

GEO Impact Assessment

Title: Reform of the Equality and Human Rights Commission IA No: GEO 1038 Lead department or agency: Government Equalities Office (Home Office) Other departments or agencies:	Impact Assessment (IA)
	Date: 05/2013
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Primary legislation
	Contact for enquiries: Louise Sutton 020 7035 8111

Summary: Intervention and Options	RPC Opinion: N/A
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
Zero	Zero	Zero	Yes Zero net cost

What is the problem under consideration? Why is government intervention necessary?

The future of the Equality and Human Rights Commission (EHRC) was considered as part of the Government's Review of Public Bodies in 2010. That review concluded that the EHRC should be retained but substantially reformed to focus it on the areas where it can add value. We have used the Enterprise and Regulatory Reform Bill (now Act) to amend the Equality Act 2006 – the legislation that established the EHRC – in order to carry through these reforms.

What are the policy objectives and the intended effects?

1. To clarify the EHRC's core functions as an independent equality body and National Human Rights Institution;
2. To stop non-core activities and, where appropriate, make alternative provision where they can be done better and/or more cost-effectively by Government or other civil society/private sector providers;
3. To clarify the EHRC's relationship to Government and strengthen further its governance and systems to provide greater transparency, accountability and value for money.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1. NOT PREFERRED. No legislative change - To keep the Equality Act 2006 as it is and use an enhanced sponsorship role, including tighter performance and financial controls, to achieve the necessary changes to deliver the objectives above. Option 2 - PREFERRED - Government have used the Enterprise and Regulatory Reform Act to remove vague and unnecessary provisions from the Equality Act 2006 in order to clarify the EHRC's remit. Key non-legislative reforms have also been implemented including a new Framework Document, the recruitment of a new Chair, the appointment of a new, smaller more focused Board and a comprehensive review of the EHRC's budget. These measures provide the EHRC with a sharper strategic focus in order to improve performance against its core functions and value for money.

Will the policy be reviewed? YES. If applicable, set review date:

Does implementation go beyond minimum EU requirements?	No				
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: Zero		Non-traded: Zero		

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: HELEN GRANT MP Date: 2 June 13

Summary: Analysis & Evidence Policy Option 2

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: Zero

COSTS (£m)	Total	Transition	Average	Annual	Total	Cost
	(Constant Price)	Years	(excl. Transition)	(Constant Price)	(Present Value)	
Low						
High						
Best Estimate	Zero		Zero		Zero	

Description and scale of key monetised costs by 'main affected groups'

Government has implemented a number of legislative reforms through the Enterprise and Regulatory Reform Act. These reforms clarify the EHRC's role and core functions and we estimate that no costs will be imposed on business or civil society. Funding decisions (outside the scope of this IA) will have had an impact on wider society, but the changes to legislation considered in this IA will have no further effect.

Other key non-monetised costs by 'main affected groups'

None

BENEFITS (£m)	Total	Transition	Average	Annual	Total	Benefit
	(Constant Price)	Years	(excl. Transition)	(Constant Price)	(Present Value)	
Low						
High						
Best Estimate	Zero		Zero		Zero	

Description and scale of key monetised benefits by 'main affected groups'

Monetised benefits will result from funding decisions already taken (outside the scope of this IA) and not from the proposed legislative changes.

Other key non-monetised benefits by 'main affected groups'

None

Key assumptions/sensitivities/risks
See Section F of Evidence Base

Discount rate (%)

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: Zero	Benefits: Zero	Net: Zero	Yes	Zero net cost

Evidence Base (for summary sheets)

A. Strategic Overview

A.1 Background

The EHRC was established in October 2007 with a very broad remit. It replaced and took over the work of the Equal Opportunities Commission, Commission for Racial Equality and Disability Rights Commission and was also given responsibility for promoting equality and tackling discrimination in respect of age, sexual orientation and religion or belief, promoting good relations between groups and providing institutional support for human rights. The EHRC was tasked with taking a cross-cutting approach to equality and human rights issues and given a number of new powers and duties.

The future of the EHRC was considered as part of the Government's review of public bodies in 2010. That review concluded that the EHRC should be retained but substantially reformed to focus it on the areas where it can add value, to increase its accountability to the Government, Parliament and the public and to improve its effectiveness and value for money.

In March 2011, we set out our detailed proposals to reform the EHRC – and almost a thousand responses were received. Most were unhappy with the EHRC's performance to date. However, views on the way forward were polarised. Some attributed the problems at the EHRC to poor leadership and management. They wanted the Government to work with the EHRC to address this – instead of changing the legislative framework. Others felt the proposed reforms did not go far enough, with over half of the responses from individuals specifically calling for the EHRC's abolition. In May 2012 we published our plans to bring forward a strong package of reforms for the EHRC, and in June 2012 we brought forward legislative provisions in the Enterprise and Regulatory Reform Bill, which received Royal Assent on 25 April 2013.

A.2 Groups Affected

The implementation of these changes will have a limited effect on business and civil society.

A.3 Consultation

Within Government

We engaged closely with Government Departments and in particular sought views from Ministry of Justice (MoJ), the Department for Communities and Local Government (DCLG), and the Department for Work and Pensions (DWP), including the Office for Disability Issues (ODI), which we recognised had a particular interest. We also consulted the Department for Education (DfE), Department for Transport (DfT) and Department for Business, Innovation and Skills (BIS).

Public Consultation

The Government ran a public consultation exercise *Building a fairer Britain: Reform of the Equality and Human Rights Commission* between 22nd March and 15 June, 2011. The consultation sought views on a number of legislative and non-legislative proposals to achieve the policy aims and objectives outlined above. Among the intended audience the following were targeted:

- Voluntary and community sector organisations
- Business
- individuals
- Equality & human rights organisations
- Trades Unions
- Public sector organisations

We received a total of 993 responses to the consultation – 224 representing organisations and 769 from individuals (or people who did not clearly indicate that their response represented the views of others). 11 of the individuals had responded to the EasyRead version of the consultation document. Most responses from individuals either replicated the response of the Public and Commercial Services Union, or seemed to have been prompted by coverage of the consultation in a nationwide newspaper, calling for the EHRC’s abolition.

i) Organisational responses

The 224 organisations which responded to the consultation are listed at Annex A. The breakdown of organisations responding from different sectors was as follows:

Public sector (e.g. local authorities, other non-departmental public bodies)	55
Voluntary and Community sector (e.g. Women’s Resource Centre, Disability Hate Crime Network)	101
Member and representative groups (e.g. Confederation of British Industry, Discrimination Law Association)	29
Trades unions (e.g. PCS, TUC)	23
Other ¹	16
Total	224

Around two-thirds of responses from organisations came from groups which either support or represent individuals from disadvantaged groups (e.g. the Women’s Resource Centre or the Disability Hate Crime Network) or those – like the EHRC – which are involved in the protection and/or enforcement of rights. Only one response was received from an organisation representing the views of business (the Confederation of British Industry); the remainder were largely from public sector organisations.

In addition to the consultation exercise, we also held five engagement events in partnership with large organisations at which equality considerations were discussed/addressed. Attendees included representatives from:

- The voluntary and community sector
- Public sector bodies
- Regulators and ombudsmen
- Trades Unions
- Groups representing business interests

Further events were held in Scotland and Wales and hosted respectively by the Scottish and Welsh Governments.

A full Government Response to the consultation, summarising the views expressed and explaining how they have been taken into account when we developed our policy was published in May 2012. The response is available on the Gov.uk website²

Our consultation proposed a number of legislative changes that we did not proceed with:

- i. Amending the equality duties at section 8 of the Equality Act 2006 to clearly define EHRC’s role as an “equality regulator”. In light of the views expressed by respondents to the consultation, we have decided that it is neither realistic nor desirable to expect the EHRC, to “regulate” every part of society on equality checking up on organisations as diverse as pubs and shops, housing associations and police forces , central Government departments and multi-national corporations . We have therefore decided to retain the equality duties at section 8, and the human rights duties at

¹ Organisations which did not fit within the above groups, classified themselves as ‘Other’ or did not declare the name or nature of their organisation.

² See: <https://www.gov.uk/government/policies/creating-a-fairer-and-more-equal-society>

section 9, as they are. We consider that these duties more accurately convey EHRC's role as a national expert on equality and human rights issues and a "strategic enforcer" of the law.

- ii Amending the Equality Act 2006 to improve the EHRC's value for money and accountability. The key legislative proposals were to:
 - a. introduce a statutory requirement for EHRC to lay its business plan before Parliament;
 - b. introduce a statutory requirement for EHRC's Chair and CEO to have specific regard to using public money efficiently and effectively;
 - c. make clear that the Secretary of State may impose a financial sanction where EHRC can be shown to have mispent taxpayers' money; and
 - d. make explicit that, as a publicly funded body, EHRC is subject to Government public expenditure restrictions.

Since 2011, the EHRC has taken a range of steps to respond to the Government's concerns and there have been clear signs of improvement across its financial and operational performance. The EHRC's last two sets of account have received a clear audit opinion. It has rolled out a performance management system for its staff, has significantly reduced its dependence on interim members of staff and has reduced its headcount by over half from 455 staff in May 2010 to around 220 in May 2013.

The EHRC has also identified future savings of around £3m by rationalising its estate, and has taken steps to deliver significant reductions to the cost of its corporate support functions by sharing 'back office services

Most importantly, in March 2012 a new Framework Document clarifying the relationship between EHRC and the Government was agreed between the Home Office and the EHRC Board. The operational independence of the EHRC, a publicly-funded body, should never have resulted in financial indiscipline. The Framework document made clear that the EHRC will comply with Government-wide rules on managing public money and with public expenditure controls, where these do not prevent the EHRC being unable to perform its statutory functions. As well as establishing tighter financial controls, the Framework Document sets out how the EHRC and Government will work together to increase EHRC's transparency to Parliament and the public on how it operates. Following the announcement of a change in the Machinery of Government in September 2012, in March 2013 a revised version was agreed between the EHRC Board and the new sponsor Department, the DCMS, consolidating these arrangements³

We therefore decided that it is not necessary to proceed with these proposals.

We also consulted on removing the general duty at section 3. The general duty is intended to set out the societal context within which the EHRC should carry out its functions: "... with a view to 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;
- e) there is mutual respect between groups based on understanding and valuing of diversity and on shared respect for equality and human rights".

Following the debates in Parliament on this provision within the passage of Enterprise and Regulatory Reform Act, we have decided not to repeal the general duty, as we recognise that the general duty is important to many people as a symbolic statement of the EHRC's overarching purpose. We believe that the EHRC will be more effective now that the monitoring and reporting that it is required to do clearly focuses on its core equality, diversity and human rights duties

³ See: <https://www.gov.uk/government/publications/ehrc-framework-document?kas>

Following careful consideration of the consultation results alongside views expressed through the Government's Red Tape Challenge Spotlight on Equality in June 2011, we have implemented a strong package of legislative and non legislative reforms which we consider will allow the EHRC to move from strength to strength as our national equality body and national human rights institution.

B. Rationale

The UK is required by EU law to have an independent equality body and the Government is committed to retaining an A-rated a National Human Rights Institution. However, whilst the EHRC has carried out some important work that has deepened our understanding of equality and human rights it has, in the past, struggled to deliver against its remit.

Therefore, the decision was taken to retain the EHRC but substantially reform it to focus it on the areas where it can add value, to increase its accountability to the Government, Parliament and the public, and to improve its effectiveness and value for money.

C. Objectives

We want the EHRC to become a valued and respected national institution. We will achieve this by:

1. setting out more clearly the EHRC's core functions as an independent equality body and National Human Rights Institution;
2. stopping non-core activities and, where appropriate, make alternative provision where they can be done better and/or more cost-effectively by Government or other civil society/private sector providers; and

D. Options

Option 1 was to make no legislative changes (do nothing) but use an enhanced sponsorship role and non-legislative changes being implemented to achieve necessary budget reductions to deliver the objectives above.

NOT PREFERRED: Government's view on bringing forward a package of reforms was that it unhelpful to the EHRC for its founding legislation to include vague, unnecessary and obsolete provisions. We think this has contributed to the EHRC's underperformance to date.

Option 2- Using the Enterprise and Regulatory Reform Act, we have removed vague and unnecessary provisions from the Equality Act 2006 in order to clarify the EHRC's remit. Key, non-legislative aspects of our reform have also been implemented, including the publication of a new Framework Document clarifying the relationship between Government and the EHRC [\[insert link\]](#), the recruitment of a new Chair (November 2012) and the appointment of a new, smaller Board (January 2013). In January 2013 we also announced that following the comprehensive budget review of the EHRC, completed in partnership with the organisation, a new budget had been agreed which enables the EHRC to fulfil its statutory functions.

PREFERRED

As a result of the provisions contained with the Enterprise and Regulatory Reform Act, we have amended the Equality Act 2006 as follows:

- We have changed the EHRC's section 12 duty to monitor progress towards a fairer society and reducing the frequency with which it is required to publish a report;

We have aligned the outcomes against which the EHRC is required to monitor progress to its core equality and human rights duties, and changed the requirement for it to report from every three to every five years. This won't prevent the EHRC publishing reports at more frequent intervals, should it choose to do so, but it does allow a longer timescale between reports, enabling more meaningful change over time to be captured.

- We have repealed the good relations duty at section 10, and its associated power at section 19;

The good relations duty previously required the EHRC to promote understanding of the importance of good relations between different groups of people sharing a “protected characteristic” (age, disability, gender, gender reassignment, race, religion or belief, sexual orientation). As a separate ‘good relations’ mandate is not necessary, this element has been repealed. Future work in this area can be carried out under the EHRC’s existing equality and human rights duties.

The associated power at section 19 of the Equality Act 2006 which enabled the EHRC to “make, co-operate with or assist with arrangements for the monitoring of kinds of crime affecting certain groups” has also been repealed, as it duplicates the work done by other organisations in gathering this data. . In any event, the EHRC will retain the ability to review and challenge this data using its powers in pursuance of its section 8 and 9 duties. To the extent that the EHRC is not able to exercise its section 9 powers in Scotland, we consider that the Scottish Human Rights Commission is able to perform a similar function.

- We have repealed the EHRC’s power to make arrangements for the provision of conciliation in non-workplace disputes, at section 27.

We have repealed this power on the basis that the EHRC’s arrangements for the provision of conciliation had not been cost-effective, and did not fit with the EHRC’s strategic role. In light of its reduced budget, the EHRC has now decided to stop making arrangements for the provision of conciliation in non-workplace disputes. We have therefore decided to repeal its power to do so, which is now redundant.

As a consequence of this repeal, we have also amended the relevant sections of the Equality Act 2010 to remove references to section 27 of the Equality Act 2006.

E. Appraisal (Costs and Benefits)

GENERAL ASSUMPTIONS & DATA

This IA considers the impact of the regulatory changes made. It should be noted that the impact of funding decisions by the Government and the EHRC are outside the scope of this IA.

OPTION 2 – the removal of vague and unnecessary provisions in order to focus it on its core functions

COSTS

There are no anticipated costs for any of these legislative proposals.

BENEFITS

There are no anticipated financial benefits from any of these legislative proposals.

Our analysis of responses to the consultation, together with our continuing engagement with stakeholders, indicates that our proposed legislative changes will have no negative impact on civil society or businesses.

ONE-IN-ONE-OUT (OIOO)

These measures are deregulatory, as the repeal of section 10 (good relations duty) of the Equality Act 2006 will reduce the volume of legislation. However, we have not identified any savings to business from the changes so these measures would qualify as an OUT with zero net cost.

COSTS (INs)

The estimated cost imposed on business is zero.

BENEFITS (OUTs)

The estimated benefit to business is zero. However we think our legislative changes could benefit

business by helping to bring about a more strategic, more focused EHRC, which will help businesses to better understand their responsibilities

NET

Zero net cost

F. Risks

OPTION 2 – to remove vague, unnecessary and obsolete provisions in order to narrow EHRC's remit.

Key Risk	Mitigation
That proposed reforms do not achieve the aim of a more efficient and effective EHRC.	We will review the EHRC's progress at its next triennial review to see if further reform is required.

G. Enforcement

The new Framework Document sets out how the Government will monitor and evaluate the EHRC's future performance. Together with our legislative proposals, the Framework Document will help to create a more effective and efficient organisation⁴.

H. Summary and Recommendations

Following careful consideration of the consultation results alongside views expressed through the Government's Red Tape Challenge Spotlight on Equality in June 2011, in May 2012 we brought forward a strong package of legislative reforms which have been implemented via the Enterprise and Regulatory Reform Act. Along with key non-legislative elements which have also been implemented, we believe that the EHRC will go from strength to strength as a respected national expert on equality and human rights issues and strategic enforcer of the law.

I. Implementation

The Government has implemented these changes via the Enterprise and Regulatory Reform Act which received Royal Assent on 25 April 2013. The provisions affecting the EHRC will commence on 25 June 2013.

J. Monitoring and Evaluation

The effectiveness of the new regime will be monitored by regular appraisals. The EHRC is also subject to triennial reviews. The new Framework Document agreed between DCMS/GEO and the EHRC and the effect of the legislative changes will be formally evaluated during this process.

K. Feedback

⁴ See: <https://www.gov.uk/government/publications/ehrc-framework-document?kas>

Regular meetings between DCMS/GEO officials and EHRC officials at all levels of the organisation e.g. Chair of EHRC and Ministers, Chief Executive and Director, GEO Sponsorship Unit and EHRC officials. GEO Sponsorship Unit will also seek regular feedback from wider stakeholders e.g. the Equality and Diversity Forum and Parliamentarians.