

EQUALITY ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: The Commission for Equality and Human Rights

Section 1: Establishment

17. *Section 1* establishes the CEHR.

Section 2: Constitution, &c.

18. *Section 2* introduces *Schedule 1* which sets out provisions relating to the constitution of the CEHR; its members (the Commissioners); their appointment criteria; and their tenure of office; the tenure of office of the Chairman and the deputy Chairman; regulation of its proceedings; appointment of its staff; appointment of its Investigating Commissioners; its powers of delegation and the committees to which certain functions must be delegated; preparation of its annual report; remuneration of Commissioners and staff; its financial arrangements; and its status.

Section 3: General duty

19. *Section 3* sets out the outcomes for society that the CEHR is required to work towards. It explains the rationale for the CEHR, combining work in equality, human rights and good relations between different groups in society. The CEHR is required to exercise its functions in Part 1 in order to work towards the outcomes set out in this section.

Section 4: Strategic plan

20. *Section 4* places the CEHR under a duty to publish and lay before Parliament, a strategic plan setting out the activities or types of activity it plans to carry out, the timetable for these activities, and the priorities for these activities (or the principles on how these priorities should be determined).
21. *Subsection (2)* requires the CEHR to review its strategic plan at least once every three years from publication, although it does not have to revise the plan after each review if it does not think it appropriate to do so. The CEHR must publish the original plan and each revision of it, and ensure that the plan and each revision is sent to the Secretary of State to lay before Parliament.

Section 5: Strategic plan: consultation

22. *Section 5* places the CEHR under a duty to consult on the preparation and review of its strategic plan. The CEHR is required to consult with those who have knowledge or experience relevant to the CEHR's functions and others the CEHR considers appropriate. The CEHR is also required to issue a general invitation to make representations, to ensure it is able to consult with as large a group of people as possible.

23. The CEHR will be required to take account of any representations it receives in the course of its consultation.

Section 6: Disclosure

24. *Section 6* creates a summary criminal offence of unauthorised disclosure by a former or current Commissioner, Investigating Commissioner, employee, or member of a committee established by the Commission, of information provided to the CEHR by third parties in the course of an inquiry, investigation, assessment, compliance notice process, or a negotiation to obtain an agreement. Information obtained through the exercise of its other functions will be subject to disclosure in accordance with the Freedom of Information Act 2000. Subsection (3) provides an exhaustive list of categories for which a disclosure can be authorised. They are disclosure made: for the purpose of the exercise of a function of the CEHR under any of sections 16, 20, 21, 24, 25, 31 and 32; in a report of an inquiry, investigation, or assessment published by the CEHR; in pursuance of an order of a court or tribunal; with the consent of each person to whom the disclosed information relates; in a manner that ensures that no person to whom the disclosed information relates can be identified; for the purpose of civil or criminal proceedings to which the CEHR is party, or; if the information was acquired by the CEHR more than 70 years before the date of the disclosure. Subsection (3) does not permit disclosure of information provided by, or relating to, an intelligence service. Such material can only be disclosed under subsection (4) where the intelligence service has given its consent. Subsection (6) provides that the penalty for a summary conviction shall be a fine up to the statutory maximum i.e. £5,000.

Section 7: Scotland: human rights

25. *Section 7* provides that the CEHR may not take human rights action in relation to matters falling within the devolved competence of the Scottish Parliament, except with the consent of a person established by Act of the Scottish Parliament whose principal duties relate to human rights (for example a Human Rights Commissioner). “Human rights action” is defined in *subsection (2)*.

Section 8: Equality and diversity

26. *Sections 8 to 12* set out the duties of the CEHR. Later sections in Part 1 set out the general powers the CEHR has to meet its obligations under these duties.
27. *Section 8* sets out the CEHR’s duties in relation to equality and diversity. The provisions require the CEHR to promote understanding of, and encourage good practice in relation to, equality and diversity (whether or not this relates to compliance with the equality enactments (as listed in section 33)), promote equality of opportunity, promote awareness and understanding of rights under the equality enactments and to work towards the elimination of unlawful discrimination and harassment, including through using its enforcement powers.
28. *Subsection (3)* clarifies that the Commission may promote the favourable treatment of disabled persons in carrying out its equality and diversity duties. This provision ensures the Commission’s work is consistent with the requirements of the Disability Discrimination Act 1995. *Subsection (4)* defines disabled persons for the purposes of this Act.

Section 9: Human rights

29. *Section 9* sets out the CEHR’s duties in relation to human rights. The provisions require the CEHR to promote understanding of the importance of human rights, encourage good practice in relation to human rights, and promote awareness, understanding and protection of human rights. In addition, the CEHR will be required to encourage public authorities to comply with section 6 of the Human Rights Act 1998 (c.42) (HRA) (which

prohibits them from acting in a way which is incompatible with the Convention rights as defined in section 1 of the HRA).

30. The latter duty applies only in relation to public authorities (“public authority” is defined in section 6 of the HRA). However, in relation to the more general duties under this section, the CEHR will not be limited to dealing with public authorities. It will, for example, also be able to provide encouragement to the voluntary and commercial sectors to adopt appropriate human rights standards as the basis of the relationship with their clients and customers in the provision of their services.
31. *Subsection (2)* makes clear that the CEHR may take action under this section in respect of human rights other than the “Convention rights” set out in Schedule 1 to the HRA. However, *subsection (3)* requires the CEHR to have particular regard to the importance of exercising its powers in relation to the Convention rights.
32. *Subsection (4)* requires the CEHR to take account of relevant human rights when fulfilling its duties under sections 8 and 10.

Section 10: Groups

33. *Section 10* sets out the CEHR’s duties in relation to promoting good relations between members of different groups, within different groups, and between members of different groups and wider society. It also requires the CEHR to work towards eliminating prejudice against members of groups and enabling members of groups to participate in society, for example in challenging racism in the media, or enabling disabled people to become involved in civic activities.
34. *Subsections (2) and (3)* define groups as people who share one of the attributes listed in subsection (2), including smaller groups who may share an attribute in addition to the one by which that group is defined, such as Muslim women, or Black and minority ethnic lesbians and gay men, or young disabled people. Groups may or may not consider themselves to be “communities”. The Commission’s work with groups can apply to communities as well as groups.
35. *Subsection (4)* ensures that, in carrying out its duties under this section, the CEHR should have particular regard to the need to exercise its powers in relation to groups defined by reference to race, religion or belief.
36. *Subsection (5)* ensures that in carrying out its duties in relation to working with groups, the Commission may promote or encourage the favourable treatment of disabled people, to ensure consistency with the general approach of the Disability Discrimination Act.

Section 11: Monitoring the law

37. *Section 11* sets out the obligations and powers of the CEHR to keep the equality and human rights enactments under review and provide advice and recommendations on the law and proposed changes to the law.
38. *Subsection (1)* requires the CEHR to monitor the effectiveness of the equality and human rights enactments. The equality and human rights enactments are listed in section 33 and, for the purposes of this section, include the whole of this Act (subsection (3)(c)). *Subsections (2)(a) and (b)* enable but do not require the CEHR to advise the Government about the effectiveness of the equality and human rights enactments and to recommend changes. *Subsections (2)(c) and (d)* enable the CEHR to give advice to the Government or the devolved administrations in Scotland or Wales about the effect of legislation (not limited to the equality and human rights enactments) or the likely effect of any proposed changes to the law.

Section 12: Monitoring progress

39. *Section 12* places the CEHR under a duty to publish reports on what progress has been made towards the achievement of desirable outcomes i.e. the results to aim for in encouraging and supporting the development of the society described in section 3. To meet its obligations under this duty, the CEHR will need to evaluate available evidence in order to identify desired outcomes for society and the indicators by reference to which progress can be measured. The CEHR will be required to consult widely on which of these should be priorities for the CEHR to monitor.
40. Once the CEHR has determined what outcomes and indicators are priorities, it will use the indicators to monitor progress towards the outcomes over a period of time. The CEHR is required to publish a report within three years of this section coming into force, and every three years thereafter. The Secretary of State must lay the progress report before Parliament.

Section 13: Information, advice, &c.

41. *Section 13* sets out the general powers available to the CEHR, and the general activities it can undertake, to carry out any or all of its duties. These activities are publishing or disseminating ideas and information, giving advice and guidance, undertaking research and providing education or training.
42. *Subsections (1)(e) and (f)* permit the CEHR to work in partnership with others, or to arrange for others to carry out any of the listed activities. This may include contractual or grant-based partnerships.
43. *Subsection (2)* confirms that advice given under this section does not include the preparation of documents to be used for the purpose of legal proceedings. The CEHR has separate powers to provide such advice in respect of particular types of legal proceedings, as laid down in section 28.

Section 14: Codes of practice

44. *Section 14* enables the CEHR to issue a code of practice in respect of specified areas of discrimination legislation, to assist in compliance with the legislation and to promote equality of opportunity. Additionally, the CEHR may issue a code of practice on specified provisions of landlord and tenant and housing legislation.
45. *Subsection (1)* lists the areas in the equality enactments (as defined in section 33) in relation to which the CEHR is to be able to issue codes of practice.
46. *Subsections (3) and (4)* set out the circumstances and the areas of landlord and tenant and housing legislation on which a code can be issued giving practical guidance to landlords and tenants in England or Wales (*subsection (2)*) and in Scotland (*subsection (3)*).
47. *Subsection (5)* places an obligation upon the CEHR to comply with a direction of the Secretary of State to prepare a code of practice in respect of a matter not currently covered by this section but which the Secretary of State expects to add by means of the order-making power provided in section 15(6) to vary the range of matters on which the CEHR may prepare a code of practice.
48. *Subsection (6)* requires the CEHR to publish for consultation proposals for any code of practice.
49. *Subsection (7)* prevents the CEHR from issuing a code of practice unless it has been approved in draft by the Secretary of State and then laid before Parliament. Either House of Parliament may pass a resolution disapproving the draft code within 40 days of it being laid. If no such resolution is passed, *subsection (8)* provides that the code of practice will come into force on a day specified by order by the Secretary of State.

50. *Subsection (9)* requires the Secretary of State to consult Scottish Ministers and the National Assembly for Wales prior to approving a draft code of practice or commencing a code of practice which relates to the duties on the public sector regarding the general and specific duties for race, gender or disability under the RRA, SDA and DDA, respectively.
51. *Subsection (10)* requires the Secretary of State to consult the Scottish Ministers prior to approving a draft code of practice or commencing a code of practice issued under *subsection (4)* which gives practical guidance to landlords and tenants of houses in Scotland.

Section 15: Codes of practice: supplemental

52. *Subsection (1)* of this section makes provision for the codes of practice issued under section 14 to be revised. *Subsection (3)* provides for any code to be revoked by an order made by the Secretary of State at the request of the CEHR. An order to revoke a code will be subject to the negative resolution Parliamentary procedure.
53. *Subsection (4)* describes the legal effect of a code of practice. It provides that a failure to comply with a provision of a code of practice does not itself give rise to criminal or civil proceedings, but a code of practice is admissible in such proceedings and must be taken into account by a court or tribunal if the court or tribunal considers the code to be relevant.
54. *Subsection (5)* disapplies the requirement in subsection (4)(b) for a court or tribunal to take account of a code of practice issued under section 14(4). However, the Housing (Scotland) Act 2006 provides for the Scottish courts and tribunals to take account of such codes.
55. *Subsection (6)* provides for an order-making power to allow the Secretary of State to vary the range of matters that codes of practice may address. In accordance with section 39(4), any such order will be subject to the affirmative resolution procedure.

Section 16: Inquiries

56. *Section 16* gives the CEHR a power to conduct inquiries into matters relating to its duties in respect of equality and diversity, human rights and groups. These could be thematic (for example into the causes of unequal outcomes), sectoral (looking at inequality in, for example, the uptake of health screening services or at the employment of disabled people in particular sectors, e.g. the retail sector) or relate to one or more named parties.
57. *Subsection (2)* provides that if the CEHR begins to suspect that a person who is the subject of an inquiry may have committed an unlawful act (i.e. a breach of the equality enactments, as set out in sections 33 & 34), it should not continue to consider that act as part of the inquiry. The CEHR can, however, use the information acquired in the course of an inquiry as the basis on which to launch an investigation. The CEHR is under a duty to ensure that so far as possible, those aspects of an inquiry which concern the person being investigated or which require his involvement are not pursued while the investigation is in progress.
58. *Subsection (3)* provides that the report of an inquiry may not conclude, expressly or by necessary implication, that a specified or identifiable person has committed an unlawful act. Nor may the report refer to the activities of a person in terms that will harm the person unless it is necessary in order that the report adequately reflect the results of the inquiry.
59. *Subsection (4)* provides that restrictions on the CEHR considering unlawful acts under the equality enactments should not impact on the CEHR's consideration and reporting of human rights matters in the course of an inquiry.

60. *Subsection (5)* provides that the CEHR, in circumstances where the findings are in the opinion of the CEHR of an adverse nature, must allow a specified or identifiable person at least 28 days in which to make written representations on the draft of a report which records findings which relate to that person, and requires the CEHR to consider any such representations.
61. *Schedule 2* sets out the provisions relating to terms of reference, representations, evidence, reports and recommendations and effects of reports in relation to inquiries, investigations and assessments. Commentary on Schedule 2 can be found below.

Section 17: Grants

62. *Section 17* provides the CEHR with a power to make grants to others, in pursuance of any of its duties under sections 8 to 10. This is a power currently available only to the CRE under section 44 of the RRA.
63. *Subsection (2)* allows the CEHR to attach conditions, including as to repayment, to the financial assistance that it provides.
64. *Subsection (3)* provides that, where the CEHR provides financial assistance in the exercise of its powers to co-operate with or assist others under Part 1 of the Act, it may do so only in accordance with the provisions of section 17.

Section 18: Human rights

65. *Section 18* allows the CEHR to co-operate with other people or organisations within the United Kingdom and abroad when undertaking its human rights duties as set out in section 9. Section 13 permits the CEHR to co-operate with others in respect of the activities set out in that section; section 18 allows co-operation to extend beyond those activities in relation to human rights. In particular, this will allow the CEHR to co-operate with human rights commissions or commissioners in other parts of the United Kingdom, and to give its opinion to international bodies about the compliance of the United Kingdom with its international human rights obligations.

Section 19: Groups

66. *Section 19* provides the CEHR with powers additional to the general powers set out in section 13, to fulfil its duties in respect of groups set out in section 10.
67. The provisions of section 19 enable the CEHR to monitor crimes affecting members of certain groups and undertake activities to reduce crime within or affecting members of those groups. The CEHR can also arrange social, recreational, sporting, civic, educational or other activities designed to involve members of groups.
68. The CEHR can undertake these activities itself, or can arrange to assist or cooperate with others in making such arrangements.

Section 20: Investigations

69. *Section 20* gives the CEHR a power to conduct investigations into persons (both natural and legal). Such an investigation may be into the commission of an unlawful act under the equality enactments, compliance with a requirement of an unlawful act notice issued under section 21 or compliance with the terms of an agreement entered into under section 23.
70. *Undersubsection (2)*, the CEHR may only carry out an investigation under *subsection (1)(a)* if it suspects that the person concerned may have committed an unlawful act.
71. *Subsection (3)* provides that a belief of unlawful discrimination or harassment, sufficient to satisfy the requirement in *subsection (2)*, may have been acquired by the

CEHR in the course of an inquiry, but need not be. The CEHR may carry out an investigation without having first carried out an inquiry.

72. *Subsection (4)* sets out the requirements which must be met before the CEHR can settle a report which records a finding that the person concerned has: committed an unlawful act; failed to comply with a requirement imposed by an unlawful act notice under section 21; or failed to comply with an undertaking given under section 23. The CEHR must send the person concerned a draft of the report and allow him at least 28 days in which to make written representations and consider any representations made.
73. *Schedule 2* sets out the provisions relating to terms of reference, representations, evidence, reports and recommendations and effects of recommendations in respect of inquiries, investigation and assessments. Commentary on Schedule 2 can be found below.

Section 21: Unlawful act notice

74. *Section 21* makes provision for the CEHR to issue an unlawful act notice after an investigation confirming an unlawful act has taken place.
75. *Subsection (1)* permits the CEHR to issue an unlawful act notice in circumstances where it has conducted an investigation and is satisfied that the party investigated has committed an unlawful act, as defined in section 34. Under *subsection (2)* an unlawful act notice must set out the unlawful act and the legislative provision by virtue of which the act is unlawful. *Subsection (3)* requires the CEHR to include in the notice details of the appeal procedure against the notice, the scope for a subsequent investigation into the subject's compliance with the notice and the scope for the CEHR to apply to a court for an injunction or interdict under section 24 if it thinks the unlawful act is continuing. Under *subsection (4)* the CEHR may include within the notice a provision requiring the recipient to prepare an action plan (as provided for in section 22) setting out how the unlawful act will cease or not be repeated. It allows the CEHR to recommend action that the person served the notice should take. *Subsection (5)* sets out the basis on which a person may appeal against an unlawful act notice and *subsection (6)* enables a court or tribunal to affirm, annul or vary a notice or requirement under it and includes the power to make an order for costs.

Section 22: Action plans

76. *Section 22* sets out the arrangements for an action plan that section 21 enables the CEHR to require of a person on whom it has served an unlawful act notice.
77. *Subsection (2)* requires that the unlawful act notice must specify a deadline for the first draft action plan.
78. *Subsections (3) and (4)* require the CEHR to either approve the first or any subsequent draft plan or give notice to the person that it is not adequate, specify a time for a revised draft and make recommendations as to the content of the revised draft.
79. *Subsection (5)* provides that, unless the CEHR gives the person notice that the draft plan is inadequate or applies to a court for an order (under *subsection (6)* below) to provide a revised draft, the action plan shall come into force within six weeks.
80. *Subsection (6)* enables the CEHR to apply to a county court (and the Scottish equivalent) for an order requiring a person to submit a draft or revised action plan by a deadline specified by the court. The court may also make a direction as to the plan's content. *Subsection (6)(c)* enables the CEHR to apply to a court for an order within five years of an action plan coming into force to require the person to comply with the action plan or to take specific action for a similar purpose. *Subsection (9)* provides that a person not complying with a court order commits a criminal offence.
81. *Subsection (7)* allows for an action plan to be varied by agreement.

82. *Subsection (8)* applies paragraphs 10 to 14 of Schedule 2 to consideration by the CEHR of the adequacy of a draft action plan.

Section 23: Agreements

83. *Section 23* makes provision for the CEHR to enter into an agreement with a person who it has reason to believe has committed an unlawful act, as defined in section 34. Agreements are enforceable through the courts. The CEHR is able to enter into an agreement where the other party undertakes not to commit a specified unlawful act, and to take or refrain from taking specified action. In return, the CEHR undertakes not to proceed under section 20 or 21 with an investigation or the issue of an unlawful act notice in respect of the act specified in the agreement.
84. Under *subsection (4)* an agreement may contain supplementary matters, such as action that may be taken in the event of a breakdown of the agreement or the circumstances in which either party may terminate the agreement. It also allows the parties to consensually vary or terminate the agreement.
85. *Subsection (5)* provides that the CEHR can enter into an agreement with a public authority in respect of a breach of any of the public sector duties set out in section 34(2) in lieu of issuing a public sector duty compliance notice, as provided for in section 32.

Section 24: Applications to court

86. *Section 24* gives the CEHR the power to apply for an injunction (and an interdict in Scotland) against a person who it believes that, unless restrained, is likely to commit an unlawful act. It also provides for the CEHR to apply to a court when the other party to an agreement provided for in section 23 has failed to comply, or the CEHR thinks is unlikely to comply, with an undertaking under the agreement. The court can order the other party to comply with his undertaking and take any such other action as the court may specify.

Section 25: Application to restrain unlawful advertising, pressure, &c.

87. *Section 25* sets out the CEHR's powers to bring legal proceedings (in its own name) in respect of the relevant provisions in the SDA, RRA, DDA and this Act that prohibit unlawful advertising, instructions and pressure to discriminate in respect of race, sex, disability and religion or belief.
88. *Subsection (2)* provides that the CEHR alone is entitled to bring proceedings in respect of these provisions of the equality legislation set out in *subsection (1)*.
89. Under *subsection (3)* the CEHR can apply to an employment tribunal or county court (or to a sheriff in Scotland) for a finding that an act of unlawful advertising, pressure or instructions to discriminate has taken place.
90. *Subsection (4)* provides for a court or tribunal to which a complaint has been made by the CEHR to determine whether the allegation is correct.
91. *Subsection (5)* gives the CEHR the power to apply to a county court for an injunction and under *subsection (6)* to a sheriff in Scotland for an interdict, where it considers that, unless restrained, the person concerned may commit further acts of unlawful advertising or instructions or pressure to discriminate. The CEHR may apply for such an injunction in one of two circumstances: either where a court or tribunal has determined that such an act has been committed or where the CEHR believes that such an act has been committed.
92. *Subsection (7)* provides that the CEHR's enforcement powers in this section do not apply to the criminal offences in the SDA, RRA, DDA or this Act of making false or misleading statements about whether an advertisement is unlawful.

Section 26: Section 25: supplemental

93. *Section 26* sets out the procedural rules governing the exercise of the CEHR's powers in relation to unlawful advertising, and instructions or pressure to discriminate under section 25.
94. *Subsection (1)* provides that the CEHR can only make an application to a court or tribunal under section 25(3) for a determination that an act covered by section 25 has taken place:
- within six months of the alleged unlawful act; or
 - with the permission of the employment tribunal or court if after that six month time limit.
95. *Subsection (2)* prevents the CEHR, when applying for an injunction under section 25(5) or (6), from relying on the ruling of a court or tribunal under section 25(4) if there is an appeal pending against that ruling, or if it would still be possible for an appeal to be brought within the normal time limits.
96. *Subsection (3)* provides that the CEHR can only apply to a county court for an injunction or to the sheriff in Scotland for an interdict under section 25(5) or (6) restraining a person from doing an act covered by section 25:
- within five years of the date on which the act last occurred; or
 - with the permission of the court (or sheriff in Scotland) if after that five year time limit.

Section 27: Conciliation

97. *Section 27* gives the CEHR the power to make arrangements for the provision of conciliation services (as defined in *subsection (9)*).
98. Conciliation services can be provided in relation to disputes where proceedings have been or could be brought under specified sections of the equality enactments (listed in *subsection (1)*). These are civil proceedings in respect of:
- goods, facilities and services, premises, public functions and education under the SDA;
 - goods, facilities and services, premises, public functions and education under the RRA;
 - goods, facilities and services, premises, public functions and education under the DDA (except for proceedings about admissions and exclusions);
 - goods, facilities and services, premises, public functions and education under the provisions for religion and belief in this Act;
 - activities covered by the Sexual Orientation Regulations that can be made under Part 3 of this Act, and;
 - further and higher education under the Employment Equality (Sexual Orientation) Regulations and the Employment Equality (Religion or Belief) Regulations.
99. Conciliation services can also be provided (*subsection (2)*) in relation to disputes about a landlord's reasonableness in relation to consent to the making of disability related improvements to let residential property in England or Wales. *Subsection (3)* makes similar provision in respect of consent to the making of disability related works in Scotland.
100. *Subsection (4)* requires the CEHR to exercise this power to ensure that, so far as reasonably practicable, the conciliation services are available to those who want them.

*These notes refer to the Equality Act 2006 (c.3)
which received Royal Assent on 16 February 2006*

101. *Subsection (5)* prevents information communicated to a person providing conciliation services from being used in litigation without the consent of the party who provided the information.
102. *Subsection (6)* excludes Commissioners, CEHR staff, Committee members and Investigating Commissioners from providing conciliation services.
103. *Subsections (7) and (8)* require the CEHR to make administrative arrangements to prevent information connected with a conciliation case from being passed to a member of the CEHR or its staff, except in the following circumstances: where the parties to the dispute agree; where the information does not make the individuals identifiable (e.g. where information is provided in aggregate form); or where the information is necessary for conciliation arrangements to be made.
104. *Subsection (10)* provides the Secretary of State with an order-making power (specified in section 39(4) as subject to an affirmative resolution procedure) to amend this section so as to vary the range of disputes in respect of which the CEHR can arrange conciliation services.

Section 28: Legal assistance

105. *Subsection (1)* enables the CEHR to give assistance to an individual who alleges that he is a victim of behaviour contrary to the equality enactments (defined in section 33) and who is or may become a party to legal proceedings which relate to the alleged breach of the equality enactments. The CEHR will determine the criteria on which legal assistance is granted.
106. *Subsection (2)* enables the CEHR to give assistance to an individual who is or may become a party to legal proceedings in England or Wales insofar as the proceedings concern or may concern the question of a landlord's reasonableness in relation to consent to the making of disability related improvements to let residential property.
107Subsection (3) makes similar provision in respect of legal proceedings in Scotland about consent to the making of disability related works in Scotland.
108. *Under subsection (4)* the types of legal assistance which the CEHR may provide or arrange are legal advice, legal representation, and facilities to settle the dispute or any other form of assistance. Such assistance may also include securing an arrangement to avert legal proceedings. This is distinguishable from the provision of formal conciliation services in section 27 where both sides are able to meet with a conciliator to resolve a dispute about discrimination and harassment in relation to the provision of goods, facilities and services, education and the exercise of public functions.
109. *Subsection (5)* prevents the CEHR from providing legal assistance in respect of the provisions of Part V of the DDA (public transport).
110. *Subsection (6)* allows the CEHR to provide legal assistance in respect of any aspect of any proceedings which relate in part to a provision of the equality enactments. However such assistance must end if the proceedings cease to relate to a provision of the equality enactments.
111. *Subsection (7)* gives the Lord Chancellor an order-making power to enable the CEHR to provide assistance in respect of proceedings which have ceased to relate to the equality enactments, but which relate wholly or partly to any of the Convention rights (as defined in section 1 of the Human Rights Act 1998).
112. *Subsection (8)* gives the Secretary of State an order-making power to enable the CEHR to provide assistance in other proceedings (under legislation other than the equality enactments) where a disabled person seeks to rely on a matter relating to his disability. This could not, however, be used to permit assistance in respect of Part V of the DDA, which is expressly excluded under *subsection (5)* above.

113. *Subsection (9)* provides that the powers in *subsections (7) and (8)* may be exercised either in general terms, or in relation to particular types of proceedings or particular circumstances.
114. *Subsection (11)* disapplies any requirement in legislation for the CEHR, in providing legal assistance under this section to have in place a contract of insurance or indemnity in order for it to advise on compromise agreements.
115. *Subsection (12)* provides that the CEHR may support legal proceedings brought under domestic legislation (outside the equality enactments) that is either incompatible with or has failed to give effect to Community law on discrimination on the grounds listed (sex, (including reassignment of gender) racial origin, ethnic origin, religion, belief, disability, age or sexual orientation).

Section 29: Legal assistance: costs

116. When a person who has been assisted by the CEHR becomes entitled to have his costs/ expenses repaid to him by another party, this section entitles the CEHR to recover its expenses (the amount of which may be determined by regulations made by the Secretary of State) out of costs awarded or paid by agreement.
117. Under *subsections (2) and (3)* the CEHR is able to enforce the reimbursement as a debt, although the debt ranks after any obligation on the person to pay money to the Legal Services Commission in England or Wales and to the Scottish Legal Aid Board in Scotland.

Section 30: Judicial review and other legal proceedings

118. *Section 30* confirms that the CEHR has capacity to institute or intervene in legal proceedings where the proceedings are relevant to any of the CEHR's functions, subject to any limitations imposed under legislation or by rules of court, except that it makes provision to override the "victim test" in section 7 of the Human Rights Act.
119. *Subsection (2)* deems the CEHR to have the necessary title and interest in relation to any such legal proceedings in Scotland.
120. *Subsection (3)* enables the CEHR to rely on a breach of the Convention rights in any legal proceedings which it has instituted (or in which it has intervened) even if it is not itself a victim of the breach. However it may only do so if there are one or more persons who are (or, for a potential future breach, would be) victims. Were it not for this provision, the "victim" test in section 7 of the Human Rights Act would prevent the CEHR from relying on the Convention rights. No award of damages may be made to the CEHR in relation to a breach of the Convention rights. The terms "legal proceedings", "unlawful act" and "victim" used in this subsection are defined in section 7 of the HRA.
121. *Subsection (4)* ensures that, apart from *subsection (3)*, this section does not create any cause of action or override any other limitation or restriction on who may bring proceedings.

Section 31: Public sector duties: assessment

122. *Section 31* enables the CEHR to assess a public authority's compliance with the public sector duties for gender, race and disability.
123. *Schedule 2* sets out the provisions relating to terms of reference, representations, evidence, reports and recommendations and effects of recommendations. Commentary on Schedule 2 can be found below.

Section 32: Public sector duties: compliance notice

124. *Section 32* enables the CEHR to require a public authority to comply with its public sector duties for gender, race and disability.
125. *Subsection (2)* enables the CEHR to issue a notice requiring a public authority to comply and to provide within 28 days written information of steps taken or proposed to comply with the duty.
126. *Subsection (3)* provides that a notice issued under this section requiring information relevant to the CEHR for assessing compliance shall specify when and the manner and form in which the information is to be provided.
127. *Subsection (4)* requires the CEHR to have conducted an assessment provided for under section 31 before it can issue a compliance notice in respect of a breach of a public sector general duty.
128. *Subsection (5)* obliges the recipient of a compliance notice to comply with it.
129. *Subsection (8)* enables the CEHR to apply to a court for an order requiring the public authority to comply with the notice. *Subsection (9)* provides that the court referred to in *subsection (8)* is the High Court or Court of Session in respect of a general duty and a county or Sheriff's court in respect of specific duties.
130. *Subsection (10)* requires a compliance notice to specify a time limit before which the CEHR will not apply to a court for enforcement of a compliance notice.
131. *Subsection (11)* provides that enforcement of a breach of a public sector specific duty shall be by no other party than the CEHR and solely by means of a compliance notice.

Section 33: Equality and human rights enactments

132. *Subsection (1)* defines “the equality enactments” which are referred to in sections 8(1)(d) and (e), 21(2), 28 and 34 as the existing pieces of legislation dealing with promoting equality and combating discrimination on the grounds of sex (including, in the field of employment, married status and gender reassignment), race, disability, sexual orientation and religion or belief, together with Part 2 of this Act and the regulations to be made under Part 3. The Secretary of State may add to, remove from or vary the list of equality enactments by using the power contained in *subsection (3)* – which, in accordance with section 39(4), is subject to the affirmative resolution procedure.
133. *Subsection (2)* defines the “equality and human rights enactments” which are referred to in sections 11(1) and 11(2)(a) and (b). The enactments falling within this definition are the equality enactments defined in subsection (1) and the HRA.

Section 34: Unlawful

134. *Section 34* defines “unlawful” as used in sections 8, 16, 20, 21, 23 and 24, as contrary to provisions of the equality enactments listed in section 33.
135. *Subsection (2)* excludes certain activities which would otherwise meet the definition of unlawful in *subsection (1)*. This includes breach of the public sector duties under the SDA, RRA and the DDA and breach of the public transport provisions in Part V of the DDA.

Section 35: General

136. *Section 35* sets out various definitions of terms used in Part 1 of the Act. The section provides that “act” includes deliberate omission. This is the definition used in the existing equality enactments.

137. “Race” includes colour, nationality, ethnic origin and national origin. This follows the definition of racial grounds, racial group etc in section 3(1) of the RRA.

Section 36: Dissolution

138. *Section 36* provides for the Secretary of State, by order, to dissolve the EOC, CRE and DRC (collectively referred to in relevant subsequent sections as “the former Commissions”) or to remove specified functions from them.
139. *Subsection (3)* requires the Secretary of State to have exercised the order-making power in *subsection (1)* to ensure that all the former Commissions cease to exist by 31st March 2009.

Section 37: Transfer of property, &c.

140. *Subsection (1)* enables the Secretary of State, by an order under section 36(1), to provide for the transfer of specified property, rights and liabilities from the former Commissions to the CEHR.
141. *Subsection (2)* empowers the Secretary of State to direct any of the former Commissions to provide information in respect of property, rights and liabilities and in relation to the exercise of any of their functions. It also provides for the Secretary of State to direct that a former Commission should transfer specified property, rights and liabilities to a specified person. The former Commissions can also be directed to make staff, property or facilities available to the CEHR. The Secretary of State can also direct the former Commissions to stop taking certain specified action.
142. Under *subsection (3)* the Secretary of State may direct a former Commission to prepare a scheme for the transfer of specified property, rights and liabilities to the CEHR or to any other person.
143. In preparing a scheme to transfer property, rights and liabilities, *subsection (4)* provides that the former Commissions must consult with either the CEHR or the person to whom the transfer is to be made. The transfer will come into effect once approved by the Secretary of State, subject to any modifications made.

Section 38: Transfer of property: supplemental

144. *Section 38* is linked to the direction-making power in section 37. It stipulates that any direction by the Secretary of State under section 37 must be made in writing, and only following consultation with the relevant former Commission and, if appropriate, the CEHR.
145. The direction can only be varied or revoked by a further direction.
146. *Subsection (2)* ensures that any action taken or in the process of being taken by a former Commission immediately prior to the transfer shall have the same effect after the transfer as if done by the CEHR (including any legal action).
147. Any references to the former Commissions in agreements or other documents shall be taken as a reference to the CEHR after transfer.
148. *Subsection (4)* allows for property, rights and liabilities to be automatically transferred irrespective of any requirement for consent or agreement that would ordinarily apply.
149. *Subsection (5)* provides for the Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE) to apply to the transfer of staff from the former Commissions to the CEHR. The regulations safeguard the terms and conditions of staff. Subsection (5) provides that any scheme or order made under section 37 must provide that continuity of employment is preserved for any purpose relating to an employee of a former Commission. This will protect existing pension arrangements.

Section 39: Orders and regulations

150. *Section 39* sets conditions under which a Minister of the Crown may make secondary legislation under Part 1 of the Act. *Subsection (1)* requires all orders and regulations to be made by statutory instrument, and *subsection (2)* provides that any order or regulations may make provision generally or for specified purposes, may make different provision for different purposes, and may include transitional, incidental or consequential provisions.
151. *Subsection (3)* provides that certain orders and regulations are subject to the negative resolution procedure, namely:
- any order revoking a code of practice issued by the CEHR (under section 15(3));
 - any order extending the range of proceedings in which the CEHR may provide assistance (under section 28);
 - regulations concerning the calculation of the CEHR's expenses in legal proceedings (under section 29(5));
 - any order dissolving an existing Commission (under section 36(1));
 - an order dissolving the Disability Committee (under Part 5 of Schedule 1).
152. *Subsection (4)* lists the order-making powers which are to be subject to the affirmative resolution procedure, namely those which
- add or vary any entry in the list defining groups for the purposes of section 10 (under section 10(6));
 - add, remove or vary any entry in the list of enactments in connection with which the CEHR can issue a code of practice (under section 15(6));
 - add, remove or vary any entry in the list of enactments in relation to which the CEHR can provide conciliation services (under section 27(10));
 - add, remove or vary any entry in the list of equality enactments (under section 33(3)).
153. These orders may make consequential amendments to any enactment, including an enactment in or under an Act of the Scottish Parliament.

Section 40: Consequential amendments

154. *Section 40* gives effect to the consequential amendments set out in Schedule 3.

Section 41: Transitional: the Commission

155. *Section 41* creates a transitional period during which time only selected provisions dealing with the formation of the CEHR will take effect. The transitional period starts from the commencement of any of the establishment sections (sections 1 to 3) and Schedule 1. The transitional period ends when any of the CEHR's duties and powers in sections 8 to 32 comes into effect.
156. During the transitional period, the minimum number of Commissioners will be five, instead of ten as stated in paragraph 1 of Schedule 1. This will allow the CEHR to begin making decisions, at an early stage, in respect of establishing the CEHR.
157. As soon as possible after the first appointments to the CEHR Board, the Secretary of State is required to appoint the three transitional Commissioners, as nominated by each chair of the former Commissions. The conditions of appointment of the three transitional Commissioners will mirror other Commissioners, although their positions

will cease to exist not more than two years after the relevant former Commission loses its principal functions or ceases to exist.

158. The purpose of these transition appointments is to provide a link between the former Commissions and the nascent CEHR to ensure the smooth transition of functions, duties and staff from the former Commissions to the CEHR.

Section 42: Transitional: functions of the dissolved Commissions

159. Under *section 42*, the order making power in section 36(1) can also provide for a former Commission to continue an action (referred to as a ‘transitional case’) it has started (for example, a consultation exercise, code of practice, guidance etc) when the relevant related function transfers to the CEHR, or for the CEHR to exercise a function of a former Commission in relation to the transitional case, as specified in the order.
160. *Subsection (2)* ensures that a commencement order made to bring into force a provision of Schedule 3 or 4 may include any provision applying, disapplying or modifying a provision in this Act or any another enactment to ensure that a provision in *subsection (1)* relating to an order made under section 36(1) is able to take effect.
161. *Subsection (3)* ensures that codes of practice issued by a Commission that ceases to exist under section 36(1) or where the function that relates to a specific code has been removed shall continue to have effect until the code is revoked, by order, subject to the negative resolution procedure, by the Secretary of State, at the request of the CEHR.
Any codes prepared by the former commissions can be revised by the CEHR as if they had been issued by the CEHR under section 14.
162. Any consultation exercises already undertaken by a former Commission in respect of revising or issuing a code of practice will still apply as if undertaken by the CEHR under section 14.

Section 43: Transitional: rented housing in Scotland

163. *Section 43* enables the DRC to provide conciliation services and legal assistance and to issue codes of practice in relation to the making of disability related works in Scotland. This will ensure that the DRC can exercise these powers pending the establishment of the CEHR.
164. *Subsection (1)* inserts a new section 49I in the DDA, which gives the DRC powers to make provision for conciliation services to be provided in respect of disputes about the making of disability related works in Scotland.
165. *Subsection (2)(a)* inserts a new section 53A(1F) in the DDA. This gives the DRC powers to issue a code of practice giving practical guidance about the making of disability related works in Scotland.
166. *Subsection (2)(b)* inserts a new section 53A(4B) in the DDA. This requires the Secretary of State to consult the Scottish Ministers before deciding whether to approve a DRC code prepared under new section 53A(1F).
167. *Subsection (2)(c)* inserts a new section 53A(6B) in the DDA. This requires the Secretary of State to consult the Scottish Ministers before appointing a day for the coming into effect of a DRC code prepared under new section 53A(1F).
168. *Subsection (2)(d)* inserts a new section 53A(8B) in the DDA. In the case of a code issued under new section 53A(1F), this amendment disapplies the requirement in section 53A(8A) for a court, tribunal or other body to take account of a DRC code where it considers it relevant in certain proceedings, including those concerning improvements. However, the Housing (Scotland) Act 2006 provides for the Scottish courts and tribunals to take account of DRC codes on the making of disability related works.

*These notes refer to the Equality Act 2006 (c.3)
which received Royal Assent on 16 February 2006*

169. *Subsection (3)* inserts a new section 7(1)(ab) in the DRCA. This gives the DRC powers to provide legal assistance in respect of proceedings in Scotland about the making of disability related works.