

**APPLICATION FOR NEW ACCREDITATION
OF THE EQUALITY AND HUMAN RIGHTS COMMISSION (GREAT BRITAIN)
TO THE INTERNATIONAL COORDINATING COMMITTEE
OF NATIONAL HUMAN RIGHTS INSTITUTIONS
- November 2008 -**

I. BACKGROUND

The Equality and Human Rights Commission of Great Britain (EHRC) submitted its application for membership to the Group of National Institutions to the International Coordinating Committee of National Institutions (ICC) at its April 2008 Session. At that Session, the ICC decided to defer consideration of the application, as the EHRC had only been operational for six months and an evaluation of the effectiveness of the Commission and its compliance with the Paris Principles could therefore not yet be determined. The EHRC reapplied for membership of the ICC to be reviewed by the Sub-Committee on Accreditation at its November 2008 session.

The following sections provide background information on the Commission based on the supporting documentation received from the EHRC by the National Institutions Unit of the OHCHR, in its capacity as Secretariat of the ICC, in accordance with Article 3 of the ICC Rules of Procedure.

II. DOCUMENTATION PROVIDED IN SUPPORT OF THE APPLICATION

To permit the ICC to make a determination as to the compliance of the Equality and Human Rights Commission (EHRC) with the Paris Principles, the EHRC submitted the following documentation in support of its application to the April 2008 Session:

- Equality Act 2006
- Two Statutory Instruments dealing with transitional arrangements
- Organigram
- Commissioners of the Equality and Human Rights Commission
- Interim Business Plan 2007-08
- The Statement of Compliance with the Paris Principles
- White paper, Fairness for all: a new Commission for Equality and Human rights (2004)
- Government response to the Fairness for All consultation (2004)
- Letter of support from the Northern Ireland Human Rights Commission
- Cooperation among the UK National Human Rights Institutions: an interim protocol

The EHRC has submitted the following additional documentation for consideration at the November 2008 Session of the ICC:

- An updated Statement of Compliance with the Paris Principles
- Letter of support from the Government of the UK
- Draft Annual Report
- Memorandum of Understanding with the Northern Ireland Human Rights Commission
- List of Organisations and Press Release regarding grants to organisations working on equality and human rights in 2008/09
- Submission to the European Commission on a Directive to combat discrimination outside the labour market (January 2008)
- Submission to the UK government on the UPR (February 2008)
- Written evidence to the Joint Parliamentary Committee on Human Rights on its Inquiry into a Bill of Rights (March 2008)
- Guardian Newspaper article on Commission's work surrounding government proposals on Terrorism laws to extend pre-charge detention (March 2008)

- Counter-Terrorism Bill Parliamentary Briefing: House of Commons Second Reading (April 2008)
- Health and Social Care Bill Parliamentary Briefing: House of Lords Committee Stage (April 2008)
- Advice from Rabinder Singh QC and Aileen McColgan on Pre-Charge Detention Counter-Terrorism Laws (May 2008)
- Submissions to the House of Lords in *Van Colle v Chief Constable of Hertfordshire Police and Smith v Chief Constable of Sussex Police* (May 2008)
- Guardian Newspaper article on Commission's intervention in the House of Lords cases of *Van Colle* and *Smith* (May 2008)
- Submissions to the House of Lords in *RJM v Department for Work and Pensions* (May 2008)
- EHRC Submission on the Sixth Periodic Report of the United Kingdom to the United Nations Committee on the Elimination of all forms of Discrimination Against Women (June 2008)
- EHRC Submission on the United Kingdom's sixth periodic report under the International Covenant on Civil and Political Rights (June 2008)
- Extract of Update to the EHRC Programme Board on the Human Rights Inquiry (July 2008)
- Fairness: A New Contract with the Public (July 2008)
- House of Lords Judgment in the *Van Colle* and *Smith* cases (July 2008)

III. CHARACTER OF THE NHRI

1. Establishment

The Equality and Human Rights Commission (EHRC) was established by the *Equality Act 2006* (hereinafter 'the Equality Act'), an Act of the National Parliament of the United Kingdom. It commenced operation on 1 October 2007 (EHRC Statement of Compliance with the Paris Principles, hereinafter 'Statement of Compliance'). The Equality Act was enacted for a number of reasons: to set up the EHRC and to dissolve the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission; to introduce provisions about discrimination on the grounds of religion or belief; to enable provisions to be made about discrimination on grounds of sexual orientation; to impose duties relating to sex discrimination on persons performing public functions; and to amend the Disability Discrimination Act 1995 (Equality Act, Preamble).

The EHRC is not constitutionally entrenched; as there is no written Constitution in the United Kingdom. However, the EHRC notes in its Statement of Compliance that its statutory foundation is strengthened by a substantial body of earlier parliamentary enactments on human rights, anti-discrimination, race relation, and the application of the European Convention on Human Rights in the domestic jurisdiction; including those which established the EHRC's predecessor bodies. The EHRC also notes that the Equality Act itself had a very lengthy period of development, which involved setting up an advisory task force of key external stakeholders, the development of a White Paper, widespread government consultations and extensive Parliamentary deliberations that gave due weight to the Paris Principles.

The United Kingdom is a quasi-federal state, consisting of Great Britain (England, Wales and Scotland) and Northern Ireland. The geographic jurisdiction of the EHRC extends to England, Wales and to Scotland (Equality Act, section 94); with certain limitations in matters that fall within the competence of the devolved Scottish Parliament (Equality Act, section 7).

Section 7 of the Equality Act envisages the establishment of a body to deal with human rights matters over which the devolved Scottish Parliament has competence. The Scottish Commission for Human Rights (SCHR), established by the *Scottish Commission for Human Rights Act 2006*, an act of the Scottish Parliament, commenced operation in June 2008. Its mandate largely relates to the promotion and monitoring of human rights within Scotland. Given the overlap in jurisdiction, the EHRC notes that agreed appropriate protocols are a priority for both the Commissions. A draft memorandum of understanding between the two commissions is currently being finalised (statement of compliance).

There is an entirely separate human right institution in Northern Ireland, the Northern Ireland Human Rights Commission (NIHRC), which was established by the *Northern Ireland Act 1998* and has been accredited with 'A' status by the ICC since 2006. On 3 March 2008, a tripartite protocol was established between the three Commissions, which aims to encourage cooperation, while preserving the independence of each Commission. Thus, the protocol regulates only those matters that are

necessary to prevent duplication (Statement of Compliance). The protocol is based on the following principles for practical cooperation:

- As national human rights institutions (NHRIs) of the UK, the three Commissions affirm their commitment to the fullest possible compliance with the Paris Principles and they commit to mutual support, regular liaison, practical cooperation and respect for each others' mandate and competence.
- On policy matters, while a substantial degree of consensus is to be expected on matters governed by the international human rights standards, each Commission is free to adopt and express its own position, and respects the right of the others to advance their own views. In international forum none of the Commissions will have authority to speak on behalf of another without their consent; but any of them may advance, on behalf of the three UK NHRIs, what are known to be common positions.
- Cooperation on domestic issues will in due course be the subject of more formal bilateral and/or trilateral memoranda of understanding. In particular, the SCHR and the Scotland Directorate of the EHRC will prioritise work to ensure, through the exercise of their respective mandates, the equal and effective promotion and protection of human rights in Scotland.
- With the regard to participation in the Council of Europe system, each of the Commissions may participate to the extent it decides. Each Commission will notify the others when it decides to attend a Council of Europe event, and before making submissions to or intervening in human rights policy committees the Commissions will endeavour to reach a common position.
- With the regard to ICC accreditation and participation in UN events, pending the accreditation of the EHRC, NIHRC is to address Northern Ireland issues and may use its privileges at UN Human Rights Council and treaty body sessions to draw attention to what the other commissions identify as the key issues concerning their respective jurisdictions. The NIHRC will not otherwise make statements or put questions on matters not affecting Northern Ireland. After the accreditation of the EHRC, both Commissions will make it clear on whose behalf each of them intervenes at the UN events. Although three commissions may have different opinions on policies, they will articulate positions that are common to the three commissions and drafts of written submissions will be circulated for comment.

The NIHCR has sent a letter of support for the EHRC's application for accreditation to the Sub-Committee on Accreditation. The EHRC and the NIHRC have agreed a Memorandum of Understanding to regulate issues such as the joint exercise of the UK NHRIs' participation rights within the UN system, and of the single vote for the UK NHRIs in the meetings of the ICC and the European Group. The MoU has been designed to ensure that the NHRIs of the United Kingdom together enjoy within the international systems no lesser and no greater access than any accredited NHRI that has a single nationwide jurisdiction in its state.

2. Independence

The Equality Act (Schedule 1, paragraph 42) defines the independent status of the EHRC as follows:

- (1) The Commission shall not:
 - (a) be regarded as the servant or agent of the Crown, or
 - (b) enjoy any status, immunity or privilege of the Crown.
- (2) Service as Commissioner, Investigating Commissioner or employee of the Commission is not employment in the civil service of the State.
- (3) The Minister shall have regard to the desirability of ensuring that the Commission is under as few constraints as reasonably possible in determining:
 - (a) its activities
 - (b) its timetables, and
 - (c) its priorities.

The Statement of Compliance explains that the EHRC is a Non-Departmental Public Body (NDPB),¹ which is a usual status accorded to independent bodies that are publicly funded, but not a government department (or part of one). Other examples of NDPBs include the Bank of England, the Independent Police Complaints Commission and the British Broadcasting Corporation.

As an Executive NDPB,² the EHRC was established in accordance with the NDPB framework. Executive NDPBs are formally accountable to a Government Minister, who is then answerable to Parliament for the operations of that body (Statement of Compliance).³ Following amendments in 2007, the Minister to whom EHRC is accountable is the Lord Privy Seal (Equality Act, section 35). Under the Equality Act, the Lord Privy Seal is responsible for laying the following documents before Parliament:

- The EHRC's Strategic Plan or any revisions to it: section 4(4)
- The EHRC's periodic reports on monitoring progress under section 3: section 12(5)
- The EHRC's Annual Report: Schedule 1, paragraph 32(5)
- Any Codes of Practice Formulated by the EHRC: section 14(7)

The EHRC notes that it is accountable to the Minister for other provisions in the Equality Act,⁴ related to procedural and administrative matters that do not interfere with the EHRC's independent mandate (Statement of Compliance).

The Lord Privy Seal heads the Government Equalities Office, which is the EHRC's 'sponsor department'. This means the Office is responsible for processing the EHRC's resource and capital funding; ensuring the EHRC complies with public accounting rules and other statutory obligations; and for monitoring the EHRC's performance of its responsibilities set out in the Equality Act (Statement of Compliance). The relationship between the sponsor department and the NDPB is governed by a Management Statement and Financial Framework Document. In the case of the EHRC, these documents are negotiated between the Lord Privy Seal and the EHRC, but the EHRC reports that these are technical documents, with no content that undermines the effective autonomy of the EHRC (Statement of Compliance).

The EHRC is financially accountable to Parliament, in that it must prepare annual financial statements.⁵ These statements are independently audited by the Comptroller and Auditor General; who then tables them, along with his or her report, to Parliament (Equality Act, Schedule 1, paragraph 40). The EHRC is also able to commission internal audits of its work (Statement of Compliance).

In regards to the liability and immunity of members of the Commission, it should be noted that the Commission is a body corporate (Equality Act, section 1), which gives it separate legal personality to sue and be sued in its own name. This means that under British administrative law the EHRC is answerable for the actions of the Commissioners under the doctrine of vicarious liability (Statement of Compliance). Further, Commission and Committee members are covered by indemnity insurance against legal action against them for their actions taken on behalf of the Commission.⁶

¹ The UK Cabinet Office defines a NDPB as "A body which has a role in the processes of national government, but is not a government department, or part of one, and which accordingly operates to a greater or lesser extent at arm's length from ministers." Their distance from government means that the day-to-day decisions they make are independent as they are removed from ministers and Civil Servants. Ministers are however ultimately responsible to Parliament for a NDPB's independence, its effectiveness and efficiency: See <http://www.civilservice.gov.uk/about/public/bodies.asp>

² The Cabinet Offices lists the main features of Executive NDPBs as: set up by Ministers to carry out administrative, commercial, executive or regulatory functions on behalf of the Government; legally incorporated and have their own legal identity (meaning they are established by Act of Parliament, by Royal Charter, etc); employ their own staff; are allocated their own budgets; are not Crown bodies and do not have Crown status; appointments to the boards of the bodies are made by Ministers etc; Ministers are ultimately answerable for the performance of the bodies and for their continued existence. See website above.

³ For example, the EHRC's activities may be the subject of Parliamentary Questions posed by Members of Parliament in either House to Lord Privy Seal.

⁴ Sections 10(6), 14(5), 15(6), 37(2).

⁵ The Lord Privy Seal directs the EHRC as to the form in which annual statement of accounts should be stated (Equality Act, Schedule 1, paragraph 40(1)(b)).

⁶ This indemnity is reflected in the terms and conditions of EHRC Commissioners appointments, which contain the following condition: 'If legal proceedings are brought against you by a third party, the Department for Communities

In relation to potential conflicts of interest, the EHRC reports that it has internal arrangements to deal with this, including codes of conduct and disciplinary procedures for Commissioners and staff, and a compulsory register of interests. These arrangements are overseen by an Audit and Risk Committee. As a standing agenda item, at every meeting of the Board of Commissioners those present are required to declare any interest concerning any matter on that day's business (Statement of Compliance). More broadly, the EHRC is subject to the jurisdiction of the Parliamentary Commissioner for Administration (Equality Act, Schedule 1, paragraph 43). The Commissioner is an independent ombudsman agency and may investigate administrative action taken by the EHRC.

3. Appointments processes and organisational infrastructure

3.1. Composition of the NHRI's membership and appointment processes

The Equality Act provides for a Commission composed of not less than 10 or more than 15 members (to be known as Commissioners). The chief executive is a Commissioner *ex officio*. Commissioners are appointed by the Minister, who also appoints a Commissioner as a Chairman and one or more Commissioners as deputy Chairman (Equality Act, Schedule 1, Part 1).

Under paragraph 2 of Schedule 1 of the Equality Act, the Minister may only appoint a Commissioner:

- if they think that the individual has experience or knowledge relating to a relevant matters such as discrimination on grounds of age, disability, gender, gender, race, religion or belief, sexual orientation; has experience or knowledge relating to human rights; or is suitable for appointment for some other special reason; and
- having regard to the desirability of the Commissioners together having experience and knowledge relating to the relevant matters.

Except for the Chairman, Commissioners are appointed on a part-time basis. The legislation does not specify a time commitment required of members, but the EHRC reports that most commit around 20 days per year, with the Wales Commissioner committing an additional 10 days and the Deputy Chair working two days per week (Statement of Compliance).

The Commission is currently composed of 17 members,⁷ many of whom had previously served on preceding equality commissions:

- Trevor Phillips (Chair)
- Baroness Margaret Prosser (Deputy Chair)
- Morag Alexander
- Kay Allen
- Baroness Jane Campbell
- Kay Carberry
- Jeannie Drake
- Joel Edwards
- Baroness Sally Greengross
- Professor Kay Hampton
- Francesca Klug
- Sir Bert Massie
- Ziauddin Sardar
- Ben Summerskill
- Maeve Sherlock
- Dr Neil Wooding

and Local Govt will meet any civil liability which is incurred in the execution of your functions, unless you have acted recklessly and provided that you have acted honestly and in good faith.'

⁷ Section 41 of the Equality Act allows provision for transitional commissioners who are selected in order to assist with the smooth transfer of functions of the predecessor commissions. The EHRC has three transitional Commissioners, whose terms will expire in autumn 2009, which is why there are currently more commissioners than provided for under Schedule 1 (Statement of Compliance).

- Executive Director Dr Nicola Brewer (Ex Officio Commissioner)

There is no provision either in the Equality Act or its Schedule that specifies an appointment process. The Statement of Compliance explains the appointment process as follows:

- The appointment process for Commissioners is subject to detailed guidance from the Office of the Commissioner for Public Appointments (OCPA), an independent agency whose task is to regulate, monitor, report and advise on appointments made by UK Ministers to the boards of national and regional public bodies (including Executive NDPBs). The Code of Practice issued by the OCPA, which is applicable to the EHRC, requires selection based on merit, open and transparent processes with an element of independent scrutiny.⁸
- The vacancies were widely advertised, through the news media, the internet and specialist media, including those serving minority groups. Applicants were required to complete application forms setting out their suitability against a range of objective criteria. The candidates deemed most suitable were invited to attend an interview and assessment, where they were scored by selection panels that included independent experts.
- The formal appointments were made by the Minister on the basis of a shortlist forwarded by the selection panel. The Minister also appointed one of the Commissioners as Chair, and one as Deputy Chair.
- The Chief Executive, an ex officio Commissioner, is an appointment made by the Commission, with ministerial consent (Equality Act, Schedule 1, paragraph 7). She or he is a permanent employee of the Commission (see section 3.3 below).

According to paragraph 3 of Schedule 1, the tenure of a Commissioner is not less than two years or more than five years. This must be specified in the letter of appointment. A Commissioner whose term has expired may be reappointed. The Statement of Compliance explains, in this regard, that all appointments to date have been for three years, except for the Chair (five years), but the flexibility in the legislation would allow for the option of staggered replacements rather than a changeover of the entire membership at one time. While it is not stipulated in the Act, in the UK appointment to NDPBs for a second term is the norm, subject to a satisfactory appraisal. However, a further reappointment would be unusual (Statement of Compliance).

Under paragraph 35 of Schedule 1, the Commission may remunerate the Chairman, deputy Chairman or other Commissioners and pay them travelling and other allowances, pensions, or gratuities determined by the Minister. The Commission may also compensate the Chairman, Deputy Chairman or Commissioners when they cease to hold office, if the Minister thinks that there are special circumstances that make it right to do so. Paragraph 37 of Schedule also indicates that the Commission may pay a member or former member of an advisory or decision-making committee such remuneration, allowances or gratuities as the Minister determines and approves. The Statement of Compliance indicates that although the Equality Act requires the approval and determination of the Minister to pay Commissioners, in practice, this is an accounting convention intended to protect against the abuse of public funds and that there is no Ministerial oversight of ordinary expenditure. The EHRC reports that the current remuneration for its Chair, deputy Chair, and Commissioners are at rates above the norm for public appointments. (Initially set at £400 per day for most Commissioners and £600 for the deputy Chair. The Chair, being full-time, is on a salary commensurate with a very senior public sector appointment.)

The Minister may dismiss a Commissioner who is, in the opinion of the Minister, unable, unfit or unwilling to perform his functions (Equality Act, Schedule 1, paragraph 3(5)). However, the Statement of Compliance clarifies that 'unfitness', in the context of NDPB regulation, would only be invoked in very serious circumstances which conventionally could include criminal behaviour, non-attendance at a number of meetings, an undischarged bankruptcy, or being found guilty of grave misconduct or conflict of interest.

⁸ The Office of the Commissioner for Public Appointments was created by an Order in Council on 23 November 1995. The Commissioner's Code of Practice is available at: http://www.ocpa.gov.uk/the_code_of_practice.aspx

Under Part 4 of Schedule 1 Commissioners are disqualified from being elected to the UK House of Commons,⁹ the Welsh Assembly or the Northern Ireland Assembly. However, there is no bar on membership to the UK House of Lords and in fact three of the current Commissioners are members of the House of Lords (Statement of Compliance).¹⁰

3.2. Pluralism

The Equality Act specifies that the Minister must ensure that the Commission includes a Commissioner who is or has been a disabled person; a Commissioner who knows about conditions in Scotland, with the consent of the Scottish Ministers; and a Commissioner who knows about the conditions in Wales, with the consent of the Wales Ministers (Schedule 1, paragraph 2(3)). More generally, the UK Government has made a commitment to increasing diversity in public appointments and since March 2002 the OCPA has been given formal responsibility for encouraging equal opportunities in respect of appointments to public bodies.¹¹

Diversity is reflected in the current composition of the Commission, which includes 10 female and 5 male Commissioners, and a female Chief Executive Officer. The Commission has members drawn from minorities in terms of ethnic or racial group, national origin, religion and sexual orientation; it has members with backgrounds in the media, trade union, the women's sector, academia, the law, the voluntary and community sectors, the public service, business, health and social care (Statement of Compliance). The EHRC also notes that it has a diverse staff body and that it seeks to comply with best practice and non-binding guidance on matter concerning equality of opportunity and non-discrimination; as reflected in its objectives in recruitment and selection (Statement of Compliance). The EHRC has provided statistical information on the make up of its staff in its Statement of Compliance.

3.3. Organisational infrastructure

The Statement of Compliance indicates that the EHRC has the infrastructure, management framework, staffing and resources required to fulfil its mandate. The obligation on Government to provide the EHRC with adequate resources comes from paragraph 38 of Schedule 1, which specifies that the Minister must provide to the EHRC such sums as appear 'reasonably sufficient for the purpose of enabling the Commission to perform its functions'. The EHRC's funding is determined as part of a comprehensive funding review, which includes the EHRC submitting an indicative budget to its sponsoring department, the Government Equalities Office. The EHRC is due to give an indicative budget for 2009/10 in December 2008 (Statement of Compliance).

The total budget of the EHRC in 2007-08 was approximately £71 million and the EHRC reports that the Government Equalities Office has indicated that £70m is likely to be the level of funding for the next 3 years (08/09 onwards). The Commissioners and senior management of the EHRC are of the view that this is an adequate sum for the discharge of all its functions. It allows the EHRC to employ over 500 staff with considerable resources for project, litigation and other expenditure. As at August 2008 there are 390 staff employed by the EHRC, with plans to increase this to 525 by the end of March 2009 (Statement of Compliance).

3.3.1. organizational structure

The Commission members, led by the Chair, and known collectively as the Board of Commissioners, are responsible for setting the strategic direction of the EHRC. The Chief Executive, supported by the senior management team, is accountable to the Board for business delivery and for advising the Board on emerging strategic priorities.

Under paragraphs 11-12 of Schedule 1, the Commission can establish one or more committees that either:

⁹ The lower house of the UK Parliament.

¹⁰ The House of Lords is the British equivalent of the upper house and can be described as the advisory or "revising" chamber. Two out of the three members (Jane Campbell and Baroness Greengross) are crossbench (independent) members of the House of Lords. A crossbencher is a member of the British House of Lords who is not aligned to any particular party.

¹¹ See <http://www.ocpa.gov.uk/diversity.aspx>

- Advise the Commission or an investigating Commissioner (advisory committees); or
- Have been delegated functions of the Commission (decision-making committees).

Such Committees are composed of Commissioners, staff and other non-Commissioners. The chairman of each decision-making committee must be a Commissioner. The Equality Act further specifies that the EHRC must establish three decision-making committees: the Scotland Committee, the Wales Committee and the Disability Committee – which it has done. For the details of these statutory committees, see below at section 5.3.

The EHRC's Senior Management Team is composed of a Director of each of the 'Group Directorates', which are as follows (Statement of Compliance):

- Corporate Management Group is composed of finance, human resources, ICT, buildings, information management and corporate legal affairs. The Group delivers infrastructure and systems and provides operational services.
- Legal Group is composed of legal policy, enforcement and casework. It manages the handling of legal cases and enforcement activities, where 'pure' legal work takes place; leads and manages the development of the legal strategy of the EHRC; works with and supports the EHRC teams in delivering work, either leading or participating as part of the project teams and by advising on legal issues; and conducts investigations (jointly with Policy Team).
- Communications Group includes external affairs, stakeholder management, and English regions. It delivers and reviews a communications and stakeholder management strategy; engages stakeholders in the EHRC's activities; responds to their requests; and ensures good external recognition of EHRC issues.
- Strategy Group includes business planning, foresight, research, disability programmes, and policy. It develops the EHRC's knowledge and view of the wide equalities and human rights landscape; devises and implements a strategy of intervention that will make a public impact; supports and works with the Board in managing the EHRC's strategy; supports the work of the Disability Committee in managing relevant programmes; conducts and Commission research to assure and build the essential equality and human rights evidence base to support the work of the EHRC.
- Scotland Group coordinates the EHRC's work in Scotland, ensuring that this reflects the needs of Scotland, and contributes to Great Britain-wide work.
- Wales Group coordinates the EHRC's work in Wales, ensuring that this reflects the needs of Wales, and contributes to great Britain-wide work.

The EHRC's senior management team and all director level posts have been filled some months ago. The task of integrating a large proportion of the staff of the three predecessor Commissions with newly recruited staff (to address the additional functions of the EHRC) is also now largely complete (Statement of Compliance).

The organizational design has been developed to be accessible, authoritative and ambitious. Based on a model called 'matrix management,' it is designed to maximise expertise, effectiveness and efficiency and is a flexible structure, neutral to priorities. Staff predominantly work in cross-functional project teams, with practice leaders maintaining and developing specializations across the organization, rather than relying on specialists working exclusively on a small range of issues or topics. A significant proportion of staff will have a portfolio of responsibilities (Interim Business Plan 2007-2008).

3.3.2. Staff

A chief executive officer must be appointed by the Commission (with the consent of the Minister) and other staff may be appointed by the Commission.

With the consent of Minister, the Commission may also appoint one or more 'Investigating Commissioners' to be delegated the functions of (a) carrying out an inquiry under section 16 of

the Equality Act, (b) carrying out an investigation under section 20 of the Equality Act, (c) giving an unlawful act notice under section 21 of the Equality Act, and (d) entering into an agreement under section 23 of the Equality Act (Equality Act, Schedule 1, paragraph 9). However, an Investigating Commissioner is not a Commissioner (paragraph 9(4)).

The numbers, terms and conditions of staff appointments are determined by the Commission and approved by the Minister (Equality Act, Schedule 1, paragraph 7). The Statement of Compliance indicates that, in practice, this requirement operates to ensure that permanent staffing levels are appropriate to the budget. The EHRC has the authority to hire its own staff on a permanent basis, and/or to engage agency staff, consultants or other contractors. There are no limitations on its ability to do so other than the requirements to observe proper financial and administrative procedures and to remain within budget and within the overall staffing complement determined by the Minister responsible to Parliament for the institution. Staff of the EHRC are directly employed by it and are accountable to it. Staff members are not civil servants (Equality Act, Schedule 1, paragraph 7). However they are offered terms and conditions of employment no less favourable than those in the Civil Service. Staff seconded to the EHRC make up roughly less than 1% of the total workforce (Statement of Compliance).

3.3.3. Regular Meetings

The Commission may regulate its own proceedings and should determine a quorum for its meetings. At least five Commissioners must participate in the process in order to make a determination (Equality Act, Schedule 1, paragraphs 5-6).

In its statement of compliance, the EHRC notes that Board meetings generally involve all Commissioners, the Senior Management Team and support staff; with other staff attending as required. From January 2008, Board meetings have taken place every second month (six per year). The Commissioners, when appropriate, can meet in private. They are also able to invite outside persons and, in general, to regulate their internal governance they see fit.

4. Relations with Civil Society and human rights institutions

4.1. Formal Relationships with Civil Society

A number of provisions in the Equality Act require the EHRC to consult with civil society:

- The EHRC must consult with such persons as it thinks appropriate, including those having knowledge or experience relevant to the EHRC's functions and must take account of any representations made in relation to: its strategic plan (section 5); its periodic reports monitoring progress under section 3 (section 12); and its codes of practice (section 14).
- In the fulfilment of its duties, the EHRC may act jointly or cooperate with anyone engaged in publishing or disseminating ideas/information; undertaking research; providing education or training; or giving advice or guidance (section 13).
- The EHRC may cooperate with persons interested in human rights, within the United Kingdom or elsewhere (section 18)
- The EHRC has a grant-making function (section 17). Through this fund, the EHRC has allocated around £11 million, one-seventh of the entire EHRC budget, for the 2008-09 year to 286 grassroots civil society organizations working on equality and human rights issues (Statement of Compliance).
- The EHRC may also cooperate with or assist with social, recreational, sporting, civic, educational, or other activities designed to involve members of diverse groups (section 19).
- In conducting inquiries under section 16, the EHRC must bring the inquiry's terms of reference to the attention of 'persons...who are likely to be interested in it' (Schedule 2, paragraph 2), which may include civil society organisations in foreseeable instances.
- It is possible for advisory and decision-making committees to include external members (Schedule 1, paragraphs 11-12), which would include members of civil society. For example,

the EHRC reports that its Scotland Committee, Wales Committee and Disability Committee include members who have a strong background in civil society organisations.

4.2. Regular Consultations

In its Statement of Compliance, the EHRC reports that it has engaged and collaborated with a number of human rights organisations within Britain. The engagement has taken a number of forms such as sharing of information, meetings to discuss particular human rights issues and collaborating on projects. The EHRC has a dedicated stakeholder management team to ensure that outreach is undertaken in a strategic and coordinated manner. The EHRC will hold a stakeholder conference on the 5 November 2008, which will be held annually.

As part of its obligation to consult in relation to its strategic plan, periodic under section 3, and codes of practice, the EHRC must 'issue a general invitation to make representations' in a manner that reaches 'as large a class of persons' as reasonably practicable. The EHRC consulted stakeholders on its 2008-09 Business Plan and is currently consulting with key stakeholders on its next three-year business plan, grants scheme and equality scheme (Statement of Compliance).

Specifically, the EHRC gives the example of a project it has undertaken with NGOs in relation to closing a legal loophole under the Human Rights Act, in which private care homes were held in the House of Lords case of *YL* not to constitute a public authority. This was significant as there is evidence of abuse of human rights of older and disabled persons in the health and social care sectors. The EHRC worked with the BIHR, Justice, Liberty, Age Concern, and Help the Aged to influence the government to introduce an amendment to the Health and Social Care Bill to rectify the gap in human rights protection. This Bill is currently passing through parliament. Another example is formal consultations held by EHRC with Muslim organisations, in response to a series of counter-terrorism measures introduced by the government over the last eight years (including stop and search). The focus of these consultations was the effect of Government's counter-terrorism policy on community cohesion. Meetings were held in March, April and May 2008 in London, Leeds, Glasgow and Cardiff (Statement of Compliance).

The three UK NHRIs have held a number of meetings during 2008 both at officer level and at CEO level. In addition, the three UK jurisdictions and the Irish Human Rights Commission have recently agreed to formalise their cooperation by committing to at least two annual thematic meetings. The CEO of EHRC has also held regular meetings with the Equality Commission for Northern Ireland and the Irish Equality Authority.

Furthermore, the EHRC has met with the Parliamentary and Health Service Ombudsman, the Children's Commissioners for the three Great Britain jurisdictions, the Prisons Inspectorate and all other national agencies involved in protecting and promoting human rights. This liaison ensures, for example that mutual referral arrangements are in place (Statement of Compliance).

4.3. Cooperation with the United Nations, regional and national institutions

The EHRC's authority to co-operate with United Nations, regional and national institutions comes from its general power to 'cooperate with persons interested in human rights within the United Kingdom or elsewhere' in pursuance of its duties under section 9 (section 18). The duties referred in section 9 are to promote understanding of the importance of human rights, to encourage good practice in relation to human rights, to promote awareness, understanding and protection of human rights, and to encourage public authorities to comply with the European Convention rights.

The EHRC has engaged with the international human rights system in the following ways:

- In February 2008 the EHRC provided a submission to the Government regarding its first examination under the Universal Periodic Review process. The Commission also attended and engaged in the oral examination at the United Nations in April 2008.
- The EHRC submitted an independent shadow report to the CEDAW Committee for its periodic examination of the UK, which highlighted key areas of concern, such as equal pay; violence against women; work life balance; and education. In drafting the report, the EHRC consulted with a variety of domestic NGOs, as well as the Women's National Commission (WNC). The

EHRC also took part in the Committee session in July 2008; participating in the briefing session with NGOs and NHRIs.

- The Commission also submitted an independent parallel report to the Human Rights Committee for its periodic examination of the UK, which raised a number of concerns including the domestic Bill of Rights process in Britain, concerns with various anti-terrorism laws, failure to fully implement Convention provisions, the human rights of disabled and older people and privacy concerns with the DNA database and National Identity Cards. The EHRC also took part in the Committee session July 2008. The EHRC, together with the NIHRC, met with the Committee to communicate particular concerns with the government's record on ICCPR and spoke at the Committee's separate formal in which NGOs expressed their concerns. In addition the EHRC sent further written submissions to the Committee following the session.
- The EHRC is currently working on its parallel report to the Committee on the Convention on the Rights of Children and will attend the Committee session in October 2008. It is following the same processes as for the treaty monitoring under CEDAW and ICCPR.

In its Statement of Compliance the EHRC also notes that it is an active member of the European Network of Equality Bodies (Equinet), which works on equality and discrimination issues within the European Union. One of the Equinet working groups is moderated by an EHRC staff member. The EHRC has participated in regional and international meetings such as the first meeting between the Fundamental Rights Agency and European NHRIs and the ICC's 20th Session. It has also held bilateral meetings with Council of Europe Commissioner for Human Rights, the Danish Institute for Human Rights and the Australian Human Rights and Equal Opportunities Commission and the New Zealand Human Rights Commission.

As discussed above in section 1, the EHRC has a particular mandate to cooperate with the other human rights institutions in the UK. The three human rights institutions have signed a protocol agreeing how they will work together within the UK. As discussed above in section 1, a MOU has been agreed between the EHRC and NIHRC covering the rights and duties as an ICC member including the exercise of the one voting and the one speaking right. This agreement also includes arrangements for participation in the international human rights system, including the Human Rights Council and the Treaty Bodies. The EHRC has been closely engaging with the Northern Ireland Human Rights Commission (NIHRC) in the treaty monitoring processes.¹² It has also had a separate bilateral meeting with the NIHRC in Belfast this year; with senior staff attending to share knowledge and plan future cooperation. The EHRC has held a number of meetings with the Chair of the Scottish Commission for Human Rights (SCHR) to identify mutual areas of future cooperation. The SCHR will be co-located with the EHRC in offices in Glasgow (Statement of Compliance). As noted below in section 6.4 the EHRC has agreed to be the independent mechanism required to ratify the UN Convention on the Rights of Persons with Disabilities in partnership with the SHRC, NIHRC and the Equality Authority Northern Ireland.

5. Accessibility

5.1. Procedures and mechanisms to ensure accessibility

In its Statement of Compliance, the EHRC reports that it has ensuring the staffing, structures and systems to ensure maximum accessibility and impact to its promotional, information and awareness-raising work. The EHRC offers a helpline, through the communications directorate. The service responds to requests for help and advice on issues surrounding human rights violations. The helpline number is advertised on the internet, where there is also information on legal rights, where to go for support and how to get access to the legal teams. The EHRC has up to 100 trained staff in its five helpline offices. The EHRC has also established a user-friendly, accessible website (Statement of Compliance).

¹² The EHRC notes that ahead of the CEDAW and HRC sessions, it worked closely with the Northern Ireland Human Rights Commission (NIHRC) to work out common aims for the session, share shadow reports agreeing how to share time in the allocated slots for NHRIs. The CEDAW process enabled the EHRC and the NIHRC to put into practice the working principles outlined in the Interim Protocol which governs how the three UK NHRIs (including the Scottish Human Rights Commission) work together.

The previous Commissions, in particular the Commission for Racial Equality, published material in ethnic minority languages, and it is expected that the EHRC will maintain the commitment to making key documents available when there is evidence of a need to do so. If an individual approaching the EHRC needs information in particular language, the EHRC will accommodate that need through a variety of ways: translating publications; providing interpreters, audio translations, or translations of individual documents relevant to a particular case. The EHRC's helpline services are expected to be available in many languages including all the main migrant community languages; whether directly through the EHRC's 'Language Line' or via interpreting services provided at no cost to the user and with minimal delay. Text-phone services are also available, and at public events sign language interpreting is provided. Forms and other documents are made available in accessible formats (Statement of Compliance).

The Statement of Compliance also notes that, as a public authority, the EHRC is subject to the requirements of the Welsh Language Act 1993, which places a duty on the public sector to treat Welsh and English on an equal basis when providing services to the public in Wales. In accordance with that Act's requirements EHRC publications will be produced in Welsh or bilingual formats, or have Welsh-language summaries made available.

The EHRC's headquarters are in Manchester and it has other main offices in London, Cardiff and Glasgow, with a call centre in Stratford and additional regional presence in north Wales, Edinburgh, Birmingham and other major UK cities.¹³ The regional offices manage and intervene on regional equality and human rights issues, manage regionally based stakeholder relationships and support community initiatives (Statement of Compliance). All of the EHRC's premises are, as is required by law, accessible to people with disabilities.

5.2. Procedures and mechanisms for addressing public opinion

The Communications Directorate of the EHRC brings together three key functions in the context of public awareness: External Affairs (media and public relations), Stakeholder Management (cooperation with institutional and civil society stakeholders) and English Regions (insurance of accessibility). The EHRC promotes its work through a variety of media outlets, issuing frequent press releases and providing comment or personal appearance to media outlets on request. It has a press office with five staff. The Directorate uses a range of tools to test public opinion on issues relating to human rights and equality and to monitor the external factors affecting the EHRC's reputation such as regular polling, blog monitoring, parliamentary monitoring and news alerts (Statement of Compliance).

The Directorate provides content for the EHRC website (www.equalityhumanrights.com); utilizing material from the former Commissions and creating new content. The EHRC also maintains the previous Commissions' websites as supplementary resources. The main website continues to be a work progresses, but the EHRC plans to greatly expand its content on human rights, by including documentation from and links to the resources of the international systems and the NHRI and NGO networks (Statement of Compliance).

The Communication Directorate also conducts regular polling to test public opinion on issues surrounding human rights and equality. The EHRC uses the information gained to track public attitudes to the key issues relating to human rights violations, general attitudes to the human rights agenda and specific policy issues as they arise. The EHRC's internet capability and the helpline service give the public a direct entrance to the human rights field (Statement of Compliance).

5.3. Working groups

The EHRC has three statutory decision-making committees, for Disability, for Scotland and for Wales, each of which is chaired by a Commissioner. Members of these committees, who include Commissioners, staff and external members, were appointed last year.

- The Scotland Committee (Schedule 1, paragraphs 16-23): advises the Commission on the exercise of the Commission's functions in so far as they affect the region. Before exercising a

¹³ These are Newcastle, Leeds, Nottingham, Cambridge, Guildford and Bristol.

function in a matter which in the opinion of the Commission is likely to affect persons in Scotland, the Commission shall consult the Committee. In addition, the commission's functions under sections 12(2)(d), 12(2)(c) and 13 of the Equality Act have been delegated to the Committee in so far as their exercise affects the region (except in the area of disability). To that extent, those functions are exercisable by Committee, not the Commission. The Scotland Committee is chaired by a Commissioner appointed by the Commission who knows about conditions in Scotland. Members of the Committee are appointed by the Commission for a period of not less than 2 years or more than 5 years.

- The Wales Committee (Schedule 1, paragraphs 24-31): advises the Commission on the exercise of the Commission's functions in so far as they affect the region. Before exercising a function in a matter which in the opinion of the Commission is likely to affect persons in Wales, the Commission shall consult the Committee. In addition, the commission's functions under sections 12(2)(d), 12(2)(c) and 13 of the Equality Act have been delegated to the Committee in so far as their exercise affects the region (except in the area of disability). To that extent, those functions are exercisable by Committee, not the Commission. The Wales Committee is chaired by a Commissioner appointed by the Commission who knows about conditions in Wales. Members of the Committee are appointed by the Commission for a period of not less than 2 years or more than 5 years.
- Disability Committee (Schedule 1, Part 5): has been delegated the Commission's duties and powers under sections 8, 10-11, 13-15, 19, 27-28, and 30 in relation to disability matters. However, this delegation does not prevent the Commission from also exercising those duties and powers in relation to matters partly related to disability and partly to other matters. The Committee also advises the Commission about the exercise of the Commission's functions in so far as they affect disabled persons. The Committee must consist of not less than 7 or more than 9 members; at least half of whom are (or have been) disabled persons. The Chairman must also be (or have been) a disabled person. Members of the Committee are appointed by the Commission for a period of not less than 2 years or more than 5 years. Unlike the other two Committees, which are envisaged as permanent, the Disability Committee will be independently reviewed after five years to review whether it should continue to exist.

The EHRC has established three further decision-making committees, as per paragraph 12(1) of Schedule 1 of the Equality Act. These are: the Legal Committee; the Grants Committee; and the External Affairs Committee.

The EHRC has also established two advisory committees as per paragraph 11(1) of Schedule 1 of the Equality Act. These are the Audit and Risk Committee, which aims to ensure best practice by providing advice to management, and the Remuneration Committee, which was established to consider the appraisal outcomes and packages for the Chief Executive and Group Directors. The Remuneration Committee is made up of the Chair, two Commissioners and an external appointee (Statement of Compliance).

IV. COMPETENCE AND RESPONSIBILITIES

6. General Jurisdiction and Functions

6.1. Mandate to promote and protect human rights

The EHRC's general duty, which is set out in the Equality Act (section 3) as follows:

The Commission shall exercise its functions with a view of encouraging and supporting the development of a society in which:

- (a) people's ability to achieve their potential is not limited by prejudice or discrimination,
- (b) there is respect for and protection of each individual's human rights,
- (c) there is respect for the dignity and worth of each individual,
- (d) each individual has an equal opportunity to participate in society, and

- (e) there is mutual respect between groups based on understanding and valuing of diversity and on shared respect for equality and human rights.

The Commission is then given more specific duties, which sections 8 to 12 of the Equality Act set out as follows:

- To promote understanding of the importance of equality and diversity; encourage good practice in relation to equality and diversity; promote equality of opportunity; promote awareness and understanding of rights under the equality enactments; enforce the equality enactments;¹⁴ work towards the elimination of unlawful discrimination and unlawful harassment (section 8).
- To promote understanding of the importance of human rights; encourage good practice in relation to human rights; promote awareness, understanding and protection of human rights; encourage public authorities to comply with section 6 of the Human Rights Act¹⁵ (section 9).
- To promote understanding of the importance of good relations among and between groups and encourage good practice on such relations. Groups are defined as a class of persons who share a common attribute in respect of age, disability, gender, transgender, race, religion or belief, and sexual orientation (section 10).
- To monitor the effectiveness of the UK's equality and human rights enactments by advising the central government on their effectiveness; recommending to the central government their amendment, repeal, consolidation (with or without amendments) or replication (with or without amendments); advising central or devolved governments about their effect (including an enactment in or under an Act of the Scottish Parliament); advising central or devolved governments about the likely effect of a proposed change of law (section 11).
- To identify (a) changes in society that are relevant to the aim specified in section 3, (b) target goals to encourage and support the development of the society described in section 3 (outcomes), and (c) points of reference by which to measure progress towards those goals (indicators); and to publish periodic reports on progress towards the identified outcomes by reference to the identified indicators (section 12).

Human rights are given a broad definition in the Equality Act. Specifically, they are defined in section 9(2) as:

- Convention rights within the meaning of section 1 of the Human Rights Act 1998; and
- other human rights

According to its Statement of Compliance, without any express limitation, the EHRC has interpreted this definition as covering the entire range of internationally recognised human rights.

6.2. The mandate in practice

The EHRC is given a number of both general and specific powers that allow it to fulfil its duties in practice, some of which have been discussed in above sections. These include the power to:

- Publish or otherwise disseminate ideas of information, undertake research, provide education or training, give advice or guidance (section 13)
- With the Ministers approval, issue codes of practice to ensure or facilitate compliance with a provision or enactment relating to equality of opportunity (section 14)
- Conduct an inquiry into a matter relating to any of its duties in relation to equality, diversity, human rights and group relations (section 16)
- Make grants to another person in pursuance of any of its duties in relation to equality, diversity, human rights and group relations (section 17)

¹⁴ The equality enactments are defined in section 33 of the Equality Act as: the Equal Pay Act 1970; the Sex Discrimination Act 1975; the Race Relations Act 1976; the Disability Discrimination Act 1995; Part 2 of the Equality Act 2006; Regulations under Part 3 of the Equality Act 2006; the Employment Equality (Sexual Orientation) Regulations 2003; the Employment Equality (Religion or Belief) Regulations 2003.

¹⁵ 6(1) states that 'It is unlawful for a public authority to act in a way which is incompatible with a Convention right'.

- Cooperate with persons interested in human rights within the United Kingdom or elsewhere (section 18)
- Cooperate with or assist in arrangements for monitoring crime affecting certain groups, for preventing or reducing crime affecting certain groups, or for activities designed to involve members of groups (section 19)
- Investigate whether a person committed an act contrary to the provisions of the equality enactments (section 20)
- Institute or intervene in legal proceedings or provide legal assistance to individuals who are or may become a party to legal proceedings (sections 28, 30).

6.3. Functions regarding national legislation

The Equality Act does not include a specific provision giving the EHRC responsibility for the harmonization of national legislation with international human rights instruments. However, the EHRC has interpreted its broad functions as including assessing the compatibility of law, policy and practice with the international and regional instruments to which the State is party; the effectiveness of law, policy and practice in protecting rights; and any obstacles in the domestic legal or administrative order to the implementation of existing, or adoption of additional, human rights obligations. Specifically, the EHRC points to its functions in section 11 to 'promote understanding of the importance of human rights... encourage good practice...[and] promote awareness, understanding and protection of human rights', combined with its power to 'give advice or guidance' in section 13 (Statement of Compliance).

In its Statement of Compliance the EHRC reports that it has undertaken work in relation to current Bills passing Parliament, which have potential implications for human rights and has provided responses to consultations on draft legislation being conducted by Parliamentary Committees. For example, the EHRC has prepared briefings, lobbied Members of Parliament, produced submissions and given oral evidence in relation to:

- The Counter-Terrorism Bill 2007-2008: specifically, this has involved analysing whether the proposals to extend interrogation detentions for up to forty two days comply with international standards, in particular the ECHR. The EHRC has decided to use its powers to challenge these provisions in court if they are enacted and has made its analysis and decision known to parliamentarians and the press;
- The Health and Social Care Bill 2007-2008: which relates to the Human Rights Act's application extends to private care homes;
- The Criminal Justice and Immigration Bill 2006-2008: which creates a new criminal offence relating to incitement to hatred based on sexual orientation;
- The Parliamentary Joint Committee on Human Rights Inquiry into a Bill of Rights for Britain.

It also reports that the government has made an announcement that in the next session of parliament starting in November 2008 it will produce a Single Equality Bill to consolidate and modernise all equality law in Britain; covering grounds of race, gender, disability, sexual orientation, religion or belief, and age. The EHRC has been working closely with the government to ensure that this project goes ahead and that the new legislation is effective in protecting people from discrimination, promoting equality and achieving substantive equality. This has also included promoting the introduction of a freestanding right to equality equivalent to article 26 of the ICCPR and Optional Protocol 12 of the ECHR (Statement of Compliance).

6.4. Encouraging ratification and implementation of international standards

The Equality Act contains no specific provisions that elaborate the EHRC's function of encouraging ratification and implementation of international human rights instruments. Nevertheless, the Statement of Compliance indicates that the EHRC draws its legal ground to work in this area from a broadly defined mandate in sections 3 and 9; which includes among other things, a duty to 'encourage good practice in relation to human rights' combined with its power to 'give advice or guidance' in section 13 (Statement of Compliance).

In its Statement of Compliance the EHRC reports that it has been working collaboratively with the Office for Disability Issues to encourage the Government to ratify the UN Convention on the Rights of Persons with Disabilities (and its Optional Protocol) within 2008 and to ensure that the rights within it are fully and effectively implemented in the UK. The EHRC will be designated the role of independent mechanism in partnership with the SHRC, NIHR and the Equality Authority Northern Ireland. The EHRC has indicated that it taking such a role would be conditional on the Government making no or minimal reservations and acceding to the Optional Protocol.

In addition the EHRC called on the Government to accede to the ICCPR Optional Protocol on Individual Petitions in its written and oral submissions to the Human Rights Committee's examination of the UK in July 2008. It has also called on the Government to sign and ratify optional protocol 12 (the freestanding right to non-discrimination) and optional protocols 4 and 7 to the ECHR which the government has to date refused to do.

In relation to the implementation of international standards, the EHRC also reports that it has recently initiated judicial review proceedings in the High Court against the government, to challenge the manner in which the enacted the European Union's Directive on gender discrimination in the provision of goods, facilities and services into domestic law. The EHRC has also intervened in proceedings relating to equality in a number of cases in the House of Lords, Court of Appeal and other appeal courts (Statement of Compliance).

6.5. Programmes for teaching and research

Section 13 of the Equality Act provides that, in pursuance of its duties, the EHRC may undertake research and may provide education or training. It may also arrange for other persons to do so or cooperate with others doing so.

The EHRC has recognised that human rights education programs should be provided not only in schools, universities and professional circles, but in informal education, youth work, trade unions, faith communities and the community and voluntary sector, and groups who are especially vulnerable to abuses of human rights. Although it has not yet developed an independent capacity to deliver large-scale human rights training or published materials for human rights education, a large body of such material produced by the predecessor Commissions remains accessible, including via the EHRC website (Statement of Compliance).

The EHRC's Strategy Directorate mandated to conduct and commission research to assure and build an equality and human rights evidence-base essential to support the work of the EHRC. For example, the EHRC co-funded research, conducted by the Scottish Centre for Social Research, exploring attitudes towards discrimination across six key equality areas: disability, gender, race, religion or belief, age and sexual orientation. The project's report, *Attitudes to Discrimination in Scotland: 2006 Scottish Social Attitudes Survey*, serve as a valuable baseline measurement of attitudes on which the EHRC's Scottish presence can draw in measuring its own effectiveness (Statement of Compliance). The EHRC has also commissioned three research projects concerned with (i) monitoring the implementation of human rights standards in public service delivery; (ii) the role of inspectorates; and (iii) the effect of human rights cases in the appeal courts the European Court of Human Rights. The research funding will inform the Commission's work on its Human Rights Inquiry (see section 6.6 below).

6.6. General powers

The functions of the EHRC outlined above in section 6.1 give it a general power to give advice, make recommendations and disseminate opinions and information on matters concerning the promotion and protection of human rights. This may relate to legislative or administrative provisions (section 11); any situation of violation the EHRC decides to take up (sections 9, 16); or the national situation with regards to human rights (section 12). It may also arrange for other persons to do so, and cooperate with others doing so, for example by Commissioning reports on the protection of rights in particular situations, or on systemic violations (section 13).

The EHRC prepares an annual report on the performance of its functions; including in relation to Scotland and Wales. The annual report is presented to the Parliament, as well as the Scottish

Parliament and the National Assembly for Wales, through the Minister (Equality Act, Schedule 1, paragraph 32).¹⁶ Through the submission of its annual report, and other special reports to the Parliament through the Minister, the EHRC can draw the attention of the Government to human rights violations. The EHRC can also report and make recommendations in respect of matters arising in the course of inquiry, investigation or assessment, which will be presented in a report of that inquiry, investigation or assessment (Equality Act, Schedule 2, paragraph 15).

In its Statement of Compliance, the EHRC reports that in April 2008 it launched a major inquiry into 'the state of human rights in Britain today'. The Inquiry's terms of reference are: to assess progress towards the effectiveness and enjoyment of a culture of respect for human rights in Great Britain; and to consider how the current human rights framework might best be developed and used to realize the vision of a society built on fairness and respect, confident in all aspects of its diversity. The EHRC reports that the Inquiry process will include:

- A call for written evidence, which has resulted in over a hundred written responses. The EHRC has also organized nine focus groups to ensure that groups who might be subject to barriers in responding to formal processes could give evidence. The government has, as a part of this, provided considerable cross-departmental material.
- Three research projects concerned with monitoring the implementation of human rights standards in public service delivery, the role of inspectorates and the effect of human rights cases in the appeal courts and the European Court of Human Rights in Strasbourg.
- Twelve days of oral evidence sessions schedule to receive evidence from ministers, the media, lawyers and service users.
- The EHRC also intends to initiate a large scale polling and "deliberative group" work to look at public attitudes to human rights and the UK's Human Rights Act in order to understand how it might change some of the negative stereotypes and crude attacks on human rights by the media and some politicians.
- A final report from these projects; expected in March 2009.

6.7. Power to gather information

The EHRC, in the course of an inquiry, investigation or assessment, may give a notice to any person to provide or produce information or to give oral evidence (Equality Act, Schedule 2, paragraph 9). However, that notice may not require a person to provide information that he or she is prohibited from disclosing by virtue of an enactment; may not require a person to do anything that he or she could not be compelled to do in proceedings before the High Court or the Court of Session; and may not require a person to attend a place unless the EHRC undertakes to pay the expenses of his journey (Equality Act, Schedule 2, paragraph 10). To prevent against abuse of this power to compel evidence, it is subject to judicial oversight (Statement of Compliance), namely the recipient of a notice may apply to the High Court or the Court of Session to have a notice cancelled if it is unnecessary or unreasonable (Equality Act, Schedule 2, paragraph 11).

If the EHRC thinks that a person has failed or is like to fail to comply with a notice without reasonable excuse, it may apply to a county court or to the sheriff for an order requiring a person to take such steps as may be specified in the order to comply with the notice (Equality Act, Schedule 2, paragraph 12). A person commits an offence if he or she fails to comply with a notice without reasonable excuse; falsifies anything provided or produced in accordance with a notice; or makes a false statement in giving oral evidence in accordance with a notice. A person who is guilty of an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale (Equality Act, Schedule 2, paragraph 13).

A person is not required to disclose 'sensitive information' within the meaning of the Intelligence Services Act; information that might lead to the identification of an employee or agent of an intelligence service; information which might provide details of processes used in recruiting, selecting or training employees or agents of an intelligence service; and information relating to an intelligence service which would prejudice the interests of national security. However, the EHRC is

¹⁶ Paragraph 32(5) places an obligation on the Minister to lay the report before Parliament.

able to contest any such claim by applying to a specialised judicial body, which can order disclosure (Equality Act, Schedule 2, paragraph 14).

7. Quasi-jurisdictional competence

The EHRC has competence to:

- conduct an inquiry into a matter related to any of its duties (section 16);
- investigate whether a person committed an unlawful act contrary to a provision of the equality enactments, has complied with a requirement imposed by an unlawful act notice, or has complied with an undertaking given (section 20);
- assess the extent to which a public authority has complied with a duty under provisions of the equality enactments (section 31).

The procedures for the EHRC's inquiry, investigation and assessments functions are contained sections 16, 20, 31 and in Schedule 2 of the Equality Act. These procedures are as follows:

- Before conducting an inquiry, investigation, or assessment, the EHRC must prepare terms of reference and give notice of these to persons specified in them (paragraphs 2-4). For investigations and assessments persons concerned must be given an opportunity to make representations about the proposed terms. The EHRC must consider any representations made and must publish the terms of reference once settled (paragraphs 3-4).
- If in the course of an enquiry, the EHRC suspects that a person may have committed an unlawful act, they may commence an investigation into that act under section 20 (Equality Act, section 16(2)).
- The EHRC must give persons, in particular persons specified in the terms of reference, an opportunity to make representations in relation to inquiries, investigations and assessments. These may include oral representations. The Commission must consider representations made, although there are some cases where they may refuse to do so (paragraphs 6-8).
- The EHRC must publish a report of its findings on an inquiry, investigation or assessment (paragraph 15).
- However, before settling a report of an investigation recording a finding that a person has committed an unlawful act or has failed to comply with a requirement or undertaking, the EHRC must send a draft of the report to the person concerned giving them the opportunity to make written representations within 28 days. Any such representations must be considered (Equality Act, section 20).
- The EHRC may make recommendations as part of a report of an inquiry, investigation or assessment; or in respect of a matter arising in the course of an inquiry, investigation or assessment. Such recommendations may be addressed to any class of person (paragraph 16).
- The effect of a report is such that a court or tribunal may have regard to the findings contained in it, but shall not treat it as conclusive (paragraph 19).
- An inquiry may not consider whether an intelligence service has acted (or is acting) in a way which is incompatible with a person's human rights, or other matters concerning human rights in relation to an intelligence service (paragraph 20).

In its Statement of Compliance the EHRC comments that although it would hesitate to describe itself as having quasi-jurisdictional competence, in so far as it does not hear cases or deliver judgments and must defer them to the courts, the EHRC's work, in many respects, corresponds to a quasi-jurisdictional role:

- The EHRC may receive complaints brought by individuals, their representatives, third parties, nongovernmental organizations, trade unions or any other representative organizations. The primary means for accessing the EHRC's advice service is through the telephone helpline, although individual issues may also be brought to the Commission in writing. The helpline is not only available to complainants but to advisers, employers and stakeholders such as the legal profession and representative organisations (Statement of Compliance).

- The EHRC reports that, if it decides to conduct an inquiry, its legal team will draft the terms of reference for the inquiry, which will be submitted to the EHRC's legal committee for authorization. The terms of reference are then sent to concerned parties, who have a right to make representations. The EHRC then publishes its terms of reference and the investigation is launched.
- The EHRC may make arrangements for the provision of confidential conciliation services for disputes in respect of which proceedings have been or could be brought under the equality enactments. However, the EHRC itself must not participate in the conciliation (section 27).
- The EHRC may enter into an agreement with a person if it thinks that he or she has committed an unlawful act. Under such an agreement the person undertakes to take or refrain from taking specified action and the EHRC undertake not to proceed against the person. A person is not taken to have admitted to an unlawful act by reason only of entering into an agreement. Such an agreement may be varied or terminated by agreement of the parties (section 23). The EHRC may apply to a county court or to the Sheriff for an order requiring a person to comply with an undertaking in the agreement (section 24).
- The EHRC states that at the end of an inquiry or investigation it will produce a report. Those subject to the inquiry or investigation will be provided with a draft copy of the report and will have 28 days to make written representations. The EHRC takes written representations into account before finalizing the report. It can also make recommendations as part of its inquiry or investigation. A person to whom a recommendation is made as a result of an inquiry or investigation is obliged to have regard to it.
- The EHRC may apply to a county court (or the sheriff) for an injunction to restrain a person from committing the act if it thinks that a person is likely to commit an unlawful act (section 24).
- The EHRC can assist an individual who is or may become party to legal proceedings if the proceedings relate or may relate, wholly or partly, to a provision of an equality enactment; and the individual alleges that he has been the victim of behaviour contrary to a provision of the equality enactments. In giving assistance, the EHRC may provide or arrange for the provision of legal service, legal representation, facilities for the settlement of a dispute, and any other form of assistance (section 28).
- The EHRC has capacity to institute or intervene (as *amicus curiae*) in legal proceedings, whether for judicial review or otherwise, if it appears to the EHRC that the proceedings are relevant to a matter in connection with which the EHRC has a function (section 30 of the Equality Act).
- The EHRC reports that it has instituted or intervened in three cases before the House of Lords: *Van Colle v Chief Constable of Hertfordshire Police*; *Smith v Chief Constable of Sussex Police*; and *RJM v Secretary of State for Work and Pensions*. These cases related to issues of the right to life and the scope of the article 14 discrimination provision under the ECHR. The EHRC has also decided to intervene in two other cases being heard in October 2008 and is also preparing applications to intervene in a number of cases that are pending before the European Court of Human Rights (Statement of Compliance).

V. SUMMARY OF ANNUAL REPORT

The EHRC will celebrate its first anniversary of operation in October 2008. It expects its first annual report to be available at this time. Under parliamentary procedure in the UK, the reporting period for annual reports runs from April – March. Accordingly, the ECHR's first annual report will cover the period October 2007 – March 2008.