

# Full Regulatory Impact Assessment

## ESTABLISHMENT OF THE COMMISSION FOR EQUALITY AND HUMAN RIGHTS

February 2005

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## Purpose of Regulatory Impact Assessment (RIA)

1. This full Regulatory Impact Assessment accompanies the Bill establishing the Commission for Equality and Human Rights (CEHR). This document is intended to provide an assessment of the options for the provision of institutional support for equality and human rights, and the impact of the proposal to create the CEHR upon the private and public sectors and wider society.
2. For the most part the proposal to establish the CEHR will not lead to change in the underlying discrimination and human rights legislation which this new body will promote and, in the case of discrimination, enforce. The Bill to establish the CEHR will however include provisions for the introduction of a duty on public bodies to promote equality of opportunity between men and women, and promises to make it unlawful to discriminate on grounds of religion or belief in the provision of goods, facilities and services, and in public functions. Regulatory Impact Assessments for these proposals have been produced separately.

## Introduction

### **The Current Equality Commissions**

3. Promotion of equality and enforcement of legislation relating to discrimination is currently undertaken by three separate Commissions - the Commission for Racial Equality (CRE), the Disability Rights Commission (DRC) and the Equal Opportunities Commission (EOC). Although the three Commissions receive different levels of funding<sup>1</sup> their spending allocations to various major functions is roughly

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<sup>1</sup> Annual budgets (which are not totally grant-in-aid) for current Commissions for 2003/04: CRE £19,852,000; EOC £8,810,600; DRC £14,696,000.

the same. The following provides a rough break down of the allocation of operational resources to major functions:<sup>2</sup>

- Awareness-raising and Education 44%
- Strategic Law Enforcement 22.5%
- Policy and Research 19.5%
- Scotland and Wales 14%<sup>3</sup>

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

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

- The CRE receives around 11,000 enquiries on points relating to the law each year and its website received over 12,000 visitors each month. The organisation provided casework support to 1,300 requests for assistance and supported 155 tribunal and court cases in 2002.

- The DRC's website receives up to 42,000 visitors per month. Casework support was provided to 1781 individuals in 2002, of these around half had a positive outcome. Support was provided in 55 tribunal and court cases in 2002.

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<sup>2</sup> Percentages of total operational cost devoted to major areas of activity. Does not include staff costs. Based on evidence provided by the DRC and EOC for 2003-04.

<sup>3</sup> The activities of all functions are GB wide. This additional funding for Scotland and Wales is for the funding of activities tailored to these nations.

<sup>4</sup> DRC reports an increased awareness of the Disability Discrimination Act among service providers and employers (by end 2004) of 60%; and furthermore a general increase in public awareness anti-discrimination legislation of 17% between 2002 and 2003.

- The EOC website (which includes specialist legal pages) receives around 21,000 visitors per month. The EOC provides casework support to around 1,300 individuals per year and in 2003 supported 38 cases deemed to be in areas of strategic priority.
6. Casework support can involve a range of activities including, simple advice provision; assistance with legal administration; advising clients' legal representatives or advocacy on behalf of a client. The overall work of the Commissions provides substantial assistance to individuals and organisations in obtaining information or advice on discrimination matters.<sup>5</sup> In total about 250 cases of strategic significance are supported in total by the three Commissions each year.

## **Risk Assessment (or the case for intervention)**

### *New Legislation*

7. New legislation came into effect in December 2003 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.<sup>6</sup> These areas of equality have not thus far benefited from dedicated institutional support, as they fall outside the responsibilities of the current equality Commissions. Government has committed itself to providing institutional support for these new areas of legislation.
8. The Government has also set itself the objective of providing institutional support for human rights. The need for such support was recommended by the Joint Committee on Human Rights (JCHR) in its sixth report.<sup>7</sup> Creating a

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<sup>5</sup> Between them the Commissions provided casework support for around 4400 cases in 2002, and their websites combined receive around 75,000 visitors per month.

<sup>6</sup> These new pieces of legislation implement an EC Directive.

<sup>7</sup> 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/jtrights167/6702.htm>

human rights institution would be a major step in helping to advance the underlying aim of the Human Rights Act (came into effect in 1999), which is to promote a culture of respect for human rights in the UK, spearheaded by public authorities.

## Extent of Discrimination in the UK

9. The changing nature of our society poses significant, complex and new challenges to social, economic and political life. There is still much discrimination, of many kinds, experienced in the UK, of which the following are just a few examples:
  - a. The Prime Minister's Strategy Unit report of 2003 on the participation of people from ethnic minorities in the labour market illustrated the gap between white and non-white participation in employment, pointing to higher unemployment rates for ethnic minorities by some 10-15%. 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.<sup>8</sup> Furthermore, 67% of people from BME communities live in the 88 most deprived districts in England (compared to 37% of the white population).<sup>9</sup>
  - b. Although more women form part of the work force than ever before, they still earn significantly less than their male counterparts (pay gap has been measured at 18% for 2003<sup>10</sup>) and are concentrated in lower-skilled occupations and part-time employment. Women are also particularly prone to discrimination as a result of pregnancy<sup>11</sup>.
  - c. There are around 10 million disabled adults (22% of the adult population) in Great Britain who are likely

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<sup>8</sup> Ethnic Minorities and the Labour Market, Prime Ministers Strategy Unit, Cabinet Office, 2003.

<sup>9</sup> Strength in Diversity: Towards a Community Cohesion and Race Equality Strategy, 2004.

<sup>10</sup> Source: Office of national Statistics

<sup>11</sup> EOC Research findings "Pregnant and Productive" - 2005

to be covered by the Disability Discrimination Act.<sup>12</sup> While 6.9 million of these are of working age<sup>13</sup>, disabled people are nearly nine 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. Health and social care, and public transport are areas where disabled people can experience real difficulties in accessing services.

- d. 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.<sup>14</sup> 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. It is estimated that the costs of age discrimination to Gross Domestic Product could be in the order of billions of pounds per year.<sup>15</sup>
- e. 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.<sup>16</sup> 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.

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<sup>12</sup> Data sourced from Family Resource Survey 2002/03.

<sup>13</sup> Data sourced from Labour Force Survey 2003

<sup>14</sup> Data sourced from The Employers' Forum on Age website. <http://www.efa.org.uk>

<sup>15</sup> Partial Regulatory Impact Assessment for Age Discrimination Legislation. DTI, 2003. [www.dti.gsi.gov.uk/er/equality/agediscrim\\_RIA.pdf](http://www.dti.gsi.gov.uk/er/equality/agediscrim_RIA.pdf)

<sup>16</sup> 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

- f. 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.<sup>17</sup>
10. It is not feasible to quantify the lost output from these and other exclusions, but the potential gains from reversing them could be felt throughout society. Indicators of social participation also suggest that the groups above figure to a large degree in many categories of disadvantage, with the high welfare costs and risks to social cohesion this implies.

#### Awareness of Equality and Human Rights

11. 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. The examples given above provide evidence of the levels of discrimination that result partly from this lack of awareness.
12. There is a need to provide integrated support to individuals and employers in order to promote awareness of new legislation, which makes it unlawful 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

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<sup>17</sup> Religious Discrimination in England and Wales. Home Office 2001.  
<http://www.homeoffice.gov.uk/rds/pdfs/hors220.pdf>

make significant changes to their practices. Individuals will only feel the benefits of this legislation and employers only able to ensure they are necessarily compliant if they are made sufficiently aware of its introduction.

13. There is evidence that many businesses, especially SMEs<sup>18</sup>, have little awareness of their obligations under discrimination legislation<sup>19</sup>. At present, advice on race, gender equality and disability is provided by the three respective Commissions (CRE, EOC and DRC). As explained later in this document in the Small Firms Impact Test, small businesses feel they have much to gain from the creation of a body such as the CEHR which is able to speak with a unified, coherent voice on matters of equality and human rights.

## Multiple Discrimination

14. Discrimination can be particularly damaging for individuals who face more than one type of discrimination. For example, research suggests that being disadvantaged in multiple ways increases the risk of exclusion through unemployment.<sup>20</sup> Because the existing commissions are organised around single issue/equality strands, they have not been equipped to deal with multi-faceted discrimination, and individuals suffering in this way may not be receiving adequate support.

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<sup>18</sup> 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>

<sup>19</sup> Consultation with regulators from other areas suggests this is a pattern across many areas of regulatory legislation – not just discrimination.

<sup>20</sup> 82% of older Pakistanis and Bangladeshis and also 82% of older people with impairments have exceptionally high levels of risk of unemployment. From Multiple Disadvantage in Employment, Richard Berthoud, Institute for Social and Economic Research, University of Essex. The pay gap for part time working women in their 50's is the greatest of all groups at 57%, from EOC research.

## Wider Social Aspects

15. Discrimination prevents many from full participation in society, in the social as well as economic sphere, with detriment to their quality of life.

16. 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.

17. The introduction of the Human Rights Act has not led to the rapid development of properly informed awareness of a culture of respect for human rights as many feel is desirable. Sufficient unmet needs have been identified to establish that there is essential work for a commission to do.<sup>21</sup>

## The risks of not acting

18. There would likely be 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.

19. As a result, there would be greater exposure of employers and service providers to legal action, involving court cases which impose costs on employers and the court and tribunal system.

20. Continuing endemic poor practice and poor levels of information about the new regulations could increase the risk of court judgments based on incorrect interpretation of the new legislation/regulations and potential cost burdens on employers as a result.

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<sup>21</sup> The Case for a Human Rights Commission. House of Lords & House of Commons Joint Committee on Human Rights March 2003

21. Continued poor awareness of rights by individuals (particularly in relation to the new areas of legislation), 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.

22. Without a Commission to promote awareness of human rights the opportunity afforded by the HRA may be missed, and society's conception of its rights will not flourish and develop.

23. Continued inconsistent compliance with the HRA, resulting in a failure to harness the benefits that a human rights culture could bring to the delivery of public services.

24. No improvement in public service provision resulting in continued poor quality services and increased risk of court action from individuals.

## 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.

25. Apart from not imposing possible costs that would be associated with familiarisation with the new Commission, on the private and public sectors (although its creation would result in an overall cost-saving in this respect) there are no additional benefits from this option. It would fail to address any of the problems set out above. Any cost savings to the private and public sectors would be likely to be counterbalanced by increased costs resulting from more litigation as employers and service providers would be less aware of their legal responsibilities.

26. 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 Commission(s) 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.

27. 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 3 old strands of a Commission for each main equality strand, 3 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.

28. 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 reap the economies of scale and synergies arising from a single organisation, including from the promotion of good practice on equality and diversity to employers and service providers would not be realised.
- The potential failure to tackle multi-discrimination cases effectively.
- The benefits arising from a single institution holding responsibility for human rights and equality would not be felt.

29. This model would lead to significant extra costs for employers and service providers, especially compared to those that would be entailed under option 3. As well as receiving guidance from the 3 existing Commissions, private and public sector organisations would also receive three sets of new separate guidance from 3 new equality Commissions and a human rights Commission. Initial costs would be associated with having to read and assimilate information from these new sources. Costs laid out later in this RIA associated with reading time would have to be multiplied by a factor of four.

30. Many private and public sector organisations would no doubt be confused by 7 separate organisations communicating similar but different information. This would be likely to lead to a greater lack of understanding of equality issues across all sectors which could result in greater levels of discrimination and therefore more litigation. The opportunity to develop effective partnerships with businesses and the public sector, in order to use their good practices to drive the mainstreaming of equality and human rights in society, would be lost.

31. 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.<sup>22</sup> The costs of a separate human rights commission would need to be added to this.

### 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.

32. A single body provides the opportunity to promote equality and human rights and tackle discrimination in an integrated way, covering all equality strands. The JCHR recommended that institutional support for human rights 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.

33. A combined Commission would allow the expertise and experience that can be found across the various equality areas to be harnessed in a single body, allowing for the development of greater understanding and the cross-fertilisation of ideas. As well as enabling the different strands to draw on the ideas and knowledge of each other there would also be a reduction in duplication of effort that six (or seven) institutions would be likely to create.

34. 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 experiencing discrimination.

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<sup>22</sup> Total running costs for the three current commissions for 2003/04 is around £43 million.

35. Failure to provide a coordinated source of advice and guidance on all discrimination and equality matters, would lead to many of the benefits outlined later in this document not being realised.

36. Through the Making it Happen Consultation in 2003 (detailed later in this document), it was made apparent that this was the preferred option for most stakeholders. As a result Government elected to pursue this option as it decided it would most effectively contribute to its goal of creating a fairer, more inclusive society. A more detailed of analysis of the costs and benefits of this preferred option is set out from paragraph 41.

### A Commission for Equality and Human Rights

37. Through extensive consultation (detailed later in this document) the Government has decided that the most effective way of addressing the problems of inequality and unfairness still prevalent in our society is to establish a single Commission for Equality and Human Rights (CEHR), that will promote and enforce Great Britain's discrimination legislation and will 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/belief and age. It will also have responsibility for the promotion of human rights, focusing on the provision of advice and guidance to public authorities in order to facilitate a continuing improvement in the level of compliance with the Human Rights Act (HRA).

### Fundamental Duty of the CEHR

38. The CEHR will strive to create a society in which:

- i. peoples ability to achieve their potential is not limited by prejudice or discrimination,
- ii. there is respect for the human rights, dignity and worth of each individual,

- iii. each person has an equal opportunity to participate in society, and
- iv. there is mutual respect between communities based on understanding and valuing of diversity and on shared respect for equality and human rights.

## **The Commission's Functions**

39. The Commission's core functions will be:

i. Promoting and encouraging awareness and good practice on equality and diversity and Promoting equality of opportunity between people in the different groups protected by discrimination law through

- a. awareness campaigns, research, provision of advice and information
- b. providing information, guidance and advice on legislative obligations and good practice;
- c. providing a single point of contact for all customers in the public, private and voluntary/community/charity sectors;
- d. developing support and tools for employers and service providers;
- e. working with strategic partners in order to provide high quality advice;
- f. working with the public sector on the duties on public bodies to promote equality of opportunity;
- g. conducting general enquiries to identify and respond to emerging policy challenges.

ii. Promoting and understanding of rights under the equality enactments, through the promotion of these rights and the provision of easily accessible advice and information.

iii. Undertaking the enforcement of rights under the equality enactments, through the provision of individual case support according to the priorities the CEHR will set and through the use of effective, flexible enforcement powers and tools.

iv. Working towards eliminating unlawful discrimination and harassment set out in the relevant legislation, through promoting awareness and providing advice on individual rights and how to secure these, and through strategic enforcement action, including the use of investigations and inquiries to help create a culture change in terms of what is acceptable and unacceptable behaviour.

v. Promoting awareness, understanding and protection of human rights, involving promotion of a culture of respect for human rights by promoting good practice to public authorities to improve compliance with the Human Rights Act<sup>23</sup>, providing helpline information and advice to the public and contributing to public education.

vi. Promoting good relations between the different communities covered by equality legislation and between them and wider society. The CEHR will encourage good practice in community relations and work towards the elimination of prejudice against, hatred of and hostility towards communities as well as seeking to end the involuntary isolation of certain communities. 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. The CEHR will give particular attention to the needs of communities defined by race and faith.

## Scotland and Wales

40. The CEHR will operate across Great Britain. However, its arrangements and activities will reflect the distinct social, economic, cultural and historical circumstances of Scotland and

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<sup>23</sup> 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>

Wales, as well as the specific Scottish/Welsh approaches to equality since devolution. It will also make arrangements to ensure a proper division of responsibilities with any Scottish Human Rights Commission which is established in the future.

## BENEFITS AND COSTS

41. 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. 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

42. 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; 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.

43. There will be no direct compliance costs on employers or service providers as the creation of the CEHR itself introduces no new regulatory legislation.<sup>24</sup> 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.

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<sup>24</sup>Costs associated with the forthcoming gender duty and new legislation making it illegal to discriminate in goods, facilities or services on the grounds of religion or belief are dealt with in the RIAs for these individual and stand-alone areas of legislation.

## Benefits for Individuals

44. 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 CABx and the Community Legal Service.

45. 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<sup>25</sup>. Some proportion of this will only be realised if a body such as the CEHR is in place to promote and enforce legislation.

46. Through the promotion of good 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.<sup>26</sup>

47. People will benefit from better employment conditions through improved practice by employers as a result of the body's promotional work.

48. 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

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<sup>25</sup> £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 or belief] Regulations 2003); £33.9-69.9 million for age (see Partial Regulatory Impact Assessment for Age Discrimination Legislation).

<sup>26</sup> Survey of Employment Tribunal Applications. DTI, 1998. <http://www.ets.gov.uk>

needs of their customers and respond to their requirements will be encouraged through the interaction of the CEHR with the public sector.

49. 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 Employers (private, public and voluntary sector)

50. The CEHR would deliver more effective and “joined up” information and advice on compliance with anti-discrimination law, and good practice, covering all six equality strands and human rights. 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. While the CEHR will undoubtedly wish to present guidance in new, joined-up formats, this process of updating and issuing new guidance is something the current Commissions already undertake periodically for their current areas of responsibility. An estimate of the costs associated with accessing newly formatted guidance from a single source, relative to three separate sources, produces an overall cost-saving to employers of between £2.7 and £3.4 million per year.<sup>27</sup>

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<sup>27</sup> Website hits on sections of the EOC website providing practical advice for employers as a proportion of overall EOC website hits were 80%. We also used a lower range of 60% to reflect the fact that the same employer may be browsing different sections of the website that are of interest to them. These shares were also applied to the total monthly hits on the DRC and CRE websites. 75% of these website enquiries were assumed to be for producing or updating general HR documentation. This produced an annual total of approximately 425,000-550,000 employer web enquiries across the three websites. Assuming that a manager with hourly earnings of £19.28 (New Earnings Survey 2003), multiplied by 1.3 to reflect non-wage costs = £25, spends 15 minutes on each website, with each website receiving between 142,000-182,000 hits per annum, moving from three websites to one produces an annual cost-saving of between £1.8 million and £2.3 million.

In addition we estimate that the average 142,000-182,000 managers visiting the CEHR website each year will save a further 15 minutes in formatting their HR documentation as a result of the different strands of equality advice already being combined. This produces a further benefit of between £0.9 and £1.1 million.

51. 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.

52. 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 age<sup>28</sup>, sexual orientation<sup>29</sup> and religion or belief.<sup>30</sup> 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 (building on the work done by the current Commissions) would continue to bring tangible benefits for employers.<sup>31</sup>

53. 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.<sup>32</sup> Through working in strong, proactive partnerships with employers

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<sup>28</sup> Partial Regulatory Impact Assessment for Age Discrimination Legislation. DTI, 2003. [http://www.dti.gov.uk/er/equality/agediscrim\\_RIA.pdf](http://www.dti.gov.uk/er/equality/agediscrim_RIA.pdf)

<sup>29</sup> Full Regulatory Impact Assessment for Employment Equality (Sexual Orientation) Regulations 2003. DTI, 2003 [http://www.dti.gov.uk/er/equality/ria\\_amend\\_sexor.pdf](http://www.dti.gov.uk/er/equality/ria_amend_sexor.pdf)

<sup>30</sup> 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](http://www.dti.gov.uk/er/equality/ria_amend_relig.pdf)

<sup>31</sup> Survey of Employment Tribunal Service Applications 1998. DTI, 1998.

<sup>32</sup> *ibid*

to improve equality practice, the CEHR could help limit the number of cases that are remedied through the courts or tribunal system.

54. The CEHR will be able to provide a voluntary conciliation service, through a third party, for discrimination cases not involving employment.<sup>33</sup> This would save time and potential costs both for the individual and business or organisation concerned as disputes would be resolved without going to court. As already stated the cost of a discrimination case typically costs an employer £4,000. The DRC's-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 CEHR will have the option to charge the business or organisation concerned for the costs of this service. 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.

55. 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 Links. 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.<sup>34</sup> 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.<sup>35</sup>

56. Coherent guidance produced by the CEHR will make clear the responsibilities and duties of private businesses performing

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<sup>33</sup> The scale of such a service would be at the discretion of the CEHR Board.

<sup>34</sup> Labour Turnover: Survey Report, October 2003. Chartered Institute of Personnel and Development (CIPD).

<sup>35</sup> Business Case for Diversity and Equality, 2003. Women and Equality Unit, DTI, 2003. [http://164.36.253.98/research/bus\\_case\\_div.pdf](http://164.36.253.98/research/bus_case_div.pdf)

contract work on behalf of the public sector, making them less open to unexpected litigation.

57. 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 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 the Public Sector (as service providers)

58. 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. The savings realised by public sector employers arising from a single access point as outlined in paragraph 50, would also aid them in their roles as service providers.

59. Through effective promotion by the CEHR of the obligations on them created by the Human Rights Act, public service providers will be encouraged to develop strategies to ensure their service provision is compliant with the Act, avoiding legal challenge and associated costs. Public bodies are also required to be compliant with evolving case law on the HRA, if they are to avoid litigation and improve their practices. However only 56% of public bodies actively monitor case law on a regular basis<sup>36</sup> - leaving themselves vulnerable to potential litigation. The CEHR could aid in facilitating awareness of the HRA and evolving case-law within public bodies.

60. The potential costs of court cases to public authorities who are not compliant with the HRA are considerable. Court cases on the grounds of human rights have resulted in legal costs and

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<sup>36</sup> Human Rights – Improving Public Service Delivery, Audit Commission, 2003.

penalties ranging from £18,000 to £320,000.<sup>37</sup> The HRA was cited in 49% of all civil cases over a representative 3 month period in 2002. Given that 6006 judicial review claims were issued in total in 2002, we can estimate that around 2850 of these cited the HRA. These figures give an impression of the range of cases that cite the HRA. These findings led The Public Law Project to conclude that decision makers in public bodies have yet to absorb and incorporate in their decision-making processes the values inherent in the HRA.<sup>38</sup> The CEHR's awareness-raising remit would seek to lower the number of authorities open to litigation claims of this nature.

61. Furthermore, successful cases can have a universal and costly impact on the way public bodies operate and can result in them committing valuable resources to reviewing policies and procedures.<sup>39</sup> As already stated the CEHR's role in promoting awareness of the HRA and communicating good practice should lower the number of such cases and subsequent knock-on costs for the wider public sector.

62. The CEHR will play a major role in the 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 should become more integrated within general development programmes. Currently training of this kind is often undertaken as a one-off separate event, rather than as an integrated part of service programmes.<sup>40</sup> It is assumed public authorities regularly review and update their training regimes and therefore changes would be made as part of this routine.

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<sup>37</sup> Human Rights – Improving Public Service Delivery. Audit Commission, 2003.

<sup>38</sup> The Impact of the Human Rights Act on Judicial Review: An Empirical Research Study. The Public Law Project. June 2003.

<sup>39</sup> Robertson v Wakefield City Council (2002). From Human Rights – Improving Public Service Delivery, These case had an impact on all local authorities as it restricted the way in which they could use electoral registers.

<sup>40</sup> Human Rights – Improving Public Service Delivery, Audit Commission, 2003.

63. 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<sup>41</sup> and the courts. 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.<sup>42</sup>

## Benefits for Society

64. 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.

65. More effective tackling of discrimination and barriers to social participation should lead to increased social cohesion and productivity.

66. Through generic or equality-strand specific campaign, and support for citizenship education the CEHR would seek to combat negative stereotypes and increase public understanding thereby leading to a positive culture change.

67. The human rights remit of the CEHR should, in the context of wider social goals, help the Government deliver on a number of its key priorities. In particular the stated vision of creating a culture of rights and responsibilities is highly dependent on the development of a greater social awareness of human rights. It is felt that leaving implementation of a human rights culture exclusively to the courts will do little to advance progress towards this goal.<sup>43</sup>

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<sup>40</sup> The number of discrimination Employment Tribunal Service applications in 2002/03 on grounds of gender were 25,980, on grounds of race were 4,238 and on grounds of disability were 4,630. The number of cases for age, sexual orientation and religion and belief have been estimated to total 14,000 (RIAs for Employment Equality Regulations 2003 and partial RIA for Age Discrimination legislation).

<sup>41</sup> ETS Annual Report and Accounts 2002/03 and ACAS. ETS, 2003. <http://www.ets.gov.uk>

<sup>43</sup> The Case for a Human Rights Commission. House of Lords and House of Commons Joint Committee on Human Rights. March 2003.

68. 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.

69. Stakeholder groups concerned with equality issues and others 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.

70. The CEHR's role in promoting good relations between the different communities covered by equality, and with 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. This will be assisted by its specific duties to tackle prejudice and hate crime. Currently, of the three Commissions only the CRE has a statutory duty to promote good relations between people of different racial groups. It is intended that the CEHR will give special attention to the needs of communities defined by race or faith, given the specific problems they face.

## COSTS

### Public expenditure implications

71. 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. We have estimated the one-off establishment costs of the new body to be in the region of £24m.

72. Annual expenditure on the new body will be higher than the combined expenditure of the existing Commissions<sup>44</sup>, as the CEHR will have a much broader remit through supporting three new areas of discrimination law, and promoting human rights.

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<sup>43</sup> Annual Budgets for current commissions for 2003/04: CRE £19,852,000; EOC £8,810,600; DRC £14,696,000.

However there will be scope for efficiency savings, particularly in corporate and support services, on a continuing basis through reduced expenditure on overheads in one body as opposed to three. We estimate the annual operating costs of the CEHR, once it is fully operational, to be £70m.

#### Costs for Employers (private, public and voluntary sector)

73. The establishment of the CEHR will impose no new legislative burdens upon employers. Nevertheless, the CEHR will seek to improve compliance with existing legislation and promote good practices.

74. There may be costs associated with defending cases brought with the support of the new body (new only for the three new strands). Given the CEHR's likely strategic approach, the number of cases is expected to be small and limited to those which will clarify the law or have a wide impact. An overwhelming proportion of these cases will be brought whether or not the CEHR gives support.

75. The CEHR will undoubtedly seek to issue guidance in new, joined-up formats. The process of updating guidance to improve its accessibility and ensure it is consistent with the latest developments and trends is something the current Commissions already regularly undertake. It must be remembered that the establishment of the CEHR itself will impose no new regulatory burdens on the private or public sectors (the costs of producing guidance for the gender duty and extension of protection from religious discrimination have been covered in those respective RIAs as they may well be introduced prior to the establishment of the CEHR). However there may be some minor costs associated with the CEHR drawing the attention of employers and service providers to its website in order to access any new information. The costs associated with employers obtaining advice and information from the CEHR has been factored into the estimate given in paragraph 50. Employers will benefit from an overall cost saving from having to contact only one body as opposed to the current three Commissions (plus Government departments).

76. Employers will be encouraged to act on codes of practice published by the CEHR, which explain existing legal obligations 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 work-place social events to better include gay and lesbian staff and their partners
- iii. Recognising the crucial role that older staff can play and initiate programmes to recruit/retain more

77. There may be some costs to employers who find themselves subject to an inquiry or an investigation undertaken by the CEHR. The power to undertake such inquiries or investigations would not impose any additional legal requirement upon employers, but there is likely to be some degree of burden in respect of providing information or documents required by the CEHR or in giving oral evidence.<sup>45</sup> However, it is conceivable that costs to employers could be offset by the avoidance of possible future costs arising from their non-compliance with anti-discrimination. An inquiry is not to establish unlawful practice and we expect it rarely to focus on a single organisation. An investigation, to determine unlawful discrimination or harassment, may only take place if the CEHR or the Secretary of State has a reasonable suspicion that a person (individual or organisation) has committed an unlawful act. This power is discussed in more detail in paragraph 92.

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<sup>45</sup> There is a great deal of variation in the length of time an investigation lasts for, but it is usually between 9 and 18 months. Assuming the organisation under investigation devotes 40-60% of a senior managers time (and possibly the same amount of 0-3 support staff depending on the size of the organisation) to cooperating with the commission, we can estimate the costs of shorter and longer investigations for private and public organisations. Shorter investigations (9 months) could cost a public sector organisation between £11,600 and £58,100; and private sector organisations between £15,100 and £75,500. While longer investigations (18 months) could cost a public sector organisation between £23,200 and £116,200; and private sector organisations between £30,200 and £151,000.

Costs for the Public Sector (as service providers):

78. The new body will promote good practice regarding equality and non-discrimination in public sector service provision and will 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 duties regarding disability and gender. The enforcement of public duties is an activity already performed by the Commission for Racial Equality (race duty), and will be by the Disability Rights Commission (disability duty) & the Equal Opportunities Commission (if the gender duty comes into effect before the CEHR becomes operational) - so no additional costs will be realised through these activities with the creation of the CEHR. Costs associated with the introduction of the gender duty and legislation making it unlawful to discriminate in the provision of goods, facilities and service on the grounds of religion or belief are covered in the RIAs relating to those individual areas.

79. Much of the role of the CEHR relating to the promotion of awareness of human rights will be focussed on public sector service providers. A number of organisations already provide support and advice for public authorities in raising awareness of human rights issues:

- the Department for Constitutional Affairs has produced a number of publications designed to educate individuals and organisations about rights and responsibilities under the HRA<sup>46</sup>. Furthermore, DCA are involved in conducting human rights promotional road shows in England and Wales;
- The British Institute of Human Rights have helped to support and train a number of public bodies;
- A useful toolkit for public body managers has been produced by the Legal Action Group;

80. The CEHR would develop close partnerships with such organisations in order to add real value to the provision of

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<sup>46</sup> The DCA Human Rights Publications Unit have an annual budget of approximately £53,000 for 2004/05.

advice and support to public authorities seeking to be compliant with the human rights act. Public service managers have expressed the view that guidance offering a clearer link between human rights and equalities legislation and good practice would be highly beneficial.<sup>47</sup> The CEHR would be uniquely placed to provide information of this kind and offer the sort of support which would allow public sector management to more easily and effectively mainstream human rights good practice within their organisations.

81. 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 Human Rights Act (e.g. those involved in social care, health or housing). Much training of this kind is already conducted in the public sector<sup>48</sup> however it is often taken as a one-off separate event, rather than being an integrated part of service programmes for managers.<sup>49</sup> It is expected that 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.

82. While many public authorities already display good human rights practices, there is a significant proportion of authorities which have not made adequate attempts to comply with the Human Rights Act.<sup>50</sup> The sorts of changes made by public authorities are understandably diverse given

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<sup>47</sup> Human Rights – Improving Public Service Delivery, Audit Commission, 2003.

<sup>48</sup> The number of local authorities which had undertaken training of this kind had risen from 69% to 89% between 2002 and 2003. Human Rights – Improving Public Service Delivery, Audit Commission, 2003.

<sup>49</sup> Human Rights – Improving Public Service Delivery, Audit Commission, 2003.

<sup>50</sup> In October 2003 58% of surveyed public bodies had still not developed a strategy for human rights. Human Rights – Improving Public Service Delivery, Audit Commission, 2003. This number will no doubt be increased since then through the efforts of DCA and others.

the nature of the sector, but they often involve a review of relevant policies or procedures. Examples include,

- A health trust has conducted policy reviews of consent and resuscitation policies, violence and aggression policies, selection and recruitment and disciplinary policies, patient control and restraint policies.
- A housing department has taken advice on issues such as discrimination against non-spouses and same sex partners in succession, housing allocation policies, nuisance neighbours and racial harassment.
- A borough council has improved its procedures for appeals by appointing an independent chair.
- A number of planning departments have allowed public participation at planning committees and changes to licensing procedures.

83. As the CEHR, through its promotional activities, will attempt to indirectly increase compliance with the Act in the public sector there will be costs to public authorities which need to improve their human rights practice. Any costs to an authority of attempting to mainstream an awareness of human rights in their practices must be balanced against the costs of potential litigation and public sector wide costs arising as a result of court decisions covered earlier in this document.

84. It must also be remembered that the CEHR's role in respect of human rights is purely promotional. The CEHR will have no powers to force public bodies to change policies or procedures in order to be in line with an existing legal requirement. This enforcement role will remain with the courts which already impose costs upon public bodies in this regard.

## Society

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

## Individuals

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

	Benefits	Costs
Establishment and running of CEHR		One-off establishment costs of the new body estimated to be in the region of £24m. Annual operating costs of the CEHR, once it is fully operational, estimated to be £70m.
Individuals	<p>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.</p> <p>Local access to high quality advice and support will be improved through the CEHR's work to support other advice providing organisations.</p> <p>Through seeking to lower the extent of discrimination faced by individuals and thus also lowering the number of claims, the negative effects on all aspects of a claimants life associated with the process of making a claim would be reduced.</p>	None

	<p>People will benefit from better employment conditions through improved practice by employers as a result of the body's promotional work.</p> <p>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.</p> <p>Individuals will be able to seek quicker redress for multiple discrimination more effectively than at present.</p>	
Employers	<p>Costs associated with accessing newly formatted guidance from a single source, relative to three separate sources, produces an overall cost-saving to employers of between £2.7 and £3.4 million per year.</p> <p>High quality advice delivered through a 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.</p> <p>Increased partnership-working, building upon the experiences of the current Commissions, to improve information provision through business intermediaries, including regional and local</p>	<p>May be costs associated with defending cases brought with the support of the new body (new only for the three new strands). Given the CEHR's likely strategic approach, the number of cases will be small and limited to those which will clarify the law or have a wide impact.</p> <p>Cost to employers of accessing newly formatted guidance. These costs have been factored in overall cost savings for a single commission (see column to the left).</p> <p>Some costs associated with employers being encouraged to act on codes of practice published by the CEHR, which explain existing legal obligations and give guidance on compliance.</p>

	<p>bodies, will also improve access to information and guidance.</p> <p>Employers will find it easier to comply with the new regulations on sexual orientation, religion or belief and age through targeted information and support. Any reduction in the number of cases, through the promotional and awareness raising activities of the CEHR, building on work done by current Commissions, will continue to bring tangible benefits for employers.</p> <p>Through working in strong, proactive partnerships with employers to improve equality practice, the CEHR could help limit the number of cases that are remedied through the courts or tribunal system, and also reduce the broader negative effects such cases can have on the workplace.</p> <p>Employers should benefit from better understanding of the business case for diversity. 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. A further gain may be an increased ability to market products more effectively to a broader customer base.</p> <p>Coherent guidance produced by the CEHR will make clear</p>	<p>May be costs to employers (in terms of staff time) who find themselves subject to an investigation undertaken by the CEHR.</p>
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	<p>the responsibilities and duties of private businesses performing contract work on behalf of the public sector.</p> <p>Provision of a clear framework of the new regulations and of good practice associated with them for the courts will lower the risk of potentially costly judgements determining the interpretation of the regulations in a burdensome way.</p>	
<p>Public Sector Service Providers</p>	<p>Coherent provision of advice to the public sector, 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.</p> <p>The CEHR's awareness-raising remit would seek to lower the number of authorities open to litigation claims under the HRA (have resulted in costs as high as £320,000). This role should also lower the number of cases that have subsequent knock-on costs for the wider public sector.</p> <p>The CEHR will play a major role in the 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</p>	<p>Some additional training may be provided by the CEHR, in partnership with other organisations, in order to make public sector staff more aware of their obligations, especially under the HRA. It is expected that this training will become increasingly incorporated in the general training and development programmes of public bodies, minimising additional costs.</p> <p>The CEHR may well offer newly formatted guidance on existing legal obligations. If this takes place there will be some cost to public authorities in familiarising themselves with the new guidance.</p> <p>Through the CEHR's promotional approach to the HRA there will be indirect costs to public authorities which need to</p>

	<p>met.</p> <p>Modest savings in costs to courts could be realised through the impact of the CEHR's promotional work in reducing the number of cases brought to tribunals and the courts. Each application costs the Employment Tribunal system about £910 to process.</p>	<p>improve their human rights practice. Any costs must be balanced against the costs of potential litigation and public sector wide costs arising as a result of court decisions.</p>
Society	<p>Improved social cohesion of all groups within society, through tackling discrimination and inequality in a more strategic way.</p> <p>More effective tackling of discrimination and barriers to social participation should lead to increased social cohesion and productivity.</p> <p>Help develop a greater social awareness of human rights, aiding the creation of a culture of rights and responsibilities.</p> <p>A single body will allow for more effective, joined-up communication with and between the various stakeholder groups and Government.</p> <p>Good relations role will help build trust and confidence between communities and help to develop a stronger sense of British identity and citizenship.</p>	None

## Equity and Fairness

87. The underlying idea behind creating a single Commission, along the lines of the CEHR, is to aid the advancement of equity and fairness throughout society. A small fraction of the inequalities felt by individuals today have been discussed in this document. The CEHR would work to address these and all areas of inequality and discrimination. An Equal Treatment Appraisal and Race Equality Impact Assessment been produced to accompany the Bill of which this document forms part.

## Competition Assessment

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

## Enforcement and Sanctions

89. The CEHR will have an enforcement role for anti-discrimination legislation, and will provide institutional support for the enforcement of such legislation relating to sexual orientation and religion or belief and, in due course, age, for the first time. It is the Government's intention that the enforcement framework should be consistent across equality legislation.

90. The CEHR's enforcement role will complement actions brought by individuals 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.

91. It will be for the CEHR Commissioners, when appointed, to determine the body's enforcement strategy. However, it is envisaged that the commission's enforcement strategy, like those of the current Commissions, will be to use its powers to bring about change on a broad scale, intervening where it will have most impact. This will include supporting cases to clarify the law, or investigations into the most serious cases of unlawful

discrimination or harassment, and intervening in cases brought by third parties where there is an important equality or human rights point at issue. The current Commissions have undertaken a limited number of such investigations,<sup>51</sup> which have been significant exercises aimed at addressing very serious problems. The costs of such investigations would be fully met by the CEHR, although there is likely to be some burden on an organisation subject to an investigation into suspected unlawful acts in that they will be required to provide information and/or documents and may be required to give oral evidence. Where the CEHR does not find the matter under investigation proven, it would produce a report (possibly with recommendations). Where it is satisfied that one or more unlawful acts did take place, this could lead to an unlawful act notice being served on the party under investigation. However, this would be avoided if both parties agreed to enter into a binding agreement. An unlawful act notice or an agreement could contain a requirement for the other party to prepare and implement an action plan setting out the steps to prevent a recurrence of the unlawful act or steps to stop it happening.

92. 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 inquiries and investigations; power to issue and enforce unlawful act notices; power to enter into binding agreements; 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, through a third party, for discrimination cases not involving employment, thus saving time and costs for the parties involved and the courts. This would build on

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<sup>51</sup> It is difficult to gauge how many investigations of this kind the current Commissions undertake. It has been known for the commissions to have none underway for several years but then to take on more than one at the same time. In October 2004 the Commission had 5 investigations in total underway. We would therefore estimate that the CEHR would have no more than 5-10 such investigations under way at any one time.

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 equality areas (covered in more detail in paragraph 54).

- b. A power to conclude binding agreements with an organisation, instead of subjecting it to the full investigation process will be available across the board, based on the current power available only to the DRC. This will provide a basis for securing improvement without formal enforcement action, where a body is willing to work with the CEHR.
- c. 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.
- d. The legislation setting up the CEHR will contain an order-making power that allows for the relevant Secretary of State to give the CEHR the power to associate a relevant human rights claim with a case they are supporting arising from a disability discrimination claim. If activated, this power would allow such cases to still be supported if there remains a disability interest. A similar un-activated power was created under the Disability Rights Commission Act 1999. This power will not allow the CEHR to support free-standing human rights cases which did not have a disability discrimination element at the outset of the proceedings.<sup>52</sup>
- e. It is proposed that there should be a specific tool to enable the CEHR to assess the performance of a public authority in respect of its public sector duty for

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<sup>52</sup> If the power is activated cases of this kind would form only a very small proportion of the strategic cases that the CEHR would support on the grounds of disability and so would be unlikely to have any significant impact on costs.

race and proposed disability and gender duties. Currently the CRE can only adopt an 'all-or-nothing' approach to the enforcement of the public duty to promote race equality through judicial review in the case of the general duty and the issuing of compliance notices to enforce the specific duties. It is expected that the following new powers would be granted to the CEHR for the purposes of ensuring compliance with all three duties:

- the CEHR should be empowered to carry out an assessment of a public body's performance of its general and specific duties;
- in the light of the assessment the CEHR could make recommendations, which lead to agreed action for improvement; or, in the case of a breach of a specific duty, enter into a binding agreement or issue a compliance notice.

This widening of powers would be made in order to provide the CEHR with more flexible levers to encourage non-compliant public authorities to take appropriate steps, without proceeding to potentially costly litigation. Marginal costs would result upon the CEHR as a result of these powers, which would be met from its own budget. Public authorities would already be legally bound to comply with the various duties and would not be required to take steps, as a result of these powers, that go beyond these obligations.

93. 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. Indeed a number of inspectorate bodies are currently in the process of reviewing their activities

with a view to incorporating equality and human rights considerations to a greater degree.

### Monitoring and Review

94. As a Non Departmental Public Body (NDPB) the single equality commission will be subject to the usual Non Departmental Public Body (NDPB) management framework and accountability processes. 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, and would be required to produce an annual report which includes account information. The CEHR will be required to perform regulatory impact assessments for any major changes in its functions and powers.

95. The CEHR will have a duty to report periodically on Britain's progress on the advancement of equality and human rights. This reporting requirement would largely draw on existing data sets and research, though the CEHR will of course have a research capability of its own. The CEHR may seek to develop partnerships with coordinating bodies and inspectorates in order to ensure data collection is as relevant as possible. This duty will only fall upon the CEHR itself and no additional burdens or reporting requirements will be placed on the wider public sector or private sector. The publication of a report of this kind would provide the CEHR with an objective evidence base, which could be used to inform the Commission's strategic and resource planning.

## Consultation

96. Home Office, DWP, DCA and DfES have been closely involved in the development of these proposals.

### Making it Happen

97. 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 (SEB). 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.

98. It generated 300 responses covering all relevant interests. The key findings were:

- a) Wide support for a single body<sup>53</sup>, 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 equality 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 groups ("strands") covered by the current Commissions. This reflects concerns at the potential eclipse of their interests in a larger, broader body.

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<sup>52</sup> 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](http://164.36.253.98/equality/project/CEHR_mor_rep.doc)

- 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.
- 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 regional and local 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.

## Fairness for All

99. The White Paper, Fairness for All, laying out the Government's proposals for a CEHR was released on 12 May. Its publication was followed by a 3 month consultation period.

100. Overall, the communications and distribution strategy following publication of Fairness for All and subsequent requests for copies of the document indicate a high level of interest in the proposals for the CEHR. To date, we are aware that:

- Over 18,000 copies of the White Paper were distributed or downloaded
- Over 5,000 copies of the summary paper were distributed or downloaded

101. In addition, officials organised regional roundtable consultation events in partnership with regional development agencies, government offices in the regions and regional assemblies; a business sector round table, and a meeting with organisations representing various religion and belief denominations.

102. Support was provided to third parties for consultation events, most notably a series of events with black and minority

ethnic community organisations organised by the 1990 Trust, but also including a major one-day conference organised by the Equality and Diversity Forum, and an event with young people in conjunction with the Children's Rights Alliance for England. DTI also supported the Scottish Executive's one-day conference in Glasgow.

103. Finally, officials participated in a number of externally organised events on the CEHR, including by the British Federation of Race Equality Councils Annual Meeting, Race on the Agenda policy forum, the Association of Charitable Foundations, the Commission for Racial Equality, Sutton Race Equality Council, Crown Prosecution Service, London Civic Forum and Age Concern.

#### Response to Fairness for All

104. Over 430 responses were received to the White Paper, covering a wide range of "equality strand" interests, geographical regions, and sectoral issues. With the exception of black and minority ethnic (BME) organisations (and the Commission for Racial Equality), all respondents generally support the establishment of the CEHR as the best way to realise the Government's long-term vision for equality and human rights in Britain.

105. The Government's formal response to the consultation is available [here](http://164.36.253.98/equality/project/index.htm) (<http://164.36.253.98/equality/project/index.htm> or can be ordered by phoning 0870 1502 500). The response announced a number of policy changes in response to comments on the White Paper, which have been included as required in the sections above.

106. Very few respondents referred to the Partial RIA which formed part of the White Paper, and these were generally either appreciative of the document or linked to the wider issue of funding for the CEHR.

#### The CEHR Task Force

107. 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.

108. The Task Force, which has been chaired by Jacqui Smith, Deputy Minister for Women and Equality, was 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. The Task Force's remit was to explore and develop options for the new body including its role, functions, priorities and governance arrangements and structure.

109. The Task Force has met several times since December 2003 and their work has directly influenced the detail of the Bill of which this RIA is part.

### Consultation With Small Business: the Small Firms Impact Test

110. Small businesses tend to be less aware of discrimination legislation than larger firms, and are therefore more likely to be at risk from tribunal and court 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.

### *Making it Happen*<sup>54</sup>

111. An online consultation with small and medium sized businesses regarding statutory support for equality has been performed as part of the wider 'Making It Happen' consultation. The exercise produced 456 responses.

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<sup>54</sup> Making it Happen Green Paper released in October 2002  
[http://164.36.253.98/equality/project/making\\_it\\_happen/cons\\_doc.htm](http://164.36.253.98/equality/project/making_it_happen/cons_doc.htm)

112. There was a clear demand among respondents for a single equality body that would act as a 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.

113. 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.

114. 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.

#### CEHR Task Force<sup>55</sup>

115. 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.

#### Fairness for All

116. The White Paper, Fairness for All, was distributed to over 350 trade associations and representative business groups. 29 responses were received from private sector organisations - many

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<sup>55</sup> See paragraph 107 for further details

of which commented on the role of the CEHR in relation to small firms. All business (including SME) respondents supported the creation of the CEHR in principle. The following points were fairly commonly held by such respondents:

- The CEHR has the potential to be of immense benefit for SMEs;
- The CEHR must operate in a manner which acknowledges that all firms (particularly SMEs) are different - and the business case for diversity must therefore be made in different ways;
- SME respondents were keen on the prospect of the CEHR having a regional presence which would make use of existing regional structures and facilitate local employer networks;
- The CEHR Board should contain SME experience.

117. 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.

## Summary and Recommendation

118. 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 equality 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.

119. 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.

### Ministerial Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs

Signed by the responsible Minister.....

Minister of State for Industry and the Regions and Deputy Minister for Women and Equality, Department of Trade and Industry

Date.....

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