body. 27% mentioned additional bureaucracy and resulting running costs and 8% doubted the general capacity and expertise that staff in a single body might have.
- 70.** The exercise asked respondents what services and support they would like to see a single equality body provide. 50% stated publication of general/legal advice and guidance; 20% stated education, training and awareness raising while 12% would like a phone help line or out of hours help.
- 71.** A representative of the Small Business Council (SBC) has been a full and active member of the CEHR Task Force. This representative consulted widely within the small business community and helped to organise a business workshop (attended by the SBC, the Federation of Small Business, the British Retail Consortium and the Confederation of British Industry), which fed directly into the Task Force process.
- 72.** The Small Business Service (SBS) supports the proposed establishment of a single Commission. The SBS believes that the new Commission will have to take significant steps in order for businesses to view the Commission as an honest broker and an impartial source of advice. The SBS also believes that the single Commission may make it easier to bring multiple claims some of which may not be justified, resulting in additional costs for businesses, and therefore believes that the Commission has a role in sifting out claims that are vexatious in nature.

Consultation

- 73.** Home Office, the Department for Work and Pensions and the Department for Constitutional Affairs have been closely involved in the development of these proposals.

- 74.** The consultation **Equality and Diversity: Making it Happen**, launched in October 2002, sought views on the priorities for equality institutions and set out options for structures, including a single equality body. It reflected the need to develop institutional provision for the three new groups (strands) being covered by discrimination legislation (sexual orientation, religion and belief and age) over the next three years, as well as the growing vision of equality as relevant to all and as a key driver of an integrated prosperous society.
- 75.** It generated 300 responses covering all relevant interests. The key findings were:
- a)** Wide support for a single body,²⁶ and recognition of the value of a cross-cutting approach (especially to enable more effective promotion of mainstreaming, more coherent provision of advice and information across all discrimination grounds, and more effective tackling of multiple discrimination).
 - b)** Very modest support for the other structural options put forward in the consultation document.
 - c)** Broad agreement on the priorities of a new body, though with some differences of emphasis.
 - d)** Strongly expressed concern that there should be no diminution of service to the strands covered by the current Commissions. This reflects concerns at the potential eclipse of their interests in a larger, broader body.
 - e)** Differing views on the internal structure of the new body, with some advocating a strand-based structure, and others a predominantly functionally-based organisation.

24 **Equality and Diversity: Making it Happen** – Report on the Consultation Exercise. MORI, October 2003
http://164.36.253.98/equality/project/CEHR_mor_rep.doc

- f)** Much support for a harmonised legal framework for equality but strong views from business that the regulatory burden of such legislation would not be welcome.
- g)** Much emphasis on the need for a new body to work in partnership with local and regional organisations to provide advice and support to individuals and businesses on the ground.
- h)** A strong call for distinctive arrangements for Scotland and Wales, within a GB-wide body, to work with the grain of Scottish and Welsh equality policies and institutions.

The CEHR Task Force

- 76.** When the Government announced plans to bring together the work of the equality commissions in a new body, on 30 October 2003, its intention to establish a Task Force to advise on developing the detail of the new body was also announced.
- 77.** The Task Force, which has been chaired by her Rt Hon Jacqui Smith MP, Deputy Minister for Women and Equality, is an ad-hoc, independent, advisory group 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 (see Appendix E for a full membership list). The Task Force's remit has been to explore and develop options for the new body including its role, functions, priorities and governance arrangements and structure.
- 78.** The Task Force have met several times since December 2003 and their work has directly influenced the detail of the White Paper of which this RIA is part. The group will continue to meet throughout the consultation period following the publication of this White Paper

Summary and Recommendation

- 79.** This document recommends the creation of a single body to carry forward the work of the existing Commission for Racial Equality,

Disability Rights Commission and Equal Opportunities Commission and take on similar responsibilities for the new discrimination strands (age, religion or belief and sexual orientation) for which legislation has or is due to come into effect. The body will also be charged with promoting equality more generally and will have responsibility for promoting human rights.

80. The multi-faceted nature of discrimination and close links between equality and human rights in today's society means a coordinated, effective single Commission for Equality and Human Rights is required. A single body will be better able to serve the individuals and communities it is charged to protect than could several disparate bodies; will act as more effective partner for business by providing a single source of advice and speaking with a single, clear voice on equality matters; and will be able to drive change in service provision within the public sector through embedding a culture that respects equality and human rights.
81. **We welcome any comments regarding the impacts described in this Regulatory Impact Assessment. However we are keen, in particular, to receive the views of public authorities on the role of the CEHR in promoting compliance with the Human Rights Act and additional costs this may impose.**

Appendix C

Evaluating the impact of the CEHR on different groups

The creation of a Commission for Equality and Human Rights (CEHR) will facilitate the promotion of equality and human rights good practice on an integrated basis, promoting equality and human rights as relevant to all and not just a minority concern.

It will build on the important contributions to the equality agenda already made by the Commission for Racial Equality, the Disability Rights Commission and the Equal Opportunities Commission, developing and building on the programmes they have put in place. In addition to taking forward the work of the existing equality Commissions, the CEHR will also have a remit to provide support and promote better practice in relation to discrimination in the new equality areas of age, sexual orientation and religion/belief, as well as a role in promoting Human Rights. It will also have a wider role in promoting awareness and good practice on equality and diversity generally. The CEHR will act to work effectively in the various contexts of Scotland, Wales and the English regions.

Operating within the current legislative framework

The proposal to establish the new body is separate from reform or change of the underlying legislation it will promote and enforce. It will not bring in any new rights or obligations. Therefore, the Commission will be operating within a framework in which discrimination legislation affords different levels of protection to different groups. For example, legislation provides protection

against discrimination in employment and vocational training on grounds of sexual orientation and religion/belief, (and from 2006 on grounds of age), but protection against discrimination on grounds of race, disability or gender applies more widely than just employment and vocational training. The CEHR will work within this legislative framework, and be equipped to tailor the way its services are delivered to ensure that it does not disadvantage certain groups in its day-to-day operations.

In exploring the impact of the creation of the CEHR, the Government has considered its effects on individuals associated with the various equality areas.

Policy Appraisal for Equal Treatment

The creation of a single organisation will provide an integrated and coherent service for all individuals, tailored to their specific needs and provided in an accessible and user-friendly way. Information, advice and guidance on equality legislation, human rights obligations, and good practice will be available to all through telephone helplines, websites and published literature.

In addition to providing support to all individuals, in the form of information, advice and legal representation where appropriate, the CEHR will also support organisations which have responsibilities under the law. In this way, the CEHR will contribute to a culture change that embeds good practice in equality and human rights, benefiting everyone – not just those who experience discrimination. Working effectively with key customers, such as private sector employers, education providers and the public sector, we anticipate that all groups will benefit from improved employment practices and service provision.

A key principle of the CEHR will be its commitment to partnership working, developing relationships with individuals and organisations in the voluntary, community, public and private sectors, to develop its strategic priorities and business plan, as well as assist with the delivery of its services. It is intended that the CEHR work alongside these organisations and operate in

an open, transparent and accountable way, to ensure that the specific needs of particular groups, communities and sectors are met.

The CEHR will also work in partnership with other advice providers, such as Citizens Advice Bureaux, trade union representatives and human resource professionals so that they are able to access the expertise and experience of the CEHR in discrimination law, and provide high quality accessible advice to individuals.

The proposed regional presence for the CEHR will provide more localised and regionally-sensitive services to individuals, public bodies and business than the existing arrangements provide for. This will ensure that CEHR services are available in all regions of Britain, including in Scotland and Wales, in accordance with need.

The CEHR's role in promoting a culture of respect for human rights will complement its equality-focussed work, assisting it in resolving potential conflicts between groups on the basis of human rights principles of reasonableness and proportionality.

Age

Legislation making it unlawful to discriminate on the grounds of age in the fields of employment and vocational training is due to come into effect in 2006. The CEHR will enforce this legislation and promote awareness and best practice in relation to equality of opportunity for people of different ages more generally, providing information, advice, guidance and in some strategic cases, legal representation. The CEHR will benefit both children and young people, as well as older people. There is currently no public body which performs these functions and those experiencing age discrimination will benefit from the CEHR's presence.

Disability

The Disability Discrimination Act (DDA) 1995 makes it unlawful to discriminate against a disabled person for a reason related to their disability. The Act has been significantly extended to provide improved rights for

disabled people, in particular by the Special Educational Needs and Disability Act (SENDA) 2001 and the regulations introduced in 2003 to amend employment and pensions provisions. Further measures are to be introduced through the draft Disability Discrimination Bill, including a proposed public sector duty to promote the equalisation of opportunities for disabled people.

In replacing the Disability Rights Commission, the CEHR will carry forward the existing Commission's functions and remit, and we do not therefore anticipate any adverse impact for disabled people. Because of its cross-cutting remit, the CEHR will be well placed to serve disability issues as they intersect with gender, ethnicity, sexual orientation, faith and age, for example.

The DRC, uniquely amongst the existing Commissions, has statutory provision for the appointment of disabled people, or people who have had a disability, to a minimum of 50% of its Commissioner posts, including either the Chair or Deputy Chair. The spirit of these provisions is carried forward in the arrangements for the appointment of at least one disabled person to the CEHR Board, and the establishment of a disability committee to oversee the disability-specific work of the CEHR. The disability committee would also be required to have disabled people, or those who have had a disability, make up at least 50% of its membership.

Gender

The CEHR will carry forward broadly the same powers as the EOC regarding the promotion of gender equality and the enforcement of the relevant legislative provisions. It will work to promote equality and challenge unlawful discrimination on grounds of gender and gender reassignment. Again, the cross-cutting nature of the CEHR's remit will mean that appropriate services can be developed where gender issues intersect with other strands, ensuring that the CEHR is able to meet the needs of all individuals.

Race

As a public body, the CEHR will be required to comply with the public sector duty on race equality and the promotion of good relations between people of different racial groups. This will be separate from the range of functions and duties it will carry out.

The CEHR will inherit the powers and duties currently held by the CRE regarding the promotion and enforcement of race equality, including the CRE's responsibility to enforce the public sector race duty to promote race equality and good relations between different racial groups.

The CRE's programme of grants to support organisations carrying out local race equality projects will be continued in the CEHR, including its relationship with Race Equality Councils and other voluntary and community organisations.

The Government believes that the CEHR will satisfy (as did the EOC and the CRE) the EC law requirements that Member States should designate equality institutions in relation to sex and race.

As with the other strands, where race equality issues intersect with other equality strands, the CEHR will be well placed to provide support.

Religion and belief

Since December 2003 it has been unlawful to discriminate on the grounds of religion or belief in the fields of employment and vocational training. The CEHR will enforce this legislation and promote awareness and best practice in relation to equality of opportunity for people of different religions or belief more generally.

There is currently no dedicated commission that performs these functions and we anticipate that the establishment of the CEHR will benefit those of all faiths, and those with secular beliefs, who experience discrimination, providing information, advice, guidance and in some strategic cases, legal representation.

Sexual Orientation

Since December 2003 it has been unlawful to discriminate on the grounds of sexual orientation in the fields of employment and vocational training. The CEHR will enforce this legislation and promote awareness and best practice in relation to equality of opportunity for people of different sexual orientations more generally.

There is currently no dedicated commission that performs these functions and it is anticipated that the establishment of the CEHR will benefit lesbians, gay men and bisexuals, as well as others who experience discrimination on grounds of sexual orientation, providing information, advice, guidance and some strategic cases, legal representation.

Summary

The Government believes that the proposed arrangements for a Commission for Equality and Human Rights will have a positive impact on equality, and all the groups protected in law by anti-discrimination legislation.

A single Commission offers the best model to deliver dedicated support for individuals identifying with one, or more than one, protected group. The creation of the new body does not result in less effective support for race, sex and disability than is offered by the existing Commissions, and provides institutional support for the first time to new areas of anti-discrimination legislation (sexual orientation, religion or belief and – in time – age).

The general functions of the CEHR - to encourage good practice and awareness, promote equality of opportunity, work to eliminate discrimination and keep discrimination legislation under review – will embed the principle that the body should act to improve equality for all.

Appendix D

Code of Practice on Consultation – summary of consultation criteria

The six consultation criteria

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

Appendix E

Taskforce membership

Category	Organisation	Name
Gender	Equal Opportunities Commission	Amanda Ariss
	Fawcett Society	Katherine Rake
Race	Commission for Racial Equality	Pam Smith
	Runnymede Trust	Michelynn Lafleche
Disability	Disability Rights Commission	Nick O'Brien
	British Council of Disabled People	Andy Rickell (to March 04) Janet Seymour-Kirk (from March 04)
Sexual orientation	Stonewall	Ben Summerskill
Religion²⁷	FaithWise	Mohammed Aziz
	Churches Together in Britain and Ireland	John Kennedy
	Inter Faith Network for the UK	Brian Pearce

27 Mohammed Aziz (FaithWise), John Kennedy (Churches Together in Britain and Ireland) and Brian Pearce (Interfaith Network for the UK), have agreed collectively to rotate membership between them, with two of the three present at any one meeting.

28 Tessa Harding (Help the Aged), Patrick Grattan (Third Age Employment Network) and Katie Ghose (Age Concern) have agreed collectively to rotate membership between them, with two of the three present at each meeting.

Belief	British Humanist Association	Hanne Stinson
Age²⁸	Age Concern	Katie Ghose
	Help the Aged/Third Age Employment Network	Tessa Harding/ Patrick Grattan
Trade unions	Trades Union Congress	Lucy Anderson
Human rights	London School of Economics	Francesca Klug
	Institute for Public Policy Research	Frances Butler
Scotland	Equality Coordinating Group	John Wilkes
Wales	University of Cardiff	Teresa Rees/ Paul Chaney
Academics/experts	University College London	Colm O’Cinneide
	University of Oxford and Equality and Diversity Forum	Sarah Spencer
Business	Confederation of British Industry	Neil Bentley
	Small Business Council (DTI)	Lorraine Gradwell
Public sector	Local Government Association	Mandy Wright/ Ros Hardie Ejiohuo

Terms of reference

To:

- Advise Government on the role, functions, priorities and activities of the proposed Commission for Equality and Human Rights, in furtherance of the Government’s statement of 30 October on future arrangements for equality institutions in Great Britain;
- Provide such advice in preparation for a White Paper;
- Provide ongoing policy advice, including assessment of responses to the White Paper, on the range of issues described above.



Published by TSO (The Stationery Office) and available from:

Online

www.tso.co.uk/bookshop

Mail, Telephone, Fax & E-mail

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries: 0870 600 5522

Order through the Parliamentary Hotline Lo-call 0845 7 023474

Fax orders: 0870 600 5533

E-mail: book.orders@tso.co.uk

Textphone 0870 240 3701

TSO Shops

123 Kingsway, London, WC2B 6PQ

020 7242 6393 Fax 020 7242 6394

68-69 Bull Street, Birmingham B4 6AD

0121 236 9696 Fax 0121 236 9699

9-21 Princess Street, Manchester M60 8AS

0161 834 7201 Fax 0161 833 0634

16 Arthur Street, Belfast BT1 4GD

028 9023 8451 Fax 028 9023 5401

18-19 High Street, Cardiff CF10 1PT

029 2039 5548 Fax 029 2038 4347

71 Lothian Road, Edinburgh EH3 9AZ

0870 606 5566 Fax 0870 606 5588

TSO Accredited Agents

(see Yellow Pages)

and through good booksellers

URN 04/1072

