

# **Report of a Feasibility Study into setting up a Scottish Centre for Research on Equality and Human Rights**

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## **SECTION 1: RATIONALE FOR THE FEASIBILITY STUDY**

### **Introduction**

Equality of opportunity and human rights are high on the social, political and intellectual agenda. Recently published policy documents include a European Green Paper on equality and non-discrimination (EC, 2004), the GB Equalities Review (Cabinet Office, 2007) and the Discrimination Law Review (Department for Communities and Local Government, 2007). At the heart of all these documents and recent legislation, such as the Equality Act 2006, is an emphasis on the principle of mainstreaming equality to replace the ‘silo thinking’ which tended to characterise work in the field of equalities and human rights in the past. The need to implement European Employment Directives has led to new Regulations in the area of religion and belief, sexual orientation and age discrimination. Public and private sector organisations have new duties to ensure that they do not discriminate against their staff or clients on six grounds (gender, race, disability, age, sexual orientation and religion/belief), but also to promote equality in relation to race, disability and gender. The Equality and Human Rights Commission (EHRC) was established in 2007, with a GB-wide remit and the central aim of ensuring that public and private sector organisations place equal opportunities at the heart of all their activities.

In Scotland, equality policy has a wider ambit than the six strands which feature in European policy, legislation and regulation. The Scotland Act 1998 defines equal opportunities in terms of ‘the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions’. In Scotland, therefore, equalities law is a complex mix of European, GB and Scottish law and policy and there are debates about the place of social class within the broader field of equality and precisely which equality strands should be prioritised, given their growing number.

There has also been considerable policy turbulence around the human rights agenda. There is now a recognition that more needs to be done to promote community integration and cohesion, to foster a positive view of human rights and to debate the meaning of multi-culturalism. Following the passage of the Human Rights Act (1998), which incorporated the principles of the European Convention on Human Rights into UK domestic legislation, there has been ongoing discussion about the balance between the rights of the individual and those of the wider community. In July 2006, a report was published entitled *Rebalancing the Criminal Justice System in Favour of the Law-Abiding Majority* (Home Office, 2006) and in November 2006 a review of the operation of the Human Rights Act was published by the House of Lords and House of Commons Joint Committee on Human Rights (House of Commons, 2006). Fuelled by fears of a possible backlash against the human rights agenda, an important policy decision was made to establish a single commission to deal with equality and human rights, although in Scotland the commitment of the Scottish Government to establish a separate Scottish Commission for Human Rights was honoured.

In Autumn 2006, Nick Watson, University of Glasgow, and Sheila Riddell, University of Edinburgh, were awarded a grant by the Scottish Funding Council to undertake a feasibility study with a view to establishing a Scottish Centre for Research on Equality and Human Rights. The study set out to examine both the likely benefits and the possible risks of such a development. It was envisaged at the outset that the proposed centre would provide a focus for Scottish research on equality and human rights, informing the Scottish legislature as well as the public, private and voluntary sectors. In addition, it was hoped that the proposed centre would become a focus for the generation of

internationally competitive research, establishing and confirming Scotland's position as an international leader in thinking and research on equality and human rights.

The feasibility study aimed to investigate:

- Current debates in equality and human rights and their implications for research;
- The implications of recent policy and practice developments in the broad field of equality and human rights and their impact on Scotland in the context of devolution;
- The nature of available quantitative and qualitative data on equality and human rights in Scotland and the future data requirements of a range of stakeholders;
- The current equality and human rights policy landscape in Scotland, the UK and internationally;
- Priority areas for research and knowledge transfer activities;
- Future funding options.

It was envisaged from the outset the Centre would be inter-disciplinary in nature, providing the research infrastructure for effective interactions between diverse disciplines including education, law, sociology, politics and business. The feasibility study sought to explore the extent to which the Centre could act as a knowledge hub, conducting and disseminating research which was high quality, strategic and interdisciplinary. Furthermore, the involvement of a wide range of stakeholders across a variety of sectors was seen as critical.

### **Methods employed in the feasibility study**

In order to investigate the need for a Scottish Centre for Research on Equality and Human Rights, the following methods were employed:

- Literature and policy reviews identifying key issues and tensions in the field of equality and human rights
- A review of research and statistics and an analysis of future data needs in the light of the recommendations of the Equalities Review
- Interviews with key stakeholders in the public, private and voluntary sectors
- A review of approaches to policy and research on equality and human rights in national and international context
- Consultation and dissemination events

These are discussed further in the sections which follow. In addition, the following working papers can be found on the Centre website ([www.creid.ed.ac.uk](http://www.creid.ed.ac.uk)): Working Paper 1: Equality and Human Rights: Key Concepts and Issues; Working Paper 2: Policy Review: Equality and Human Rights; Working Paper 3: Human Rights: An Annotated Bibliography; Working Paper 4: Digest of Research on Equality; Working Paper 5: Report on Key Informant Interviews; Working Paper 6 Mainstreaming Equality: An International Perspective.

## **SECTION 2: KEY ISSUES AND TENSIONS IN THE FIELD OF EQUALITY AND HUMAN RIGHTS**

### **Introduction**

Although often contested and certainly complex to work with, the broad goal of mainstreaming equality has become the established orthodoxy for public policy work on equality and human rights. It involves the integration of equality perspectives into every stage of policy processes – design, implementation, monitoring and evaluation – with a view to promoting equality. ‘Equalities perspectives’ generally include the recognition of inequalities, and the on-going promotion of equality, in terms of age, disability, gender, race, sexual orientation and religion. Yet whilst the same broad approach to equalities may apply across the UK, in member states of the EU, and many other countries, the concept of mainstreaming is interpreted and operationalized in diverse ways. These diversities emerge from historical and cultural factors, organisational and legislative arrangements, political will, and available resources.

Across the world, inequities are evident, in varied ways, and a number of organizations and researchers have documented these (Firebaugh, 2006). Whilst recognising the vast inequalities that exist across the globe, governmental responses within post-industrial societies have focused on ameliorating a limited range of inequalities such as those relating to gender, race and disability. These areas have been identified as having a particular impact on labour markets, economies and work-life reconciliation<sup>1</sup>, and change has been driven by both the quest for social justice and the desire to create level playing fields within competitive markets. Within the European Union, in particular, there is a desire to achieve socially cohesive societies and avoid conflicts within and between member states. At the same time, it is recognised that allowing one country to discriminate against certain social groups might give them an unfair advantage, so anti-discrimination and equality legislation may be seen in the context of the managed market within social democratic states. Discrimination on grounds of sexual orientation, age and religion is also receiving much attention, given the ageing of many populations coupled with increased recognition of differing belief systems and the potential for these to foster political agitation and civil unrest.

In Great Britain the Government has established a single equalities body incorporating, in relation to England and Wales, a human rights commission, with a specific equalities commission and separate human rights body in Scotland. Northern Ireland already has a single equalities body and human rights commission which has been in operation from 1999. Whilst equality groups welcome some aspects of mainstreaming, questions have been raised about the extent to which a generic approach to equality is capable of reflecting equally the interests of all equality groups. Further, questions have also been raised about the coupling, or separation, of equalities and human rights legislation and organizational responses. Similarly, the extent to which all public policy can (or indeed should) consider the interests of all groups simultaneously has been queried: how might greater equality be achieved given the inter-weaving ways in which inequalities can operate? Mainstreaming equalities is therefore a topic of immediate interest to policy-makers, practitioners, trade unions and professional associations, social movements and individuals.

### **Equality and human rights**

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<sup>1</sup> *Post-industrial society is a term used to describe societies that have undergone certain economic and demographic changes. These include a rapid growth in the service sector and decline in manufacturing alongside enhanced dependence upon information technology. Governments now often refer to the ‘knowledge economy’ and the need for workers with technological and communication skills. Participation of women in the labour market, regardless of their care responsibilities, has become critical to economies and household incomes. Fertility rates have declined, populations are ageing, and thus immigration has become central to maintaining an adequate pool of both skilled and unskilled workers. These issues pose particular challenges for equality and human rights.*

Equality and human rights concerns have become key elements on agendas for many governments, trans-national and non-governmental organisations (NGOs). As concepts they raise aspirations about the attainment of individual potential free from discrimination and prejudice. They also aim to foster respect and understanding between people and communities. Issues such as migration and immigration, limited educational attainment among specific groups and communities, the continued under-utilization of the skills of women, raise concerns. Increasingly, governments and NGOs assert that addressing these, and related issues, will aid social justice and economic prosperity.

The principles of human rights, enshrined in the European Convention on Human Rights, provide a guarantee for the same protection and treatment regardless of who you are or how you choose to live. The convention has had a major impact in member states, as well as those countries seeking accession to the EU. Democracy and legitimacy, it is asserted, cannot be fully realised unless there are opportunities for all to participate equally. The duty to enact the letter and spirit of the convention is with governments and most have aligned responses to this with the requirements of the range of EU directives on equal treatment and discrimination (Rees, 1998; Fredman, 2000).

Further, in the UK devolution has provided a new political and administrative settlement for Wales and Scotland. Over the last decade new contexts and ways of working have been created through the Scotland Act 1998 and the Government of Wales Act 1998. The political complexities of Northern Ireland have led to a different settlement there too. These developments recognise the differing social, economic and political environments contained within the UK. Yet all of these developments are underpinned by provisions for the promotion of equality of opportunity for the UK as a whole, although, in turn, devolved government has an impact upon this too.

The role of business is coming under increasing scrutiny both as a factor in the creation of inequalities but also as a champion of new ways of working to promote equality and human rights. Certainly the response of business to legislation and the work of relevant governmental agencies is to the fore of government's thinking in any proposals for action. In the competitive environment of the knowledge, or skills based, economies, organisations and businesses may aim to become what is commonly termed as an 'employer of choice'<sup>2</sup>. In this context equalities and human rights are drawn upon as positive elements of employment policies and practices.

### **Mainstreaming: Opportunities and tensions**

As noted above, added to this increasingly complex arena of economic and political developments on equalities and human rights is the concept of mainstreaming. As noted earlier, this concept has achieved the status of orthodoxy in so far as it has become the accepted basis to governmental practices and policies in most post-industrial societies. Mainstreaming equality implies that equal opportunities principles, strategies and practices should be integrated into all aspects of the work of government and public bodies. The United Nations, the Commonwealth governments, the Council of Europe and many governments worldwide support this basis to strategic action.

Mainstreaming has implications for participative democracy, since it implies that wide consultation of individuals and groups should take place before legislation is passed to ensure that it is 'equality proofed' (Rees, 1998; Breitenbach et al., 2002). Devolved governments in the UK and within Europe have been particularly strong in adopting and promoting mainstreaming (Rees, 2001). Following the European Employment Directive, which outlaws discrimination in relation to gender, race, disability, sexual orientation, age and religion, the UK government announced its intention to move towards a mainstreaming approach, replacing the existing equality commissions with a new single equalities body. The justification for this move is that, firstly, individual identity is complex, not unitary.

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<sup>2</sup> *Employer of choice is a term used by companies to assert that there are policies and practices in place that recognise employees as the greatest asset of the business. Policies and practices incorporated in this approach tend to focus upon work-life reconciliation and professional and personal development (See <http://www.employerofchoice.org.uk/>)*

Therefore, if an individual has experienced discrimination in relation to employment or some other aspect of their life, it may be difficult to know whether the unequal treatment has arisen as a result of their gender, disability, race etc. Further, the principles that underpin equality in relation to all aspects of identity are fundamentally the same.

Although governments and some political groups are in favour of mainstreaming, a number of questions have been raised about its practicality and legitimacy. At a fundamental level there is a lack of clarity about the concept of mainstreaming and what it might entail, with some proponents defining it as a strategy whereby a concern with equality and identity permeates all aspect of policy-making and legislation, whilst others see it primarily in terms of the universal principles which should be applied to all aspects of equality policy (Breitenbach et al., 2002). A generic approach to equality may be theoretically flawed, since it is not clear that all equality groups face similar social, political and economic barriers. For example, the obstacles to full political participation encountered by women, black and disabled people may be quite different (Riddell and Watson, 2003).

### **Drivers of inequality: the politics of identity versus the politics of redistribution**

Even within particular equality fields (for example, gender, disability, race), there are ongoing debates as to whether discrimination and inequality occur as a result of economic injustice (Fraser, 2001) or lack of political recognition (Young, 2000). Mainstreaming equality policies may gloss over these very important debates both within and between a range of equality domains. A generic approach to a range of equality issues may reduce the political power of new social movements such as the disability movement, which has developed relatively recently and is still in the process of carving out its political terrain (Riddell and Watson, 2003). People are much less likely to mobilise round generic equalities than a specific aspect of identity such as gender, sexual orientation or disability.

The single equalities body which is the future vehicle for the delivery of the mainstreaming agenda takes no account of social class, which in many fields such as education, health and employment is the social variable most strongly associated with unequal outcomes and life chances (Saunders, 1989; Firebaugh, 2006). There are concerns that the focus may be on ensuring that public bodies comply with statutory requirements, instead of addressing material outcomes.

### **The goals of equality policies: equality of opportunity, process or outcome?**

There continue to be tensions and debates about the ultimate goal of equality policy and practice. Liberal approaches to equal opportunities suggest that barriers inhibiting the social progress of particular groups should be removed, so that everyone begins life on a level playing field. However, social theorists such as Bourdieu and Passeron (1977) have argued that a certain way of reproducing social inequality is to place all individuals in a similar position when, for example, starting school or accessing a health service. Given that some people by accident of birth have access to a wide range of economic, social and cultural capital (Bourdieu, 1997), which others, through no fault of their own, lack, a level playing field will inevitably reinforce existing social inequalities.

A more radical approach to equality policy and practice focuses on achieving equality of outcomes between different groups. Proponents of such an approach maintain that if social inequalities are to be challenged rather than reproduced, some groups and individuals must be positively assisted at key points in their lives. The idea of reasonable adjustments for disabled people, enshrined in GB disability discrimination legislation, goes some way to reflect this principle, although positive action is generally not permitted within GB equality legislation. In the US where forms of positive action for black people were pioneered in certain arenas such as access to higher education, there was some evidence of success in improving access to high status institutions, but also something of a backlash amongst groups and individuals who felt that they had not been similarly supported. Whilst positive action has fallen out of favour particularly in the US, strong arguments are still made by political

philosophers such as Anne Phillips (2004) in favour of equality outcome. She maintains that if particular groups are found to under-achieve in particular social fields such as education, income or life expectancy, then we should make the assumption that they are encountering particular barriers or disadvantages, which should be identified and removed.

There has also been considerable interest in analysing the procedural justice within social welfare systems, identifying the dominant discourses which underpin and legitimise particular practices. Mashaw (1983), for example, analysed the discourses in play within US social security systems, identifying ongoing tensions between systems which upheld the interests of professionals, administrators or individual service users. Riddell (2006) applied these ideas to the field of special educational needs, suggesting that professionals tended to dominate the field and promote discourses based on identifying children's needs which in reality tended to uphold their interests rather than those of disabled children and their parents. As the modernisation of social welfare systems continues, with ongoing emphasis on individualisation, it is inevitable that the focus on equality of process will continue.

The Equalities Review (Cabinet Office, 2007) recognised these different approaches to equality and the possibility of becoming mired in well-entrenched debates between proponents of different positions. Drawing on the work of the economist and philosopher Amartya Sen (see, for example, Sen, 1992), the following definition of an equal society was proposed:

An equal society protects and promotes equal, real freedom and substantive opportunity to live in the ways people value and would choose, so that everyone can flourish.

An equal society recognises people's different needs, situations and goals and removes the barriers that limit what people can do and can be. (Cabinet Office, 2007: 16)

This definition combines aspects of approaches based on equality of opportunity, process and outcome. However, it also emphasises 'different needs, situations and goals', implying that people may choose to prioritise and value different social outcomes. Tensions between universalism and the recognition of difference lie at the heart of different understandings of equality (for a discussion of the principles of universalism see Phillips, 1992). However, as noted by Fraser, 2001, there are inherent dangers in assuming that people have actively chosen unequal social outcomes in order to reinforce a particular aspect of their identity. Another reading of their situation would suggest that they may be victims of social forces and pressures which lie outwith their understanding and control. For example, boys from socially disadvantaged backgrounds in Scotland may actively reject academic achievement because this accords with their performance of masculinity, without recognising that this rejection of schooling may well reinforce their long-term social disadvantage. A criticism of the capabilities approach to equality, which now lies at the heart of GB government equality policy, is that it may over-emphasise individual agency and the desire for cultural identity and difference, and may under-emphasise the immense power of structural forces which reproduce a range of social inequalities.

## **Conclusion**

In summary, there are a number of questions in relation to the equality and human rights agenda which are likely to continue to be debated over coming years. These may be summarised thus:

### *Conceptual issues relating to equality and human rights*

Whilst a new definition of what counts as an equal society has been proposed, discussion and disagreement are likely to be on-going, particularly as the devolved administrations develop their own agendas which may not be entirely consistent with Sen's capabilities approach. At the heart of many conceptual discussions are tensions between the politics of redistribution and the politics of identity, and the inter-connected discussion about difference versus universalism. Furthermore, the integration

of equality and human rights within one commission at GB level will continue to be debated. Whilst the intention behind this is to widen people's understanding of the concept of human rights by linking it to concepts of basic human freedoms, it may not be straightforward in practice to reconcile the equality and human rights agendas.

#### *Deciding which equality strands should be recognised*

At GB level, six equality strands are recognised in line with European policy, legislation and regulation. However, in the devolved administrations a slightly different list of strands is recognised, for example, in Scotland social background is included and in Wales, Welsh language has a particular status. Dealing with varying accountability regimes within different jurisdictions may pose complications in the future. At a more fundamental level, the use of pre-specified categories is dismissed by some who maintain that the emphasis should be on the way in which individuals construct and negotiate identity over the lifecourse. For example, writers like Corker and Shakespeare (2002) have described disability as 'the ultimate post-modern category' because the extent to which an individual perceives themselves as disabled is likely to vary over time and in relation to an individual's social location.

#### *A generic approach to equality*

It is not evident that generic equality legislation and policy will be feasible or effective, as evidenced by the critical response from bodies like the Disability Rights Commission to aspects of the proposal for a single Equality Act in the Discrimination Law Review (Department of Communities and Local Government, 2007). It is evident that the barriers facing different equality groups are fundamentally different, and it will be important to ensure that different approaches to securing equality are maintained, for example, the reasonable adjustment provisions which relate to disabled people and which do not apply to other groups.

#### *Assessing the impact of equality policies*

There are also ongoing debates on how the impact of equalities policies should be assessed. A key process in mainstreaming, social audit<sup>3</sup>, is often criticised as overly managerialist, and there are disagreements about what categories and performance indicators should be used within any audit (Riddell et al, 2007). Equality schemes, currently produced in relation to race, gender and disability, are to date the main accountability technique employed in the field of equality. However debates continue in relation to their utility in relation to the time taken to produce them, and the extent to which single equality schemes, the logical product of mainstreaming equality, would reduce the focus on particular strands such as race and disability and undermine some of the gains which have been made.

The proposed Scottish Centre for Research on Equality and Human Rights would hope to contribute to these discussions in the future so that clear understandings of a distinctively Scottish perspective on these issues can be developed, and can be placed in a wider UK and international context.

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<sup>3</sup>Social auditing is a way of measuring the extent to which organizations are working towards values and objectives it has committed itself to. With regards to mainstreaming this involves the determination of categories for data collection to enable on-going monitoring and evaluation in the pursuit of equalities. It may also include the collection and analysis of qualitative material for the identification and assessment of processes.

## **SECTION 3: POLICY REVIEW**

### **Introduction**

Both through domestic and foreign judiciaries, the UK is bound by a range of international and national human rights instruments. These instruments include various UN Conventions, the EU Charter of Fundamental Rights, as well as the European Convention on Human Rights which was given further force in the UK context by the UK Human Rights Act 1998. In addition, a series of domestic laws have been passed and amended since the 1970s to ensure equality and protection from discrimination in relation to specific sections of society. This review examines the origins, underlying principles and implications of the most significant of these instruments.

### **The Council of Europe**

The Council of Europe was the body responsible for developing the European Convention on Human Rights and the European Court of Human Rights (ECHR), which have exercised an important influence on the legislature of member countries. Indeed, before the UK passed its own Human Rights Act in 1998, all UK human rights cases were examined at this European level.

The Convention was the basis of two important directives issued by the European Union in 2000: the Racial Equality Directive and the Employment Equality Directive. The directives were also made possible by Article 13 of the Treaty of Amsterdam, which gave the EU powers to insist that member states produce anti-discrimination legislation. These directives required that the 25 EU member states ensure their equality legislation was updated to incorporate the following specific grounds of discrimination: race and ethnic origin, religion and belief, age, disability and sexual orientation (in addition to this the Equality and Human Rights Act 2006 lists gender).

Europe's oldest political organisation, the Council of Europe was founded in 1949, following the Treaty of London. It comprises 47 member countries, 1 applicant country (Belarus) and five countries with 'observer status': the Holy See, the U.S., Canada, Japan and Mexico. Following the ravages of two world wars, the Council was created as a mechanism for defending human rights, democracy and the rule of law across Europe. Beyond this, it also aims to foster a common European identity as well as democratic stability in Europe by backing political, legislative and constitutional reform. The UK was among the ten original signatories to the Council in 1949, followed by Greece and Turkey later in the same year.

### **The European Convention on Human Rights**

#### *Origins of the Treaty*

To use its full title, the 'Convention for the Protection of Human Rights and Fundamental Freedoms' is the treaty by which the member states of the Council of Europe undertake to respect fundamental freedoms and rights. It was strongly influenced by the aspirational principles underlying the Universal Declaration of Human Rights, published by the General Assembly of the United Nations in December 1948.

The Convention was signed by the 12 Council members in 1950, and came into force in 1953. The UK was among the first signatories to the Convention, which had been drafted substantially by Sir David Maxwell-Fyfe. It was the first international legal instrument that sought to safeguard the rights and freedoms of its people, and has in turn influenced other nations' approaches to human rights, notably the U.S.

Two independent bodies were commissioned to oversee the enforcement of the Convention: the European Commission of Human Rights (1954) and the European Court of Human Rights (1959).



This two-tier system was replaced in 1998 by the new European Court of Human Rights, as agreed at the Vienna Summit of 1993.

In 1999, the first Commissioner for Human Rights was appointed, charged with responsibility for promoting awareness of the Convention and its key messages.

### *Composition of the Treaty*

The Treaty is divided into three main sections, each comprising a number of Articles. Section 1 'Rights and Freedoms' contains 17 Articles, each one pertaining to a distinct civil or political right. It is this section that specifies the core human rights that are commonly referred to as 'the Convention'. Section 2 contains a further 33 Articles pertaining to the creation of a European Court of Human Rights, while Section 3 contains 8 Articles listing 'Miscellaneous Provisions'.

A number of additions have been made since the drafting of the original Convention in 1950. These take the form of a series of Protocols, containing further Articles specifying additional rights and how they should be protected.

The whole Treaty is prefaced by Article 1 that frames the Convention by charging High Contracting Parties (i.e. signatory countries) with the 'Obligation to Respect Human Rights' for all those within their jurisdiction.

### *The rights guaranteed – absolute, limited and qualified rights*

Not all the Convention rights are formulated in the same way. They can be divided into three main types: *absolute*, *limited* and *qualified*. As the name suggests, the first type are inalienable and unbreachable. They include the right to life (Article 2), to protection from torture or inhuman and degrading treatment (Article 3), and from slavery (Article 4), as well as protection against retrospective criminal penalties (Article 7). *Limited* rights like the right to liberty (Article 5) are subject to explicit and finite limitations based on exceptional circumstances. The exceptions are set out in the ECHR. Finally, among the *qualified* rights are the right to respect for: private and family life (Article 8), religion and belief (Article 9), freedom of expression (Article 10), and assembly and association (Article 11). Interference with such rights is only permissible if it is: a) based in law, b) done to secure a permissible aim as specified in the Convention (for example protecting the public order), or c) a proportionate and democratic action which is necessary to fulfil a social need or pursue a legitimate aim.

The 'Rights and Freedoms' set out in the Convention comprise a set of prohibitions and permissions in a range of areas. These are:

- Article 2 – Right to life
- Article 3 – Prohibition of torture
- Article 4 – Prohibition of slavery and forced labour
- Article 5 – Right to liberty and security
- Article 6 – Right to a fair trial
- Article 7 – No punishment without law
- Article 8 – Right to respect for private and family life
- Article 9 – Freedom of thought, conscience and religion
- Article 10 – Freedom of expression
- Article 11 – Freedom of assembly
- Article 12 – Right to marry
- Article 13 – Right to an effective remedy\*
- Article 14 – Prohibition of discrimination
- Article 15 – Derogation in time of emergency\*
- Article 16 – Restrictions on political activity of aliens\*

Article 17 – Prohibition of abuse of rights

Article 18 – Limitation on use of restrictions on rights\*

\*Explanatory notes:

Article 13: states that anyone whose Convention rights are violated shall have the right to an effective remedy before a national authority, even when the violation was committed by a person acting in an official capacity.

Article 15: makes it possible for a signatory country to suspend its obligations under the Convention during a time of war or other public (and life-threatening) emergency. Such suspension will be strictly limited to the exigencies of the situation and provided that it does not contravene other obligations under international law. Moreover, the suspension does not apply to Articles 2, 3, 4, and 7. The Council of Europe must be consulted fully where a state chooses to make use of this right of derogation.

Article 16: states that articles 10, 11 and 14 should not prevent signatory states from imposing restrictions on the political activity of aliens.

Article 18: limits the restrictions it is possible to place on rights and freedoms to those circumstances stipulated in the Convention.

#### *The Protocols*

There are six Protocols (numbered 1, 4, 6, 7, 12, and 13), which have been added to the Convention at different times since its inception in 1950. The first Protocol, issued in Paris in 1952, stipulates further rights to own private property, receive education, and participate in free elections. The remaining Protocols outline prohibitions and protections in relation to freedom of movement, discrimination, the expulsion of nationals and of aliens, and rights relating to criminal procedures (including the right to appeal, compensation for wrongful conviction, and ‘double jeopardy’). The most recent Protocol, signed in Vilnius in 2002 extends the Convention’s abolition of the death penalty to apply in all circumstances, including wartime.

#### *Application in UK law*

Although the UK was one of the first signatories to the Convention, it has not signed up to all parts of the treaty. All but two of the Articles listed in Section 1 of the Convention are included in the UK Human Rights Act (and are thus enforceable by the national judiciary). The exceptions are Articles 13 and 15, covering violations of rights by persons acting in an official capacity, and the derogation of states’ obligations under the Convention during a time of emergency. The UK has also signed up to the First Protocol covering private property, education and free elections, and the Thirteenth Protocol (superseding the sixth Protocol) abolishing the death penalty.

### **The European Court of Human Rights (ECHR)**

Based in Strasbourg, this is the only truly judicial organ established by the European Convention on Human Rights. The court is designed to ensure that contracting states observe their obligations under the Convention and is comprised of one judge for each member state.

From 1965 individual British citizens were granted rights of access to the ECHR where they felt their Convention rights had been breached. However, both the time and expense involved in this process meant that only the most serious cases could be heard in Strasbourg. Upon election in 1997, the British government therefore published the White Paper *Bringing Rights Home*, leading to the 1998 Human Rights Act. This Act places the European Convention of Human Rights in the context of a homeland judiciary, effectively making the Convention enforceable in British courts. The Human

Rights Act came into force in the UK in 2000. Details of the Act, its relationship with the European Convention on Human Rights, and some of its implications for a now devolved British legislature are examined in the next section.

## **The Human Rights Act 1998**

Introduced in 1998, the UK Human Rights Act (HRA) developed out of the European Convention on Human Rights. Although a piece of UK legislation, its purpose is essentially to protect and strengthen equality instruments developed in Europe. In its own terms, it is:

‘An Act to give further effect to rights and freedoms guaranteed under the European Convention on Human Rights; to make provision with respect to holders of certain judicial offices who become judges of the European Court of Human Rights; and for connected purposes.’ (Human Rights Act, 1998, Chp 42)

There are two main ways in which the HRA achieves its stated goals:

- It places a requirement on UK courts that as far as possible they should interpret the law in a way that is compatible with Convention rights.
- It places an obligation on public authorities to act compatibly with Convention rights.

This latter principle applies also to other organisations in circumstances where they are acting for or on behalf of public authorities. For example, where a private security firm is contracted by the Prison Service it effectively becomes a public authority while carrying out the contracted services.

The HRA also gives people the right to take court proceedings if they think that their Convention rights have been breached or are going to be. The HRA will exert an important influence on the operations of the UK legislature, and is likely to shape the development of future laws in certain areas. For example, Article 14 is particularly pertinent to the 2006 Equality Act. This article prohibits discrimination on ‘any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status’.

## **The Rights it Guarantees**

The HRA incorporates the rights in Articles 2 to 12 and in Article 14 of the Convention, plus those in the First and Sixth Protocols (detailed above). The incorporated rights are set out in the First Schedule to the HRA and are referred to as ‘Convention Rights’. The Sixth Protocol abolishes the death penalty in the UK, which still existed for some extreme cases of treason. However it is written into the HRA that exceptions, for example during wartime, do exist. While the purpose of the Human Rights Act is to give the Convention rights greater force in a national context, not all the rights are incorporated into British law with the Act.

## **Impact of the Human Rights Act**

The DCA Review of the HRA (DCA, 2006) concludes that it has had a significant and largely positive impact on UK policy-making processes. There are three main ways in which this impact has been felt:

- by introducing a formal process of ‘**human rights proofing**’ for all Bills, ensuring their compatibility with Convention rights
- through **litigation** which may force a change of policy or of policy delivery
- through a change of **behaviour** in public authorities now required to act in ways compatible with the Convention rights

In general terms, the Review thus considers that the HRA has in fact strengthened the relationship between the citizen and state by imposing a human rights framework on policy-making, thereby ensuring a means of protecting the needs of an increasingly diverse population.

The Act has changed how policy and other decision makers view the Convention rights, because they are now enforceable in UK law. As a consequence, they are explicitly recognised as part of the decision-making process. One result is that this has led to a shift in emphasis in policy away from an inflexible ‘one size fits all’ model, in favour of one that takes into account individual needs and circumstances. On the other hand, the review cites a number of cases that illustrate the potential increase in inefficiency, controversy or misunderstandings in the system that can arise from the shift towards a culture of entitlements that the HRA signals.

### **Constitutional Implications**

While it brings human rights into a closer relationship with the British legal system, the Human Rights Act has little impact on the constitutional balance between the Judiciary, the Executive and the Parliament. Unlike a separate British ‘Bill of Rights’ (a proposed alternative to the HRA), the HRA protects the sovereignty of the UK Parliament. This means that the elected House of Commons, rather than the judiciary, remains the final arbiter on questions of rights and morality – even where its decisions (Acts of Parliament) are incompatible with the European Convention. Moreover, the DCA Review concludes that the Human Rights Act has had the positive effect of establishing a closer dialogue between ECHR judges and the British judiciary.

### **Implications of Devolution**

The devolved governance structure in the UK, combined with a distinctive judicial system in Scotland, means that the impact of the HRA will vary to some degree in each of the countries. This differential impact should be particularly noticeable given that the HRA did not come into force until two years after the devolved legislature was established with the Scotland Act (1998). Nevertheless the HRA provides the constitutional framework within which devolution was effected and sets out the Convention rights that are embedded in the Scotland Act, the Government of Wales Act, and the Belfast Agreement and Northern Ireland Act.

Under the initial devolution arrangements the National Assembly of Wales did not have primary legislative powers, although human rights were written into the Government of Wales Act 1998. The Assembly was thus required to Act in ways that are compatible with the European Convention on Human Rights. The Government of Wales Act 2006, which reiterated existing commitments on Human Rights, introduced fundamental reforms to the Welsh Assembly. With effect from May 2007 the Act introduced a separate executive body with legal separation from and accountability to the legislature. Thus a new governance structure for Wales was introduced, comprising the Welsh Assembly Government (the legislature) and the National Assembly for Wales (the executive). The relationship between them mirrors that of the UK government and Parliament respectively. Following these changes the Welsh Assembly Government is awarded new powers to legislate on devolved matters such as education, health, and public services. These powers are, however, subject to the Assembly being granted legislative competence on a particular devolved issue. This is granted on a case-by-case basis by the UK Parliament. In exercising this legislative competence on any issue the Assembly is required to act compatibly with the Convention Rights. Given these new legislative powers over devolved issues, the Assembly must inevitably give fuller consideration than hitherto to the place of human rights in Welsh public and political life.

The Northern Ireland Act 1998 contained a commitment to safeguarding human rights and equality of opportunity. Specifically, a devolved administration is prohibited from acting in a way that

contravenes the Convention rights. In addition, in compliance with a commitment made by the UK government at the Belfast (Good Friday) Agreement in 1998, Section 68 of the Act made provision for a Northern Ireland Human Rights Commission. This is an independent public agency – neither an NGO nor a governmental body – and is recognised by the UN as a member of the worldwide network of National Human Rights Institutions. Its role is to promote awareness of the importance of human rights and to advise both the UK Secretary of State and the Executive of the Northern Ireland Assembly. The Commission has the power to conduct investigations, to assist individuals wishing to take cases to court, and to bring court proceedings itself. In addition to its educational and advisory roles, the Commission is specifically charged with compiling a Bill of Rights for Northern Ireland to supplement the European Convention on Human Rights. Through its Bill of Rights Forum (established in December 2006) it is currently engaged in public consultation on this issue.

According to the provisions of the Scotland Act 1998 the Scottish Parliament must legislate in ways that are compatible with the Convention rights. Importantly, this means that the courts can invalidate Acts of Scottish Parliament where they are incompatible with the Convention rights. By contrast, courts can only make Declarations of Incompatibility in relation to Acts of UK Parliament. The Scotland Act prohibits all members of the Scottish Executive from making subordinate legislation or from committing any other act that is incompatible with the Convention rights. For example, any proposed actions that are incompatible with the UK's international obligations can be prevented by the Secretary of State. In short, while human rights are a reserved matter the activities of the Executive in devolved matters must also be governed by human rights considerations. Since the Scotland Act took effect in May 1999 the Scottish courts have thus examined human rights cases taken against the Executive. Following the UK Human Rights Act, which came into effect in 2000, the most important change for the Scottish judiciary will be the range of individuals and bodies required to abide by and implement human rights. In effect, the Scottish Government and the Scottish Parliament are no longer the only public authorities bound by the Convention rights.

The idea of a 'public authority' is central to the Human Rights Act, and the legally enforceable protections it brings to UK citizens. It will also be a key issue in implementing and enforcing human rights in the context of the UK's devolved governance structure. One of the most pressing concerns for policy-makers is how this term is defined. In the Human Rights Act the term is in fact only partially defined as including (but not limited to) a court or tribunal and "any person certain of whose functions are of a public nature". The Act is deliberately open-ended in this respect, and it will be left to the courts to determine who or what is a "public authority" and therefore has obligations in relation to human rights. An example that attracted a considerable amount of debate in this regard was the Church of Scotland (and other churches). In so far as it provides formal (primary or secondary) education and performs other public functions it must be regarded for the purposes of the HRA as a 'public authority'.

It is possible to distinguish two broad categories of 'public authority'. Included among the 'pure' public authorities would be all branches of central and local government, the military, customs and police, and the public prosecution service. On the other hand there are 'hybrid' public authorities which perform some public function(s) but may be in no sense agencies of government at any level. There is an important difference between these two types of public authority when it comes to the Human Rights Act. All the activities of a 'pure' public authority (for example the Scottish Executive) must be compatible with the Convention rights. However, 'hybrid' public authorities need only observe the Convention rights when carrying out their public functions. Importantly, this latter type of authority is thus not bound by the Convention rights in regard to its internal organisation. Where private organisations are contracted to carry out public functions they will have to demonstrate their awareness of public authority obligations in respect of human rights.

A further important implication arising from how 'public authority' is defined in the HRA relates to the law courts. As public authorities the courts will inevitably be constrained by their own Convention

obligations when considering private law disputes. For example granting an interdiction to exclude someone from a shared home in cases of domestic dispute may be deemed a breach of that party's Convention rights (Gane, 2000).

## **Equality Strands in GB Legislation**

GB has a number of pieces of legislation designed to promote equality and combat specific forms of discrimination. Most notably these instruments address (in)equality issues in relation to gender, race and disability. Much of the legislation offers protections against discrimination in the workplace and other areas of public life. Since the 1970s the most significant pieces of anti-discrimination legislation have been the Equal Pay Act (1970), the Sex Discrimination Act (1975), the Race Relations Act (1976) and the Disability Discrimination Act (1995). The following sections discuss some of the key protections they offer, and the Commissions created to support and promote them. The discussion includes additional protections secured through Amendments or subsequent legislation in other areas (for example laws relating to issues like sexual orientation or religion and belief).

### **The Equal Pay Act 1970, the Sex Discrimination Act 1975 and the Equal Opportunities Commission**

The Equal Pay Act 1970 (EPA) and the Sex Discrimination Act 1975 (SDA) both protect the right to equality on grounds of sex. Each has been amended a number of times since they both came into force in 1975. A separate Sex Discrimination (Northern Ireland) Order was passed in 1976. The EPA guarantees adult men and women equal rights in pay and benefits where they are doing work that is demonstrably the same or equivalent in either content or value. The SDA prohibits discrimination in employment, education, advertising, housing or the provision of goods, services or facilities. It applies to men and women of any age, including children. The SDA applies to England, Wales and Scotland, with dedicated branches of the Equal Opportunities Commission operating in each country.

The purpose of the SDA is to make unlawful sex-based discrimination in specific areas of public life. Victims of such discrimination may take legal action against the perpetrator. The Act also prohibits victimisation of those who try to exercise their rights under the SDA or Equal Pay Act. In addition to protecting individuals from discrimination on grounds of sex, the SDA also prohibits discrimination against married people and, following the Civil Partnership Act 2004 (effective from December 2005), those in a civil partnership. It does not, however, make it unlawful to discriminate against someone because they are single. While discriminatory advertisements are unlawful, only the Equal Opportunities Commission has the power to take legal action against advertisers.

#### *Forms of Sex Discrimination*

The SDA prohibits both direct and indirect sex discrimination. Part 1 of the SDA outlines the various forms of discrimination to which it applies. It includes specific provisions for discrimination on grounds of gender reassignment, pregnancy and maternity and harassment in employment. Direct sex discrimination involves treating a man or woman less favourably because of their sex than a person of the opposite sex would have been in comparable circumstances. The Act also deals with the more complex question of indirect discrimination. This involves the application to both sexes of some requirement, condition or procedure that particularly disadvantages one sex and is not justifiable on objective grounds unrelated to sex. This provision applies in all the fields covered by the SDA. The Sex Discrimination (Gender Reassignment) Regulations 1999 amended the SDA to extend its protections in employment (pay and conditions) and vocational training to include discrimination on grounds of gender reassignment. Harassment on these grounds is also expressly prohibited by the SDA. Disadvantageous treatment of an employee arising from of her pregnancy and/or maternity leave is prohibited by the SDA. In such cases the woman need only prove that she is treated less favourably than other women who are not pregnant or who do not have children, rather than via comparison with male employees. The courts have found that the SDA does not cover discrimination

on grounds of sexual orientation, although this is made unlawful in the field of employment under the Employment Equality (Sexual Orientation) Regulations 2003.

The SDA makes specific legal provisions prohibiting harassment in employment, vocational training and further education. It is defined as either:

- unwanted conduct on grounds of the recipient's sex or
- unwanted verbal, non-verbal or physical conduct of a sexual nature

Harassment must either have the purpose or the effect of violating the recipient's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. There is no indication that the perpetrator needs to be in a position of power in relation to the recipient.

#### *Fields Covered by the SDA*

Part 2 of the SDA deals with discrimination in the employment field, including recruitment (except in specified cases where being a particular gender is a necessary and legitimate requirement for the advertised post), treatment at work, and dismissal. The SDA definition of 'employee' is wider than in other areas of the law, extending to those employed on a personal or sub-contracted basis. It also prevents discrimination by: firms against partners, trade unions against members, employment agencies, bodies conferring professional qualifications, vocational training providers, and barristers or advocates.

Part 3 of the SDA also prohibits discrimination in education. Co-educational schools, colleges and universities must not discriminate on grounds of sex in the way they treat or admit students. Harassment in further education establishments is also unlawful. This same section of the SDA outlaws discrimination in the provision of goods, facilities or services to the public, or a section of the public, or in the disposal or management of premises. Non-profit making voluntary bodies are exempt where the restriction of services or membership to one sex accords with the purpose of the organisation. Similar restrictions in the provision of services are permitted where they are intended to avoid serious embarrassment.

#### *Positive Discrimination*

Part 5 deals with the issue of positive discrimination in favour of one sex. In general, this practice is not lawful, although there are limited exceptions in the provision of training or encouragement to apply for particular work where members of the relevant sex are under-represented. Such lawful exceptions are termed 'positive action'.

More recently the Sex Discrimination (Election Candidates) Act 2002 was passed, enabling political parties to adopt positive action measures to redress the gender imbalance in electoral politics. This amends the SDA and its Northern Ireland counterpart.

With these stated exceptions, the main role of the SDA is a reactive one: to prohibit specific forms of discrimination in a range of fields. As will be discussed below, with the advent of mainstreaming and 'equality duties', recent legislation has adopted a more proactive stance towards equality, stipulating a range of measures public bodies must adopt in order to promote greater equality of opportunity for all their employees and clients.

#### *The Equal Opportunities Commission*

The Equal Opportunities Commission (EOC) was created by Parliament in 1976 in order to promote equal opportunities between men and women and to work towards ending sex discrimination in all areas of public life. It has given advice on reviewing legislation in this area, and offers support to victims of discrimination.

#### *The Gender Equality Duty*

Under the terms of the Equality Act 2006 (see below for further discussion), the Gender Equality Duty became the third equality duty applied to UK public authorities since 2000, allowing for positive action to promote gender equality. It came into force on 6<sup>th</sup> April 2007. The Sex Discrimination (Public Authorities) (Statutory Duties) (Scotland) Order 2007 also outlines a set of 'specific duties' to be met by the listed public authorities. The aim of these specific duties is to map out the necessary steps towards delivering the general duty.

### **Race Relations Act 1976 and the Commission for Racial Equality**

The Race Relations Act of 1976, as amended in 2000 and 2003, makes it unlawful to discriminate against anyone on grounds of race, colour, nationality (including citizenship), or ethnic or national origin. In cases where forms of discrimination apply to cultural and religious practices, these are also included. For example, Jews and Sikhs are protected under this legislation. The RRA 1976 contained powers to create a statutory Commission for Racial Equality to advise, advocate and monitor developments in this area. As with the EOC, it has a separate office in Scotland, dedicated to overseeing the Scottish racial equality agenda.

The RRA applies to employment, training, housing, education, public appointments and the provision of goods, facilities and services. The RRA identifies three main types of racial discrimination: direct discrimination, indirect discrimination and victimisation. The definition of these three forms of discrimination is similar to that used in the SDA. Direct discrimination is treating one person less favourably than another. Racist abuse and harassment are forms of direct discrimination. Indirect discrimination applies to situations where members of a particular racial group are far less likely to be able comply with a requirement or condition that is imposed on everyone, and which cannot be justified on non-racial grounds. An example of where the RRA would apply in this respect would be in allowing Sikhs to be exempt from a rule prohibiting employees or school pupils to wear headgear. The RRA also prohibits victimisation of anyone who exercises their rights under the RRA or supports anyone else in doing so.

#### *The Race Equality Duty*

The RRA was amended in 2000, placing a general statutory duty on over 300 public authorities to: eliminate unlawful racial discrimination; promote equality of opportunity; and promote good relations between people of different racial groups. The listed authorities include the Scottish Administration, the National Assembly of Wales, the Armed Forces, the NHS, Local Authorities, Governing Bodies of publicly funded schools and colleges, the Housing Corporation, Communities Scotland and the Police.

The main aim of any 'equality duty' is to place more responsibility on services providers and employers to think strategically about equal opportunities, rather than leaving it to individuals to challenge poor practice. By imposing the duty on public bodies, it was hoped that the shift towards equality in their policies and service provision, would influence British society and culture as the non-discrimination message filtered through core services. In addition, the RRA placed a duty on public bodies to offer equality in employment in order to promote the appointment of staff that represented the ethnic diversity of the communities they served. The specific duties imposed by order of Scottish ministers are outlined in the Race Relations Act (Statutory Duties) (Scotland) Order 2002 and came into effect in March of that year. From that time named public bodies were required to produce clear, timetabled plans for meeting these duties. This is referred to as a Race Equality Scheme. To assist them in this, the Scottish office of the Commission for Racial Equality has issued a statutory code of practice (Scotland) for public authorities, as well as a non-statutory guide to good practice. Similar codes were produced for England and Wales. Race Equality Schemes must be reviewed every three years. In producing their Equality Schemes authorities are required to go beyond a mere audit of their policies and practices, by clearly showing how they have explored their underpinning values, principles and standards. Such Schemes should make provision for substantial consultation with a



range of ethnic groups, as well as contain plans for policy review and dissemination, public access to information and services, and staff training.

Like its counterpart EOC, the CRE has not only an advisory role but also certain enforcement powers through which it can apply for a court order against any body that it believes to be failing to meet its duties under this legislation. Similarly, Scottish Ministers have the power to make orders regarding specific duties on Scottish public authorities, reflecting the powers of the Home Secretary in England and Wales.

Perhaps in anticipation of a future policy trend towards a single equality duty, the Code of Practice issued in 2002 in fact invited public authorities to consider developing a racial equality scheme as part of a larger equality-mainstreaming strategy, provided that race remained a distinct and easily identifiable strand. This move would accord with earlier EU directives advocating a more coordinated approach to anti-discrimination policy.

### **Disability Discrimination Act 1995 and the Disability Rights Commission**

The Disability Discrimination Act 1995 (DDA) was passed in 1995 to address the discrimination that many disabled people face. At the same time it set out provisions for the creation of a statutory commission to oversee this area of equality: the Disability Rights Commission (DRC). Established in 1999 the DRC has both enforcement and promotional powers, and both apply to its most recent work on the duty to promote disability equality. Unlike the SDA, EPA or RRA, in order to be protected under the DDA an individual must first demonstrate that they qualify by proving that they have a disability. This is defined as ‘a physical or mental impairment, which has an adverse and long-term effect on his or her ability to carry out normal day-to-day activities.’ (DDA, Schedule 1). ‘Long-term’ is described as lasting for at least 12 months. Physical and mental impairments include sensory and hidden impairments (for example mental health problems, learning difficulties, dyslexia and conditions like epilepsy or diabetes).

According to Schedule 4 of the DDA, discrimination takes two forms: a person may be treated less favourably because of their disability and for reasons that cannot be justified, or there may be failure to make reasonable adjustments in situations where a person’s disability would place them at a substantial disadvantage. This definition of discrimination marks a departure from the idea of direct and indirect discrimination used in preceding equality legislation. Clearly these requirements still leave room for a degree of discretionary practice on the part of institutions. For example, reasonableness is not defined in the legislation, but the DRC states<sup>4</sup> that a range of relevant factors may be taken into account in determining what is reasonable in individual cases. Importantly, the idea of making reasonable adjustments represents a move towards an anticipatory duty, in which positive interventions are made to overcome barriers for all individuals with a disability, rather than responding to need on a case-by-case basis. Effectively, this laid the groundwork for the subsequent development of a positive equality duty, where the emphasis is on anticipating the needs of those individuals it seeks to protect. As with the SDA and RRA, the DDA also protects against harassment in the employment field. Here harassment is defined as unwanted conduct relating to the disabled person’s disability with the purpose or effect of violating the person’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

The DDA offers protection against discrimination in the fields of employment (Part 2), goods and services (Part 3), education (Part 4), and transport (Part 5). In relation to employment, discrimination on grounds of disability is prohibited in recruitment, training, promotion, benefits, redundancy and dismissal. In addition to employers, trade organisations and qualifications bodies have a duty to

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<sup>4</sup> This is set out in the Disability Rights Commission’s Examinations and Assessment Good Practice Guide, p3.

comply with the DDA. Following these legal requirements, a Code of Practice on Employment and Occupation was developed offering practical guidance on how to prevent discrimination against disabled people in employment or when seeking employment. The Code applies to England, Wales and Scotland, and describes the duties of employers and others in this regard. This includes general advice on the nature and definition of disabilities, the legal rights of disabled people, best practice guidance on how to avoid discrimination in a range of situations, and details of the duties regarding reasonable adjustments. In all cases the duty applies to both in-work and pre-employment practices.

Part 3 refers to the provision of goods, facilities and services and includes the disposal or management of premises or land and private clubs. It requires service providers to make reasonable adjustments for disabled people, for example to change practices or policies which currently make it impossible or unreasonably difficult to access a service, or to provide auxiliary aids to make access easier. This part of the DDA also stipulates the requirements placed on transport stations and booking facilities to eliminate discrimination against disabled people. The question of transport more generally is addressed separately in Part 5 of the DDA. In particular, this requires transport providers to phase in measures to guarantee the minimum levels of accessibility stipulated in the legislation.

Part 4 of the Disability Discrimination Act 1995 deals specifically with the protection of all disabled people in education. While this applies to staff as well as students, Part 4 of the DDA does not apply to services and facilities provided wholly or primarily for staff (these would be covered by Part 2 of the Act). Part 4 of the Act did not originally include any duties on institutions not to discriminate against disabled people or students. Different parts of the legislation took effect at different times, and the original Act has been subject to a number of amendments that extend its scope. Specifically, the Special Educational Needs and Disability Act 2001 (SENDA) amends the 1995 DDA to include specific legislation for post-16 education. Following these amendments post-16 education providers are now required to develop a new direct discrimination duty. Specific duties are outlined in a Code of Practice (COPP16) developed by the Disability Rights Commission (DRC) for providers of post-16 education and training and related services. The Code has been developed under the new legislation and offers practical guidance for institutions on how to avoid discrimination, as well as helping disabled people to understand their rights under the law. It applies to England, Wales and Scotland. A separate Code of Practice exists for schools.

Responsible bodies in further and higher education have a duty to make reasonable adjustments, including the provision of auxiliary aids or services, and making adjustments to physical features. Schools do not have to adjust physical features under the DDA, where they have made proper inquiries into the matter and found that the cost is prohibitive. They do, however, have a duty under other legislation to review the physical access arrangements of their premises (see the Education (Disabled Strategies and Pupils Educational Records) (Scotland) Act (2002).

### *The Disability Equality Duty*

The most recent legislative developments under the DDA 1995 (Amendment) (Further and Higher Education) Regulations 2006 go further in actively promoting disability equality in key areas. For example they remove the justification defence for a failure to make reasonable adjustments, reverse the burden of proof, prohibit discriminatory advertisements and instructions to discriminate, and introduce specific provisions in relation to qualifications.

The Disability Equality Duty came into force in December 2006 and requires public authorities to take positive steps to promote disability equality, over and above the mere avoidance of discriminatory practice. Guidelines relating specifically to Scotland were published by the Disability Rights Commission in 2006, listing the public authorities and bodies to which the DED applies.

### **The Equality Act 2006**

The Equality Act is:

‘An Act to make provision for the establishment of the Commission for Equality and Human Rights; to dissolve the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission; to make provision about discrimination on grounds of religion or belief; to enable provision to be made about discrimination on grounds of sexual orientation; to impose duties relating to sex discrimination on persons performing public functions; to amend the Disability Discrimination Act 1995; and for connected purposes. 16<sup>th</sup> February, 2006’ (Equality Act, 2006, Chapter 3).

Although the EA included age and race into the equality strands at a later stage of the document, this initial message did not mention these areas specifically. The equality strands subsequently identified in the EA are: age; disability; gender; proposed, commenced or completed reassignment of gender; race; religion or belief; and sexual orientation (Part 1, 10:2, a-g).

Part 1 (Chapter 3) outlines the organisation of the EHRC, its general duties, powers (including in relation to the Scottish Parliament) and responsibilities. The stated general duty of the EHRC is to encourage and support the development of a society in which people are able to achieve their potential without prejudice or discrimination, and in which the rights, worth and dignity of individuals and groups are equally respected. The EA requires the Commission to devise and publish a strategic plan, informed by wide-ranging evidence and consultation, and to be revised every three years. In relation to Scotland, the Commission is expected to defer its powers in relation to human rights actions in matters where the Scottish Parliament has legislative competence. This section lists the duties of the EHRC in relation to equality and diversity. They include educational roles like promoting understanding of the importance of equality and raising awareness of the rights guaranteed in the legislation; leadership roles like promoting good practice; and enforcement powers to ensure compliance with the law and to eliminate unlawful discrimination and harassment. This section concludes with plans for the dissolution of the three existing equality commissions.

Subsequent sections of the EA are devoted to discrimination on grounds of religion or belief and sexual orientation. Further amendments are also made to the provisions of the (amended) SDA and DDA. Part 2 thus prohibits discrimination that treats a person less favourably because of their allegiance or non-allegiance to any religion, or any philosophical or religious belief. This prohibition applies to the provision of goods, services and facilities, housing, education, discriminatory advertisements, and the activities of public authorities. A notable omission is the employment field. A number of exceptions and exemptions are also listed, for example allowing faith schools to continue selecting students on religious grounds. Protections already secured under the Race Relations Act for certain groups like Jews and Sikhs will continue under the religion and belief strand of the EA. A number of exemptions, additional provisions and vetoes are also given in Part 2, in relation to immigration and national security.

Part 3 addresses the question of discrimination on grounds of sexual orientation. Rather than making it unlawful, powers are given to the Secretary of State to enable him or her to make anti-discrimination provision ‘of a kind similar to Part 2 of this Act’; to define discrimination and harassment; and to make various other provisions equivalent to existing equality enactments. In effect, the Equality Act thus introduces new strands to the equality agenda, although it does not assign them all equal legal protections.

Finally, Part 4 amends the Sex Discrimination Act 1975 by creating a statutory duty on all public authorities to prevent sex discrimination and to promote equality of opportunity in the pursuit of all their activities. Specifically, the Act (c. 3: 85) requires *public authorities*, when carrying out their activities, to have due regard to the need:

- to eliminate unlawful discrimination and harassment, and
- to promote equality of opportunity between men and women.

Among the bodies exempt from this duty are: the House of Commons, the House of Lords, the Scottish Parliament, the General Synod of the Church of England, the Security Service, the Secret Intelligence Service, and the GCHQ.

## **Equality and Scotland**

As discussed above, 1998 saw the introduction of a devolved governance structure in the UK. In Scotland this led to the creation of a Scottish Parliament and the Scottish Executive, instituted under the provisions of the Scotland Act 1998. While human rights is a reserved matter, the Scotland Act requires that the actions of the Executive in devolved matters are compatible with Convention rights. In relation to human rights, Scotland is thus governed by Westminster on the one hand, and the provisions of the Scotland Act on the other.

Similarly, Scotland is also governed by GB-wide equal opportunities legislation (the Sex Discrimination Act 1975, the Race Relations Act, 1976 and the Disability Discrimination Act, 1995), while the stipulations of the Scotland Act impose a devolved duty to encourage equal opportunities.

The Scotland Act defines Equal Opportunity thus:

“...the prevention, elimination or regulation of discrimination between persons on ground of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes including beliefs or opinions such as religious beliefs or political opinions.” (Scotland Act, 1998: Schedule 5, Reserved Matters, Part II)

It is interesting to note that this definition goes beyond some other anti-discrimination legislation by including social origin, thus highlighting the role of social class or socio-economic background/circumstances as a potential source of discrimination in Scotland.

## **A GB Single Equality Bill**

In the next phase of its work on discrimination law, the UK Government is currently holding consultations on the introduction of a Single Equality Bill. The Discrimination Law Review was launched in February 2005 to consider how to improve the current discrimination law framework. On 12<sup>th</sup> June 2007 it published a consultation document outlining proposals for a Single Equality Bill. The introductory preface sets out the rationale for the proposals it contains, by stating both the moral and economic case for a more equal society. The proposals are set out in three main parts.

The first section calls for measures to simplify and harmonise existing legislation in order to ensure consistency, standardisation and to update Equal Pay law in line with case law, as well as proposals to create a ‘culture of compliance’ with the law. Part 2 contains proposals to make the law more effective by widening the range of anti-discrimination measures it encompasses, extending the coverage of public sector equality duties, and improve practice in the private sector (by developing a ‘light touch “equality check tool” for employers and introducing a voluntary equality standard accreditation scheme). Among the strategies recommended for effective dispute resolution, is the proposal that Additional Support Needs Tribunals in Scotland should have the power to hear disability discrimination school education cases, mirroring the situation in England and Wales. Part 2 also includes proposals to replace the separate public sector equality duties (race, gender, disability) with a single equality duty. The proposals also seek views on whether such a single duty should include age, sexual orientation, and/or religion and belief. Unlike the proposal to create the single equality duty,

the question of whether to include these equality strands is represented not as a recommendation but a speculative inquiry.

Part 3 contains proposals for modernising the law. This addresses questions including the adequacy of existing legislation in relation to grounds of discrimination (for example how they are defined). Also examined in the issue of age discrimination beyond the workplace. Specifically, the proposals consider the possibility of legislative measures like positive action provisions to address the needs of older people and prevent age discrimination outside the workplace. If enacted, these proposals could have a potentially significant impact on issues like residential care for the elderly. Part 3 also examines the question of whether organised religion should be allowed to treat people differently on the grounds of gender reassignment. Finally, this section seeks views on whether there are any other groups who are vulnerable to harassment outside the workplace, and if granting legislative protection would be a proportionate response to the problem.

Additionally, the document contains the Government's proposals for implementing the EU Gender Directive through the Sex Discrimination Act 1975 (Amendment) Regulations 2007, relating to access and supply in the delivery of goods and services. The proposed strategy will involve extending to the provision of goods, facilities or services and premises, some of the key protections that currently exist in the field of employment and vocational training. These include protection from indirect discrimination, harassment, discrimination on grounds of maternity and direct discrimination on grounds of gender reassignment.

### **The Situation Across Europe**

Having begun this overview of discrimination law in the European context, this section now returns to the European context by comparing the different member states in their approach to race and employment legislation. In a review of the then 25 member states, Cormack and Bell (2005) examine how each country has interpreted the Racial and Employment Equality Directives.

The Racial Equality Directive 2000 and the Employment Equality Directive 2000 indicate four types of discrimination: direct, indirect, harassment and instruction to discriminate. All 25 EU member states incorporated this definition of discrimination into their national legislation. However, some nations have made additional measures, like the duty to make reasonable adjustments contained in the UK's Disability Discrimination Act.

Not all EU member states have defined grounds of discrimination in their anti-discrimination legislation. Those that have include the UK, Austria, Ireland, the Netherlands and Sweden. The EU Racial Equality Directive and Employment Equality Directive both list six main equality strands of race, gender, disability, sexual orientation, religion or belief, and age. All six are now recognised in the UK Equality Act 2006, although not all EU member states have incorporated all six strands into their legislation. In fact, states have varied considerably in their approach to defining the grounds of discrimination. Some, like Belgium, attempted to compile a very extensive list of possible grounds, while others chose to remove certain grounds proposed in the Directives. For example, Latvia has excluded explicit reference to sexual orientation, although it does state that its list of grounds for discrimination is non-exhaustive. Similarly, Finland, Hungary, Latvia, Poland and Slovenia have all included a clause that the list given is not exhaustive.

Examples of additional grounds included in anti-discrimination legislation include genetic inheritance and family status (Portugal), education and financial status (Slovenia), while Hungary, the Netherlands and Poland have prohibited discrimination against part-time or fixed-term workers. Until recently the UK was the only EU state that excluded reference to 'colour' in its definition of race, although this was incorporated into the Equality Act 2006.

Perhaps the most debated aspect of the Racial Equality Directive's six equality strands has been how to interpret the term 'belief'. The Netherlands and Austria, for example, interpret the concept as encompassing broad philosophies ideologies, or moral stance. Other states have made explicit reference to political opinion when defining 'religion or belief'. These include: Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Hungary, Italy, Latvia, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovenia, Spain, UK (Northern Ireland only).

## **Conclusion**

The purpose of this section has been to give an overview of the most significant policy developments that impact on equality and human rights at UK, GB and Scottish levels. It begins with the historical and wider political context by examining the UK's obligations under international human rights instruments. It then outlines the most significant anti-discrimination legislation developed in the UK since the 1970s. The discussion has also aimed to highlight the particular implications of this legislation for a devolved governance context.

While the most significant pieces of legislation and their subsequent amendments are included, this is not a comprehensive examination of the equality and human rights policy. The Appendix to this report includes an over-view of UK and international anti-discrimination legislation produced by the Women and Equality Unit at the Department of Trade and Industry. It is available online [<http://www.womenandequalityunit.gov.uk>] and refers to the websites of the relevant government departments.

## **SECTION 4: MEASURING EQUALITY: REVIEW OF RESEARCH AND STATISTICS**

### **Introduction**

This section presents a summary of currently available research and statistics on equality in Scotland and subsequently considers the new data gathering requirements of the Equalities Review. This is not intended to be an exhaustive account. Rather, we are attempting to provide an overview of the type of data which are available and the gaps in the research literature and statistics. Working Paper 4 on the project website provides a more detailed account of the literature on which we have drawn.

The organisations that conducted or commissioned the research include: the Scottish Government, the Equal Opportunities Commission, the Disability Rights Commission, the Commission for Racial Equality, the Economic and Social Data Service, the Home Office, the Department for Work and Pensions, LGBT Youth (Scotland), Stonewall, and Children in Scotland. While not an exhaustive list, this digest contains some of the most important and up to date research currently available. Publication titles are followed by a description, summary of the findings and a brief commentary where appropriate.

### **Generic equality statistics and research**

Since devolution the Scottish political apparatus has promoted research and policy development in the area of equality. One of the Scottish Parliament's four founding principles is to promote equality of opportunity for all and its legislative outputs are subject to veto by the European Court of Human Rights. An Equal Opportunities Committee was established to develop and promote the equality agenda across all areas of activity in the Parliament. At the same time the Scottish Executive set up an Equality Unit, which has conducted and commissioned a large amount of research into equality. In November 2006, the Scottish Executive published a high level summary of equality statistics, and key elements of this review are described below.

The High Level Summary of Equality Statistics (HLSSES, available online at <http://www.scotland.gov.uk/HLSSES>) presents statistical trends in the main areas of government policy. The data presents information along a number of equality dimensions including age, disability, ethnicity, gender and in some cases religion. In the HLSSES data are presented in such a way as to highlight differences and potential areas of inequality in Scotland. The HLSSES does not explore the reasons underlying the differences it presents, although acknowledges the likelihood of a complex interplay of cultural, demographic and socio-economic factors. The statistics are set out in graphic form accompanied by a short narrative. The data have been compiled using a range of administrative and survey sources. The strand of sexual orientation is not included in HLSSES since quantitative data on this group is not widely collected by central government. The publication does, however, contain links to a selection of LGBT research available on the Scottish Executive website. During 2007 the Office of the Chief Statistician (OSC) plans to address the issues (including inadequate survey instruments) relating to the current lack of statistical data on LGBT groups. The information on disability is collected using both administrative and survey sources. With some exceptions, the data are generally gathered using the definition of disability outlined in the Disability Discrimination Act 1995. However, because the HLSSES uses data gathered from a range of sources, the disability categories vary to some degree across the topics covered. Data on ethnic groups are similarly collected from a range of sources, including Census data (1991 and 2001). Most of the data presented were gathered using the definition and classification scheme adopted in the 2001 Census, although here again some variation occurs throughout the HLSSES. The ethnicity classification to be used in the 2011 census is currently under review.

The HLSSES presents data on twelve main areas of government activity. These are listed below, with selected sub-topics in parenthesis:

- Population and Migration (expectancy, population projections and profiles)
- Businesses (size of companies in Scotland; entrepreneurship)
- The Labour Market (earnings, employment activity, and NEET)
- Transport and Travel (personal travel, travel to work/school)
- Lifelong Learning (age participation index, demographics in HE, financial support, education and religion)
- School Education (pupil numbers, attainment, staffing, exclusions, inclusion, learning difficulties)
- Tourism and Culture (tourism, culture, sport)
- Children and Young People (child protection, childcare, community involvement, social work services staff)
- Health and Community Care (life expectancy, mortality rates, diet, obesity, physical activity, smoking, alcohol, sexual/dental/mental health)
- Crime and Justice (crime and disorder, prison, homicide, youth crime, sentences imposed)
- Housing (stock and tenure, housing quality, perceptions and neighbourhoods, special adaptations in the home, homelessness)
- Social and Welfare (income, deprived areas)

In addition to the high level summary of equality statistics, a number of reports provide overviews of attitudes in relation to different equality strands. For example, *Attitudes to Discrimination in Scotland*, (Bromley and Curtice, 2003) reports on discriminatory attitudes towards disabled people, women, minority ethnic groups and gay men and lesbians. Coming from a slightly different angle, work was commissioned by the Scottish Executive to investigate experiences of social exclusion in Scotland (O'Connor and Lewis, 1999). The research explored the process of social exclusion as it is experienced by individuals; identified the factors which precipitate exclusion; analysed the barriers to 'mainstream society' which the 'excluded' face; and considered current practices and future strategies for combating social exclusion. This report provides detailed insights into the nature and causes of exclusion experienced by two groups in particular: those excluded through discrimination based on difference and through social isolation arising from crisis.

Further insight into Scottish social attitudes towards equality and discrimination is provided by reports of the Scottish Social Attitudes Survey, undertaken by the National Centre for Social Research in conjunction with the Unit for the Study of Government in Scotland at the University of Edinburgh from 1999 onwards. The survey is designed as an annual Scottish sister survey to the British Social Attitudes survey with a view to charting and interpreting attitudes on a range of social, political, economic and moral issues. It operates and is funded on a modular basis, each module incorporating 40 questions on a given topic. Topics covered in the questionnaire included attitudes towards national identity, fertility, the health service, providing for old age, social identities and public services in Scotland. A comprehensive demographic and classification section was also included. Surveys have been variously funded by the ESRC, Scottish Executive and Communities Scotland. This is a source of valuable qualitative data in relation to the issues and problems facing minority/disadvantaged groups. For instance, more recent studies (since 2002) have included questions on LGBT issues and since 2006, questions on the other main equality strands. An interesting finding to emerge is that whilst there has been a general improvement (in the last five years) in attitudes towards LGBT groups, attitudes towards Muslims and traveller communities have worsened.

The data produced is available at <http://www.esds.ac.uk>. This site provides access to raw microdata from the surveys available for further analysis (requiring statistical analysis packages).

## Gender



In March 2007, in order to inform its work on the gender equality duty, the Scottish Executive published a review of gender statistics entitled *A Gender Audit of Statistics and Research: Comparing the Position of Women and Men in Scotland* (Breitenbach and Wasoff, 2007). The review summarised statistics on gender differences and inequalities in Scotland across various aspects of social and economic life. The review noted that whilst data on gender had improved over time, high quality inter-sectional data were generally unavailable.

In 2002, a National Statistics Social Focus report on women and men in Scotland was published (Scottish Executive, 2002). This publication focuses on gender, highlighting where data are available, the differences between women and men in areas such as population, housing, income, health, the labour market, education, crime, and social participation. The data are organised according to the following main topics: population (demographic profile, births, marriage etc.), households and housing, income and wealth, health and care, labour market, education and training, crime and justice, social participation. In addition to the work funded by the Scottish Executive, the Equal Opportunities Commission has commissioned a number of research reports and reviews, including, for example, research on the position of classroom assistants and minority ethnic women workers.

## **Race**

A number of pieces of research have been funded over recent years by a range of public bodies including the Scottish Executive and the Commission for Racial Equality. A number of such studies are described briefly below.

Research was commissioned in order to inform a re-evaluation of the ethnic identity categorisations currently used in the Census, with a view to developing a category to meet a variety of needs (Macdonald, Stone, Arshad and de Lima, 2005). The main aim of the research was thus to explore how people would choose to categorise their own ethnic identity, while at the same time examining the needs of people making use of the data collected using these categories. This qualitative research examined the views and experiences of stakeholders, data users and data providers.

Overall the research found that most respondents felt some changes to the existing classifications would be useful, although there was debate over how best to execute such change. The research highlighted the following areas to explore in future consultation:

- The reasons for asking about ethnic identity in surveys should be made clear to respondents
- The way in which ethnicity data are used to improve services in Scotland should be better disseminated
- Census data should be used more extensively to meet the diverse needs of communities at national and local levels
- Better mechanisms are needed to assist those who have difficulty filling in forms like the Census (because of literacy or language issues)
- How should issues of colour, nationality and ethnicity be disentangled in question frameworks?
- Because colour can trigger discrimination it is an important area for data collection and monitoring. However, is the Census the correct vehicle to do this? If yes, what would be appropriate wording for such a question?

The Scottish Executive has published a number of statistical bulletins which deal with race and ethnicity across different areas. For example, a bulletin summarised information on racist incidents reported to the police in Scotland from 2003/04 to 2005/05. Details were reported of all incidents, all crimes or offences associated with each incident, and, where possible, details of the victims and perpetrators. The figures show an overall increase in the number of racist incidents, rising by 13%

from 2004 to 2005 (the figures for 2003 are incomplete, reporting only for 7 of the 8 forces in Scotland). Forces have actively encouraged greater reporting of such incidents and data collection methods have improved, both of which may be factors affecting the increase in the statistics.

## **Disability**

A growing body of work on disability has been commissioned over recent years by the Scottish Government and other bodies, reflecting the growth of the disability movement and the advent of the Disability Rights Commission as the body charged with overseeing the implementation of the DDA. Some of these reports are summarised below.

A 'state of the nation' report on disability in Scotland (Scottish Council Foundation, 2005) was commissioned by the Disability Rights Commission to collate information on the position of disabled people in Scotland and to suggest possible areas for future improvement. The main focus of the study is on the potential impact of future demographic changes and on policy, attitudes and awareness in relation to disability. The study combines analysis of recent statistics and trends with a review of a range of research in this field.

The report concludes that overall attitudes to disabled people are positive in Scotland, with relatively high levels of awareness about unfair treatment and barriers faced by disabled people. Disabled people tend to be disadvantaged in their experience of mainstream public services like healthcare, education, housing and social care. While some progress has been made in Scotland in recent years (in relation to employment levels, access to learning and to public transport), many environmental, access, legal and institutional barriers remain that lead to discrimination and exclusion. Many disabled people live in deprived communities, are more susceptible to unemployment and poverty (both material and aspirational), and are more limited in their choices to improve their own circumstances.

The report argues that categories should be used to signal need rather than impairment and that public services need to do more to anticipate rather than respond to the needs of disabled people. Communities should be built with an inclusive, accessible infrastructure, based on participatory decision-making. Strategies are needed to improve access to jobs for disabled people through government initiatives and by creating more inclusive, flexible workplaces. Persistent problems in relation to low income need to be tackled, for example through savings schemes and by increasing the number of social housing providers offering assured rental schemes. Strategies should be adopted to improve disabled people's health and well-being over the lifecourse, such as flexible working arrangements for all and increasing self-sufficiency supports for older people. Opportunities for joint activities and events between disabled and non-disabled people should be fostered to encourage more positive attitudes. The views of disabled people need to be incorporated into decision-making. There is also a need to improve provision in the area of 'out of work incomes'.

Riddell, Banks and Tinklin (2005) were commissioned by the Scottish Executive to conduct a study with the aim of analysing the position of disabled people in employment in Scotland. The study combined a review of statistical data with a summary of relevant literature. The study reported that up to a fifth of Scotland's population has a disability. The number of disability-related benefits claimants continues to rise and employment rates disabled people remain low. In the context of national variation, Glasgow has the highest incidence of disability, of incapacity benefits claims, and the lowest levels of employment among disabled people. When compared with people without a disability, disabled people have comparatively fewer qualifications and are more likely to be employed in low skill occupations attracting lower incomes. There is a lack of policy initiatives focussed on addressing the preponderance of people with a limiting long term illness among the economically inactive. Employment initiatives typically place fewer than a fifth of disabled people in work.

This study also identified research gaps and drew the following conclusions:

- There is a lack of Scottish data in relation to Jobcentre Plus programme evaluations, as well as evidence of the impact of key legislation like the Disability Discrimination Act and National Minimum Wage.
- More information is needed on ‘what works’ in existing programmes and policies
- There is a lack of disaggregated data on disabled people’s experiences of employment and employment services
- More qualitative research is required exploring individual experiences of disabled people and the perspectives of employers;
- There is a need for more research on disabled children and young people’s experiences in school and school leaving destinations;
- Longitudinal research examining the career development of disabled graduates should be undertaken;
- More research is needed on the complex and multi-dimensional nature of the barriers faced by disabled people;
- The spatial dimension of disability and its interaction with employment, income and poverty should be examined in greater depth.

## Age

The three ‘new’ equality strands (age, sexual orientation, religion and belief) have attracted less research funding to date, partly because legal protection has arrived on the scene relatively recently and, until the advent of the Equality and Human Rights Commission, there has been no enforcement body. Below we describe some recent research which has been conducted in these three areas.

Qualitative research was conducted by Ipsos MORI (Davidson, Maclardie and Murray, 2006) to inform the Scottish Executive’s *Strategy for a Scotland with an Ageing Population* (published March 2007), entitled: *All Our Futures: Planning for a Scotland with an Ageing Population* to address the challenges and opportunities posed by Scotland’s ageing population. The research centred on the following themes:

- attitudes towards the ageing population
- how people view the impact of ageing on themselves - their aspirations for old age and barriers they perceive to fulfilling those aspirations
- perceptions of change needed to support an ageing population.

Interviews and focus groups were conducted with participants representing a range of ages, gender and sexual orientations, socioeconomic and ethnic backgrounds. The research found that although there was some awareness of Scotland’s ageing population, its implications were not fully appreciated. It was believed that older people were not seriously discriminated against or disadvantaged except in relation to health. The following points arose from the survey:

*A Youth-focussed Bias:* The survey found that predominant attitudes favoured the needs of younger people over those of older people (where they were in conflict). This prevalent youth-centred attitude suggests that until attitudes change the Strategy should emphasise the benefits to all of society, not just older people, in addressing the ageing population issue.

*Conceptualisations of Old Age:* Old age was conceptualised as a period free from work and family commitments. There was little sense that participants felt old age is *about* making a contribution in these areas. There is a danger implicit in such perceptions that older people are no longer seen to be ‘full’ contributing members of society. This suggests that initiatives to encourage and help older

people make continuing contributions of this nature should emphasise the benefits to the older person (e.g. enjoyment and social contact) and should be voluntary and flexible.

*Preparing for Old Age:* Most participants were poorly prepared for their own old age. Greatest concerns were expressed about health and the capacity for self-care in later life. Participants were also worried about financial provision in later life, and felt that some government support should be available. It is important that initiatives to encourage better planning strike a balance between warning people of the implications of not planning and avoiding 'scare tactics'. In addition to educating without employing 'scare tactics', initiatives which emphasise the *current* benefits of taking action may have more impact. More positive images of old age could also be used to help combat the notion that ageing is too "depressing" and "scary" to contemplate.

Raab and Macdonald (2004) analysed Scottish Household Survey data relating to older people supplemented by other relevant data and set in the context of current policy initiatives. The report documents the proportions of older people experiencing disability, poor health and low reported income. Key findings included the following:

- Older women living alone are more likely than older men to report low incomes and difficulties with everyday activities.
- There are few differences between the incidence of such problems in urban and rural areas, but a tendency towards a greater concentration in disadvantaged urban areas.

Other findings relate to issues concerning transport, housing, employment, and older people's activities, volunteering and forms of support received from others.

## **Sexual orientation**

LGBT Youth Scotland, a national youth organisation for lesbian, gay, bisexual and transgender young people, was commissioned by the Scottish Executive Education Department (SEED) to carry out research to inform the Guidance on Dealing with Homophobic Incidents project (O'Loan, McMillan, Motherwell, Bell and Arshad, 2006). This was one of SEED's Promoting Equal Opportunities in Education projects and ran from February to November 2005. The study examined how homophobic incidents and homophobia is dealt with in schools. The report comprises a literature review, findings from surveys and interviews with schools LEA representatives, schools and young people in six local authority areas.

While Education Authorities provide a reasonably strong lead in including strand-specific anti-discrimination guidance, school policy does not always reflect this. Only a quarter of schools surveyed make explicit reference to homophobic bullying or sexual orientation in their anti-bullying policy. The majority of interviewees stated that there were no explicit expectations placed on them in terms of tackling homophobia. 51% of schools estimated that verbal homophobic bullying had occurred in their schools over the previous 12 months. By contrast, awareness levels of physical homophobic bullying were low amongst survey respondents; only 10% of EAs and 1% of schools stated that they were aware of this occurring. School responses to homophobic bullying incidents were found to vary considerably. However, the survey found that the issue tends to be marginalised within the equalities matrix in education, with greater specific emphasis placed on race and disability. The survey failed to find any clear and consistent set of strategies in place for dealing with specifically homophobic bullying. The survey found significant support for confidence-building strategies in dealing with these issues. Chief among these are CPD and clear guidelines for dealing with homophobic bullying incidents. The survey also found considerable scope and support for including discussion of homophobia in the school curriculum.

Given the complexity of research on sexual orientation, a review was commissioned by the Scottish Executive of methodological approaches to research on sexual orientation (McManus, 2003). The importance of definitions and classifications was noted, and it was suggested that wherever possible researchers should try to employ the definitions used in the Scotland Act and take account of other research which has used similar definitions. Problems with obtaining a representative and sufficiently large sample of LGBT respondents were seen as the major methodological issue. Problems also arose with the collection of administrative and large-scale data sets because of possible reluctance of individuals to disclose information which might be regarded as private and personal. However, it was suggested that hesitation over providing such information was likely to diminish as people became more accustomed to the idea of data collection for the purpose of discrimination monitoring.

The second phase of research commissioned by the Scottish executive in relation to sexual orientation dealt with the perspectives of community organisations (McLean and O'Connor, 2003). Qualitative research was carried out with representatives of LGBT organisations in Scotland. Nine group discussions were held with a variety of LGBT organisations by the *National Centre for Social Research (NatCen)* in November and December 2001. The discussions focused on three main objectives - to identify policy areas where LGBT research is considered lacking, to understand the types of research needed on these topics and to elucidate the barriers to research on LGBT issues in Scotland, as well as their solutions.

Broadly two types of research were identified as necessary for LGBT communities in Scotland. The first related to a set of specific topics warranting further research to enhance understanding and inform policy development, while a second set of broader research needs were highlighted which potentially cut across specific policy areas – for example relating to social inclusion or attitudes towards LGBT issues in Scotland. Thus, at the most fundamental level the priority research areas identified were: the nature and extent of the LGBT community, attitudes to sexual orientation and transgender and issues of social inclusion. The study also highlighted key policy areas requiring further research in specific issues, including education, partnership rights, crime, employment, youth, parenting, health, transgender issues, rural issues and multiple disadvantage.

Developing this work further, a stocktake of current policy and practice relating to lesbian, gay, bisexual and transgender (LGBT) people at local authority level in Scotland was conducted (Fyfe, Fleming and Reid, 2006). The aim was to provide a baseline for examining the policy and practice of local authorities in relation to sexual orientation and gender identity, and findings and recommendations included the following:

- Councils said that LGBT people had a 'low visibility' and tended not to seek help from the council
- Councils lack basic information about LGBT people in their areas
- There is a less developed legislative framework in relation to sexual orientation than for some other equalities themes and many councils stated that they did not prioritise their efforts in the same way as they do for race or disability
- LGBT issues were frequently not included in key council plans and strategies
- In general there was limited progress in monitoring the effectiveness or impact of any LGBT policies
- It is recommended that councils should make explicit references to sexual orientation and gender identity in their statements on equalities issues
- It is recommended that councils should have in place guidelines to deal with discrimination or harassment on grounds of sexual orientation or gender identity
- It is recommended that the Scottish Executive should identify ways to promote sexual orientation and gender identity equality more effectively.

The organisation Stonewall has a website with links to these and other reports on sexual orientation and gender identity:

[http://www.stonewall.org.uk/beyond\\_barriers/research](http://www.stonewall.org.uk/beyond_barriers/research)

## **Religion and belief**

This is an area where relatively little research has been conducted. Religion and belief are clearly complex areas, closely associated with national identity and ethnicity. Hussain and Miller (2006) conducted research on Pakistani and English minorities in Scotland and on majority populations in England and Scotland to explore associations between religious and national identities in the context of multi-culturalism and devolution. The research used surveys and focus groups and was funded by the ESRC and the Nuffield Foundation. It was argued that, rather than making Scotland a more xenophobic country, devolution had calmed anti-English feeling since Scots had more of a sense of responsibility of their own destiny. In addition, whilst experiencing greater harassment, Muslims attributed this to the fallout of 9/11 rather than to devolution. Scottish Muslims were increasingly likely to identify themselves as Scottish nationalists.

Clegg and Rosie (2005) were commissioned to undertake a study for the Scottish Executive on faith communities and local government in Glasgow. The research investigated how Glasgow City Council and faith communities work together, and how different faith communities relate to one another. The findings from the study have been used by the new Inter Faith Liaison Officer to support faith communities in the Glasgow City Council area. Seven faith communities were involved in the research. These were the Christian, Muslim, Jewish, Buddhist, Baha'i, Sikh and Hindu communities. Findings included the following:

- Faith communities understand the importance of a relationship with local government. They have skills, capacity, and willingness to contribute to public life in the Glasgow City Council area, though this is not always recognised or utilised
- Faith communities report a strong perception of insensitivity to their religious and cultural needs among Council staff at all levels. This appears to arise from lack of knowledge and training
- There is a perception among many faith groups of a level of 'tokenism' in the way Glasgow City Council involves them in consultation and decision-making
- Most faith communities lack knowledge about Council services and are frustrated and confused about how to access them. The provision of information in appropriate languages is a particular concern for some faith groups
- The attacks on the USA on 11th September 2001 are seen to have marked a turning point from predominantly racial intolerance and abuse towards more religiously motivated attacks. People wearing religious dress or symbols, are a particular target
- A number of faith communities think that they are actively engaged in inter faith activities. However, in certain cases, some faith communities express a reluctance to engage in inter faith work. Barriers to inter faith work are seen as a lack of vision, willingness or leadership to develop strong inter faith relationships.

Having provided a brief overview of research on equality in Scotland, we now consider the implications of the Equalities Review for data collection in Scotland.

## **Data collection implications of The Equalities Review**

This section draws on the Review of Equality Data conducted by National Statistics and published in 2007. The data review aimed to identify the information needed to fulfil the aspirations of the Equalities Review (ER) for much closer auditing of the extent to which progress towards equality was being achieved for particular groups. The ER accepted the recommendation of a Measurement

Steering Group that a definition of equality should be based on the ‘capabilities approach’ developed by Professor Amartya Sen and others, because ‘it focuses on what matters to people and recognises that people have diverse goals in life’ (ER p126) (see Section 2 for further discussion). This has particular implications for the type of equality data which will be required in the future. The capabilities approach defines equality as equality of ‘substantive freedoms’. Substantive freedoms are described as what individuals are able to do or be in their lives. Equality of substantive freedoms incorporates aspects of equality of process, outcome or opportunity.

In line with the capabilities approach, the ER defines an equal society in the following way:

An equal society protects and promotes equal, real freedom and substantive opportunity to live in the ways people value and would choose, so that everyone can flourish.

An equal society recognises people’s different needs, situations and goals and removes the barriers that limit what people can do and be. (ER p126).

The ER proposed definition of equality captures three aspects of equality of substantive freedoms:

- opportunity: whether everyone really has the same substantive freedom to flourish;
- agency: what degree of choice and control an individual has in achieving the valued activity, and
- process: whether discrimination (or some barrier or process) causes or contributes to a particular inequality.

The ER asserts that equality can be described (and therefore measured) in different ways depending on the characteristics and context we are concerned with (Burchardt and Vizard, 2007a, 2007b)

<http://archive.cabinetoffice.gov.uk/theequalitiesreview/upload/assets/theequalitiesreview/paper1equality.pdf>. Important questions to address concern the type of equality which is being considered and in relation to which groups. Conceptualisations of equality based on process, outcome or opportunity have drawbacks. Instead, the ER recommends a capability approach to equality or equality of substantive freedoms because it asserts that this recognises that each of the above aspects – process, outcome and opportunity - are necessary but none on their own is sufficient.

The benefits of the capabilities approach are listed in the ER in the following way:

- it can incorporate aspects of equality of process (for example the substantive freedom to seek and receive justice in the legal system)
- it can accommodate variation in need (where different institutional arrangements or resources are needed to achieve the same substantive freedom).
- it recognises that advantages and disadvantages can accumulate over a lifetime through recognising the part institutions and policies have to play and focusing on what an individual is able to be or do in the present.
- it reduces the problem of factors affecting outcomes by focusing on the freedom individuals have to choose rather than differences in the final outcome.

The challenges of the approach are summarised thus:

- as with equality of opportunity, it does not resolve the problem of distinguishing between causal factors.
- the degree of acceptance of the capabilities approach among stakeholders, particularly representatives of different equality organisations.
- achieving a robust evidence base for the equality of substantive freedoms for use in policy making.

## **The recommended measurement framework**

The ER proposes ten steps to achieve greater equality. Step three covers measuring progress towards equality through a comprehensive framework of measurement. In terms of purpose, it recommends that:

- the framework is used by all public bodies, to agree priorities, set targets and evaluate progress towards equality;
- the framework is used by the EHRC, to inform its triennial State of the Nation report” (ER p109 - 110), with the 5 year goal of achieving, among other things a shared understanding of what we mean by equality and a common framework of measurement at national, regional and local levels (ER p123). **This has been re-formatted**

The ER proposes that the equality characteristics in this framework should be gender, ethnicity, disability, sexual orientation, transgender, religion/belief, age and socio-economic group. It is also recommended that Welsh language is added as a characteristic when the framework is applied in Wales. These characteristics share two features:

- they can be treated as beyond an individual’s control,
- existing evidence suggests they are a source of inequality.

Most equality characteristics are clearly ‘beyond an individual’s control’ and the ER argues that others can be treated this way:

- religion/belief: because it would be unreasonable to expect an individual to change their religion/belief to avoid discrimination
- socio-economic group: because it is determined largely by family origin so can be treated as beyond an individual’s control

The ER recommends ten capability domains or dimensions, developed from domains in international human rights frameworks combined with the results of public consultation. These are: Longevity; Physical security; Health; Education; Standard of living; Productive and valued activities; Individual, family and social life; Participation, influence and voice; Identity, expression and self-respect; Legal security (see Table 4.1).

To achieve the objective of measuring substantive freedom to achieve valuable outcomes, the ER proposes that outcome indicators, process (unequal treatment) indicators and choice and control indicators will be needed (as appropriate) for individual characteristic/domain cells and across various combinations of cells in the framework.

The ER recommends the use of ‘headline indicators’ supported by subsidiary indicators for each equality domain in an equality scorecard rather than aggregating indicators to produce an overall equality index. It argues that analysis must also be possible across domains and across characteristics to identify multiple advantages or disadvantages.

### **Priorities proposed in the ER**

The ER identifies a sub-group of the domains of the measurement framework in which ‘equality gaps are most likely to cause further inequalities’ (ER p47), and which therefore require prioritisation in terms of information gathering. These are listed as early years and education (within education domain), employment (within productive and valued activities domain), health (health domain) and crime and criminal justice (parts of the physical security and legal security domains).

Across the measurement framework, there are a number of aspects which have been highlighted in the ER as requiring particular attention. These can be grouped as follows:



- Data gaps in particular combinations of domain and characteristics; focusing primarily on the key domains listed in the paragraph above;
- Data on sexual orientation, data for transgender status;
- Data coverage (population within countries and across countries);
- Data quality;
- Presentation and accessibility of data.

Table 4.1 The measurement framework proposed by the Centre for Analysis of Social Exclusion (2006) and endorsed by the Equalities Review (Cabinet Office, 2007)

Characteristic	Gender	Ethnicity	Disability	Age	Sexual orientation	Transgender	Religion/ Belief
Capability domains or dimensions							
Longevity							
Physical security							
Health							
Education							
Standard of living							
Productive and valued activities							
Individual, family and social life							
Participation, influence and voice							
Legal security							

The ER makes recommendations for filling specific data gaps emerging from a study of persistent inequalities and proposes which organisations should be responsible in each case (pp 87 - 88). These proposals are shown below with the responsibilities where suggested shown in brackets:

- physical security domain, for data on all equality characteristics relating to impact and harm caused by particular crime types, in particular for victims of hate crime (criminal justice agencies);
- health domain: data on ethnicity, disability and religion/belief in particular ethnicity relating to mental health (DH, SE, WAG, Healthcare Commission);
- education domain, for data on ethnicity, disability and socio-economic status for 16 to 19 year olds in education (DfES, SSE, WAG) and data on satisfaction about pre-school provision among ethnic minority and poorer White children (Local Authorities);
- productive and valued activities domain, for data on ethnicity and disability for 16 to 19 year olds not in education, employment or training (DfES, SE, WAG);
- legal security domain, for data across equality characteristics and criminal justice (HO, MoJ);
- longevity domain, for data on ethnicity as part of civil registration of births and deaths.

The ER draws particular attention to the ‘lack of robust data on inequality within certain groups, most notably sexual orientation and transgender’ (ER p95). Furthermore, there is a paucity of consistent data across countries of Great Britain (Britain rather than UK was the scope of the ER) and the non-household population. A number of data quality issues are highlighted as needing resolution. In particular, these are (ER pp141 - 145):

- inconsistencies in classification across sources;
- inconsistency across time as a result of changes in classification;
- frequency of data collection not fit for the purpose for which it was intended;

- dispersed data collection and poor information-sharing between organisations;
- the need for more meaningful classification categories;
- over-use of inappropriate proxy measures (for example use of country of birth for ethnicity, and free school meals for socio-economic group);
- the need for information on quality of data alongside the data themselves;
- the need for improved response rates.

The ER also presents a robust case for improvements in the presentation and accessibility of data.

### **The structuring of research on equality and human rights in Scotland**

We also reviewed university websites in Scotland to explore the spread of work on equality across the sector. About 35 centres appear to have a broad focus on equality, although most focus on one strand and few are inter-disciplinary. There is relatively little work on human rights, and most of this is from a legal angle with weak links to other disciplinary areas.

### **Conclusion**

We began this section with an overview of currently available research and statistics in relation to equality in Scotland. Whilst considerable information is available in relation to gender, and, to a lesser extent, race and disability, research evidence in relation to the three ‘new’ strands (sexual orientation, age and religion/belief) is much thinner on the ground. Whilst there is broad agreement in relation to gender categories, debates still exist in relation to the categories and definitions in relation to most other areas. This has clear implications for the harmonisation of statistics. Furthermore, whereas most people have no problem in ticking boxes on surveys enquiring about their gender, questions about sexual orientation or religion/belief are likely to elicit a wider range of responses since these tend to be regarded as private matters. It has been suggested that once people have a better understanding of the need for discrimination monitoring they will be more willing to comply with requests for information in these areas, but this view has yet to be tested.

The Equalities Review has proposed a new definition of equality based on the capabilities approach, which has significant implications for data collection and analysis. There is a need for greater conceptual clarity around some aspects of this approach, for example, in relation to what counts as autonomous decision making. At a more practical level, the review of equality data has highlighted the need for more comparable data across GB, harmonisation of categories, improved quality of data gathering in some areas and transparency about data shortcomings. In addition, there are some equality strands where data are severely limited at the moment (for example, in relation to sexual orientation). This is partly to do with definitional problems, but also concerns people’s reticence to disclose information. Clearly, some of the issues facing Scotland in developing its future data-gathering strategy relate to compliance with GB legislation in addition to the equality legislation passed by the Scottish Parliament. In some areas, for example education, it is unlikely that comparable data will be obtainable because of the distinctiveness of the Scottish education system.

In addition, we investigated the nature and location of research centres in Scotland dealing with equality and human rights. It was evident that most centres were concerned with a particular strand and that human rights and equality were regarded as discrete issues. Inter-disciplinary work was rare and centres for the study of human rights tended to have a legal focus.

## **SECTION 5: KEY STAKEHOLDERS' PERSPECTIVES ON EQUALITY AND HUMAN RIGHTS**

### **Introduction**

The research team undertook interviews with individuals from the public, private and voluntary sectors in Scotland in order to obtain their views on policy and practice priorities within the field of equality and human rights, the type of research which might be useful to undertake in Scotland and the need for a Scottish Centre for Research on Equality and Human Rights. The results of these interviews are summarised below, organised by sector, and an overview of common issues and key differences across all sectors is also provided. Further details of the interviews are provided in Working Paper 5. This section concludes with an account of other consultation and dissemination activities carried out during the course of the feasibility study.

### **Scottish governance context**

The emphasis throughout these interviews was on eliciting views from a Scottish perspective, where there are specific issues facing organisations involved in implementing and managing equality and human rights policy. Scotland has a devolved governance structure and the Scotland Act places a specific requirement on MSPs and the Scottish Executive to ensure their actions respect human rights. At the same time, Scotland is governed through a mixture of 'reserved' and 'devolved' powers. Reserved issues are decided in Westminster and the devolved ones by the Scottish Parliament. One of the most important implications of combining equality and human rights within EHRC is that its remit will encompass both reserved (for example employment) and devolved (for example education) matters. In addition to the Scottish Equality and Human Rights Commissioner, a Chair of the Scottish Commission for Human Rights (SCHR) has been appointed. The SCHR will focus on devolved matters, and consultation with the EHRC is required under the Equality Act 2006.

### **Voluntary sector interviews**

Twelve phone interviews were conducted with representatives from the Scottish voluntary sector, including organisations operating on behalf of the main<sup>5</sup> equality strands identified in the 2006 Equality Act. The views of the following voluntary bodies were elicited: Scottish Council of Voluntary Organisations, Scottish Low Pay Unit, Glasgow Housing Association, Barnardos Scotland, Scottish Council of Jewish Communities, Scottish Interfaith Council, Help the Aged, LGBT Youth Scotland, Equality Network, Capability Scotland, Scottish Disability Equality Forum, and Nil By Mouth.

#### *Recent Policy Developments: mainstreaming and equality duties*

Respondents on the whole welcomed recent policy developments, in particular the trend towards mainstreaming and positive equality duties, as well as the increasingly explicit policy emphasis on human rights. Mainstreaming was understood to mean that 'equality should be taken for granted in all aspects of work'. The concept was a familiar one to almost all of the interview informants, although there was less awareness in the children's charity since its remit does not directly concern the main equality strands.

Responses suggest that in the voluntary sector mainstreaming is a widely supported principle, which captures the complexity and breadth of equality issues. As one informant put it, 'effectiveness needs a holistic approach'. Mainstreaming was also praised for its capacity to raise awareness of equality issues like sexual orientation or age that have hitherto received rather less support, and to embed these issues in policy-making arenas. It has also created the opportunity to develop further legislation for

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<sup>5</sup> The 'gender' perspective was elicited through interviews with the Equal Opportunities Commission.

specific groups. However, a number of problems were identified in relation to the issue of mainstreaming. It is highly complex to implement, largely because it relies on securing a significant culture change. In order to avoid the danger of equality becoming 'nobody's business', mainstreaming requires training, monitoring and leadership, suggesting a continued role for equality specialists. Moreover, the larger the organisation and more complex its governance structure, the greater are difficulties of implementing equality strategies. In summary, all respondents supported the principle of mainstreaming, but felt that its implementation requires adequate resources, leadership and accountability.

### *The Equality and Human Rights Commission*

Almost all of the organisations had some contact with one or more of the preceding Commissions. This took the form of joint research, tribunal referrals, providing training and information on best practice, and more recently joint meetings in preparation for the creation of the EHRC. The closest involvement was reported by the SCVO and those organisations whose remit specifically concerns the equality strand served by one of the three commissions. By contrast, two voluntary sector organisations reported virtually no contact with the Commissions.

Most respondents saw the creation of the EHRC as a natural development to reflect the widening of the equality agenda. Some saw it as a very positive move to create a statutory body to ensure compliance with legislation and regulation across all six main equality strands. One respondent commented: 'it's an opportunity to see equality in a holistic way. People have multiple identities and the forms or grounds of discrimination can be hard to disentangle.' On a more practical level, many felt that it would be simpler to deal with one rather than several equality bodies. For example, the Scottish Low Pay Unit referred clients to the Citizen's Advice Bureau if their case was not covered by one of the existing Commissions, and thought that the EHRC would be a more appropriate referral point.

Despite overall support for the creation of the EHRC, a number of specific concerns were expressed. Many felt there was a lack of clarity about procedure during the transitional phase from three separate commissions to a single statutory body. Furthermore, it was feared that hierarchies might emerge in the treatment of different strands. Some expressed concern that the newer strands might fare less well because they lacked the same body of knowledge and experience, campaigning tradition or infrastructure as gender, race and disability. Conversely, others felt that ground already covered in relation to the 'older' strands could be lost as specific issues become diluted in a single equality approach. For example, representatives of disability charities expressed concern that this strand may be pushed off the agenda as it reaches the end of its period of being a 'fashionable equality issue'.

As noted above, the EHRC deals with both human rights and equality matters and some respondents felt that covering both fields would be very challenging in terms of the knowledge base required. It was felt that the EHRC must engage in a sustained and effective awareness-raising campaign, not only to publicise its activities but also to counter the 'Daily Mail effect' - the stigma with which human rights have come to be associated. As one informant put it, 'people need to know how human rights affects them, that it's not just all about immigrants and asylum seekers'. Secondly, there is currently a lack of expertise on the ground in relation to human rights. Local and regional delivery by the EHRC will be ineffective unless this situation is remedied.

Finally, several people questioned whether the resources of the EHRC would be adequate to meet its broad remit. It was observed that in order to operate effectively and on the basis of sound evidence, this new body requires a solid infrastructure. In the Scottish context this would mean building capacity in the voluntary sector, for example, setting up and funding advice and information services rather than relying solely on existing Citizens Advice Bureaux to support the work of a single equality body.

### *The Equalities Review*

Respondents were asked to comment on the utility of the Equalities Review and to discuss any contribution made by their organisation. Many of the organisations represented by the interviewees were directly involved in the consultation process associated with The Equalities Review. These include the disability and faith-based charities, LGBT Youth, Help the Aged (though not its Scottish wing), the Low Pay Unit and the SCVO. Other bodies were represented by the Voluntary Sector Equalities and Human Rights Coalition, which was also involved in consultation with The Equalities Review Panel. Respondents' comments thus suggest that considerable effort was made to incorporate the views and perspectives of Scotland. Through this process a range of issues relating to Scotland were raised, including LGBT young people's experiences in Scottish schools, devolution, data collection, information and advice infrastructure, and community development. However, Nil By Mouth, an organisation concerned with the issue of sectarianism, was not involved in the consultation. However, the Equalities Review does point to the need for better information about sectarianism and how it is dealt with in the courts.

Most respondents had a reasonably positive view of the final report, with comments like 'it seems to be heading in the right direction', 'it seems sensible', 'it's much improved on the interim report', or 'it's too early to say'. Others expressed a number of specific reservations. LGBT Youth was directly involved in meetings with The Equalities Review Panel. Nevertheless, the respondent from this organisation felt that the report did not reflect this involvement, and failed to adequately address the Scottish context. Similarly, the main companion report on LGBT issues was criticised as being too anglocentric and inadequate in its treatment of hate crimes. It was suggested that good quality Scottish-based research like 'First Out' (2002-03) and Scottish Social Attitudes Survey (2006) should have been mentioned. In relation to disability, the report was seen to add very little except for highlighting the issue of disability and poverty. The capability approach that informed the Review was seen as a means of providing the rationale for a more empowering and proactive policy strategy. However, several respondents felt that omitting social class as a strand in its own right was a serious flaw: 'there are some inequalities and breaches of human rights that are directly a result of class inequalities and have nothing to do with any of the other strands.'

Initial responses from older people's charities suggest broad support for the Review. However it was felt that the situation in Scotland is distinctive because of a number of legal, demographic, geographic and political differences. Consequently, there is considerable support for a Scotland-based Older Person's Commissioner as exists in Wales. Other issues that were felt to be underrepresented in the Report include those affecting women: their barriers to employment, domestic violence, and gender inequality in the criminal justice system. One respondent gave the following example: 'recent research shows that women (as perpetrators of crime) are treated more harshly when cases go to court. They're far more likely to be sent to prison, and when in prison face a quite different set of issues from men. For example, mothers' separation from children and attitudes associated with mothers and crime. They're also far more prone to self-harm.'

Several respondents liked the idea introduced in the report of a national framework for measuring and monitoring equality through a ten point 'scorecard' system. This was praised for being specific, holistic and for capturing the importance of issues like 'disapproval'. However, respondents also expressed concerns about how it could actually be implemented, and what data sources would be used to measure it, since 'its potential usefulness stands or falls on how it's measured'. Several people felt that the final report was an improvement on the interim version, in particular by having a less overtly economic agenda.

A final criticism of the report concerns the methods of data collection used to compile the evidence. Specifically, census and other survey data were criticised for using problematic categories of colour and ethnicity (some of which will be amended in the 2011 census). For example, 'white as an amalgam category misses the diversity and complexity of ethnic make-up in Britain'.

### *Human Rights and the Scottish Commission for Human Rights*

Respondents were asked to comment on the implications of combining equality and human rights in the same commission. They were also asked their views on the creation of a separate Scottish Commission for Human Rights. Although many people expressed doubts about the creation of a separate HR commission, all those interviewed strongly welcomed the new emphasis on human rights in the equality agenda. One person commented: ‘setting the equality strategy in the context of a human rights framework is the single most important thing to come from it [the EHRC]’.

This development was seen to be a positive step forward because human rights are at the core of all equality issues. One informant commented on the value of a strategy based on the Human Rights Act ‘because it treats all equality issues equally’. Incorporating human rights brings a broader perspective to the equality agenda and also provides a framework to resolve conflicts between competing groups (for example the tension between religion and gay rights in relation to adoption). It also has the potential to fill in gaps left in the equality legislation. Furthermore, this step was praised because it widens the equality agenda sufficiently to allow children’s rights to be included. ‘Human rights’ is also a more accessible concept for young people and resonates well with some recent work to develop an LGBT Youth Charter of Rights.

A potential problem identified with this development is that human rights are underpinned by a tribunal system which places too much responsibility on the individual to secure their rights for themselves. This runs counter to the trend in recent equality policy creating more institutional responsibilities to promote equality. Moreover, in the devolved Scottish context careful attention will be needed to balance devolved and reserved powers. In particular, several respondents expressed confusion about the role of the Scottish HR Chair and expressed doubts about the decision not to simply have one overall organisation in Scotland. In particular, some feared that Scotland could be left in a weaker position due to confusion over remits and responsibilities.

### *Comparing the equality strands: policy, practice and future need*

Respondents were asked to comment on the relative attention currently given to the six main equality strands (as identified in the Equality Act 2006) in relation to legislation, statutory support and general public awareness.

**Race:** Most agreed that gender and race were the equality areas that had the most robust and long-standing policy support, and that this was largely matched by public awareness of these issues. Each has had anti-discrimination legislation and statutory bodies in place for around 30 years. There are comparatively good levels of awareness about this issue and people are quite clear about their responsibilities. Tensions continue to arise, however, in relation to asylum seekers and new lines of discrimination drawn in relation to particular groups (for example migrant workers).

**Gender:** People are less well aware of the gender equality duty which is the most recent to come into force. Like race, this strand is relatively well developed – largely because of sustained lobbying by the women’s movement. Specific issues that remain in need of further protection include: transgender rights, domestic violence (including same sex domestic abuse and violence towards men) and women in the criminal justice system.

**Disability:** This was felt to be the strand that most closely matched gender and race in attracting legislative support, even though developments in this area are more recent. However, the respondent from the Housing Association felt that considerably more ground needed to be covered before disability was adequately supported. The most significant recent development for this strand was the Disability Equality Duty, although it is too soon to assess its effects. As with race and gender, the legislation was felt to be far ahead of implementation and attitude changes. As one informant

commented, legislation serves not only as a judicial instrument but also ‘has an important role in creating a general consensus on what we aspire to as a society’.

**Age:** It was observed that although ageing is an issue that affects everyone, age-related inequalities are compounded by entrenched attitudes. People tend to accept what happens to them as they get older as an inevitable fact of ageing; few see their age as potential grounds for discrimination. Age discrimination in employment is one of the few instruments of law that exists for this group and it is largely unenforceable. Other age-related legislation exists to protect vulnerable adults. There are no statutory protections in place to prevent the widespread and increasing incidents of abuse of elderly people living in residential care homes. There is insufficient understanding that private sector organisations take on equality and human rights responsibilities when they run care homes because they are performing a public function.

**Sexual orientation:** Among the problems associated with sexual orientation as an equality strand is that this group is invisible unless individuals declare themselves, but they are often unwilling to do so because of the stigma this may attract. This group potentially faces the greatest difficulty in attracting popular support because the issue is seen by some as a matter of choice. LGBT groups and individuals may be directly discriminated against by people who align themselves with another equality strand, in particular members of particular faith groups. People in same sex relationships cannot get married – the legislation on civil partnerships deliberately removed the term marriage as the only way of avoiding a House of Lords veto. As a result, while legal parity is created, a cultural distinction is drawn and thus a new form of discrimination created through legislation. Legislative protection for this group is also lacking in the area of hate crimes and male rape.

**Religion and belief:** This is a strand with complex links to race, particular in relation to Judaism and Sikhism. Gaining public support for equality in this area has become especially problematic recently because of misunderstanding and fear in relation to fundamental Islam and terrorism. There has been some recent progress by Strathclyde Police in implementing Section 74 (Religious Aggravated Crime). The Scottish Executive has recently mounted a campaign to raise awareness about sectarianism, although this tends to get submerged under the rather bland message of ‘respecting diversity’. Targeted campaigns are needed to focus on specific issues. Current diversity training used in mainstreaming strategies makes no mention of sectarianism. The most pressing need for this group is to develop better understanding of how sectarianism is embedded and naturalised through sectarian language, which is ‘the first visible part of the chain of prejudice’. The Scottish Executive should consult directly with expert members of faith (or other minority) groups when creating educational ‘toolkits’ in order to avoid misrepresentation and inaccuracies.

**Children:** Although not one of the six main equality strands, the question of children’s rights potentially intersects with each of the other strands. Under existing policy instruments the protection of children’s rights is limited and indirect. The Children Act, however, provides a good legislative framework. There is currently a draft Children’s Services Consultation Bill, but this is felt to be unhelpful and opaque. One of the main problems with it is a recurrent issue in children’s rights legislation: the emphasis tends to be not on protection and rights but on control. There is nothing comparable to the UN Convention that enshrines children’s rights. Legislation talks about protecting children and young people but that is a very different issue from protecting their rights. The incorporation of HR into the Equality Strategy thus opens up the possibility of including children’s rights and thus moving beyond the restrictive control model.

It is clear that some strands of equality have a less robust framework of legislative and attitudinal support. However, one informant commented that it is also important to attend to overlapping issues - for some the intersection of multiple identities creates significant dilemmas and areas of need. Moreover, there is a need for a more holistic approach to equality and human rights, given the tendency towards ‘single issue fatigue’.



### *Equal Opportunities Policy*

Respondents were asked to comment on their organisation's equal opportunities policy, and on their perceptions of current practice in the public and private sectors. Most respondents were highly reflexive about this issue and quite critical of their own practice. Many felt that they were particularly attentive to the needs of their main client base but less aware of the needs of others. Several of the organisations were too small (comprising one or two staff members) to require a written policy or standardised procedure. The larger organisations all had a written policy, monitoring systems, and staff training procedures. In some cases these matters are administered by a human resources division or an Equal Opportunities specialist. Among the most highly developed equality systems was that of the Glasgow Housing Association. This large organisation has an Equality Action Plan and a wide range of strategies and policies, which are constantly under review. Staff members are regularly given training in these. Like most of the voluntary organisations represented here, the GHA's Equality Policy has been compiled from various existing policy strategies and attempts to promote a culture of mainstreaming. Unlike most of the organisations, the GHA's policy includes a definition of Equality and Diversity, and it has a legal team that monitors human rights policy developments.

When asked to compare practice across sectors, most respondents felt that the public sector probably has better practice than the private sector, although not all felt that the voluntary sector was necessarily far ahead of the rest. Nevertheless, the SCVO has done a great deal to develop best practice models over the last few years, pushing the mainstreaming agenda. One particular challenge in the public sector was the rapid implementation of various equality duties. The requirements on public authorities to develop separate equality duties are extensive and yet it is anticipated that a single Equality Duty will be developed by 2010 or 2011. It is felt that because of the focus on separate strategies, the public sector is not currently doing enough to anticipate its arrival. In the private sector there was seen to be a big distinction between large and small companies. SMEs are thought to operate the worst practice, and yet they account for the bulk of this sector in Scotland, and employ large numbers of minority ethnic workers. Conversely, the private sector can also be pioneers in this field if there are sufficient (economic) incentives, like recognising the value of the pink pound. When companies chose to address a specific form of inequality they can often produce more effective results than in the other sectors because they have better resources at their disposal. However, in order to promote better practice in this sector a different strategy may be required. Rather than relying solely on mandatory measures, the economic benefits of equality policies need to be made clear: 'they will do it if they think it's a matter of corporate responsibility or in the spirit of competitiveness'.

### *Scotland and Devolved Governance*

Respondents were asked to comment on the implications of devolution for their work on equality and human rights. Many respondents agreed that cross-sectoral work in developing the equality agenda in Scotland is made easier because of the comparative accessibility of politicians and civil servants. There is some scepticism about the reliance on focus groups to guide policy without adequate scrutiny of how these are composed and run.

In many ways the Scottish Parliament provides a better environment to support the equality agenda. The Scotland Act is clear about the underlying principles and the absence of a House of Lords means that legislation relating to particular equality strands, such as sexual orientation, have a smoother passage into statute. However, as noted above, a problem lies in the tension between reserved and devolved powers, whereby devolved issues tend to be governed by reserved powers. For example, Scotland has some of the most progressive homelessness legislation in Europe but this is often impeded by reserved English issues. Moreover, certain areas of equality legislation like sexual orientation tend to be governed by party political considerations. The definition of 'public authority' used in legislation in the delivery of services is considered too narrow to adequately protect the human rights of all elderly people in residential care. Overall however, respondents felt that the devolved governance context in Scotland has facilitated rather than hindered the equality agenda.

### *Research Gaps*

Most informants agreed there is a pressing need for more research in a number of areas:

- There is a need for more qualitative, experiential research investigating attitudes and forms of discrimination – particularly in neglected or less well-developed areas (LGBT, traveller communities, ageing, sectarianism)
- Greater consultation with communities is required to generate reliable information in awareness-raising and ‘myth-busting’ strategies (for example, to disentangle religion and race)

There is also a need for:

- secondary analysis of existing data (e.g. ethnic monitoring data collected annually by local authorities which currently sits unused)
- research on attitudes and the causes of discrimination across the different strands in order to develop a ‘common discourse of equality’
- research among school age informants (currently neglected in LGBT qualitative research)
- investigation of cross-cutting issues (either tensions between strands or complex forms of discrimination)
- a central ‘knowledge hub’ database for all current data and research evidence on equalities issues

### **Public sector interviews**

Twelve interviews were conducted with public sector bodies representing a range of perspectives on equality and human rights. Some were directly involved in recent policy developments in this area, with responsibility for their implementation in the Scottish context, while others represent very large public authorities (like the NHS). Individuals from the following organisations were interviewed: EHRC, EOC, DRC, CRE, Scottish Parliament Corporate Body (SPCB), Equality Forward (representing further and higher education), the Convention of Scottish Local Authorities (COSLA), and the Scottish Executive Human Rights Unit. Interviews with the following organisations were also conducted, Strathclyde Police<sup>6</sup>, CBI Scotland, the Scottish branch of the TUC and NHS Scotland.

#### *Recent Policy Developments: mainstreaming and equality duties*

There is widespread recognition that mainstreaming is an important aspect of the policy agenda in Scotland. Most of the organisations represented have been involved more or less directly in the formulation and implementation of the equality duties and thus a more proactive, ‘culture change’ policy approach to equality in line with the principle of mainstreaming. Moreover, most informants were supportive of a more unified cross-strand approach to equality. However, there are some fears about losing ground in particular in the area of race, gender and disability. The representative of Equality Forward observed that the issue of equality training is particularly problematic. It is unregulated and despite considerable variation in quality, most people are reluctant to express criticism for fear of appearing ‘non-PC’. In particular, much equality training tends to alienate men.

#### *The Equality and Human Rights Commission*

Human rights had not been prominent in the work of the EOC, which focused on the duties arising from the Sex Discrimination Act. Work with female prisoners, for example, was based on discrimination rather than human rights. The creation of the EHRC would therefore bring a wider focus to its work, allowing human rights issues to be considered. This was a welcome development.

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<sup>6</sup> The interviewee from Strathclyde Police stressed that all the views expressed were their own, rather than those of the Police Force.

The respondent from the DRC observed that the EHRC offered a valuable means of attending to intersectional issues that involved more than one strand, although it would require appropriate powers of enforcement in order to ensure that equality was embedded in the policy and practices of organisations. At the same time, he commented that it was important that single strand issues, like access for disabled people, was not overlooked.

Interviewees from the equality commissions were quite critical of local authorities' delivery of equality, although it was recognised that communication with COSLA and with local authorities had not been good. Within the Further and Higher Education sectors, where there was a problem of 'equality fatigue'. The EHRC would need to promote its direct relevance to individuals in this sector. Moreover, it would need to allay fears that ground will be lost in areas like disability and race equality.

A number of policy and organisational priority areas were identified by the EHRC's Transition Programme Manager for Scotland. These include focussed work on the specific equality issues facing rural areas; the human rights issues surrounding immigration from EU accession states; and work on the patterns of poverty peculiar to Scotland. Tackling sectarianism would also be a priority issue, as well as the more general analysis of complex issues that involve both human rights and equality, and involve matters that are reserved and devolved. The EHRC incorporates a human rights framework, which is needed to 'ensure people are not only treated fairly, but are also treated well'. The EHRC has also cultivated valuable links with international human rights institutions like the UN Office for Human Rights.

#### *The Equalities Review*

Respondents expressed a number of reservations about The Equalities Review. Several people were concerned that the evidence base for Scotland was inadequate, with too little treatment of Scottish issues. Moreover, one informant feared that the Review appears to suggest a 'hierarchy of oppressions', whereby the issues of certain groups (or strands of equality) could be treated more seriously than others. It was suggested that the capability approach was chosen as the conceptual framework for the Review as a useful means of moving the policy debate away from sterile and unhelpful arguments about equality of opportunity versus equality of outcome. However, its emphasis on individual freedoms and choices carries with it a danger of ignoring the important structural, material and institutional barriers (including poverty), that produce inequality and social exclusion.

#### *Human Rights and the Scottish Commission for Human Rights*

Human rights actions in Scotland have tended to involve prisoners, although the issue now lies at the heart of all policy making, since all legislation must be assessed with regard to its implications for human rights.

The human rights agenda has been largely neglected in relation to tertiary education in Scotland. A number of controversial human rights issues require further investigation. These include: students' claims (thought to be groundless) that plagiarism checks breach their human rights and the place of human rights versus public protection in relation to enrolment procedures (for example, registered sex offenders applying to participate in photography courses). Some of the issues that arise in this area stem from misunderstandings about the meaning of human rights.

Several respondents feared that complications could arise as a result of having two Commissions operating in Scotland. As one informant observed, it would be better to have one organisation that had a full remit to engage in devolved matters.

The COSLA informant explained that human rights had not been a prominent issue for local government, since it tended to concern arenas that impact upon the relationship between the citizen and state. Notable examples are asylum and criminal justice – areas where human rights cases have

reached media attention. Guidance for local authorities on human rights legislation will be issued in the future, although COSLA would prefer to see human rights as part of the equality agenda. This viewpoint echoes that of the DRC representative, who felt that understanding the complex interaction of equality and human rights was essential, rather than treating them as separate issues. Having a separate Scottish Commission for Human Rights suggested a particular focus on Scottish issues. This implies a need for more research on human rights issues in the Scottish context.

#### *Comparing the Equality Strands: policy, practice and future need*

Scotland has a tradition of comparatively good inter-strand cooperation, in particular under the auspices of the Equalities Coordinating Group. Nevertheless, it is recognised that the strands of gender, race (and more recently disability) have made more progress in terms of legislation than the 'newer' strands. This progress has been reinforced by the implementation of public sector duties in the fields of race, disability and gender. However, the Scottish Parliament has tended to adopt a much more overarching view of equality in producing legislation. Furthermore, the Scotland Act has a broader definition of equality than that used in Westminster, allowing it to encompass additional issues in relation to political opinion and religious belief.

#### *Implementing Equality and Human Rights Policy*

Awareness and understanding of human rights issues is more developed in the public sector than in other sectors. This is because only states – and their apparatuses (public sector bodies) – can breach human rights. Human rights are thus designed to mediate the relationship between the citizen and the state. Other sectors are only implicated in human rights issues when they are performing public sector functions and thus acting on behalf of the state. Privately run residential care homes (for the elderly or the vulnerable) provide a clear example of this scenario. The activities of such institutions warrant close scrutiny.

It is generally agreed that despite recent developments with mainstreaming and equality duties, the public sector could make improvements, particularly in implementation. Progress has been hampered by the excess of paperwork these duties require; they are too bureaucratic – as one person expressed it 'in the public sector it is recognised that there is a need to achieve change rather than achieve paperwork'. The police are cited as models of best practice in the public sector. In the voluntary sector, some organisations can be identified as 'brand leaders', whereas the practice of some churches of excluding LGBT people from employment may be regarded as exemplifying worst practice. In the private sector, SMEs have a poor record of compliance with equality and human rights legislation, although this is often because of ignorance rather than a conscious policy of discrimination. It was observed that in order to reach these organisations, the business case for equality had to be made. However, the private sector could also provide 'shining examples of best practice', for example some large banks had 'gold standard' equality policies and practices.

#### *Research Gaps*

Informants suggested that research was needed in the following areas:

- The operation and interaction of human rights legislation and equality
- Research that focuses on Scottish equality and human rights issues
- A centralised resource of thinking, statistics and research on equality and human rights (including a role for maintaining links across a range of stakeholders)
- Research with practical applications like how to promote equality more effectively and the impact of existing policy techniques like benchmarking
- Explorative research into specific strands to uncover knowledge gaps

#### **Private sector interviews**

Nine informants from the Scottish private sector were interviewed, including companies from the retail (supermarket and motor trade), agriculture, transport, and manufacturing sectors. Five of the companies operate in Scotland, the other two are international businesses, one with a head office in East Scotland, the other in London. Twelve other companies were approached (representing housing, finance, tourism and defence) but were not willing to participate in the research.

There was generally quite low engagement with the Equality Act (2006) or the HRA (1998) probably because businesses believed they did not need to comply with either Act. There was quite a strong message from some companies that they would do the minimum required to avoid legal action, because to do more would impact adversely on their profit margins.

#### *Recent Policy Developments: mainstreaming, equality duties and the Equality and Human Rights Commission*

It is unclear how well the private sector understood the concept of mainstreaming, however the creation of a single commission was seen as an advantage to businesses. The EHRC was expected to offer comprehensive guidance on all equality issues by most interviewees as it would allow them to reduce the number of consultations they do, to ensure they comply with relevant legislation. There was little recognition that a single commission might help improve equality and reduce discrimination, only that it would make their jobs easier in keeping up with legislation.

There was approval for the way the human rights agenda has impacted on some aspects of business, for example the right to work free of abuse intimidation. But four companies related human rights to health and safety issues, remarking that they had gone too far and interfered with common sense and productivity. The issue seemed to be about the disproportionate amount of energy focussed on protecting the rights of a minority of employees, and so the HRA (1998) is clearly interpreted here as relating only to minority groups rather than a model of freedom for all. One respondent commented that their work to establish equality and non-discrimination was based on avoiding legal action rather than due to a meaningful shift in attitude towards equality for all.

Most companies used other organisations to help them keep informed rather than employ someone in-house to monitor legislative developments and their related duties, for example SEDEX (Supplier of Ethical Data Exchange), the Royal Bank of Scotland Employment Advice Line or the CIPD (Chartered Institute of Personnel and Development).

#### *Human Rights and the Scottish Commission for Human Rights*

There was some indication that the distinction between human rights and equality was not well engaged with by the respondents with the notable exception of one transport provider and the trade union.

Most respondents saw no value in having a Scottish Commission for Human Rights or a Scottish Equality and Human Rights Commissioner. There was little understanding among the respondents about what the Scottish EHRC would do, or how it could benefit their organisations.

Although some companies applauded the rise in awareness of equality and human rights, three companies were concerned that legislation was going too far, and that this reflected our society which had in their opinion, become obsessed with political correctness. These companies argued that the success of their business was based on profit, and some equal opportunities exercises (promotion and training) were a waste of time and funds. This principle was allied to issues around health and safety which were considered by interviewees to challenge common sense and divert attention from getting the job done. One company said that an individual's identity (i.e. where it coincides with one of the equality strands) should always be secondary to their professional identity while at work.

### *Comparing the equality strands: policy, practice and future need*

Each organisation demonstrated a good understanding of their duties to offer equality on the grounds of race, gender and disability. With respect to disability, there was evidence from most companies that they used some positive action, for example guaranteeing an interview to disabled candidates who met the minimum requirements. One company reported that they had not had a disabled applicant, and so had never had to look at a specific policy in this area, but also argued that the majority of posts in that organisation required physical and manual labour. It is unclear whether the company's advertising culture restricted disabled applicants, or whether disabled people were not considering this source of employment.

There was some confusion about the idea of religion or sexual orientation and about the ethics of finding this information out about an employee or customer. As no positive response could be associated with this knowledge, it was generally felt that this knowledge should not be required, to do so would be an invasion of privacy.

Only three of the nine companies interviewed reported that staff were given training on equal opportunities. All three companies had staff who dealt directly with the public. A fourth company that dealt with the public reported that they didn't offer the training. One of the companies that did offer training only targeted staff that had direct dealings with the consumer. One of the interviewees representing the manufacturing sector reported that they would not want to offer equality training because it would encourage discontent and complaints from staff members once they were aware that their rights were not upheld by working practices. Another two companies that reported that equal opportunities training was not offered, claimed that there was no need, that they met best practice standards already.

### *Scotland and Devolved Governance*

One respondent in particular from the agricultural sector personally disagreed with devolution and so reported that his company had a British identity, but felt that this did not impact on the way business was run. Although transport is a devolved issue, both of the companies from the transport sector did not think that devolution had any impact on their business. One company has always and continues to operate only in Scotland and so sees no tension between Westminster and Holyrood. The second company works with transport networks in the rest of the UK to offer a unified standard of service and feels that this overcomes any potential tension.

### *Activities for a Scottish Centre for Research on Equality and Human Rights*

Most companies did not easily engage with the idea of a Scottish research centre, as they thought the geographical focus (of Scotland) would reduce its value. Most companies expressed an interest in being on a mailing list, or receiving e-mail bulletins about developments within the centre.

## **Conclusion: common themes**

The informants reflected a diverse range of perspectives on equality and human rights issues. For some, pursuing developments in these areas is the very substance of their work, while for others these are vaguely understood issues that represent an externally imposed problem to be dealt with. Despite these contrasting perspectives, a number of common themes emerged from the interviews. These are summarised under the main topic headings.

### *Recent Policy Developments: mainstreaming and equality duties*

- Mainstreaming is widely supported for contrasting reasons. It appeals to the voluntary and policy sectors on moral and practical grounds – seen as the best means to achieve culture change. It appeals to the private sector because a single approach to equality is perceived as simpler than a multi-strand policy.

### *The Equality and Human Rights Commission*

- There is widespread support for the EHRC. The private sector and voluntary sector see it as a 'one stop shop'. The policy and voluntary sectors see it as a means of addressing complex, cross-strand issues, introducing a human rights framework to policy, and providing support for the newer, more neglected strands of equality
- Representatives of the 'older' strands fear the issues they represent will be diluted
- Many people are concerned that the EHRC should receive adequate resource to build a solid infrastructure and to ensure a smooth transitional phase
- The EHRC needs to engage in a high visibility publicity campaign, explaining the relevance of policy, promoting its activities, and dispelling myths about human rights

### *The Equalities Review*

- There is greater awareness of the Review in the public and voluntary sectors
- The emphasis within the Review on mainstreaming and the ten-point scorecard are seen as positive features.
- The document is seen as too anglocentric, with too little use of Scottish data, too little attention to poverty and little mention of sectarianism
- The Review bases its conceptualisation of equality on the capability approach. This attracts praise and criticism. For some this provides a welcome focus on empowering individuals, while for others this creates the opportunity to overlook the importance of structural factors in creating disadvantage

### *Human Rights and the Scottish Commission for Human Rights*

- There is much misunderstanding and confusion in relation to human rights
- There is a danger that human rights is too closely associated with an individualistic litigation culture
- Most voluntary sector and policy sector informants welcome its inclusion in the equality policy agenda – some see it as crucially important
- There are questions about how two separate commissions (EHRC and SCHR) will operate in Scotland
- There is need for more research into the complex interaction of equality and human rights issues
- There was hesitation around human rights from the private sector, three companies argued that it potentially interfered with profit margins and reflected a society that was too politically correct

### *Comparing the Equality Strands: policy, practice and future need*

- All sectors agree that race, gender and disability have the greatest legislative support, and the highest levels of popular awareness
- Among the 'older' equality issues, race has thus far been given greater weighting in public services like health and police
- Among the three newer strands, the private sector pays more attention to issues surrounding age, including retirement and pensions
- The legislation concerning age is not thought to be wholly effective
- Strand-specific issues requiring attention include: domestic violence, hate crimes, transgender rights, male rape, workplace youth discrimination, abuse of the elderly in residential care
- Many respondents acknowledged the problem of 'equality/single issue fatigue'. Some private sector respondents felt that equality agenda had gone too far. In the words of one informant 'a person's individual identity should always be secondary to their professional identity when at work'

### *Equal Opportunities Policy*

- While practice varies, these are in place in all sectors
- The private sector operates a minimalist, anti-litigious model
- Only private sector companies that had direct dealings with the public offered their staff equality training
- The voluntary sector adopts the most ambitious model of workplace equality
- Some of the private sector companies felt that equality legislation interfered with profit margins
- The policy and voluntary sectors agree that the private sector could be pioneers of best practice, but this requires the economic arguments for equality to be clearly articulated
- SMEs are the worst 'equal opportunity offenders'. This is a significant issue in Scotland given the especially large number of SMEs

### *Scotland and Devolved Governance*

- Private sector companies had little interest in the implications of devolved governance since they tend to assign responsibility for equality policy to their in-house (often legal) experts
- The main challenges identified by the voluntary and policy sectors are:
  - Developing competence in managing issues that cut across devolved and reserved matters
  - Responding to the recent change of government (SNP did not include equality in their manifesto although many representatives of the newer strands – esp. LGBT - feel optimistic about receiving better support)
  - There is inadequate data and research on Scottish equality issues
  - There is a desire for the EHRC and SCHR to work closely together

### *Activities for a Scottish Centre for Research on Equalities and Human Rights*

Initially private sector informants were not entirely convinced of the need for a Scottish Research Centre on Equality and Human Rights, since they were often unaware of the importance of this area and their duties with regard to business practice which was consistent with equality and human rights legislation and regulation. By contrast, there was almost universal support and enthusiasm for such a research centre from the public sector (including policy makers) and the voluntary sector.

Most respondents involved in developing or implementing policy expressed a desire to see the creation of a central knowledge resource on issues and research relating to equality and human rights. Existing research tends to be housed in strand-specific databases and resources. Most respondents felt that in order to facilitate a more coordinated approach to equality and human rights, it would be useful if all research were held in one place.

A number of gaps in existing knowledge and research were also identified. Suggested areas for future research are:

- Patterns of poverty specific to Scotland and links to equality strands
- Experiences and forms of social exclusion and inequality in rural areas
- Sectarianism
- Traveller and gypsy communities (survey data and qualitative research on experiences of education)
- Women and criminal justice
- LGBT and: school education; tensions with other equality agendas
- In relation to all strands: investigation of multiple identities (intersectional issues)
- Intersections between human rights and equality issues
- How to deliver equality schemes and staff development programmes effectively

Informants also wished to see the following activities:



- Awareness training and research oriented to practical implementation issues
- Opportunities to form networks oriented to the equality and human rights agenda in Scotland
- Practical input on how to promote equality and human rights through organisational development

### **Additional consultation and dissemination activities**

In addition to interviews with key informants and informal discussions with academics, policy makers, practitioners and business people throughout Scotland, three formal consultation meetings were held throughout 2007 in Edinburgh (in January, May and December – see Appendix for advisory committee members).

In addition, a roundtable discussion was held on 28<sup>th</sup> September 2007 to mark the launch of the Equality and Human rights Commission. Speakers included Professor Heidi Safia Mirza (Centre for Equality and Human Rights, London Institute of Education); Dr Paul Chaney (University of Cardiff), Professor Nick Watson (Strathclyde Centre for Disability Research; Professor Sheila Riddell, Centre for Research in Education, Inclusion and Diversity) and Rowena Arshad (EOC Commissioner). The key questions addressed by contributors were the following:

- How will the EHRC's agenda play out in the context of devolution?
- What are the implications of a unified approach to equality for particular strands?
- How will the agenda and human rights agenda articulate?
- What are the main areas of equality which should be addressed?

A report of the roundtable discussion is available on the project website ([www.creid.ed.ac.uk](http://www.creid.ed.ac.uk)).

## **SECTION 6: THE INTERNATIONAL CONTEXT**

### **Introduction**

This section discusses the approach to equality and human rights, and the mainstreaming of equality in a number of countries which appear to be leading the field. The focus was primarily on English speaking nations and information is presented in relation to the U.S., Canada, New Zealand and Australia. Approaches to equality in a range of European states were also include. The position of three socially progressive Scandinavian countries focused on Norway (outside the European Union (EU)), Sweden and Finland. Estonia, Latvia and the Czech Republic's response to equality and human rights were considered as former Communist States. Finally three countries representing Western Europe, Ireland, France and Germany were considered. However, with the exception of Ireland, we were restricted by the amount of information on the English language pages of each European State's government website. This section draws on Working Paper 6 on the project website.

Two key aspects of mainstreaming are explored. Firstly mainstreaming relates to the practical auditing of decisions, policies and plans within public bodies and government organisations to ensure that equality issues are considered. For example, when drawing up a policy on holiday entitlement, the NHS, as a public body in the UK must consider how the policy will impact on men and women, and ensure that both genders are treated equally due to the Gender Equality Duty (2007). In addition mainstreaming can be taken to mean the way the equality strands are protected within the legislation, and to what extent each strand has access to redress once discrimination has occurred. To achieve mainstreaming, all strands should have legal protection and representation, preferably under a single Act and Commission.

### **Non-EU States: Australasia**

#### **New Zealand.**

There is a fairly clear pathway to ensuring equality in New Zealand, via an emphasis within Government on Human Rights. There is a Human Rights Act (1993 – passed 5 years before the UK domestic legislation) which is regulated by the Human Rights Commission (established by the Human Rights Act 1977), and within this Act there is certainly acknowledgement of equality and non-discrimination. The HRA (1993) was amended (Human Rights Amendment Act 2001) at which time the Human Rights Commission merged with the Office of the Race Relations Conciliator, and new Race Relations and Equal Opportunity Commissioner posts were created. So from 2001, New Zealand has supported mainstreaming by reducing the number of bodies protecting and promoting equality. Also in support of mainstreaming, the Human Rights Amendment Act (2001) placed a duty on Government, government agencies and anyone who performs a public function to be accountable for unlawful discrimination under the HRA (1993), thus it was recognised that discrimination and inequality exist in national policies and their application.

Human rights legislation in New Zealand has its foundations in the New Zealand Bill of Rights (1990) which protects the rights of individuals, companies and incorporated societies from the actions of those in positions of power (including the government, government departments, the judiciary, state-owned enterprises and local authorities). No new piece of NZ legislation can be passed until it has been assessed as complying with the Bill of Rights. The Bill of Rights (1990) draws on the UN Declaration of Human Rights, whereas subsequent human rights legislation has stronger equality themes. For example the NZ Bill of Rights (1990) refers to the following rights: Life and security of the person (including right not to be tortured); democratic and civil rights (including right to vote and freedom of expression, thought and conscience); non-discrimination and minority rights; search, arrest

and detention; criminal procedure; right to justice. Under non-discrimination and minority rights, people have the right not to be discriminated against on the grounds of sex, marital status, religious belief, ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, employment, status, family status and sexual orientation. In addition people belonging to an ethnic, religious or linguistic minority have the freedom to practice their religion or use the language of their minority. This provides the foundation for the 1993 HRA.

In 2003 an audit was published to determine the extent to which human rights were protected or promoted in legislation, policy, government process and in practice. Within this audit the Government looked particularly at non discrimination and participation of individuals in decision making, with a focus on a number of equality strands, including the minority indigenous population. There is an emphasis on:

... the fundamental right to be who we are and to be respected for who we are - whether a disabled person, Pakeha, Māori Pacific, Asian, gay, lesbian, a transgender or intersex person, male , female, young or old – is still not a reality for all New Zealanders. (Human Rights Commission (NZ) (2004) *Human Rights in New Zealand Today: Executive Summary*, page 1)

In addition to the general emphasis on mainstreaming equality, publications address particular issues such as rights in pregnancy and Muslim women's dress code (See, for example, '*Employer's guidelines for the prevention of pregnancy discrimination*' or '*Muslim women Dress Codes and Human Rights*' (NZ Human Rights Commission: <http://www.hrc.co.nz/home/hrc/resources/resources.php#hrcguidelines> 14.08.07). Although most anti-discrimination legislation comes from the Justice ministry, some comes via the Human Rights Commission and some from specialised ministries, for example the Ministry of Women's Affairs.

## **Australia**

Australia does not have a Human Rights Act, although it does have a single equalities commission established under the terms of the Human Rights and Equal Opportunity Commission Act (1986). Instead, it has a number of pieces of legislation relating to particular aspects of equality such as the Racial Discrimination Act (1975); Sex Discrimination Act (1984); Disability Discrimination Act (1992) and Age Discrimination Act (2004).

The Human Rights and Equal Opportunity Commission (and the founding Act of 1986) go some way to co-ordinate equality protection, promotion and information. The commission consists of commissioners representing human rights, disability, race discrimination, sex discrimination and Aboriginal and Torres Strait Islander social justice. Likewise, the Act has been amended multiple times and co-ordinates the individual equality acts by defining discrimination and how it relates to race, age, disability and so on (Human Rights and Equal Opportunity Commission Act, (HREOCA) 1986, Part 1, 6A, section 3). In addition the Commission is charged with the duty of ensuring compliance with the individual equality acts.

In addition to Federal legislation, Australian states also have their own equality acts, for example, the New South Wales Anti-Discrimination Act 1977 makes it unlawful, within that territory, to discriminate on the ground of race, sex, marital status, disability, homosexuality, age and transgender and covers areas like employment, trade unions, education, access to places and vehicles, but does not relate to state policy or administration. The cascade down, from a general federal law to more refined state law follows the U.S. and Canadian models. It allows for variation within each state, though with one commission there is perhaps less ambiguity over who is protected than in the U.S.

## **Non-EU States: North America**

## **Canada**

The Canadian Human Rights Commission oversees the Canadian Human Rights Act (1985) and the Employment Equity Act (1995). Both pieces of legislation promote equal opportunity and non discrimination. The Canadian Human Rights Act (1985) refers to the Act as being a pathway to equality, and emphasis is placed on the prohibition of discrimination based on 'race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability (defined as and previous or existing mental or physical disability, including disfigurement or substance dependence) or conviction ...'. The Canadian HRA (1985) places duties on employers and individuals (including businesses) to avoid discrimination and to promote equality. The Act thus recognises that discrimination can occur at Government policy level as well as within a business/client relationship.

It is the emphasis on ending discrimination that takes the Human Rights Act beyond human rights and into the field of equality. It is unlawful, under the 1985 Act to discriminate or harass an individual, to deny access to the provision of goods, service facilities or accommodation; deny access to commercial premises or residential accommodation; to refuse employment or continued employment, or to differentiate adversely against an employee; to discriminate during employment application or advertisement; or to pay men and women unequal wages for the same work. A person who feels that they have been discriminated against on more than one ground can still make a claim through the Canadian Human Rights Tribunal and so in this way, the Act can be seen to successfully mainstream equality as multiple discrimination is recognised. It is not clear from the wording of the Act to what extent a person needs to prove that they belong to a category included in the protected list before they are eligible for protection.

There is increasing recognition within Canadian public policy of the need for more sophisticated intersectional analysis, focusing on inter-categorical and intra-categorical variation in the experiences and outcomes of particular social groups. However, as noted by Siltanen (2006) for a range of methodological and practical reasons, there is considerable scope for the further development of such analyses at Federal and state levels.

## **United States of America**

Fundamental to the US Constitution, ratified in 1791, is the Bill of Rights which protects the rights of the individual in a number of domains including freedom of speech and religion, freedom of assembly and petition, the right to be free of unreasonable search and seizure, of cruel and unusual punishment and compelled self-incrimination. In addition the Bill of Rights restricts some of the powers of Congress from making any law that prohibits or restricts religion, or from depriving any person of life, liberty or property without a fair trial. Supporting this was the Declaration of Independence, written in 1776, which was a treaty of the existing 13 states against the continued British colonisation. The Declaration of Independence asserted the equality of men and this principle continues to be influential at least at the level of rhetoric, although it is not formally written into US law.

The Equal Employment Opportunity Commission regulates and upholds six acts of the US Federal Government: The Civil Rights Act (1964); the Age Discrimination in Employment Act (1967); the Equal Pay Act (1963) Titles 1 and V of the Americans with Disabilities Act (1990); the Civil Rights Act (1991) and section 501 of the Rehabilitation Act (1973). Despite having one Commission, the US still continues to treat equality strands as discrete entities. Racial equality continues to be a major pre-occupation since this is central to many social divisions within the US. The Civil Rights Act, passed in 1964, prohibits discrimination in employment and other social policy fields on the grounds of sex, colour, religion, national origin or race. The Act also allows for some positive measures to encourage equality of outcome where this produces social justice, even though other groups may be disadvantaged by this. For example, this would allow advertisements of employment to target groups currently underrepresented.

As discussed, at the Federal level, equality and human rights have limited impact, and this may be due to the emphasis placed on State law to protect and enshrine the rights of individuals. Even within State law there is variation as some cities have their own policies to further protect the rights and freedoms for some groups, for example the growth of the LGBT community in San Francisco has led to this being the city where gay rights are most closely protected.

A brief comparison of three States (Idaho, pop. 1 466 465; Alabama, pop. 4 447 100, and New York State, pop. 19 306 183) demonstrates the variation. The State of Idaho has its own Human Rights Commission which regulates three State laws around general commission duties and gender equality. It is also the responsible body in Idaho for regulating three Federal laws, the Civil Rights Act (1964), the Age Discrimination in Employment Act (1967) and the Americans with Disabilities Act (1990). As well as employing seven civil rights investigators, Idaho's Commission also acts as an umbrella to coordinate over 150 affiliated organisations, for example, the Idaho Refugee Service program; Hispanic Business Association and Disability Action Center – Northwest. However apart from the Commission itself, there is no framework for mainstreaming, and the rights and the freedoms of the different groups are defined by the category to which they belong.

Alabama offers a different perspective. There is no equality or human rights commission, or anything that approaches this remit. However, the amendment to the Constitution of Alabama (1901) prohibits discrimination or preferential treatment based on race, gender, color, ethnicity, or national origin by public bodies. There is little information available about how the amendment is upheld, or how a complaint under the amendment might be dealt with as there is no obvious commission or tribunal system. It is difficult to determine if this simple directive is sufficient to protect the rights to equality, but it does in principle support the idea of mainstreaming as there is little distinction between the groups, and as it is part of the Constitution of Alabama it should inform all State law passed post-2001.

New York State has a Division of Human Rights which protects the right not to be discriminated against on the basis of race and color, creed, national origin, sex, age, disability, sexual orientation, marital status, familial status or military status. There is further support to those living in New York City as they have their own network of human rights organisations, which covers a large number of strands. There seems to be little differentiation between the groups, though gender and disability groups seem to have a higher profile.

## **Scandinavian States**

### **Norway**

The information from Norway is limited to the English-language pages of their Government website. There is an Equality and Anti-Discrimination Ombud (similar to our understanding of a Commission) and their remit is protected by the Anti-Discrimination Ombud Act (2005), which also relates to the affiliated tribunal. This act prohibits discrimination and promotes equality. The Ombud is also responsible for regulating the Gender Equality Act (2002). The Ombud has the following mission statement:

Everyone has a right to self-development, and to utilise his/her abilities and live his/her own life, irrespective of gender, social background, religion, sexual orientation, disability or ethnic background. [www.regieringen.no/en/topics/equality.html?id=922](http://www.regieringen.no/en/topics/equality.html?id=922)

The Ombud is based within the Ministry of Children and Equality but supports all strands currently supported by UK legislation. Equality strands may also have protection from other Ministries, for

example the Ministry for Culture, Leisure and Belief Systems or the Ministry of Immigration and Social Inclusion. Therefore the pattern of support will depend on the group to which you belong and the case you are bringing.

The Anti-Discrimination Ombud Act (2005) brings together the Gender Equality Act of 1978 and 2005, employment legislation and Owner-Tenant and housing legislation. It also formally pursues the conventions of the United Nations International Convention on the Elimination of all Forms of Discrimination against Women (1979) and All Forms of Racial Discrimination (1965), thus complying with International ideals.

The Ombud is instructed by the Act (2005) to promote genuine equality irrespective of gender, ethnicity, national origin, descent, skin colour, language, religion or belief in all areas of society, and formally includes the category of employment. In addition the Ombud has a duty to promote equal treatment irrespective of political views, membership of an employee organization, sexual orientation, disability or age. Public bodies must demonstrate their process of promoting equality if asked to do so by an Anti-Discrimination Tribunal. This may, in practice, mean that public bodies need to consider equality at the planning stage of all decisions and policies.

The Gender Equality Act (2002) places public bodies under a duty to make ‘active, targeted and systematic efforts to promote gender equality in all sectors of society’ (Gender Equality Act (2002) Norway, Section 1a). A similar duty is placed on employers. In addition, enterprises that have a duty to prepare an annual report or budget, must also account for the measures (implemented and planned) to promote gender equality and prevent differential treatment, and in this way achieve mainstreaming. The Gender Equality Act (2002) also places a duty on all schools and educational institutions to ensure that teaching aids must be based on gender equality. Whilst gender equality legislation appears to be quite highly developed, similar measures do not seem to apply to other equality strands.

## **EU: Sweden**

Sweden, unlike Norway, is a member of the EU. Of all the nations considered so far, Sweden may be the closest to achieving a mainstreaming approach to equality, and this is because it was written into their constitution in 1974 with the Instrument of Government. Chapter 1, Article 2 of the Instrument declares that public institutions have a duty to combat discrimination of persons on grounds of gender, colour, national or ethnic origin, linguistic or religious affiliation, functional disability, sexual orientation, age or other circumstances affecting the private person. As the duty is placed on public bodies as a constitutional obligation, mainstreaming can be seen to be in place. All public bodies must consider equality before making any decisions or developing any policy. Similarly the equality strands go beyond the six UK strands and also allows for ‘other circumstances’ and this anti-restrictive and non-exhaustive definition is also a sign of mainstreaming.

The Ministry of Integration and Gender Equality has responsibility for several divisions including Gender Equality; Human Rights; Integration and Diversity; Minority Issues and Youth Policy. The Office for Equal Opportunities Ombudsmen and the employment equality legislation come under the remit of the Gender Equality Division. This Division pledges that ‘women and men shall have equal power to shape society and their own lives’ ([www.swede.gove.se/sb/d/8366](http://www.swede.gove.se/sb/d/8366)). In meeting this pledge the Division aims to achieve economic equality and an equal distribution of unpaid care and household work. Therefore within this one strand, the Swedish Government go beyond the employment parameters within which most of the other considered nations operate, and approach ideas of citizenship.

The Human Rights Division of the Ministry of Integration and Gender Equality has a higher profile than the other divisions demonstrated by having its own website outlining internal approaches to Human Rights, and foreign policy around Human Rights. The Human Rights Division also acts as an

umbrella to promote the rights and freedoms of some equality strands. For example the Disability Policy promotes the inclusion and equality of disabled people, largely via the Disability Ombudsman. The site makes it unclear what legislation underpins Disability Policy other than constitutional law, and this is due to the Swedish Government site being only partially available in English. Within the Human Rights Division, there is a further focus on women's rights, and minority rights although these are restricted to five specific groups including Jews and Romany families. The Rights of Children are also the focus of a unit within this division, which may overlap with some of the issues around age. There is an Ombudsman against Ethnic Discrimination (dealing also with religion) and an Ombudsman for Sexual Orientation. Here though there is evidence of a hierarchy within the strands as age is not represented by an ombudsman and indeed has not been fully transposed into national law from the EU directives.

Although the constitution has mainstreamed equality since 1974, there is evidence that the equality strands are not given equal emphasis. Gender (and women's rights more so than men's rights) is tackled from within various units. Disability, sexual orientation and ethnic minorities have their own ombudsmen but you have to belong to a particular minority to access full protection (protection is partial outside of employment law). It is difficult to know how this has been interpreted in practice. Do the rights and freedoms promised by the constitution actually deliver? If so, why were further advances made in gender and disability rights? It seems that despite the strong message of equality and mainstreaming, this hasn't had the intended impact on those marginalised or excluded.

## **EU: Finland**

Both Sweden and Finland have made the decision to remove the term 'ethnic origin' from their legislation on the grounds that it contributes to the view that races can be distinguished from each other on scientific grounds. Both states dispute this construct: Sweden refers to 'ethnic belonging' and the Finnish Non-Discrimination Act refers to ethnic or national origin to allow for some ambiguity around the categorisation of racial groups.

Finland is one of only two EU states (the other being Italy) to include a definition of equality that is non-exhaustive (where for example the UK definition restricts itself to the six strands). Finland is also the only state (Cormack and Bell, 2005) to complete an audit of all existing legislation as a response to the Employment Equality Directive and the Racial Equality Directive from the EU. No changes were required due to the emphasis placed on equality already in statute, but some legislation that listed equality strands (and so met the provisions of the Directives) have been changed to ensure that the list of strands actually becomes exhaustive, and to remove any hierarchy of the strands, (Non-Discrimination Act). This is a giant step towards mainstreaming and the focus on existing laws (rather than new ones only) shows commitment to the principle of mainstreaming.

Like Sweden, public authorities have a constitutional duty to foster equality, and are permitted to take positive action to tackle existing inequalities. Finland's progressive approach to equality is not only evident in law, but in multi-agency working. All published information relating to new freedoms and protections in response to the EU directives are available in Braille and minority languages as a matter of course and disseminated widely. The Government has a history of building strong relationships with NGOs, user groups and regional organisations to allow potential for an open and informative dialogue.

Like Sweden there is much evidence of mainstreaming as equality is a central principle of Finland's constitution, and it appears that Finland fulfilled its duties under the directives before they were published by the EU. Their audit of policy and active dissemination of material relating to the directives demonstrates a commitment to the idea of equality and the principle of mainstreaming.

## **EU Members: Western Europe**

### **France**

Both France and Germany have requested an additional three years to fully transpose the disability or age provisions outlined in the EU's Employment Equality Directive. This extra time is not symptomatic of a lack of engagement, rather the opposite. Both nations have set up inclusive and far reaching debates to do justice to the opportunity to set up new anti-discrimination legislation. The extra time is also required because neither nation had the necessary legislation in place to build upon. Equality issues were dealt with before the EU directives, but the approach was not co-ordinated and so anti-discrimination protection came under a variety of legislation, labour policies and penal codes, (Cormack and Bell, 2005). Political opinion is a prohibited ground for discrimination within the religion and beliefs strand, and France is one of the few countries to allow positive discrimination on gender, disability or socio-economic issues (for example it has a quota system for employers to employ a minimum proportion of their work force from disabled candidates – although this approach is seen as retrogressive by the disability movement).

No previously ratified legislation has been amended in response to the directives. This is in part due, once again to a constitutional commitment to prohibit discrimination on the grounds of origin. However some new policies have been developed to further protect the rights of the other equality strands with respect to public services.

### **Germany**

As was the case with France, the German website provided very limited information in English and so the Cormack and Bell (2005) publication informed this review. As discussed, the EU directives have not been completely transposed, though again, this is considered to be because Germany wishes to take the opportunity to complete the job well, with proper consideration of relevant agencies, NGOs, user groups and regional organisations. The Cormack and Bell (2005) document says very little about the German response and this indicates that they have done little to deviate from the two directives (either in terms of best practice, or in a negative way). As with France multiple agencies at the state and the federal level previously worked toward equality and protection from discrimination. In response to the directives a new specialist commission is planned to co-ordinate the existing work. In this way mainstreaming could be approached, as the hierarchy within equality strands could be removed. However there is little information available of the current legislative structure supporting equality in Germany and so it is impossible to assess to what extent mainstreaming is achieved.

### **Ireland.**

Equality is structured in two ways within Ireland. Firstly the Equality Authority works to promote equality and prohibit discrimination in employment and affiliated systems, for example vocational training and advertising. Secondly, the Department of Justice, Equality and Law Reform co-ordinates anti-discrimination legislation working along particular strands (for example gender and disability). The Equality Authority is an independent body set up under the Employment Equality Act of 1998, and was established in 1999. The Authority's practice is also informed by the Equal Status Act 2000 and the Equality Act 2004. The Equality Act 2004 extends the cover of protection to include access to goods and services and 'other opportunities to which the public generally have access', though this does not seem to cover education or healthcare for example. The Equality Act incorporates the Gender Equal Treatment Framework, the Framework Employment Directive and the Race directive. The Act also brings in a duty to promote equality in the employment field. Nine equality strands are protected by the Authority: gender; marital status; family status; age; disability; race; sexual orientation; religious belief and membership of the traveller community, thus going beyond the equality strands laid out in UK legislation. Within this Irish legislation, discrimination is defined as less favourable



treatment and the Equality Authority focus on claims around dismissal; equal pay; harassment; sexual harassment, victimisation; working conditions and promotion. The discrimination must be associated with one of the nine equality strands.

The Equality Authority has its own legal team who can provide free assistance to those assessed as eligible to bring a case under the Employment Equality Act 1998 or the Equal Status Act 2000. To be eligible the claimant must be highlighting a point of principle not yet supported by case law and be an issue that lies within the Equality Authority's current strategic plan. Therefore legal representation is not offered democratically.

The Department of Justice, Equality and Law Reform is structured around four separate but inter-related units: Disability Equality Unit; Diversity and Equality Unit; Gender Equality Unit and the Social Inclusion Unit. The Disability Equality Unit aims to develop legal frameworks in line with Government policies to support the equal participation of people with a disability in society. It was established under the National Disability Authority Act (1999) in 2000 and aims to implement the mainstreaming of policy, however this seems to be on the agenda rather than a duty ratified by legislation. The Diversity and Equality Unit's remit seems to map onto the Equality Authority's goals as does the Gender Equality Unit, so there is clear evidence of close working between the Department and the independent Equality Authority. The Social Inclusion Unit does not seem to be so clearly supported by legislation but does develop policies which target the educational and resource disadvantages which contribute to marginalisation, and again has a focus on the equality strands.

Ireland's Human Rights Commission was set up by the Human Rights Commission Act (2000) and the Human Rights Commission (Amendment) Act (2001). This was less a response to the external pressure coming from Europe, but to the internal pressures presented by the troubles, and a direct response to the Good Friday Agreement of 1998. The Good Friday Agreement committed Ireland to democratic and peaceful resolutions to conflict, acceptance of diversity and principles of partnership and equality. The Human Rights Commission was set up in Northern Ireland in 1999 and in Ireland (known sometimes as Commission in the South) in 2001. Both Commissions work together to consider the potential of a Bill of Rights uniting all residents in Northern Ireland and Ireland, and to consider issues such as migration and racism. Both Commissions look to the United Nation's Paris Principles of 1993 and are therefore independent of their Governments.

The mainstreaming of equality is only partially successful as employment is the only clear social policy arena governed by the legislation. The ambiguity of the term 'opportunities to which the public generally have access' could in theory relate to issues such as education, but no case law has extended the Equality Authority's scope beyond employment and access to goods and services to date. The associated Department of Justice, Equality and Law Reform does place particular emphasis on two strands (gender and disability) and in this way undermines mainstreaming. However the Social Inclusion Unit subscribes to a mainstreaming approach in that the cause of marginalisation is less important than the exclusion itself, but the work of this unit is not sufficiently supported in law to be considered actually mainstreaming.

## **EU Members: Former Communist States**

### **Czech Republic**

All three former Communist states chosen here have not fully transposed the EU directives. Unlike France and Germany, it is supposed that the delay is down to low engagement and to problems interpreting the directives within their own legislative structure. It is the Racial Equality Directive that has been particularly problematic for the Czech Republic, Estonia and Latvia.

In addition the response to the Employment Directive from the Czech Republic and Estonia does not offer protection to the self-employed and only partial protection for those employed by public bodies, meaning that mainstreaming is very unlikely to be achieved.

However there are some examples of good practice. Both the Czech Republic and Estonia allow positive action with a quota system to support the employment of disabled people. There are also programmes of integration for the Roma community, recognised as an ethnic minority facing particular disadvantage, for example Roma students enjoy funded access to higher education.

There is no specialist body planned to promote equality in the Czech Republic. The existing ombudsmen are expected to extend their remit though it is unclear to what extent or to what effect (Cormack and Bell, 2005). Concern was also raised about the dissemination of changes made in response to the EU directives as printed information is not available in different formats (this is the case too for Latvia).

## **Latvia**

The obvious omission from Latvia's response to the EU directives (apart from largely ignoring the Racial Equality Directive) is the sexual orientation strand from employment law. Their definition of equality does include the other five key strands and also includes a non-exhaustive element, so those seeking protection may still be satisfied.

The response to the Employment Equality Directive was intended to apply to private and public bodies. Latvia's response does not include the civil or military service. Some protection may be afforded to those working in the civil service (but not the military) from constitutional law, but this has not been tested in reality, (Cormack and Bell, 2005). The self-employed are not fully covered by Latvian law, and those engaged in vocational training are not protected from discrimination on the grounds of age, disability or sexual orientation.

The existing National Human Rights Office has extended its remit to include a response to the EU directives. However the dissemination and continued consultations with interested groups has not been written into law, and so the Office has no nationally imposed duty to continue the work outlined by the directives. This is also the case in Estonia.

## **Estonia**

In Estonia, the Legal Chancellor's Office have extended their remit to include a response to EU directives. This model places a response very close to the corridors of power, and so the Office is seen as being far from independent. In addition the lack of a formal response to the Racial Equality Directive and a partial response to the Employment Equality Directive means that even if the Office did want to challenge the Government, it does not have the legal basis to do so.

Of all the groups of states considered, the former Communist states have the most in common. Their response to the EU directives is far removed from mainstreaming. There is a clear hierarchy of strands within their legislative structures, and public bodies tend to be exempt from anti-discrimination legislation. Perhaps this is due to state wealth, being considerably less than the Scandinavian and Western European member states considered here. The former Communist states group are also the most recent members of the EU, and it is possible that reform in the area of equality is competing with reforms in other areas, required to meet EU standards.

## **Conclusion**

This section has presented a broad overview of approaches to equality and human rights in four English-speaking countries, Norway and eight EU member states, including three recent Eastern European member states. Information was drawn from policy documents and legislation, however the data available were not consistent and so comparisons between countries must be regarded as tentative. In addition, information from non-English speaking countries was restricted to the English language pages of each European State's government website.

All of the countries reviewed have equality and human rights legislation. In some countries such as Canada and New Zealand, considerable progress has been made to unify legislation and political institutions promoting equality and human rights. These two countries also appear to have made considerable efforts to audit the success of their approaches. Despite seeking to mainstream equality, it is evident that particular measures are targeted at particular groups and considerable difficulties remain in developing unified policies and intersectional approaches to, for example, gender equality. This is partly due to technical difficulties in gathering and analysing statistical data in ways which allows inter- and intra-categorical comparisons to be made. However, there continues to be an aspiration for greater progress to be made in inter-sectional policy development and analysis. In Canada, efforts are also being made to harmonise approaches to equality and human rights at federal, state and local levels.

In other countries such as Australia and the United States, it is evident that progress has been made in terms of establishing a single equality and human rights commission with enforcement powers across strands, but different bodies of legislation continue to exist in relation to particular equality groups. At federal level in both these countries there appears to be a lack of audit in relation to the effectiveness of various pieces of policy and legislation. Furthermore, it is evident that considerable diversity exists at state and city level in terms of the enthusiasm with which federal legislation is translated into local policy and enforcement. Sexual orientation is one of the areas where there is evidence of great diversity with regard to the strength of local protection measures.

As an exemplar of the Scandinavian approach, Norway has established a central enforcement mechanism which operates across strands. There appears to have been far more progress in relation to some strands than others, notably gender. Far less attention appears to have been paid to race equality, and there appears to be an aversion to ethnic monitoring in employment and other areas in Norway, as in many other European countries such as France and Germany. This seems to be based on an assumption that if equality principles are publicly affirmed, it is not necessary to have audit mechanisms in place to check whether they are being adhered to in practice. In Norway, equality appears to have a higher profile than human rights.

Overall, it is evident in this brief review that many countries are moving in the direction of adopting a unified approach to equality and human rights, and countries like Ireland, Canada and New Zealand seem to be in the forefront of such developments. In many countries more progress has been made in relation to establishing joint enforcement mechanisms than unified equality legislation. Even in a country like Canada, which has made considerable progress in developing a common approach to equality and human rights, difficulties in dealing with issues of scale (federal, state and local) and of inter-sectional data gathering and analysis are acknowledged.

## SECTION 7: SUMMARY AND CONCLUSION

### Introduction

In preceding sections, we presented findings from our review of the concepts of equality and human rights, the national and international policy landscape, data currently available and future research needs, and the views of key stakeholders. In this final section we summarise the main findings of the study and make some suggestions about the possible remit and activities of a Scottish Centre for Research on Equality and Human Rights.

### Main findings

#### *Current debates in equality and human rights and their implications for research*

There are a number of questions in relation to the equality and human rights agenda which are likely to continue to be debated over coming years. These include:

- Ongoing debates about the meaning of and relationship between equality and human rights, including the strengths and weaknesses of the capabilities approach;
- Reassessing the equality strands which should be covered, the definitions and categories to be used and the relationship between the strands;
- The pros and cons of a generic approach to equality through mainstreaming;
- The impact and application of equality and human rights policies in practice.

#### *The implications of recent policy developments in the broad field of equality and human rights and their impact on Scotland in the context of devolution*

An overview was provided of the most significant policy developments that impact on equality and human rights at European, UK, GB and Scottish levels. The human rights agenda has been driven by European concerns to maintain peace and economic prosperity, whilst the equality agenda has been driven, at least in part, by the social justice demands of new social movements, particularly in the field of gender, race and disability. Regulation on the three new strands was informed by the EU's social and economic agenda, particularly the desire to create a level playing field in the employment arena. There are therefore important distinctions between those equality strands which are supported by local political movements and those with a less strong political base. Further complications occur as a result of devolved governance in Scotland, which identifies a slightly different array of equality strands and has in place different legislative and accountability arrangements from the rest of GB and the UK.

#### *The nature of available quantitative and qualitative data on equality and human rights in Scotland, the future data requirements of a range of stakeholders*

Whilst considerable information is available in relation to gender, and, to a lesser extent, race and disability, research evidence in relation to the three 'new' strands (sexual orientation, age and religion/belief) is much thinner on the ground. There is broad agreement in relation to gender categories, but debates still exist in relation to the categories and definitions in relation to most other areas, with clear implications for the harmonisation of statistics. People are also more reluctant to provide information on areas of their lives which have traditionally been regarded as falling within the private domain.

The Equalities Review has proposed a new definition of equality based on the capabilities approach, which has significant implications for data collection and analysis. There is a need for greater conceptual clarity around some aspects of this approach, for example, in relation to what counts as autonomous decision making. At a more practical level, the review of equality data has highlighted the need for more comparable data across GB, harmonisation of categories, improved quality of data gathering in some areas and transparency about data shortcomings. However, difficulties are likely to

persist in providing comparable data across GB because of systemic differences in areas such as education.

Our investigation of the nature and location of research centres in Scotland dealing with equality and human rights suggested that most centres were concerned with a particular strand and that human rights and equality were regarded as discrete issues. Inter-disciplinary work was rare and centres for the study of human rights tended to have a legal focus.

*Views of stakeholders and priority areas for research and knowledge transfer activities*

A number of common themes emerged from the interviews with respondents from public, private and voluntary sector organisations. These are summarised below:

- Mainstreaming is widely supported for contrasting reasons. It appeals to the voluntary and policy sectors on moral and practical grounds – seen as the best means to achieve culture change. It appeals to the private sector because a single approach to equality is perceived as simpler than a multi-strand policy.
- There is widespread support for the EHRC. The private sector and voluntary sector see it as a ‘one stop shop’. The policy and voluntary sectors see it as a means of addressing complex, cross-strand issues, introducing a human rights framework to policy, and providing support for the newer, more neglected strands of equality. However, there are also fears that the more established equality strands may lose ground.
- There is much misunderstanding and confusion in relation to human rights and concerns that it is too closely associated with an individualistic litigation culture.
- There are questions about how two separate commissions (EHRC and SCHR) will operate in Scotland
- Some private sector organisations had reservations about the human rights agenda, fearing that it might damage competitiveness and promote what was ‘too politically correct’.
- Most respondents involved in developing or implementing policy expressed a desire to see the creation of a central knowledge resource on issues and research relating to equality and human rights. Existing research tends to be housed in strand-specific databases and resources. Most respondents felt that in order to facilitate a more coordinated approach to equality and human rights, it would be useful if all research were held in one place.

A number of gaps in existing knowledge and research were also identified. Suggested areas for future research were:

- Patterns of poverty specific to Scotland and links to equality strands
- Experiences and forms of social exclusion and inequality in rural areas
- Sectarianism
- Traveller and gypsy communities (survey data and qualitative research on experiences of education)
- Women and criminal justice
- LGBT and: school education; tensions with other equality agendas
- In relation to all strands: investigation of multiple identities (intersectional issues)
- Intersections between human rights and equality issues
- How to deliver equality schemes and staff development programmes effectively

Informants also wished to see the following activities:

- Awareness training and research oriented to practical implementation issues
- Opportunities to form networks oriented to the equality and human rights agenda in Scotland
- Practical input on how to promote equality and human rights through organisational development

#### *The current equality and human rights policy landscape internationally*

In general, there is move among developed countries towards a unified approach to equality and human rights, with an emphasis on mainstreaming. Canada has perhaps moved furthest in this direction. In some European countries, certain equality strands are established much more firmly on the political agenda. For example, in Norway there is comprehensive gender equality legislation, but rather less attention has been paid to race equality.

### **Rationale for a Scottish Research Centre on Equality and Human Rights**

It is clear that the radical changes in approaches to equality and human rights which have occurred over recent years will have far-reaching consequences for both public and private sector organisations and the Scottish economy as a whole. Government and businesses will require support in implementing equality strategies and monitoring change over time. The impact of devolution is also important since equality policies may take different forms in the constituent parts of the UK.

Our review of the current state of equalities research in Scotland suggests that much current research and development work has focused on a specific strand of equality. Research has emphasised, for example, the role of ethnic grouping, gender or disability in the production of inequalities. There has to date been little work that has examined the intersection of these various categories. Work has also been confined to specific disciplinary areas. So, for example, equality and human rights have been examined within a legal, sociological, political economy or management framework. Multi-disciplinary and trans-disciplinary approaches to equality and human rights are rare and there is currently no provision of this sort of research within the existing research base. In terms of the statistics base, the Scottish Government recognises the need for much more extensive and sophisticated inter-sectional analysis. In adopting a generic approach to equality and human rights, the proposed new centre could have a radical impact on reshaping existing research capability.

### **Specific themes to be addressed by the Research centre**

***The nature of ‘equality’ and ‘human rights’:*** We will explore the relationship between equality and human rights, types and causes of inequality, the methodological issues that arise in charting inequality and interconnections, commonalities and differences between different types of inequality.

***Tackling inequality:*** We will examine actions taken by various agencies to overcome inequalities. We will include work on the practical steps taken to promote equality and human rights and methods of measuring progress towards successful cultural change and greater equality and how best to build capacity amongst community groups in relation to the promotion of equality and human rights.

***Locating equality, inequality and human rights:*** We will seek to uncover how equality and human rights issues are influenced by location. We will examine the particular issues that arise across national boundaries as well as specific sectors and organisations such as education, health, employment, large companies and SMEs

***Policies on inequality and human rights:*** We will explore the implications of mainstreaming for specific equality strands and for the human rights agenda. As well as specifically focussing the policy implications of harmonising equalities legislation in Scotland within the context of devolution, we will also examine other national and international responses.

### **Activities of the new Research Centre**

On the basis of discussions with key informants, a review of current policy and research and an analysis of the focus of existing research centres, we believe that the new Centre should engage in the following activities:

- Conduct high quality national and international research with an emphasis on developing a generic approach to equality and human rights;
- Conduct secondary analysis of existing large scale data sets, with an intersectional focus;
- Contribute to debates on categories and definitions to be employed in future research on equality and human rights;
- Undertake policy analysis within the field of equality and human rights with a particular emphasis on international comparative work;
- Investigate a range of approaches to the audit of equality and human rights policies in different types of organisation;
- Act as a knowledge hub, producing research reports and briefings and disseminating these via the web and in other formats;
- Organising conferences, seminars and training events for a range of audiences including practitioners, policy-makers and academics;
- Continue to consult with the private, public and voluntary sectors to ensure that the Centre is responsive to their information and development needs;
- Work closely with researchers in other universities to facilitate networking and avoid duplication of effort.

### **Sustainability and funding options**

The financial sustainability of the new Centre is clearly of paramount importance. The two principal investigators have had considerable success in obtaining funds for work in particular areas of equality and social policy, and discussions suggest that it should be possible to obtain further funding from Government Departments, voluntary agencies and commercial organisations, post-graduate teaching, training and CPD. A large grant bid to the ESRC is currently under preparation with Professor Heidi Safia Mirza, Institute of Education, University of London and Dr Paul Chaney, University of Cardiff. However, funding from the SFC for the initial years of the new Centre's life would ensure that a critical mass of activities would be developed which could be sustained into the future.

## SECTION 8: REFERENCES

- Bourdieu, P. (1997) The forms of capital in Halsey, A.H., Lauder, P., Brown, P. and Stuart Wellls, A. (eds.) *Education: Culture, Economy, Society* Oxford: Oxford University Press.
- Bourdieu, P. and Passeron, J.-C. (1977) *Reproduction in Culture, Education and Society* London: Sage Publications.
- Breitenbach, E., Brown, A., Mackay, F and Webb, J. (eds.) (2002) *The Changing Politics of Gender Equality in Britain* Basingstoke: Palgrave.
- Bromley, C. and Curtice, J. (2003) *Attitudes to Discrimination in Scotland* Edinburgh: The Scottish Executive
- Burchardt, T. and Vizard, P. (2007a) *Developing a capability list: Final Recommendations of the Equalities Review Steering Group on Measurement* London: Centre for Analysis of Social Exclusion, London School of Economics.
- Burchardt, T. and Vizard, P. (2007b) *Definition of equality and framework for measurement: Final Recommendations of the Equalities Review Steering Group on Measurement* London: Centre for Analysis of Social Exclusion, London School of Economics.
- Cabinet Office (2007) *Fairness and Freedom: The Final Report of the Equalities Review* London: Cabinet Office
- Clegg, C. and Rosie. M. (2005) *Faith Communities and Local Government in Glasgow - Research Findings* Edinburgh: Scottish Executive.
- Commission for Racial Equality (2002) *Code of Practice on the Duty to Promote Racial Equality: England & Wales*  
[http://www.cre.gov.uk/downloads/duty\\_code.pdf](http://www.cre.gov.uk/downloads/duty_code.pdf)
- Commission for Racial Equality (2002) *Code of Practice on the Duty to Promote Race Equality in Scotland* CRE: Edinburgh  
[http://www.cre.gov.uk/downloads/duty\\_scot\\_code.pdf](http://www.cre.gov.uk/downloads/duty_scot_code.pdf)
- Commission on Integration and Cohesion (2007) *Our Shared Future* London: Crown Copyright
- Corker, M. and Shakespeare, T. (eds) (2002) *Disability/Postmodernity: Embodying Disability Theory* London: Continuum.
- Cormack, J. & Bell, M. (2005) *Developing Anti-Discrimination Law in Europe: The 25 EU Member States Compared* European Network of Legal Experts in the Non-discrimination Field.
- Davidson, S. Maclardie, J. and Murray, L. (2006) *A Strategy for a Scotland with an Ageing Population: Qualitative Research with the General Public* Edinburgh: Scottish Executive.
- Department for Constitutional Affairs (2006) *Review of the Implementation of the Human Rights Act* [DCA 38/06]
- Department for Communities and Local Government (2007) *Discrimination Law Review A*



*Framework for Fairness: Proposals for a Single Equality Bill for Great Britain* London: DCLG  
<http://www.communities.gov.uk>

European Commission (2004) *Equality and Non-Discrimination in an Enlarged European Union Green Paper* Brussels: European Commission.

Firebaugh, G. (2006) *The New Geography of Global Income Inequality* Cambridge, Mass.: Harvard University Press.

Fredman, S. (2000). Equality: A New Generation? *Industrial Law Journal*, 30, 145-168.

Fraser, N. (2001) Recognition without ethics? *Theory, Culture and Society* 18, 2-3, 21-42.

Fyfe, A. Fleming, R. and Reid, S. (2006) *Sexual Orientation Research Phase 3 - A Stocktake of Local Authority Policy and Practice - Research Findings* Edinburgh: Scottish Executive

Gane, C. (2000) What difference will the Human Rights Act make? *The Law Society Journal* (<http://www.journalonline.co.uk>)

Home Office (2006) *Rebalancing the Criminal Justice System in Favour of the Law-abiding Majority: Cutting Crime, Reducing Offending and Protecting the Public* London: The Home Office.

House of Lords, House of Commons Joint Committee on Human Rights (2006) *The Human Rights Act: the DCA and Home Office Reviews* London: The Stationery Office

Hussain, A. and Miller, W. (2006) *Multicultural Nationalism: Islamophobia, Anglophobia and Devolution* Oxford: Oxford University Press.

Mashaw, J.L. (1983) *Bureaucratic Justice: Managing Social Security Disability Claims* New Haven and London: Yale University Press.

Macdonald, S., Stone, V., Arshad, R. and de Lima, P. (2005) *Ethnic Identity and the Census, Social Justice (Equalities) Research*, Edinburgh: Scottish Executive.

McLean, C. and O'Connor, W. (2003) *Sexual Orientation Research Phase 2: The Future of LGBT Research – Perspectives of Community Organisations* Edinburgh: Scottish Executive.

Mcmanus, S. (2003) *Sexual Orientation Research Phase 1: A Review of Methodological Approaches* Edinburgh: Scottish Executive.

National Statistics (2007) *Report from the Review of Equality Data: Summary and Recommendations* London: National Statistics Office

O'Connor, W. and Lewis, J. (1999) *Experiences of Social Exclusion in Scotland* Edinburgh: The Scottish Executive

O'Loan, S. McMillan, F. Motherwell, S. Bell, A. and Arshad, R. (2006) *Promoting Equal Opportunities in Education- Guidance on Dealing With Homophobic Incidents: Phase 1 Report and Recommendations* Edinburgh: Scottish Executive.

Phillips, A. (1992) Universal pretensions in political thought in Barrett, M. and Phillips, A. (eds.) *Destabilizing Theory* Cambridge: Polity Press.

- Phillips, A. (2004) Defending equality of outcome *Journal of Political Philosophy* 12, 1, 1-19.
- Raab, G. and Macdonald, C. (2004) *Older People in Scotland: Results from the Scottish Household Survey 1999-2002* Edinburgh: Scottish Executive.
- Rees, T. (1998) *Mainstreaming Equality in the European Union* London: Routledge.
- Rees, T. (2001) Mainstreaming gender equality in science in the European Union: The ETAN Report. *Gender and Education*, 13, 3, 243-260.
- Riddell, S. (2006) *Special Educational Needs: Additional Support for Learning* Edinburgh: Dunedin Academic Press.
- Riddell, S., Banks, P. and Tinklin, T. (2005) *Disability and Employment in Scotland: A Review of the Evidence Base* Edinburgh: Scottish Executive.
- Riddell, S. and Watson, N. (eds.) (2003) *Disability, Culture and Identity* Harlow: Pearson Education.
- Riddell, S., Weedon, E., Fuller, M., Healey, M., Hurst, M., Kelly, K. and Piggott, L. (2007) Managerialism and equalities: tensions within widening access policy for disabled students in UK universities *Higher Education*, 54, 615-628.
- Saunders, P. (1989) *Social Class and Stratification* London: Routledge.
- Scottish Council Foundation (2005) *Disability in Scotland 2005-2020: A State of the Nation Report* Edinburgh: Disability Rights Commission
- Scottish Executive (2006) *High Level Summary of Equality Statistics* Edinburgh: Scottish Executive.
- Scottish Executive (2007) *Racist Incidents Reported to the Police in Scotland, 2003/04 - 2005/05* Edinburgh: Scottish Executive
- Sen, A. (1992) *Inequality Re-examined* Oxford: Clarendon Press.
- Siltanen, J. (2006) Gender, diversity and the shaping of public policy in Canada *Scottish Affairs* 56, Summer 2007, 88-101.
- Women and Equality Unit (2003) *Key Anti-Discrimination Legislation and International Obligations* <http://www.womenandequalityunit.gov.uk>
- Young, I. (2000) *Inclusion and Democracy* Oxford: Oxford University Press.

### **Legislation on Equality and Human Rights (UK and International) and International Treaties**

Civil Partnership Act (2004)

<http://www.opsi.gov.uk/acts/acts2004/20040033.htm>

Disability Discrimination Act (1995)

[http://www.opsi.gov.uk/acts/acts1995/Ukpga\\_19950050\\_en\\_1.htm](http://www.opsi.gov.uk/acts/acts1995/Ukpga_19950050_en_1.htm)

Education (Disabled Strategies and pupils Educational Records) (Scotland) Act (2002)

<http://www.opsi.gov.uk/legislation/scotland/acts2002/20020012.htm>

Employment Equality Directive 2000/78/EC

[http://ec.europa.eu/employment\\_social/fundamental\\_rights/legis/lgdirect\\_en.htm](http://ec.europa.eu/employment_social/fundamental_rights/legis/lgdirect_en.htm)

Employment Equity (Sexual Orientation) Regulations (2003)

Equal Pay Act (1970)

<http://www.eoc-law-scotland.org.uk/PDF/epa.pdf>

The Equal Pay Act 1970 (Amendment) Regulations (2003)

<http://www.opsi.gov.uk/si/si2003/20031656.htm>

Equality Act (2006)

[http://www.opsi.gov.uk/acts/acts2006/ukpga\\_20060003\\_en.pdf](http://www.opsi.gov.uk/acts/acts2006/ukpga_20060003_en.pdf)

European Convention on Human Rights

General Assembly of the United Nations (1948) Universal Declaration of Human Rights.

<http://www.un.org/Overview/rights.html>

Home Office (2006) *Rebalancing the criminal justice system in favour of the law-abiding majority: cutting crime, reducing re-offending and protecting the public* CJS Review

<http://www.homeoffice.gov.uk/documents/CJS-review.pdf>

Human Rights Act (1998)

<http://www.opsi.gov.uk/acts/acts1998/19980042.htm>

Race Relations Act (1976)

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

Race Relations Act – amended (2000)

<http://www.opsi.gov.uk/acts/acts2000/20000034.htm>

Racial Equality Directive (2000)

[http://ec.europa.eu/employment\\_social/fundamental\\_rights/legis/lgdirect\\_en.htm](http://ec.europa.eu/employment_social/fundamental_rights/legis/lgdirect_en.htm)

Scotland Act (1998)

<http://www.opsi.gov.uk/acts/acts1998/19980046.htm>

Sex Discrimination Act (1975)

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

Special Educational Needs and Disability Act (2001)

<http://www.opsi.gov.uk/acts/acts2001/20010010.htm>

Treaty of Amsterdam (1997)

<http://www.eurotreaties.com/amsterdamtreaty.pdf>

Treaty of London (1949)

<http://conventions.coe.int/Treaty/EN/Treaties/Html/001.htm>

## APPENDIX

Source: Women and Equality Unit [<http://www.womenandequalityunit.gov.uk>]

### Key Anti-Discrimination Legislation & International Obligations

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## Introduction

The following lists are intended to give a brief overview of some key pieces of legislation related to promoting equality and tackling unfair discrimination. The document is not intended to be comprehensive but simply to give a flavour of the statutory protection that exists.

As the lists are intended to be brief, not all pieces of equality legislation are covered. Therefore, to get an absolutely full picture of the legislative framework in a particular area one would need to check for all relevant additions and amendments, many of which are not contained in this document. The website of Her Majesty's Stationary Office (HMSO) ([www.hmso.gov.uk](http://www.hmso.gov.uk)) holds electronic copies of all UK legislation that has become law since 1988.

In addition to listing the legislation, hyperlinks have been provided, firstly to the relevant government department website and secondly to the actual text of the legislation. Where possible the link is provided to the official version of the Act, Regulation, Directive or Convention e.g. held by HMSO. However, where this has not been possible, an alternative has been provided. The accuracy of such documents should not be relied on but can be used as a guide to what is contained in the actual legislation.

Lastly, it is hoped that this document is a useful resource and reference point. If you have any difficulties using it or any suggestions for how it could be improved, please email your comments to [info-womenandequalityunit@dti.gsi.gov.uk](mailto:info-womenandequalityunit@dti.gsi.gov.uk).

## Anti-Discrimination Legislation

The UK has a range of legislation which makes discrimination on certain grounds unlawful. Here is a list of the key provisions:

Legislation	Year	Areas Covered	Government Department with Lead Responsibility
<a href="#">Equal Pay Act</a> (as amended)	1970	The EqPA gives an individual a right to the same contractual pay and benefits as a person of the opposite sex in the same employment, where the man and the woman are doing: <ul style="list-style-type: none"> <li>• Like work; or</li> <li>• Work rated as equivalent under an analytical job evaluation study; or</li> <li>• Work that is proved to be of equal value.</li> </ul>	<a href="#">Department of Trade &amp; Industry (Women &amp; Equality Unit)</a>
<a href="#">Sex Discrimination Act</a> (as amended)	1975	The SDA (which applies to women and men of any age, including children) prohibits sex discrimination against individuals in the areas of employment, education, and the provision of goods, facilities and services and in the disposal or management of premises.	<a href="#">Department of Trade &amp; Industry (Women &amp; Equality Unit)</a>
<a href="#">Race Relations Act</a>	1976	The RRA makes it unlawful to treat a person less favourably than another on racial grounds. These cover grounds of race, colour, nationality (including citizenship), and national or ethnic origin.	<a href="#">Home Office (Community &amp; Race)</a>
<a href="#">Disability Discrimination Act</a>	1995	The DDA prohibits discrimination against disabled people in the areas of employment, the provision of goods, facilities, services and premises, education; and provides for regulations to improve access to public transport to be made.	<a href="#">Department for Work &amp; Pensions (Disability &amp; Carers Directorate)</a> / <a href="#">Department for Education &amp; Skills</a> / <a href="#">Department for Transport</a>
<a href="#">Sex Discrimination (Gender Reassignment) Regulations</a>	1999	These regulations are a measure to prevent discrimination against transsexual people on the grounds of sex in pay and treatment in employment and vocational training. They effectively insert into the SDA a provision to	<a href="#">Department of Trade &amp; Industry (Women &amp; Equality Unit)</a>

Legislation	Year	Areas Covered	Government Department with Lead Responsibility
		extend the Act, insofar as it refers to employment and vocational training, to include discrimination on gender reassignment grounds.	
<a href="#">Race Relations (Amendment) Act</a>	2000	The RR(A)A outlawed discrimination (direct and indirect) and victimisation in all public authority functions not previously covered by the RRA, with only limited exceptions. It also placed a general duty on specified public authorities to promote race equality.	<a href="#">Home Office (Community &amp; Race)</a>
<a href="#">Sex Discrimination (Election Candidates) Act</a>	2002	The Act enables political parties, if they wish, to adopt positive measures to reduce inequality in the numbers of men and women elected as representatives of their party. It amends the Sex Discrimination Act 1975 and Sex Discrimination (Northern Ireland) Order 1976.	<a href="#">Department of Trade &amp; Industry (Women &amp; Equality Unit)</a>
<a href="#">Race Relations Act 1976 (Amendment) Regulations</a>	2003	The Race Relations Act 1976 (Amendment) Regulations 2003 implement the EC Article 13 Race Directive. The Regulations enhance the RRA by, for example, amending the definition of indirect discrimination and changing the way in which the burden of proof applies, as well as removing a number of exceptions from the legislation. The Regulations extend protection from discrimination on the grounds of race and ethnic or national origins. These apply in the fields of employment and training, social protection and social advantage, education, the provision of goods, facilities and services, and housing.	<a href="#">Home Office (Community &amp; Race)</a>
<a href="#">Employment Equality (Sexual Orientation) Regulations</a>	2003 (Come into force December)	These regulations outlaw discrimination (direct discrimination, indirect discrimination, harassment and victimisation) in employment and vocational training on the grounds of sexual orientation. The regulations apply to discrimination on grounds of orientation towards persons of the same sex (lesbians and gays), the opposite sex (heterosexuals) and the same and opposite sex (bisexuals).	<a href="#">Department of Trade &amp; Industry (Employment Relations)</a>
<a href="#">Employment Equality</a>	2003 (Com	These regulations outlaw discrimination (direct discrimination, indirect	<a href="#">Department of Trade &amp;</a>

Legislation	Year	Areas Covered	Government Department with Lead Responsibility
<a href="#">(Religion or Belief) Regulations</a>	came into force December)	discrimination, harassment and victimisation) in employment and vocational training on the grounds of religion or belief. The regulations apply to discrimination on grounds of religion, religious belief or similar philosophical belief.	<a href="#">Industry (Employment Relations)</a>



## European Community Treaties and Conventions

The UK is a signatory to European Community Treaties and Conventions and is under an obligation to ensure that national law is consistent with European Community Law and Directives. Where this is not possible, then the courts will give any piece of Community Law with direct effect priority over domestic law. Some key equality provisions are:

Directive / Treaty	Year	Relevant Areas Covered	Government Department with Lead Responsibility
<a href="#">Article 141 (ex119) Treaty of Rome</a>	1957	Treaty establishing the European Community. This provides that men and women should receive equal pay for equal work or work of equal value.	<a href="#">Department of Trade &amp; Industry (Women &amp; Equality Unit)</a>
<a href="#">Equal Pay Directive (75/117)</a>	1975	This provides that all discrimination on the ground of sex in respect of all aspects of pay should be eliminated.	<a href="#">Department of Trade &amp; Industry (Women &amp; Equality Unit)</a>
<a href="#">Equal Treatment Directive (76/207)</a> amended by <a href="#">Directive (2002/73)</a>	1976 & 2002	This provides that there shall be no discrimination on grounds of sex in access to employment including promotion, vocational training and working conditions.	<a href="#">Department of Trade &amp; Industry (Women &amp; Equality Unit)</a>
<a href="#">Social Security Directive (79/7)</a>	1979	This requires equal treatment of men and women workers in statutory schemes providing protection against sickness, invalidity, old age, accidents at work and occupational diseases and unemployment.	<a href="#">Department for Work &amp; Pensions</a>
<a href="#">Pregnant Workers Directive (92/85)</a>	1992	This requires minimum measures to improve the health and safety at work of pregnant women and women who have recently given birth or are breastfeeding, including a right to maternity leave.	<a href="#">Department of Trade &amp; Industry (Women &amp; Equality Unit)</a>
<a href="#">Burden of Proof Directive (97/80)</a>	1997	This required any necessary changes in Member States' judicial systems to ensure more effective implementation of the principle of equal treatment.	<a href="#">Department of Trade &amp; Industry (Women &amp; Equality Unit)</a>
The Race and Employment Directives	2000	These Directives were adopted under Article 13 of the EC Treaty by the UK and other European Member States in 2000. Together, they provide a common framework of protection against	<a href="#">Home Office / Department of Trade &amp; Industry / Department</a>

<b>Directive / Treaty</b>	<b>Year</b>	<b>Relevant Areas Covered</b>	<b>Government Department with Lead Responsibility</b>
		discrimination and harassment.	<a href="#">for Work &amp; Pensions</a>
<a href="#">Race Directive (2000/43)</a>	2000	The purpose of this Directive is to lay down a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in Member States the principle of equal treatment.	<a href="#">Home Office (Community &amp; Race)</a>
<a href="#">Employment Directive (2000/78)</a>	2000	Prohibits discrimination on the grounds of sexual orientation, religion or belief, disability and age. It covers conditions for access to employment, self-employment and occupation, working conditions, including dismissals and pay; and vocational guidance and training.	<a href="#">Department of Trade &amp; Industry / Department for Work &amp; Pensions</a>

## Legislation that Impacts on Equality

Issues relating to equality are often covered in UK legislation which may primarily concern other or more broad issues.

Legislation	Year	Relevant Areas Covered	Government Department with Lead Responsibility
Transfer of Undertakings (Protection of Employment) Regulations	1981	Protects the rights of workers in the event of a relevant transfer of an undertaking to a new employer. All contracts of employment and employment relationships automatically transfer to the new employer at the date of transfer. The Regulations prohibit changes in contract terms connected with a relevant transfer.	<a href="#">Department of Trade &amp; Industry (Employment Relations)</a>
<a href="#">Employment Act</a>	1989	The Act includes an exemption from the operation of the Sex Discrimination Act for acts done in connection with certain specified statutory provisions relating to the protection of women at work.	<a href="#">Department of Trade &amp; Industry (Employment Relations)</a>
<a href="#">Pensions Act</a>	1995	Provides for equal treatment in occupational pension schemes. It does so by incorporating an equal treatment rule into every occupational pension scheme.	<a href="#">Department for Work &amp; Pensions (Pensions &amp; Retirement)</a>
<a href="#">Employment Rights Act</a>	1996	The ERA covers, among other matters, the rights: <ul style="list-style-type: none"> <li>• Not to be unfairly dismissed;</li> <li>• To maternity leave and paid time off for antenatal care;</li> <li>• To parental leave; and</li> <li>• To unpaid time off for dependents.</li> </ul>	<a href="#">Department of Trade &amp; Industry (Employment Relations)</a>
<a href="#">Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations</a>	1996	These provide for tribunals to award interest on back-pay in Equal Pay Act cases and compensation awards made under the Sex Discrimination Act 1975, the Race Relations Act 1976 and the Disability Discrimination Act 1995.	<a href="#">Department of Trade &amp; Industry / Home Office / Department for Work &amp; Pensions</a>
<a href="#">Data Protection Act</a>	1998	The Act came into force on 1 March 2000. It gives effect in UK law to the 1995 EC Data Protection Directive. The Act applies to computerised personal data and personal data held in structured manual files. It applies to anything at all done to personal data (“processing”) including collection, disclosure, use, destruction and merely holding. Organisations processing personal data	<a href="#">Department for Constitutional Affairs (Information Rights Unit)</a>

Legislation	Year	Relevant Areas Covered	Government Department with Lead Responsibility
		must comply with the data protection principles. They require data to be fairly and lawfully processed; processed for limited purposes; adequate, relevant and not excessive; accurate; not kept longer than necessary; processed in accordance with data subjects' rights; kept secure; and not transferred to non-EEA (European Economic Area) countries without adequate protection.	
<a href="#">Human Rights Act</a>	1998	<p>The Human Rights Act came fully into force on 2 October 2000. It gives further effect in the UK to rights contained in the European Convention of Human Rights. The Act:</p> <ul style="list-style-type: none"> <li>• Makes it unlawful for a public authority (e.g. government department, local authority or the police) to breach Convention rights, unless an Act of Parliament meant it could not have acted differently.</li> <li>• Means that cases can be dealt with in a UK court or tribunal.</li> <li>• Says that all UK legislation must be given a meaning that fits with the Convention rights, if that is possible.</li> </ul>	<a href="#">Department for Constitutional Affairs (Human Rights Unit)</a>
<a href="#">National Minimum Wage Act</a>	1998	This provides that workers shall not be paid less than a designated minimum rate per hour.	<a href="#">Department of Trade &amp; Industry (Employment Relations)</a>
<a href="#">Working Time Regulations</a>	1998	<p>These contain provisions regulating working time including:</p> <ul style="list-style-type: none"> <li>• A limit of average 48 hours work per week (though individual workers can agree to waive this).</li> <li>• Daily and weekly rest entitlements and rest breaks.</li> <li>• Special provisions relating to night work.</li> </ul> <p>The regulations have been amended a number of times in: 1999 (SI 3372), 2001 (SI 3256), 2002 (SI 3128) and 2003 (SI 1684).</p>	<a href="#">Department of Trade &amp; Industry (Employment Relations)</a>
<a href="#">Employment Relations Act</a>	1999	The Act established a new statutory procedure for the recognition of independent trade unions in	<a href="#">Department of Trade &amp; Industry</a>

Legislation	Year	Relevant Areas Covered	Government Department with Lead Responsibility
		<p>organisations employing 21 or more workers if that is the wish of the majority of the workforce.</p> <p>The Act also introduced the right to be accompanied at disciplinary or grievance hearings by a trade union official or fellow worker – see also the ACAS Code of Practice on Disciplinary and Grievance Procedures.</p> <p>The Act also strengthened employees' protection against discrimination on grounds of trade union membership, simplified the law on industrial action, extended protections for employees taking lawfully organised industrial action and gave new powers to the Certification Officer to determine complaints from trade union members about alleged breaches of trade union statute and rules.</p> <p>Most of the Act amended the Trade Union and Labour Relations (Consolidation) Act 1992.</p>	<a href="#">(Employment Relations)</a>
<a href="#">Maternity and Parental Leave Regulations (as amended)</a>	1999	These contain the detail of the rights to maternity and parental leave contained in the Employment Rights Act 1996 (ERA). They also prescribe the circumstances in which a dismissal will be automatically unfair for the purposes of the ERA, if the dismissal is for a reason related to pregnancy, childbirth, maternity leave, or parental leave.	<a href="#">Department of Trade &amp; Industry (Employment Relations)</a>
<a href="#">National Minimum Wage Regulations</a>	1999	These contain detailed rules as to who qualifies for the national minimum wage and what counts as working time and remuneration for these purposes.	<a href="#">Department of Trade &amp; Industry (Employment Relations)</a>
<a href="#">Part-Time (Prevention of Less Favourable Treatment) Regulations</a>	2000	The regulations give part-time workers the right not to be treated less favourably than full-time workers unless any difference in treatment can be objectively justified. They do not give a right to work part-time.	<a href="#">Department of Trade &amp; Industry (Employment Relations)</a>
<a href="#">Employment Act</a>	2002	A wide ranging package, covering dispute resolution in the workplace, improvements to employment tribunal	<a href="#">Department of Trade &amp; Industry</a>

Legislation	Year	Relevant Areas Covered	Government Department with Lead Responsibility
		<p>procedures, including the introduction of an equal pay questionnaire, provisions to implement the Fixed Term Work Directive, a new right to time off for union learning representatives, work focused interviews for partners of people receiving working-age benefits and some data sharing provisions.</p> <p>The Act also gives parents of children under six, or disabled children under 18, the right to request flexible working, with a statutory duty on employers to seriously consider their requests. It also introduced rights for fathers and adoptive parents to paid time off for the first time, and improved existing maternity rights.</p>	( <a href="#">Employment Relations</a> )
<a href="#">Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations</a>	2002	Fixed-term employees should get at least the same pay and conditions as similar permanent employees working for the same employer. Less favourable pay and conditions are only allowed if there are objective reasons for this. The regulations also limit the use of successive fixed-term contracts.	<a href="#">Department of Trade &amp; Industry (Employment Relations)</a>

## International Obligations

The UK is a signatory to a large number of United Nation's International Conventions which have anti-discrimination provisions. Although these do not currently provide a right of individual complaint against the UK, policy should be informed by an awareness of the UK's international obligations. Some of the most important are as follows:

Convention	Areas Covered
<a href="#"><u>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</u></a>	Torture and other cruel, inhuman or degrading treatment or punishment are particularly serious violations of human rights, and, as such, are strictly condemned by international law. Based upon the recognition that such practices are outlawed, the Convention strengthens the existing prohibition by a number of supporting measures, including an international monitoring mechanism.
<a href="#"><u>Convention for the Protection of Human Rights and Fundamental Freedoms</u></a>	Commonly known as the European Convention on Human Rights. The Convention sets out a list of basic civil rights and freedoms that states are obliged to guarantee to everyone within their jurisdiction. These include the right to life, to protection against torture and inhuman treatment, to freedom and safety, to a fair trial, to respect for one's private and family life and correspondence, to freedom of expression (including freedom of the press), thought, conscience and religion and to freedom of peaceful assembly and association. It has an international enforcement machinery under which states and individuals, regardless of their nationality, may refer alleged violations to the European Court of Human Rights in Strasbourg.
<a href="#"><u>Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)</u></a>	CEDAW is the most comprehensive treaty on women's human rights, establishing legally binding obligations to end discrimination.
<a href="#"><u>Convention on the Rights of the Child</u></a>	The Convention is the principal children's treaty encompassing a full range of civil, political, economic, social and cultural rights. The Convention states that all children under 18, without discrimination, have the right to survival, to develop their full potential, to be protected from harmful influences, abuse and exploitation, and to participate fully in family, cultural and social life.
<a href="#"><u>International Convention on the Elimination of All Forms of</u></a>	This Convention defines and condemns racial discrimination and commits States to prohibiting

Convention	Areas Covered
<a href="#"><u>Racial Discrimination</u></a>	and bringing it to an end, by all appropriate means.
<a href="#"><u>International Covenant on Civil and Political Rights</u></a>	The Covenant protects the individual from the violation by states of a wide range of civil and political rights. Examples include the right to life, protection from torture, slavery, forced labour, arbitrary detention and such freedoms as movement, expression and association.
<a href="#"><u>International Covenant on Economic, Social and Cultural Rights</u></a>	The ICESCR is designed to protect the economic, social and cultural rights of the individual from violation by states. It does so by placing a duty on states to progressively realise these rights. Examples include the right to work, the right to education, the rights to health and the right to social security.



## Invitees, Equalities Project meeting, 30 May 2007

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# EHRC ROUND TABLE DISCUSSION FRIDAY 28 SEPTEMBER 2007

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