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| 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: 04/2012 | | |
| | Stage: Final | | |
| | Source of intervention: Domestic | | |
| | Type of measure: Primary legislation | | |
| | Contact for enquiries: Suzi Daley 020 7035 8057 | | |

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| Summary: Intervention and Options | RPC Opinion: N/A |
|--|-------------------------|

| 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. Intervention is required to remove vague and unnecessary provisions in order to clarify the EHRC's remit.

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 - Use a suitable legislative vehicle to remove vague and unnecessary provisions from the Equality Act 2006 in order to clarify the EHRC's remit. This will be complemented by a new Framework Document¹, clarifying the relationship between Government and the EHRC and establishing tighter financial controls, the recruitment of a new Chair and a new, smaller Board and a comprehensive review of the EHRC's budget. These measures will 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: Lynne Featherstone MP Date: 17th April

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 (Constant Price) | Transition Years | Average (excl. Transition) | Annual (Constant Price) | Total (Present Value) | Cost |
|---------------|------------------------|------------------|----------------------------|-------------------------|-----------------------|------|
| Low | | | | | | |
| High | | | | | | |
| Best Estimate | Zero | | Zero | | Zero | |

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

The legislative reform Government is proposing seeks solely to 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 (Constant Price) | Transition Years | Average (excl. Transition) | Annual (Constant Price) | Total (Present Value) | Benefit |
|---------------|------------------------|------------------|----------------------------|-------------------------|-----------------------|---------|
| 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.

A.2 Groups Affected

The changes proposed 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 developing our policy is available on the Home Office website²

Our consultation proposed a number of legislative changes that we have decided not to 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 .

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: <http://www.homeoffice.gov.uk/equalities/equality-government/equality-human-rights-commission/>

We have therefore decided to retain the equality duties at section 8, and the human rights duties at 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.

Over the last 18 months, 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. It has rolled out a performance management system for its staff, has significantly reduced its dependence on interim members of staff and is cutting its headcount from 455 staff in May 2010 to under 180 by April 2013, in part by moving swiftly to deliver significant reductions to the cost of its corporate support functions through agreeing arrangements to share 'back office' services with other organisations. It also plans to rationalise its accommodation to achieve further savings. In November last year, there was a significant sign of progress when the EHRC's first unqualified set of accounts was laid before Parliament.

Most importantly, in March a new Framework Documentⁱⁱ 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 new Framework document makes 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 new 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. We have therefore decided that it is not necessary to proceed with these proposals.

Following careful consideration of the consultation results alongside views expressed through the Government's Red Tape Challenge Spotlight on Equality in June 2011, we intend to take forward a strong package of legislative and non legislative reforms which we consider has the potential to bring about the step-change in the EHRC's performance that we want to see ..

B. Rationale

The UK is required by EU law to have an independent equality body and the Government remains of the view that having a National Human Rights Institution is important. However, whilst the EHRC has carried out some important work that has deepened our understanding of equality and human rights, overall its performance to date has been weak. It has struggled to deliver against its remit, for instance attracting criticism from the Joint Committee on Human Rights on its failure to integrate human rights into its work. At the same time, it has struggled to demonstrate that it is delivering value for taxpayers' money, resulting in the qualification of its first three sets of accounts.

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
3. clarifying the EHRC's relationship to Government and strengthening further its governance and systems to provide greater transparency, accountability and value for money.

D. Options

Option 1 is 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: We think it's 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 - Use a suitable legislative vehicle to remove vague and unnecessary provisions from the Equality Act 2006 in order to clarify the EHRC's remit. This will be complemented by implementation of a new Framework Document clarifying the relationship between Government and the EHRC and establishing tighter financial controls, the recruitment of a new Chair and a new, smaller Board; and a comprehensive review of the EHRC's budget. These measures will provide the EHRC with a sharper strategic focus in order to improve its performance against its core functions and value for money.

PREFERRED

The legislative changes proposed under this option are to amend the Equality Act 2006 by:

- Repealing 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".

However, it has no specific legal purpose and does not help to clarify the precise functions EHRC is required to carry out as our equality body and National Human Rights Institution. As a "mission statement", we believe its breadth has hindered rather than helped EHRC's Board and management to define the organisation's purpose. We have therefore decided to repeal the general duty at section 3 of the 2006 Act.

- Making a consequential amendment to 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;

Having taken the decision to repeal the general duty, the consequential amendment will align the outcomes against which the EHRC is required to monitor progress to its core equality and human rights duties, and change 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.

- Repealing the good relations duty at section 10, and its associated power at section 19;

The good relations duty requires 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). We have decided that a separate ‘good relations’ mandate is not necessary. The EHRC’s most valuable work in this area, for example its inquiries into disability harassment or the home care of older people, can be carried out under its existing equality and human rights duties. This will support the EHRC to develop a more integrated and coherent work programme overall.

We also plan to repeal the associated power at section 19 of the Equality Act 2006 which enables the EHRC to “make, co-operate with or assist with arrangements for the monitoring of kinds of crime affecting certain groups”.

We think this power is unnecessary as other organisations gather 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 would be able to perform a similar function.

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

We propose to repeal 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. Provisions in the Equality Act 2010 relating to time limits for bringing certain non-employment claims allow for three months longer to bring a claim where the dispute has been referred to a conciliation service provided under arrangements made by the EHRC under section 27. As the EHRC now has no arrangements for a service under section 27, this additional limitation period no longer has any practical effect. We propose to amend the relevant sections of the Equality Act 2010 to remove references to section 27 of the Equality Act 2006 in consequence to its repeal.

E. Appraisal (Costs and Benefits)

GENERAL ASSUMPTIONS & DATA

N/A

OPTION 2 – to remove 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, indicate that our proposed legislative changes will have no negative impact on civil society or businesses. For example, several of the consultation responses highlighted the unhelpfully vague and imprecise drafting of the general duty at section 3 of the Equality Act 2006 and described its aims as unmeasurable, unenforceable and unrealistic.

ONE-IN-ONE-OUT (OIOO)

These measures are deregulatory, as the repeal of section 3 (general duty) and 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 in the autumn of 2013 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 organisation. (<http://www.homeoffice.gov.uk/publications/equalities/government-equality/ehrc-framework-doc>)

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, we intend to take forward a strong package of legislative and non legislative reforms which we consider has the potential to bring about the step-change in the EHRC's performance that we want to see.

I. Implementation

The Government plans to implement these changes by identifying a suitable legislative vehicle through which to repeal the relevant provisions.

J. Monitoring and Evaluation

The effectiveness of the new regime would be monitored by regular assessment of the level of improvement in EHRC's financial and operational performance. The new Framework Document agreed between the Home Office/GEO and the EHRC sets out the governance and financial and operational performance management framework within which the EHRC will operate and will be monitored. The EHRC is subject to triennial reviews and regular appraisals of its performance. The effect of the legislative changes will be formally evaluated during this process.

K. Feedback

Regular meetings between HO/GEO officials and EHRC officials at all levels of the organisation e.g. Chair of EHRC and Ministers, Chief Executive and Director General, 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.

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