

PROFORMA FOR EHRC REFORM CONSULTATION RESPONSES

The consultation closes on 15 June 2011. Please let us have your response by that date.

When responding, it would be helpful if you could provide the following information.

Please fill in your name and address, or that of your organisation if relevant. You may withhold this information if you wish, but we will be unable to add your details to our database for future consultation exercises.

Contact details:

Please supply details of who has completed this response.

Response completed by (name):

Position in organisation (if appropriate):

Name of organisation (if appropriate):

Address:

Contact phone number:

Contact e-mail address:

Date:

Confidentiality

Under the Code of Practice on Open Government, any response will be made available to the public on request, unless respondents indicate that they wish their views to remain confidential. If you wish your response to remain confidential, please tick this box and say why. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

I would like my response to remain confidential (please tick if appropriate):

Please say why

In what capacity are you responding (please tick if appropriate)?

As an individual

On behalf of an organisation

As an employer

Other (please specify)

Note:

- In addition to the completed proforma, you can also send other supporting information if you so wish.

Completed forms should be e-mailed to the following address:-

EHRC.reform@geo.gsi.gov.uk

If you are posting the form please send to:-

EHRC Reform Consultation Responses
C/O Louise Sutton
Government Equalities Office
Zone G10, 9th Floor Eland House
Bressenden Place
London SW1E 5DU

Thank you for completing this response form.

EHRC's core functions

PROPOSAL ONE – Repealing the General Duty

Question 1: Do you agree that Section 3 should be repealed?

Please place a cross in the appropriate box

Agree Disagree Not sure

Please explain why -

The consultation document presents no compelling argument or evidence to justify this legislative amendment. There is a stronger case for retaining the broad visionary statement of EHRC's aims in the legislation.

PROPOSAL TWO – Amending the equalities duties at section 8 to clarify EHRC’s core equality functions

Question 2: Do you agree that remodelling the duties at s.8 of the Equality Act 2006 to mirror the role and functions set out in para 1.9 of chapter 1 will help to focus EHRC on its core functions as an equality regulator? If not, what do you think EHRC’s core functions should be?

Please place a cross in the appropriate box

Agree Disagree Unsure

Please explain why -

Children in Scotland has no objection *per se* to the S.8 EHRC core function amendments set out in the consultation document. *However*, this altered role will have to be properly considered in the Scottish context, alongside the functions and responsibilities of the Scottish Government Equality Unit and the Scottish Human Rights Commission. Reform cannot be carried out effectively by focusing exclusively on the English context, nor by considering the core functions of the EHRC in isolation from the remits of other key bodies.

Partnership working, capacity building and awareness raising are important elements of EHRC Scotland’s work to date – elements that Children in Scotland would not wish to see undermined by reforms focusing on the EHRC’s regulatory functions in too narrow a sense. Partnership working, capacity building and awareness raising should be viewed as core to a successful regulatory role, which focuses on achieving compliance – as far as possible – without recourse to costly litigation.

Question 3: Do you agree with our proposal to amend the section 12 duty so that it:

a) specifies the aims and outcomes which EHRC is required to monitor progress against; and

b) requires a report every five rather than three years, to tie into the Parliamentary cycle and enable reports to capture meaningful change over time?

Please place a cross in the appropriate box

Agree Disagree Not sure

Please explain why -

a) In principle, Children in Scotland is in favour of monitoring progress against well thought-out and appropriate aims and outcomes. However, there are dangers associated with introducing outcomes through legislation that are too narrow or that prove to be poor measures in practice when compared with people's experiences of discrimination and inequality. This consultation does not clearly delineate the outcomes and measures to be used. It is, therefore, not possible to respond to this question in a meaningful manner without further detail on the specified aims/objectives and methods upon which EHRC would be reliant.

b) Given the clear need for the EHRC to remain (and to be seen to be) fully politically independent, seeking to tie reporting directly into the UK Parliamentary cycle is hard to justify. Once established, a three-year reporting cycle should not be overly burdensome and longer term change will still be captured over successive reports. In fact, a three-year schedule allows each Westminster Parliament the time and opportunity to consider and act upon the evidence and recommendations emerging from each review/report. However, the most compelling reason for the three-year cycle is that it allows corrections to be made in a timely manner before problems and concerns have become so entrenched over time that they are harder to remedy.

PROPOSAL THREE – Supporting the EHRC to enhance its focus on human rights

Question 4: Do you agree that the proposals to focus the Commission on its core functions, as well as the measures set out in Chapter 3 to increase the Commission’s accountability for the its performance, will help the Commission fulfil its human rights remit? If not, what further changes do you suggest?

Please place a cross in the appropriate box

Agree Disagree Not sure

Please explain why -

These proposals need to be properly considered and developed to be fully and appropriately inclusive of the Scottish context, alongside the functions and responsibilities of the Scottish Government Equality Unit and the Scottish Human Rights Commission. Reform cannot be carried out effectively by focusing exclusively on the English context, nor by considering the core functions of the EHRC in isolation from the remits of other key bodies. Being a reserved matter does not – and should not be treated as – excluding Scotland. Instead, reserved matters are those that must find UK-wide accommodations to the differing realities, needs and opportunities across the devolved administrations.

From a Scottish voluntary sector organisation perspective (and **not** one which receives funding from EHRC), the current EHRC Scotland role does not appear to be too broad, nor does the organisation appear lacking in accountability. The positive engagement of EHRC Scotland with third sector organisations around equalities work is valued and its reduction would be a loss to the sector. There appear to be substantial differences between the operation of the EHRC in England and EHRC Scotland that have not been taken into account in these reform proposals.

There is a clear danger that the proposal to narrow the role of the EHRC and transfer funds and responsibilities for ‘non-core’ functions to the London-based GEO, will lead to gaps in equality and human rights promotion in Scotland. It predictably would be likely to result in a substantial reduction in the level and appropriateness of support available for important human rights and equality work in Scotland – particularly that carried out by third sector organisations that have no London presence.

PROPOSAL FOUR – Removing the Commission’s good relations duty (section 10)

Question 5: Do you agree that we should remove the Commission’s good relations function, and the associated power at section 19? If not, why not?

Please place a cross in the appropriate box

Agree Disagree Not sure

Please explain why -

Promoting good relations is an important function of the EHRC and one that needs to be continued in some form, by an equalities body with a Scotland-wide remit. The inclusion in the new public sector Equality Duty of the need to foster good relations between individuals in different groups is welcome, but will not replace wider social and educational functions. Private bodies such as sports clubs and entertainments venues also have an important responsibility to promote good relations, but it is unclear from the proposals into which, if any, body’s remit this function would fall.

A further concern for Children in Scotland is the likely impacts of reform in terms of cultural attitudes and behaviour relating to rights and their enforcement. For instance, in relation to post-separation contact and parenting arrangements, there is substantial evidence of polarised attitudes and conflictual behaviour associated with the promotion of either women’s rights or men’s rights. Children, families and society as a whole would benefit from balanced discussion and education that focuses upon the rights and interests of children. This is a good example of valuable work that could potentially be carried out by the EHRC under its good relations function, but not under the proposed reforms. Focussing on rights and enforcement without parallel (coordinated) educational and social inputs may (unintentionally) result in the further polarisation of views and the exacerbation of conflicts in difficult areas such as this.

These proposals need to be properly considered and developed in the Scottish context, alongside the functions and responsibilities of the Scottish Government Equality Unit and the Scottish Human Rights Commission. Reform cannot be carried out effectively by focusing exclusively on the English context, nor by considering the core functions of the EHRC in isolation from the remits of other key bodies. We see no evidence from our experiences in Scotland of any rational basis to remove this function nor any likely benefits.

EHRC's Non-core activities

PROPOSAL FIVE – Repealing the Commission's power to make provision for conciliation services

Question 6: Do you think the Government should repeal the Commission's power to make provision for conciliation services, as part of the process of focussing the Commission on its core functions?

Please place a cross in the appropriate box

Agree Disagree Not sure

Please explain why -

If the EHRC's power are to be repealed, then it is imperative that comprehensive, alternative conciliation services are *locally available in advance*, with the capacity and resources to ensure that need for these services continues to be met across the *whole* of the UK. With this in mind, it may well be more cost effective to focus on improving the efficiency of the EHRC service, rather than repealing this power. This proposal does not provide sufficient evidence (and none that directly relates to Scotland) to make a more detailed judgment on this issue.

Children in Scotland does have concerns that existing providers will not have sufficient capacity and resources to fulfil this function should the EHRC's power here be repealed. The UK Government has at least a moral obligation not to simply walk away from this work before ensuring that an acceptable replacement is in place and sustainable through the UK.

PROPOSAL SIX – A new system for equality information, advice and support

Question 7: Do you agree with the proposals set out to provide a new system of information, advice and support? If not, what changes to the system would you recommend?

Please place a cross in the appropriate box

Agree Disagree Not sure

Please explain why -

The EHRC currently has a group of dedicated staff in Scotland, taking Scottish calls.

It is our experience from working with partners based in all four nations of the UK that specialist and up-to-date knowledge of each national jurisdiction will be required to provide a good and uniformly reliable service across the UK. For example, the new public sector Equality Duty is likely to be defined and implemented in substantially different ways in Scotland than in England and Wales.

The proposal does not make a convincing case for creating a new information, advice and support system (which will inevitably have a high start up cost) as opposed to taking action to improve the efficiency and effectiveness of current EHRC services. Were a new system to be established, Scotland should retain its own services and they should be developed with regard to the roles of other key agencies in Scotland, such as the Scottish Human Rights Commission.

Question 8 What should a new citizen - focused, cost effective information and generalist advice service look like?

Please explain -

Scotland should retain its own national services and they should be developed with regard to the role of the EHRC Scotland to date, and the roles of other key agencies in Scotland, such as the Scottish Human Rights Commission and Scottish Government Equality Unit.

It is important that the new services develop effective mechanisms to inform equality and human rights public education campaigns and regulatory work in Scotland.

Question 9: How can government best provide public education on discrimination and human rights, targeted on the most disadvantaged groups?

Please explain -

Public education in Scotland needs to be developed in coordination with key agencies in Scotland, such as the Scottish Human Rights Commission and Scottish Government Equality Unit. It should also dovetail with relevant policy frameworks in Scotland such as the Curriculum for Excellence, the Early Years Framework and Equally Well. It should also build upon the successes and lessons of previous public education campaigns in Scotland. And finally, it should be inclusive and supportive of the active engagement of the voluntary sector in Scotland.

Question 10: Is there anything that distinguishes discrimination cases from other cases eligible for civil legal aid that would justify further public funding for support?

Please explain-

All genuine victims of unlawful discrimination should be entitled to legal advice and support. The withdrawal of universal entitlement and reliance on means-tested legal aid is liable to result in substantial injustices for the many on low incomes who fall just above the threshold, but do not have sufficient personal means to feel able to invest in legal advice and representation in practice. Furthermore, there are serious concerns that – due to the reliance on private providers of civil legal aid in Scotland and the extremely low profit margins in this type of case – too few will be prepared to take on unlawful discrimination cases under legal aid for there to be an accessible service in practice.

If we aspire towards a more equal society, it is clearly in the public interest to provide support to those prepared to challenge unlawful discrimination. It would be completely at odds with the principles of equality if only the wealthy were to have access to legal redress in discrimination cases. Additionally, the impact of strategic test cases could be weakened in some circumstances if it became clear that significant numbers of victims would not be in a position to pursue legal redress.

Question 11: Do you agree with the proposal for the Air Transport Users Council (AUC), part of the Civil Aviation Authority (CAA), to provide the complaints handling service for disabled passengers in the future? If not, why not?

Please place a cross in the appropriate box

Agree Disagree Not sure

Please explain why -

PROPOSAL SEVEN: Supporting Social Action

Question 12: How could the new Government funding stream most effectively support civil society organisations to promote equalities, human rights and tackle discrimination?

Please explain -

The new Government funding stream needs to be developed in close collaboration with the Scottish Government Equality Unit and the EHRC Scotland office and to build upon the successes and lessons of current and previous equality and human rights projects in Scotland. The Scottish Government Equality Unit already administers a substantial equality grants programme and, like EHRC Scotland, maintains strong, supportive relations with civil society organisations operating in the equalities and human rights field.

For Scotland, if the funding stream is not to be administered by the EHRC Scotland office, then the most effective approach would be to transfer funding earmarked to support civil society organisations operating in Scotland, to the Scottish Government Equality Unit, to be administered directly by this body. The GEO is not in a position to effectively administer grants to civil society organisations in Scotland. Attempting to do so would be likely to result in a skewing of resources to large third sector organisations operating at UK level and to England-based projects.

Achieving greater value for money and accountability

Question 13: Do you agree with our legislative proposals to increase the Commission's transparency, accountability, and value for money?

Please place a cross in the appropriate box

Agree Disagree Not sure

Please explain why -

While in theory Children in Scotland agrees with moves to increase the EHRC's transparency, accountability and value for money, there is a lack of clarity about the new replacement functions proposed under this reform. It is currently not clear that the agencies proposed to take over current EHRC functions will operate with greater transparency and accountability, nor that they would provide better value for money than the EHRC. It is even less clear that they would provide better value than the EHRC Scotland, or deliver improved outcomes in this nation within the UK. The proposed transfer of funds and functions to the GEO is particularly opaque.

Our approach to reform & next steps

Question 14: Do you agree with our approach of legislative and non-legislative reform?

Please place a cross in the appropriate box

Agree	<input type="checkbox"/>	Disagree	<input checked="" type="checkbox"/>	Not sure	<input type="checkbox"/>
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Please explain why -

While there is clarity in the proposals about EHRC functions that will be (and are currently being) cut, there is a lack of clarity about the new replacement system on equality, information advice and support that will take over these functions. Therefore, our capacity to respond meaningfully to this consultation on EHRC reform is limited as the UK Government has not provided the information at this stage to judge whether the changes are likely to lead to better outcomes in practice – for the UK as a whole, and especially in the Scottish context.

The anticipated outcomes of the proposed reforms to the Equality Act 2006 do not appear adequate to justify their time and resource costs – particularly in the Scottish context.