

**Equality and
Human Rights
Commission**

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Equality and Human Rights Commission

**Submission on the United Kingdom's fifth periodic report under
the International Covenant on Economic Social and
Cultural Rights**

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CONTENTS

1. The Commission	4
2. Introduction	5
3. The Incorporation Promotion and Application of the Convention	
3.1 Incorporation	7
3.2 Promotion and Application: Issue 1	8
4. Article 2 Paragraph 2: The right to non-discrimination	
4.1 The Equality Bill: Issue 4	10
4.2 Representation of ethnic minorities in public life: Issue 7	15
5. Article 3: Equal Rights of men and women	
5.1 Equal Pay and Career Opportunities: Issue 8	17
5.2 Representation of women in public life: Issue 9	20
6. Article 6: The Right to work	
6.1 Welfare Reform and Employment Opportunities: Issue 10	23
6.2 Disabled Persons and Employment: Issue 11	24
7. Article 9: The Right to social security	
Pension Reform: Issue 16	26
8. Article 10: Protection of the family, mothers and children	
Violence Against Women: Issue 18	29
9. Article 11: The Right to an adequate standard of living	
9.1 Poverty and social exclusion: Issue 22	32
9.2 Access to Adequate and Affordable Housing: Issue 23	36

9.3 Sites for Gypsies and Travellers: Issue 24	38
10. Article 12: The Right to an adequate standard of Physical and Mental Health	
Inequalities in Healthcare: Issue 26	40
11. Article 13: The Right to Education	
Education of Gypsies and Travellers: Issue 32	44
12. Article 15: Cultural Rights	
Rights regarding languages: Issue 34	48

1. The Commission

The Equality and Human Rights Commission (the Commission) commenced operating on 1 October 2007 and is the independent statutory body with a duty to promote equality, human rights and good relations in England, Wales and Scotland.¹ In February 2009 the Commission received “A” status accreditation as a National Human Rights Institution.

The Commission replaced three statutory equality commissions² and has jurisdiction over equality relating to race, gender, gender identity, disability, sexual orientation, religion or belief, and age. In relation to human rights the Commission has duties to: promote understanding of their importance; encourage good practice; promote awareness and protection; and encourage public authorities to comply with human rights obligations.³

The Commission welcomes the opportunity to provide for the first time a submission to the United Nations Committee on Economic Social and Cultural Rights (the Committee) regarding the UK government's performance under the Convention.

We note that an important aspect of our duties is to publish a "State of the Nation" report every three years on the progress made in Britain on protecting human rights and preventing discrimination on the protected grounds.⁴ As part of this process the Commission is developing a set of indicators to measure progress and many of those indicators are directly relevant to rights under the Convention including health, education, adequate standards of living,

¹ The Commission has statutory jurisdiction over Equality legislation in Scotland. In relation to human rights issues in Scotland it has jurisdiction relating to matters which are "reserved" to the Westminster parliament. In relation to matters "devolved" to the Scottish parliament the Scottish Human Rights Commission has jurisdiction. The Commission and the SCHR also have powers to act jointly or cooperate on matters relating to human rights in Scotland: see section 7 of the Equality Act 2006.

² The Commission for Racial Equality, the Equal Opportunities Commission and the Disability Rights Commission.

³ Section 9(1) Equality Act 2006.

⁴ See section 12 Equality Act 2006.

employment and family life. In order to keep the Committee apprised of developments, the Commission will send the Committee its first State of the Nation report when it is published in 2010.

2. Introduction

The Commission welcomes a number of positive steps the government has taken since the last periodic report to implement and realise the economic and social rights under the Convention including the recent consultation on a Bill of Rights, and the proposals for an Equality Bill to reform all equality legislation in Britain. It is pleased that the government has made progress in a number of key areas such as improving overall levels of health and reducing the numbers of children in poverty. It welcomes reforms to respond to rapidly changing patterns in society such as parenting roles within families (flexible working reforms) and aging demographics (pension reform) to ensure that all can maximise their potential and have an adequate standard of living both in working life and in retirement.

The Commission does however have a number of significant concerns both in relation to its overarching approach to the implementation and application of the rights under the Convention, and in the failure to sufficiently realise a number of the rights particularly for the most disadvantaged groups. In relation to the implementation of rights under the Convention, to date there has been a failure to conceptualise those rights as "human rights" and as a result a failure to either take a human rights based approach to their fulfilment or to make appropriate links between economic and social rights and civil and political rights. This has resulted in public authorities generally failing to embed in the development of legislation and policy appropriate consideration of the what is required to fully comply with the rights under the Convention.

In relation to particular rights under the Convention, in a number of areas the gap in attainment between the least and most successful members of society has either stalled or widened. The Equalities Review was commissioned by the government in 2006 to consider the underlying causes of disadvantage.⁵ It found that although there

⁵ Equalities Review, Fairness and Freedom, 2007.

has been some progress it would take decades for groups such as women, ethnic minorities and disabled persons to achieve parity in levels of employment, educational attainment, proportional political representation and levels of health. In addition, it is clear that the effect of the recession is placing even greater strain on key rights such as the right to work and the right to adequate and affordable housing.

The Commission's submission indicates that significant progress needs to be made in order that disadvantaged groups are able to fully realise their rights under the Convention and that this can only be achieved by developing targeted and more far reaching measures for those groups. In particular our submission highlights the need to: drastically improve the levels of participation of women and ethnic minorities in senior public positions; ensure that welfare reforms do not infringe any groups' human rights and provide sufficient autonomy and choice for disabled persons; further enhance the flexible working provisions for parents; reduce the number of children, older persons and women in poverty; reduce health inequalities particularly of low socio-economic groups; and the need to significantly improve the linked issues of housing provision and educational attainment for Gypsies and Travellers.

In order to ensure that all vulnerable groups are protected from discrimination in the enjoyment of rights under the Convention, have sufficient equality of opportunity and are able to participate fully in society the Commission is also calling for the Equality Bill to be further improved in relation to aspects such as an equality guarantee provision, age discrimination provisions in providing goods facilities and services both for older persons and children, improved equal pay provisions, and an outcome focused duty on public authorities to reduce socio-economic disadvantage.

3. The Incorporation Promotion and Application of the Convention

3.1 Incorporation

The Commission notes the Committee's last concluding observations regarding the United Kingdom in June 2002 concerning its "*deep regret*" at the failure to incorporate the rights under the Convention.⁶

In July 2007 the government announced in its Green Paper *Governance of Britain* proposals that it would consult the public on creating a Bill of Rights.⁷ In 2008 the Joint Parliamentary Committee on Human Rights (JCHR) conducted an inquiry into the possible content of a Bill of Rights, including examining economic and social rights.⁸ The JCHR concluded that it was appropriate to include a duty in a Bill of Rights requiring the progressive realisation of the rights to health care, education, housing and an adequate standard of living. It was also recommended that the rights should not be enforceable by individuals but that they would be justiciable to a limited extent either interpreting other legislation or in reviewing the reasonableness of government measures to achieve the progressive realisation of those rights. Usefully the report of the JCHR's findings included full proposed draft clauses relating to economic and social rights.⁹

In March 2009 the government launched its Green Paper on a Bill of Rights to build on the current protection of civil and political rights under the Human Rights Act 1998.¹⁰ The Green Paper considers three issues relating to economic and social rights: whether they

⁶ *"The Committee deeply regrets that...the Covenant has still not been incorporated in the domestic legal order...[and] reiterates its concerns about the State Party's position that the provisions of the Covenant, with minor exceptions, constitute principles and programmatic objectives rather than legal obligations that are justiciable..."* Paragraph 11 Concluding Observations E/C.12/1/Add.79

⁷ Ministry of Justice:
<http://webarchive.nationalarchives.gov.uk/+http://www.justice.gov.uk/publications/governanceofbritain.htm>

⁸ Joint Committee of Human Rights, Twenty-Ninth Report session 2007-08.

⁹ *Ibid* paragraph 192.

¹⁰ Ministry of Justice, "Rights and Responsibilities: developing our constitutional framework"

should be incorporated into a Bill of Rights, how they should be linked to the fulfilment of relevant responsibilities, and if they are incorporated to what extent should those rights be enforceable. The government states that it does not consider that legally enforceable economic and social rights (such that an individual could bring a claim alleging a breach of those rights) should be included in a Bill of Rights but has consulted on two options: rights with only a declaratory effect and no effect in courts, or rights which although not directly enforceable would be able to be taken into account by courts when considering challenges to decisions by public authorities and interpreting other legislation.¹¹

The Commission welcomes the government's consideration of including economic and social rights in a Bill of Rights as a possible means of domestically incorporating the rights contained in the Convention. The Commission is still in the early stages of considering its position on these issues and will be formulating a detailed response and recommendations to the Green Paper. As a result we are not currently in a position to make specific recommendations but will send the Committee our response to the Bill of Rights consultation when it is completed.

The Commission welcomes the government's consideration of including economic and social rights in a Bill of Rights.

3.2 Promotion and Application: Issue 1

The Commission believes that the government should do more to ensure that the public is made aware of the rights contained in the Convention and that they are promoted and applied in the development and application of public policy. Both of these factors are important in achieving the progressive realisation of those rights.

The Commission is concerned that the government in its response states that it does not believe that further raising of the awareness of the provisions would be of practical benefit to officials delivering

¹¹ Ibid paragraphs 4.5 to 4.26.

specific services or to the general public.¹² We disagree with the government's statement that people are aware of their economic, social and rights. Such rights do not have the same level of understanding as civil and political rights in Britain, since the primary focus of the government's guidance has been on the Human Rights Act 1998 which implemented the European Convention of Human Rights.¹³ Indeed the language of the government primarily refers to the rights as part of the "Welfare State", not as universal human rights standards which are often interdependent to the enjoyment of civil and political rights.¹⁴

Despite the lack of understanding of economic and social rights, polls indicate that when the British public is asked about which human rights should be guaranteed support for economic and social rights is very high.¹⁵ It would be beneficial for the government to better promote that economic and social rights are vital human rights, particularly protecting the most vulnerable groups in aspects such as poverty, housing, education and health care. This is even more important in current times of recession in which people's economic and social rights are more threatened.

In addition, the Commission considers that the government should take a human rights based approach to the rights and obligations under the Convention by ensuring that they are taken into account in all relevant stages of the formulation of legislation and policy. A human rights based approach would focus on principles of dignity, participation, non-discrimination and explicit linkage to the international standards. Such measures have also been previously

¹² Paragraph 2 and 4 of the Response of the Government to the List of Issues

¹³ Which contains primarily civil and political rights.

¹⁴ As emphasised by the United Nations, for example in the Vienna Declaration (A/CONF.157/23 12 July 1993) following the World Conference on Human Rights, paragraph 5: " All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis."

¹⁵ The ICM "State of the Nation" Poll of 2000 asked which rights should be in a Bill of Rights: 94% supported a right to hospital treatment within a reasonable time; 87% supported the right to join a trade union; 76% supported the right of the homeless to be housed. Published in Dunleavy, Margetts, Smith and Weir, Popular attitudes to Democratic Renewal in Britain, 2001.

recommended by the JCHR in their review of the implementation of the Convention.¹⁶

The Commission recommends to the government and calls on the Committee to ask the government to:

- **take steps to improve awareness of the rights under the Convention as human rights;**
- **develop a human rights based approach to the application of the rights under the Convention to ensure that the rights are taken into consideration in the development of relevant legislation and policy.**

4. ARTICLE 2 PARAGRAPH 2: The right to non-discrimination

The right to equality and non-discrimination in the enjoyment of rights to employment, housing, health care and education is fundamentally linked to the powers and duties of the Commission. In relation to equality, the Commission has duties to promote understanding and good practice in relation to issues of equality, promote equality of opportunity, work towards the elimination of unlawful discrimination and harassment, and to enforce the equality enactments.

4.1 The Equality Bill: Issue 4

The government intends to introduce the Equality Bill into parliament by the end of April 2009. Its aim is to modernise and harmonise all existing equality legislation in Britain. The Commission generally supports the government's proposals but has concerns in a number of areas.

Equality Guarantee

The government has failed to fully implement its international obligations regarding the right to equality such that all persons are not

¹⁶ Joint Committee of Human Rights, Twenty first report Session 2003-04, paragraphs 75-79.

only equal before the law but also have the right to the equal protection and benefit of the law.¹⁷ Currently in Britain equality legislation has the same or even in some cases subordinate status to other legislation.¹⁸ The Commission is calling on the government to include an Equality Guarantee in the Equality Bill which would accord the right to equality the same level of protection as other fundamental rights and freedoms under the Human Rights Act.¹⁹ This would mean that all other legislation would need to be interpreted compatibly with the Equality Guarantee provisions and that other legislation may be unlawful unless any discriminatory impact could be justified as being for a legitimate aim and proportionate.

The government's Green Paper on a Bill of Rights does consult with the public on whether and how the principle of equality should be included in a Bill of Rights. In the Commission's response to the Green Paper will be making similar submissions for the need to include an Equality Guarantee, as an alternative to its inclusion in the Equality Bill.

Age discrimination

Currently in Britain there is only protection from discrimination on grounds of age in relation to employment.²⁰ The government has stated that it intends to make discrimination in the provision of goods, facilities and services unlawful for people over the age of 18.²¹ The Commission strongly supports the extension of equality legislation to provide protection regarding the provision of goods and services as

¹⁷ The government has failed to implement articles 26 of the ICCPR, article 5 of CERD and article 15 of CEDAW regarding the right to equality. The government has also not signed or ratified Optional Protocol 12 to the European Convention on Human Rights which provides persons with a freestanding right to equality.

¹⁸ Examples of possible exceptions to equality legislation are acts done under statutory authority or Ministerial Order: Sections 41 Race Relations Act 1976; section 51A Sex Discrimination Act 1976; section 59 Disability Discrimination Act 1995; section 56 Equality Act; and Regulation 12 Sexual Orientation Regulations 2003.

¹⁹ The government has failed to sign and ratify Optional Protocol 12 to the European Convention on Human Rights which provides an Equality Guarantee.

²⁰ The Employment Equality (Age) Regulations 2006

²¹ Response to the consultation on the Discrimination Law Review, July 2008: <http://www.equalities.gov.uk/PDF/EqBillGovResponse.pdf>

this is relevant to many of the rights under the Convention such as the provision of health and social care, housing, and social security.

The Commission is calling for age discrimination directed at children and young people to be unlawful unless justified. The Bill should introduce an enabling power to allow the Secretary of State to introduce legislation outlawing discrimination on grounds of age in the provision of goods, facilities and services for people under the age of 18 within a defined timescale (thus ensuring careful thought is given to any necessary exceptions).

In addition, the Commission is calling for the abolition in the Equality Bill of mandatory retirement ages of 65. Such mandatory cut off points are based on stereotypes about persons' abilities, and people in Britain are in general living longer and healthier lives, often wanting more flexibility with their working conditions (for example older persons working part-time rather than retiring). Mandatory retirement ages in Britain are also currently the subject of a legal challenge supported by the NGO Age Concern. The case was referred to the European Court of Justice on matters of interpretation and has been remitted to the High Court to be determined.²² Allowing a greater number of older workers to continue in employment after 65 would mean that businesses would benefit from being able to retain skilled and experienced staff and poverty in retirement would be reduced.

Equal Pay

The Equality Bill seeks to harmonise and simplify the equal pay provisions under the Equal Pay Act 1975 to improve protection for women from discriminatory terms in an individual's contract of employment. It will not however address the wider structural causes of unequal pay and will not provide a proactive and systematic approach to addressing the issues. Those wider issues are examined in more detail in the section on equal rights for women and men and responding to Issue 8. In relation to the Equality Bill and equal pay the Commission is calling on the government to include measures for:

²² R (on the application of the Incorporated Trustees of the National Council on Ageing) v Secretary of State for Trade and Industry C- 388/07, European Court of Justice

- increasing transparency, by ensuring employees are allowed to discuss their pay by banning 'gagging' clauses²³;
- larger companies to have a much more transparent approach to the pay gap by publishing the number of men and women in each pay band, to help identify segregation in workplaces and underlying reasons for the pay gap;
- representative actions to allow the Commission or Trade Unions to bring claims on behalf of a group of workers, therefore helping to clear the backlog of cases in the tribunal and deliver justice to women faster;
- empowering employment tribunals to make wider recommendations to avoid multiple cases from the same employer and ensure the root cause of the original claim are addressed; and
- hypothetical comparisons to be permitted where no suitable comparators are available.

A socio-economic duty

The government recognises that socioeconomic disadvantage leads to significant inequalities and gaps in outcomes (for example in relation to education, employment, financial capability, crime and health) which have a significant effect on people's life chances from early childhood through to later life. As a result, the government has stated that it is considering introducing a duty on key public authorities to help tackle these inequalities and gaps in outcomes and it is possible that the duty will be included in the Equality Bill. The New Opportunities White Paper stated that the Government is:

*".. considering legislating to make clear that tackling socioeconomic disadvantage and narrowing gaps in outcomes for people from different backgrounds is a core function of key public services. This could take the form of a new strategic duty on central departments and key public services to address the inequality that arises from socioeconomic disadvantage and place this objective at the core of their policies and programmes."*²⁴

²³ The government has announced that it will make 'gagging' clauses unlawful.

²⁴ Paragraph 1.59, New Opportunities: Fair chances for the Future, January 2009

The Commission welcomes these proposals as it is clear that socio-economic disadvantage is not only a key determinant of a person's outcomes in life, but also that persons such as disabled people, ethnic minorities, older people and women are disproportionately represented in disadvantaged socio-economic groups.

The Commission has made a submission to the government on its proposals and recommended the following key elements for the duty:

- the duty focuses on outcomes and addressing gaps in the areas of access to services, representation in decision making processes and differential service outcomes;
- that the duty compliments the equality duty on public authorities which will be introduced in the Equality Bill to mainstream the promotion of equality in all the functions of public authorities;²⁵
- the need for the development of a standardised method of data collection and analysis of socio-economic disadvantage with support from the Commission.²⁶

In relation to the Equality Bill, the Commission recommends to the government and calls on the Committee to ask it:

- **to introduce Equality Guarantee provisions in order to comply with its international obligations under UN Treaties;**
- **to introduce provisions that make it unlawful to discriminate against persons on grounds of age (including under 18s) in the provision of goods and services;**
- **to repeal provisions relating to mandatory retirement ages of 65;**
- **to improve the provisions relating to equal pay;**

²⁵ Currently there are equality duties in relation to race, disability and gender. The government has stated that it will extend the equality to the grounds of sexual orientation, religion and age in the Equality Bill.

²⁶ This could be assisted by the current work of the Commission on the development of an Equality Framework to measure progress in Britain on equality issues, including the development of equality indicators.

- **to introduce a duty on key public authorities to address inequality from socio-economic disadvantage.**

4.2 Representation of ethnic minorities in public life: Issue 7

Westminster Parliament and England

The Commission is disappointed at the very low levels of representation of ethnic minorities in public life.²⁷ We believe that elected and appointed positions in public life should broadly reflect the diversity which exists in Britain today.²⁸

Ethnic minority women make up more than five per cent of the population and yet they account for less than one per cent of England's 20,000 Councillors. To create a more representative picture the number of ethnic minority women councillors needs to increase more than fivefold - from just 149 to nearer one thousand.²⁹

The Commission has recently provided written and oral evidence to the Speaker's Conference (which will operate similarly to a parliamentary Committee) established in November 2008.³⁰ The Committee's brief is to consider the representation of women, ethnic minorities and disabled people in the House of Commons. Specific recommendations of our evidence to the Committee include consideration of a feasibility study into the impact of term limits for MPs; quotas and proportional representation for an elected second

²⁷ For example, currently only 15 of the 646 (2.3%) Members of Parliament are ethnic minorities: Speaker's Conference Submissions at:

<http://www.equalityhumanrights.com/en/policyresearch/briefings/Pages/Submissiontospeakersconference.aspx>

²⁸ The ethnic minority population in the United Kingdom in the 2001 census was 7.9%. This has since increased: National Statistics, <http://www.statistics.gov.uk/cci/nugget.asp?id=455>

²⁹ Figures from GEO Fact Sheet available via:

http://www.equalities.gov.uk/women_councillors_taskforce.aspx

³⁰ Written and Oral Evidence remains the property of the Speaker's Conference until they wish to make this public. The EHRC's recommendations can be found on our website at:

<http://www.equalityhumanrights.com/en/policyresearch/briefings/Pages/Submissiontospeakersconference.aspx> The EHRC's uncorrected oral evidence is available on the Committee's website

here:

<http://www.publications.parliament.uk/pa/spconf/spconf.htm>

chamber; extension of the public sector equality duties to include political parties³¹; equality conditions attached to state funding by the Electoral Commission; freedom for political parties to introduce ethnic minority shortlists if they chose; parliamentary scholarships and internships for diverse young people; advice on mentoring and best practice for political parties; parliamentary education programme for community groups; accessibility (physical, verbal, written and working hours).

Scotland and Wales

The Commission is concerned at the low level of ethnic minority representation in public life in Scotland and Wales. The ethnic minority population in the 2001 census stood at around 2.2% and 2% respectively. The Commission would expect this diversity to be reflected at Scottish Parliament, Welsh Assembly, and local government level.

There are currently no ethnic minority representatives in the Scottish Parliament. However, in 2007 Scotland did elect its first ethnic minority MSP.³² . Wales elected its first Black and Minority Ethnic Assembly Member in 2007 and the Assembly's first Muslim member. While this is a step forward, it must be recognised that the Scottish Parliament and Welsh Assembly still do not reflect the people they serve. At a local level the picture is not much better. Currently only 9 out of the 1,222 councillors in Scotland are from an ethnic minority background and all nine of these councillors are men.³³ In Wales only 0.8% of councillors were from a minority ethnic background in 2005, none of whom were female.³⁴ It is also of serious concern to the Commission that there are currently no ethnic minority women serving in any elected office in Scotland nor Wales.

³¹ The equality duties require public authorities to have regard to eliminating discrimination and promoting equality of opportunity in the exercise of all their functions. They currently apply to grounds of race, gender and disability under the Race Relations Act 1976, Sex Discrimination Act 1975 and the Disability Discrimination Act 1995.

³² Unfortunately Bashir Amhad MSP died in office in February 2009

³³ Electoral Reform Society, 2007, Local Authority Elections in Scotland.

³⁴ Welsh Local Government Association (WLGA 2005) 'Census of local authority councillors 2004. Cardiff. WLGA. Note that the formal data has not been updated since the 2008 elections at the time of writing.

The Commission recommends to the government and calls on the Committee to ask it to:

- **increase representation of ethnic minorities in Parliament by considering measures such as positive action and extending the equality duties to political parties;³⁵**
- **increase representation of ethnic minorities in other senior public positions by having benchmarks and concrete timetables for implementation.**

5. ARTICLE 3: Equal rights of men and women

5.1 Equal Pay and Career Opportunities: Issue 8

The Gender Pay Gap

The gender pay gap in Britain widened between 2007 and 2008. The gap between women's median hourly pay and men's was 12.8 per cent, compared with a gap of 12.5 per cent recorded in April 2007, when it had been at its lowest since records began. When calculated using the mean, women's hourly pay excluding overtime was 17.1 per cent less than men's pay, showing an increase on the comparable figure of 17.0 per cent for 2007.³⁶ For women working part-time the gap was 35.6%.

The Commission is conducting an inquiry into the pay gaps between men and women in the finance industry and of great concern our report this month indicates that female full-time employees receive 55 percent less annual gross pay and 39 percent less hourly gross pay

³⁵ This recommendation also applies to Issue 9 relating the to representation of women in public life, below.

³⁶ Annual Survey of Hours and Earnings 2008

than men. These pay gaps are also approximately double the pay gap figures for the economy as a whole.³⁷

The former Equal Opportunities Commission calculated that an average woman working full-time would lose £330,000 over the course of her working life, as compared to an equivalent male. At a macro-economic level, the Women and Work Commission estimated that closing the gender pay gap would result in an increase to GDP of £23 billion. Unequal pay may also imply low pay, which is a substantial cause of women's poverty (in work and in retirement), and impacts not only on women, but also on their children (see Issue 22 on Poverty and Social Exclusion, below).

As well as seeking to influence the pay provisions of the Equality Bill (see Issue 4 above), the Commission is calling for a root and branch review to explore further options for radical reform of equal pay legislation with a view to providing for a systemic route to eliminating pay discrimination, as well as providing redress for individuals. This might include 'transitional arrangements', where employers and workforce representatives committed to change have some protection from litigation whilst taking action to ensure their pay systems are fair. There will also need to be an ongoing push around non-legislative measures, as recommended by the Women and Work Commission.

Flexible working

The Commission has welcomed the extension of the Right to Request Flexible Working to parents of children up to 16 on April 6th this year. We have also acknowledged progress in extending maternity provision. However, in a major new report 'Working Better' launched on 30th March 2009, the Commission has presented the findings of extensive newly-commissioned evidence on the impact of current leave and flexibility regulation on career opportunities for

³⁷ Employment and Earnings in the Finance Sector, a gender analysis, 2 April 2009: <http://www.equalityhumanrights.com/en/publicationsandresources/Pages/financegenderanalysis.aspx>

women and caring opportunities for men, and has concluded that radical policy change is needed to match parents aspirations and to promote gender equality.

The Report found that Britain stands out internationally for its long leave reserved for mothers, mostly at a low rate of pay, its relatively weak parental leave and its very short paternity leave.³⁸ It also found that today's parents defy stereotypes and want to share work and family care more equally, and that their choices are constrained by inflexible and low paid family leave provisions based on a traditional division of paid work and care. The Report sets out a wide-ranging set of recommendations for government, employers and others in relation to both reforming parental leave and extending rights to flexible working.

In relation to parental leave the Commission proposes a new approach to be developed over the next 10 years which would be more 'gender-neutral' and enable both mothers and fathers to share leave and childrearing more equitably. This approach involves two aspects: firstly a series of incremental changes to increase men's take up of paternity leave and to make it longer and better paid; and secondly providing greater flexibility in how paternity and parental leave can be taken.³⁹

In relation to flexible working, the Commission considers that further measures should be taken to widen the availability of flexible working so that all employers and individuals could benefit fully. The Commission proposed introducing a formal right to request a return to full-time work after a previous change in working hours, to be negotiated subject to business needs; the removal of the requirement that an employee can request flexible work only after 26 weeks in the

³⁸ Currently paternity leave enables fathers who are employees to take up to two weeks paid (up to 90% of weekly pay) leave after the birth or adoption of their child. Parental leave is available to both parents and entitles a mother or father to take up to 13 weeks each unpaid leave up to a child's fifth birthday but that leave cannot be divided in different proportions.

³⁹ Proposing that paternity, maternity and parental leave can be taken as days, weeks or longer blocks of time. Currently you cannot take the leave in less than one week blocks or more than four week blocks in one year.

job, in order to open flexible options to job applicants; and extending the right to request flexible working to all employees.

The Commission recommends to the government and calls on the Committee to ask the government:

- **to support the Commission in a comprehensive review of the legislative framework for equal pay, with a view to producing a new framework that encourages collaborative and effective remedies for systemic pay discrimination;**
- **to introduce new measures to improve and make more flexible paternity, parental leave and rights associated with flexible working for all employees.**

5.2 Representation of women in public life: Issue 9

In relation to the representation of women in public life, the Commission is concerned that progress over the last five years in increasing representation has either been very slow or in a number of sectors has actually decreased. The Commission also notes the specific recommendations by the United Nations in 2008 for the government to take measures to increase the numbers of women in public life as part of the examination of the United Kingdom under CEDAW.⁴⁰

The Equal Opportunities Commission published annual reports on *Sex and Power*, analysing the proportion of women in 25 categories of public positions. The Equality and Human Rights Commission has continued this work and published the latest report in September 2008.⁴¹ The report found that for the period of 2007/08 compared to 2006 there are fewer women holding top positions in 12 of the 25

⁴⁰ Concluding Observations to the UK government's fifth and sixth periodic report under CEDAW: CEDAW/C/UK/CO/6

⁴¹ *Sex and Power*, Equality and Human Rights Commission, September 2008: <http://www.equalityhumanrights.com/en/projects/workingbetter/sexandpower/pages/variationsitedefault.aspx>

categories for which figures are available.⁴² In another five categories, the number of women remains unchanged since the 2006 index.⁴³ Women's representation has increased in just eight areas.⁴⁴

In relation to specific sectors where the Committee has asked for information, in relation to the judiciary in 2008 only 9% of senior judiciary were women.⁴⁵ In the Westminster Parliament only 19.3% and 19.7% of Members of Parliament in the two Houses of Parliament are women.⁴⁶ Local authority councillors⁴⁷ are mostly still white middle class men⁴⁸ and recent analysis from the Centre for Women and Democracy⁴⁹ suggests that there is a downward trend in the number of women being elected to local government. In relation

⁴² Westminster MPs, Cabinet members, Members of the Scottish Parliament and Welsh Assembly, editors of national newspapers, people in public appointments, senior police officers and judges, health service chief executives, local authority chief executives, trade union general secretaries and heads of professional bodies.

⁴³ UK Members of the European Parliament, top media bosses, directors of major museums and galleries, chairs of national arts companies and holders of senior ranks in the armed forces.

⁴⁴ There are more female members of the House of Lords, FTSE 100 company directors, chief executives of national sports bodies and voluntary organisations, local authority council leaders, principals of further education colleges, vice-chancellors of universities and top managers in the civil service.

⁴⁵ High Court judges or above: Judiciary of England and Wales (2008) Statistics - women judges in post as at 1 April 2008.

⁴⁶ 19.3% of Members of the Parliament are women: UK Parliament (2008) Members of Parliament by gender: numbers updated 25 July 2008. 19.7% of Members of the House of Lords are women: UK Parliament (2008) Her Majesty's government, updated 11 March 2008. 34.1% of Members of the Scottish Parliament are women: Scottish Parliament (2008) Female MSPs: session 3, updated January 2008. 46.7% of Members of the National Assembly for Wales are women: National Assembly for Wales website (2008) member profiles, accessed 10 June 2008.

⁴⁷ National Census of Local Authority Members, 2008, <http://www.lga.gov.uk/lga/aio/1399651>

⁴⁸ Most councillors (68.4 per cent) are male, 30.8 per cent are female⁴⁸, an increase of just 3 percent since 1997. The average age of councillors has increased from 55.4 years in 1997 to 58.8 years in 2008. 96.6 per cent of councillors were white and 3.4 per cent came from an ethnic minority background. According to the Centre for Women and Democracy, 73 per cent of young women believe that being a young woman is a barrier to becoming a councillor; 38% said that this was due to it being a male dominated role and 31% thought that women in this position aren't taken seriously.⁴⁸

⁴⁹ Centre for Women and Democracy, 'Changing Faces? Political Parties, Women and the 2008 Elections, March 2009

to the private sector, only 11% of directors in FTSE 100 companies (executive and non-executive) are women.⁵⁰

Scotland and Wales

In Scotland there was a similar trend of a reversal or stalled progress, with only a few significant increases: this year in four of the 14 categories, there are fewer women holding top posts such as Members of the Scottish Parliament, public appointments, senior police officers and university principals. In another 6 categories the number of women remains unchanged since 2007.⁵¹

In Wales, a Commission publication also identifies that progress for women at senior decision-making levels in organisations is far too slow.⁵² In relation to the Welsh Assembly progress has been made (47% of Members are women) largely as a result of special measures by the Welsh Labour Party and Plaid Cymru but in most other areas women are highly under represented, for example none of the top 100 private companies with headquarters in Wales have women as lead officers.

The Commission also refers to its recommendations in relation to improved flexible working for women under Issue 8.

The Commission recommends to the government and calls on the Committee to ask it to:

- **increase representation of women in Parliament by considering measures such as positive action and extending the equality duties to political parties;**⁵³

⁵⁰ Sealy, R., Singh, V. and Vinnicombe, S. (2007) The female FTSE report 2007.

⁵¹ These are local authority council leaders, Members of Parliament for Scottish Constituencies, Scottish Members of the European Parliament, judges of the Court of Session, local authority chief executives and health service chief executives.

⁵² 'Who runs Wales? 2009 – the road to equality for women'

⁵³ This recommendation also applies to Issue 7 relating the to representation of ethnic minorities in public life, above.

- **increase representation of women in other senior public positions by having benchmarks and concrete timetables for implementation;**
- **provide further more flexible working arrangements for women and men.**

6. ARTICLE 6: The Right to Work

6.1 Welfare Reform and Employment Opportunities: Issue 10

The government is currently undertaking significant reforms to the welfare system which aims at assisting unemployed people to regain work but ensuring that all such persons fulfil their responsibilities in taking steps to find work.⁵⁴ These reforms are currently passing through parliament in the Welfare Reform Bill.

Whilst the Commission supports the aims of ensuring that all those who can work do work, we need to ensure that there is an appropriate balance between rights and responsibilities particularly for the most disadvantaged groups that may have difficulties in being able to work or face discrimination in gaining work, such as disabled persons.

One particular concern under the Welfare Reform Bill and the possibilities of responsibilities being used to deny rights is the proposals to require individuals to declare their use of drugs in order to gain access to welfare support. The Commission is concerned that this may breach a number of human rights such as the right to private life (particularly involving employers in the scheme), the right to property and social security (limiting access to benefits); the right not to be discriminated against in the enjoyment of rights, and the prohibition on inhuman and degrading treatment (if drug users are left destitute). These concerns have also been raised by other human rights organisations.⁵⁵ The Commission is also concerned that these

⁵⁴ <http://www.dwp.gov.uk/welfarereform/noonewrittenoff/>

⁵⁵ See for example Liberty's Briefing on the Second Reading of the Welfare Reform Bill, January 2009.

provisions may actually act as a further barrier to employment and increase the risk of social exclusion.

The Commission recommends to the government and calls on the Committee to ask it to ensure that welfare reforms under the Welfare Reform Bill do not infringe any human rights or result in the risk of further social exclusion.

6.2 Disabled Persons and employment: Issue 11

There has been progress made by the government in ensuring that more disabled people are in employment and able to fully participate in society. The overall employment rate of disabled people has grown by about 1 per cent per year, from 43 per cent in 1998 to 50 per cent in 2006.

However there is a clear divergence in the rates of employment dependent on the type of disability. The employment rate of people with mental health problems has risen at a faster rate but remains very low. It rose from 15 per cent in 1998 to just 20 per cent in 2005 – despite evidence that, with support, 60 per cent of people with more serious mental health problems could work. At this rate, people with mental health problems will not reach a 60 per cent employment rate until 2047. The employment rate remains even lower for people with learning disabilities (at around 10 per cent).⁵⁶ Even when working, disabled people tend to earn less than non-disabled people (on average earning 10 per cent less). This also has clear links to levels of poverty with there being more disabled adults of working age living in relative poverty now than ten years ago.⁵⁷

In addition in relation to developing skills which are critical to persons gaining and maintaining employment, we note with concern the

⁵⁶ Disability Rights Commission (2006) 'Disability Briefing March 2006'; www.valuingpeople.gov.uk.

⁵⁷ Disability Rights Commission (2006) 'Disability Briefing March 2006'; www.valuingpeople.gov.uk.

government's own statistics in the Annex of the response to the List of Issues that disabled people are almost 2.5 times as likely to have no qualifications than non disabled people and are about half as likely to be qualified to a degree level or above.⁵⁸ The Commission believes that more must be done by the government to ensure better participation of disabled people in higher and further education.⁵⁹

In relation to welfare reform, the Welfare Reform Bill proposes to provide greater control to disabled persons in designing personalised support services to suit their needs by providing a right to "request" such control. The Commission supports this measure however believes that this measure should be a right to control rather than to merely request control as there would be no obligation on public authorities to agree to a request.⁶⁰

It is also important to recognise that discrimination or perceived discrimination of disabled persons in employment remains widespread and that contributes to disabled persons difficulties in either obtaining or remaining in work. In 2008 the Commission commissioned research into disabled persons experience and perceptions of negative treatment in the workplace.⁶¹ The research found that disabled persons across all 21 different types of negative behaviour surveyed experienced higher percentages of negative behaviour than non-disabled persons.⁶² The numbers of claims of disability discrimination in employment have also risen each year in

⁵⁸ 24.3% of disabled persons have no qualifications as opposed to 9.8% of non-disabled persons. 11.4% of disabled persons are qualified to a degree level or above as opposed to 22.0% of non-disabled persons.

⁵⁹ Submission of the Commission to the Department for Work and Pensions Consultation "No one written off: reforming welfare to reward responsibility", October 2008 page 10.

⁶⁰ Parliamentary briefing: Welfare Reform White Paper, December 2008, <http://www.equalityhumanrights.com/en/policyresearch/briefings/pages/parlbrieffingwelfareformdec08.aspx>

⁶¹ "Insight: work fit for all - disability, health and the experience of negative treatment in the British Workplace", Autumn 2008.

⁶² Issues in the survey included being treated unfairly compared to others, being humiliated or insulted, and actual physical violence.

the last three years.⁶³ As a result, the disability provisions in the Equality Bill (see Issue 4) must provide sufficient protections from discrimination, and improved mechanisms for promotion of equality of opportunity and positive action.

The Commission recommends to the government and calls on the Committee to ask it to:

- **improve policies to increase participation of disabled persons in higher and further education;**
- **provide disabled people with a right to control over the support services designed to enable them to move from benefits into work;**
- **provide improved legislative measures to eliminate disability discrimination, promote equality of opportunity and positive action measures for disabled persons under the Equality Bill.**

7. ARTICLE 9: The Right to Social Security

Pension Reform: Issue 16

The right to social security offers protection to the most vulnerable members of society and guarantees that everyone will be provided with the minimum goods and services required for a dignified life in areas such as employment and pensions for disabled or older people. In relation to pensions, there are fundamental changes taking place to the demographics of Britain most especially an increasingly ageing population.⁶⁴

⁶³ There were 4,585 claims in 2005/06, 5,533 claims in 2006/07 and 5,833 claims in 2007/08 although of the claims made in 2007/08 only 3% were successful at the Employment Tribunal. Employment Tribunal and EAT Statistics (GB), 1 April 2007 to 31 March 2008.

⁶⁴ The government estimates that In the next 50 years, the number of people over pension age will increase by more than half and there will be only two people working for every one person in retirement – compared with four today. "Security in retirement: towards a new pension system", May 2006 Department for Work and Pensions, http://www.dwp.gov.uk/pensionsreform/pdfs/white_paper_complete.pdf

Pension reform is an issue of particular concern for the Commission as it is connected both to the broad issue of reducing levels of pensioner poverty (see Issue 22), and because certain groups the Commission seeks to protect (including women, disabled people and ethnic minorities) face an increased risk of poverty in retirement.⁶⁵ Female pensioners currently have lower incomes than male pensioners and therefore are at greater risk from pensioner poverty.⁶⁶ In relation to disabled people and ethnic minorities the Commission has conducted research which indicates their vulnerability in relation to pensions.⁶⁷

The Commission therefore welcome the reforms both to improve and make fairer State pensions (Basic State Pension "BSP") and the (State Second Pension "SSP") under the Pensions Act 2007 and introducing a new scheme of private pension saving (Personal Accounts) under the Pensions Act 2008. This will enable many more people to benefit from private pension saving in their retirement, the government estimating that between 7 to 9 million people will be

⁶⁵ This issue also connects to reforming equality law to abolish mandatory retirement ages in order that people can work longer if they wish to build their pensions and income in retirement (see Issue 4).

⁶⁶ Women's median income in retirement is only 57% that of men's; only 30% of women reaching State Pension Age (SPA) are currently entitled to a full Basic State Pension (BSP), compared with 85% of men; and 1 in 5 single women pensioners risk being in poverty in retirement.

⁶⁷ Pensions Policy Institute (PPI), "The Under Pensioned: disabled people and people from ethnic minorities", Equality and Human Rights Commission, 17 November 2008: <http://www.equalityhumanrights.com/en/publicationsandresources/Pages/underpensioneddisablepeopleethnicminorities.aspx?k=under%20pensioned>

The finding indicate that people with disabilities when in work are less likely to be accruing pension provision than their non-disabled counter parts at every age, and have on average lower earnings which reduces their ability to save and make regular private pension contributions than non-disabled people.

In relation to ethnic minorities, they are more likely than the rest of the population to have characteristics associated with lower pension incomes including that 35% of people from ethnic minority groups might not qualify for the Second State Pension (S2P) each year, compared to 24% of White people. Ethnic minority workers are less likely than White workers to be saving for a pension at every age. For example, 54% of 45 to 54 year old people in work from ethnic minorities are saving for a pension, compared to 63% for comparable White people.

auto-enrolled into personal accounts or similar employer schemes from 2012 onwards.

The Commission's main concerns with the new measures is that they do not provide sufficient flexibility to allow people to benefit from the measures, both in relation to the State Pension reforms and the private pension saving scheme. In relation to the State Pensions more flexibility is required for people to increase their National Insurance (NI) contributions record.⁶⁸ This is particularly important for women who are concentrated in low paid part-time work. For example, allowing individuals to add together earnings from more than one job to exceed the Lower Earnings Limit and accrue state pensions; allowing people to make NI contributions after they reach State Pensionable Age if they need to get their BSP contribution record up to 30 years and also to increase their SSP entitlement.

In relation to the personal accounts scheme, the Commission is concerned with the lack of flexibility and portability in two ways. Individuals are not being able to make transfers of funds either in or out of their personal accounts. People will be unable to combine small pots of current pensions savings or any other savings and will be unable to transfer/take funds abroad. In addition, the annual limit of £3600 lacks flexibility as individuals are unable to compensate for periods in which they have not been able to work, or have received extra income such as bonuses or redundancy payments.

The Commission also believes that it is also vital for there to be a targeted campaign of information and support on the program of pension reform (given that they place increasing responsibility on individuals to manage their pensions) and that the proposed review of the reforms in 2017 looks closely at any differential impact on vulnerable groups including women, disabled people and ethnic minorities.

⁶⁸ Number of years of National Insurance contributions is used to determine entitlement to the Basic State Pension and the amount of the Second State Pension. . A minimum of 30 years of National Insurance contributions will be required for the Basic State Pension.

The Commission recommends to the government and calls on the Committee to ask it to:

- **introduce more flexibility into both the State Pension reforms and the private pension saving scheme to further improve levels of pension income and savings for vulnerable groups;**
- **develop a targeted information and support campaign on the pension reforms;**
- **ensure that the review of the pension reform measures in 2017 considers any differential impact of the reforms on vulnerable groups.**

8. ARTICLE 10: Protection of the Family Mothers and Children

Violence against women: Issue 18

England and Wales

The Commission welcomes the steps that the UK Government in England and Wales has taken to support rape crisis centres in 2008 and its renewed commitment to do so in 2009, however we have concerns over the lack of progress in the rape conviction rate and the lack of a comprehensive strategy to preventing violence against women and supporting those who have suffered violence.

We also welcome the funding given to victims of sexual violence and violence through the Victims' Fund, and other initiatives of this nature. However, recent research undertaken by the Commission and the End Violence Against Women Campaign indicates that there is a crisis in funding for specialist support services⁶⁹, and action is urgently needed in this area. The research indicated that over one in four local authorities in Britain have no specialised support services at all. Further, despite the emergency funding given to Rape Crisis

⁶⁹ "Map of Gaps: The postcode lottery of violence Against Women Support Services in Britain": <http://www.equalityhumanrights.com/en/publicationsandresources/Pages/MapofGaps2.aspx>. Such support services are defined as services that work primarily on violence and provide direct support to women victim-survivors.

Centres levels of provision in the voluntary sector have remained static or in some cases diminished. A survey of Rape Crisis England and Wales centres conducted for this year's report indicated that almost a quarter (24.1%) face closure this financial year and almost two-fifths (39.3%) fear closure in 2009/10 because of a lack of funding.

This lack of specialist support for all forms of violence against women was discussed in the July 2008 CEDAW examination of the UK:⁷⁰

*"The Committee notes with concern the lack of adequate support and services for victims, including shelters, which is compounded by the funding crisis facing non-governmental organisations working in the area of violence against women and the forced closures of a number of such organisations"*⁷¹.

The Commission also has serious concerns over the rape conviction rate. In relation to the statistics sourced in the government's response (Appendix), while they are technically correct, they do not indicate the full picture. The government correctly states that the reporting of rapes has increased since 1997 and that the conviction rate has increased by 46%. However, they do not state that between 75% to 95% of rapes are never reported to the police⁷² and the current rape conviction rate of reported rapes remains is still under 6%, a startling drop from 33% in 1977.⁷³

The response by the UK government also does not highlight the rate of attrition of the majority of cases that are reported to police: this has a large impact on the overall conviction rate of reported rapes. In

⁷⁰ Concluding Observations to the UK government's fifth and sixth periodic report under CEDAW: CEDAW/C/UK/CO/6

⁷¹ Ibid page 9.

⁷² See <http://www.guardian.co.uk/commentisfree/2009/apr/15/rape-convictions-sexual-assault-cps-law>

⁷³ Kelly, L., Lovett, J., and Regan, L. (2005) 'A gap or a chasm? Attrition in reported rape cases'. Child and Women Abuse Studies Unit. Home Office Research Study 293.

order to successfully drive up the conviction rate, targeted action is needed at each point in the process where cases are dropped.⁷⁴

Scotland

Whilst the situation for women experiencing sexual violence or domestic abuse in Scotland is largely similar – a conviction rate of 2.9%⁷⁵ and public attitudes particularly amongst young people regressive at best,⁷⁶ the Scottish Government has developed a gendered approach to violence which the Commission commends as a model for the rest of the UK.

In developing national strategies the Scottish Government has:

“recognised that violence against women is a function of gender inequality, and an abuse of male power and privilege. It takes the form of actions that result in physical, sexual and psychological harm or suffering to women and children, or affront to their human dignity, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. Violence against women is not only a consequence of gender inequality, it also perpetuates it. Tackling violence against women is therefore a key activity when trying to reduce the inequality between women and men.”⁷⁷

This approach has led to the development of better funded and more sustainable provision for women experiencing violence, particularly noticeable in Glasgow, which although not comprehensive, affords greater protection for women than in other parts of the UK.

⁷⁴ "A gap or a chasm? Attrition in reported rape cases", Liz Kelly, Jo Lovett, Linda Regan (2005), Home Office. Complete Sample of Cases 483: Crimed cases 75%, Detected cases 64%, Defendants charged 31%, Crown Prosecution Service Prosecuted 23%, Court proceedings 21%, Conviction (all offences) 13%, Conviction for rape 6%.

⁷⁵ <http://www.thisisnotaninvitationtorapeme.co.uk/the-campaign/>

⁷⁶ Zero Tolerance research into young people's attitudes found that 1 in 2 boys and 1 in 3 girls thought it was acceptable for a man to force a woman to have sex in certain circumstances.

⁷⁷ Scottish Government 2009 GES.

The Commission is however concerned that the recent removal of ring fencing of some domestic violence services by the Scottish Government has already lead to the potential closure of some services and that the delegation of responsibility to local authorities - the (same system which is failing in the rest of Britain) could have negative consequences in Scotland.

The Commission recommends and calls on the Committee to ask the government to:

- **implement as an urgent priority a national funding strategy to secure existing specialised violence against women services and for local authorities to ensure that there is dedicated funding for independent, specialised, women-only services to support women who are the victims of violence;**
- **to implement a cross-departmental strategy across the police and Crown Prosecution Service to focus on the areas of attrition in reported rape cases and to take meaningful steps to train police, prosecution, and judges on rape cases, with the goal of increasing the conviction rate of rape year on year;**
- **in Scotland ensure that the relatively better provision afforded by the gendered approach to violence is sustained and that vital local services are not lost.**

9. ARTICLE 11: The Right to an Adequate Standard of Living

9.1 Poverty and Social Exclusion: Issue 22

The United Nations Commission on Human Rights has stated that “extreme poverty and exclusion from society constitute a violation of human dignity”.⁷⁸ The Commission welcomes the fact that the government has been taking steps to seek to eliminate poverty in a

⁷⁸ Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, E/2003/73:
<http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/74552c7e9853750bc1256d6000524830?Opendocument>

number of respects such as welfare reform, pensions reform and specific measures regarding child poverty. In relation to pension reforms and efforts to reduce poverty of older persons see Issue 16 above. Some of the levers for tackling poverty are reserved to the state party, whilst other responsibilities lie with devolved administrations.

In relation to child poverty, the Commission welcomes the progress that the government has made to ending child poverty and supports the state party and devolved governments' targets of seeking to halve child poverty by 2010 and to eradicate it by 2020.⁷⁹ However the Commission is concerned that the number of children living in relative poverty increased slightly in 2005/06 from the previous year to 2.8 million⁸⁰ and that the government is likely to fall short of its 2010 target by 600,000.⁸¹ In addition the Commission is concerned at the continuing low levels of social mobility of poor children. Recent reports have found that working class children in Britain are less likely to climb up the social ladder than any other developed nation⁸² and that intergenerational earning mobility has failed to improve for children born since 1970.⁸³

The Commission has recently responded to the government's consultation on taking further steps to reduce child poverty and meet its targets.⁸⁴ One of the key elements of the proposals is to increase employment of parents in order that their families incomes are increased.

⁷⁹ Between 1998/99 and 2006/07 600,000 children have been lifted out of relative poverty and the number of children living in absolute poverty has halved from 3.4 million to 1.7 million children.

⁸⁰ House of Commons Work and Pensions Parliamentary Committee, "The best start in Life? Alleviating deprivation, improving social mobility and eradicating child poverty", Second report session 2007-08, 3 March 2008.

⁸¹ Ending child poverty in a changing economy, Joseph Rowntree Foundation, February 2009.

⁸² J Blanden, P Gregg and S Machin *Intergenerational Mobility in Europe and North America* Centre for Economic Performance at LSE, Sutton Trust, April 2005.

⁸³ J Blanden, S Machin *Recent Changes in Intergenerational Mobility in Britain* Centre for Economic Performance at LSE, Sutton Trust, December 2007.

⁸⁴ "Ending Child Poverty: Making it Happen", Child Poverty Unit 2009

The Commission supports employment of parents as being a key component to reduce child poverty but believes a nuanced approach must be taken given the high numbers of vulnerable groups that are affected by child poverty: for example 51% of black and black British children live in poverty compared with 27% of white children;⁸⁵ women heading their own households, especially lone mothers and single pensioners, have the highest risk of poverty;⁸⁶ 1 in 4 children in poverty lives in a family with at least one disabled adult.⁸⁷ In addition the fact that a parent or both parents are working does not necessarily mean that children will not be in poverty as half the children living in poverty live in a family where at least one parent is working and the number of poor children living in working households (1.5 million) has not changed since 1997.⁸⁸ The government needs to take a targeted and personalised approach to vulnerable groups to assist them gain employment and there needs to be a strategy for reducing low pay and in work poverty.

Appropriate and affordable childcare could help parents return to work or train and lift disadvantaged families out of poverty. A key problem in Britain is high childcare costs. The OECD's latest report on benefits and wages finds that evidence "clearly identifies childcare costs as the main culprit of inactivity traps". The report notes that the UK has amongst the highest childcare costs in the OECD – childcare expenditure typically consumes more than a third of family incomes.⁸⁹ This is significantly hampering the full-time participation of women in the labour force as lone mothers may see no financial gain from low-wage employment. The government and local authorities need to create a childcare system that is affordable and flexible.

The government also proposes new measures including a duty to publish a strategy on child poverty and to report to parliament on a yearly basis. At a local level they propose a possible duty on local

⁸⁵ It doesn't happen here Bernardo's report 2007.

⁸⁶ Gender and Poverty. Oxfam report. 2005

⁸⁷ Households below average income DWP 2007

⁸⁸ Nice Work if you can get it. Institute of Public Policy Research 2009.

⁸⁹ Benefits and Wages: OECD Indicators 2007.

authorities to take action to end child poverty. The Commission broadly supports these measures but considers that a strategy must contain targets to be effective. In relation to any duty on local authorities the experience of the Commission in relation to the enforcement of the equality duties under Equality legislation is that in order for such duties to be effective they must be outcome rather than process focused and require impact assessments of proposed policies to be conducted, changes in policies where adverse impact is determined, and data to be collected to monitor progress of local authorities.

Scotland

The Commission welcomes the progress that has been made in tackling poverty in Scotland. The child poverty rate is now among the lowest in the UK, at 25 per cent.⁹⁰ However, this rate has remained constant for the last three years suggesting that progress in Scotland towards the Government's target of eradicating child poverty by 2020 has stalled.

The Commission has concerns that the Westminster Government's proposals under the Welfare Reform Bill do not fully take into account the different policy context in Scotland as a result of devolution. In particular, proper account has not been taken of the different legislative position with regard to childcare. This means that good quality childcare may not be as widely available in Scotland as in England. The Commission is concerned that the proposals may be unsuitable if they do not fit with the wider policy and service framework currently operating in Scotland.

Wales

The Assembly Government published its child poverty strategy 'A fair future for our children' in 2005 followed by a Children's Well-being Monitor in 2008. The proportion of children in poverty in Wales has reduced more rapidly than elsewhere in the state party (from 35% in 1997 to 28%). However progress in combating child poverty has stalled since 2004.

⁹⁰ JRF, 2008, Monitoring poverty and social exclusion in Scotland 2008,

The persistence of in work poverty and the lack of affordable childcare in areas of economic and social deprivation are particularly noticeable in Wales. Targeted European convergence funding is being utilised through the Genesis 2 programme to tackle the latter. New legislation due to be debated at the Welsh Assembly will place duties on public services to monitor the impact of child poverty and assist in its eradication.

The Commission recommends to the government and calls on the Committee to ask it to:

- **develop a strategy to reduce child poverty by improving social mobility and reducing low pay and in-work poverty;**
- **develop more targeted approaches to increasing employment amongst vulnerable groups such as women, ethnic minorities and disabled persons;**
- **in relation to Scotland, ensure that any welfare reforms are fit for purpose in Scotland and that no one is at greater risk of poverty as a result of them.**

9.2 Access to adequate and affordable housing: Issue 23

Britain suffers from a chronic shortage of housing, including social housing for disadvantaged groups. Recent research in 2008 by the Local Government Association which represents local authorities in England estimated that within two years over two million households, or 5 million people, would be on the waiting list for social housing.⁹¹ The government has sought to address this by setting the target of three million new homes to be built by 2020 however it is most unlikely to reach this target, particularly in light of the effect of the recession significantly reducing building of housing.⁹²

⁹¹ Local Government Association "Councils and the Housing Crisis", 16 May 2008 <http://www.lga.gov.uk/lga/core/page.do?pageId=569200>

⁹² The National Housing Federation (NHF), said that unless radical action was taken only 1.6 million homes will be completed by 2020 and the full three million will only be reached by 2029: 19 September 2008: [http://www.politics.co.uk/news/housing-and-planning/brown-will-miss-housing-target-\\$1241377.htm](http://www.politics.co.uk/news/housing-and-planning/brown-will-miss-housing-target-$1241377.htm)

Scotland

In Scotland the primary issue relating to housing which has been the focus of the new SNP administration has also been that of housing supply. In June 2007, the Scottish Government announced the establishment of a Housing Supply Task Force with a remit to: *“...identify and tackle impediments to increasing the supply of housing across all tenures – all with a view to ensuring that people across Scotland have the opportunity to access suitable housing that meets their needs and demands.”*⁹³

Scotland currently faces severe problems of access to adequate, safe and secure housing for all. The Scottish government has set a target of 35, 000 new homes per annum to be built in Scotland to meet market demand. However in 2006 only 25, 700 houses were completed, over 21, 500 (84%) of these built by private sector providers. Of the remaining 16% of publically owned houses completed in 2006 only 28 were built by local government.⁹⁴ National House Building Council statistics for 2007 suggest that private sector new starts fell by 43% in the third quarter.

Wales

There is an increasing demand for social housing in Wales with 91,000 on waiting lists in January 2009 as compared to 80,000 in November 2007. Yet, there is a reduction in the number of affordable houses built from 803 units 2006/7 to 744 in 2007/8. The average time spent by homeless households in temporary accommodation has increased by 51% to 169 days between 2005 and 2008.⁹⁵ As part of the ‘One Wales’ Government programme, there is a commitment to build 6,500 affordable homes between 2007-11 but at the current rate of progress, this target looks difficult to attain.

⁹³ Housing Supply in Scotland, a report by the Housing Supply Taskforce, 6 February 2009

⁹⁴ Scottish Government Analytical Services 2008.

⁹⁵ Welsh Assembly Government Statistical Division, 2009

The Commission recommends to the government and calls on the Committee to ask central and devolved governments to reassess and develop new strategies to increase the levels of affordable housing, particularly social housing.

9.3 Sites for Gypsies and Travellers: Issue 24

England

Everyone has the right to a decent home and Gypsies and Travellers face some of the most serious difficulties in obtaining adequate, secure and reasonable housing in Britain. In 2006 the government's figures indicated that 21% of all Gypsy and Traveller sites were unauthorised, indicating a serious shortage of appropriate housing.⁹⁶ The Commission for Racial Equality's inquiry into sites for Gypsies and Travellers in England and Wales found that since 2001, 50.8% of the local authorities in England and Wales had forcibly evicted Gypsies and Irish Travellers from land they did not own.⁹⁷

In March 2009 the Commission published a statement concerning accommodation in England for Gypsies and Travellers which also makes a series of key recommendations to local and central government.⁹⁸ This was published alongside research assessing local authorities' progress in meeting their accommodation needs.⁹⁹ Its key findings are that although the government has made some progress in making legal sites available for Gypsies and Travellers, most local authorities are far from meeting targets for housing provision by 2011 and at the current rate it would take 18 years for

⁹⁶ Gypsies and Travellers: Facts and Figures, 5 May 2006, Department for Communities and Local Government.

⁹⁷ 236 local authorities in England and Wales responded to a survey: "Common Ground, Equality, good relations and sites for Gypsies and Irish Travellers." Commission for Racial Equality, May 2006.

⁹⁸ Gypsies and Travellers: Simple solutions for living together, EHRC (2009) <http://www.equalityhumanrights.com/en/publicationsandresources/Pages/GypsiesandTravellers-simplesolutionsforlivingtogether.aspx>

⁹⁹ Assessing Local Authorities' Progress in Meeting the Accommodation Needs of Gypsies and Travellers, EHRC (2009) <http://www.equalityhumanrights.com/en/publicationsandresources/Pages/localhousingauthorities-meetingaccommodationneedsGypsyandTraveller.aspx>

local authorities in England to create enough permanent pitches.¹⁰⁰ Our research has also shown that accommodation provision is the key to other human rights and tackling other inequalities experienced by Gypsies and Travellers (for example the right to health and the right to education for Gypsies and Travellers: see Issue 32).

Scotland

The situation in the three nations is markedly different. The Commission is currently awaiting a response from the Scottish Government to the Equal Opportunities Committee reports of 2001 and 2005 which set out a number of far reaching recommendations to improve the lives of Scottish Gypsy Travellers. The Scottish Government has made a number of funding commitments to the community – in terms of additional funding for halting sites, community development, youth work and education but the Commission views these as being piecemeal and lacking a cohesive strategy which will address the widespread discrimination Scottish Gypsy Travellers face. In response the Commission has commissioned research into current site provision in Scotland. Our concern is that a lack of adequate or suitable authorised sites is forcing Scottish Gypsy Travellers onto unauthorised encampments and from this into conflict with the settled community.

The Scottish research will provide a baseline position on Gypsy Traveller accommodation in Scotland, involving a review of the currently available research evidence and a survey of local authorities on provision of sites and pitches in Scotland. In addition, the research will reflect on the differences in the legislative context and resources available in England as a means of offering recommendations for improvement in provision, approaches and development in Scotland.

Wales

Most of the issues concerning Gypsy, Traveller and Roma groups in Wales are within the devolved remit of the National Assembly for Wales. The Welsh Assembly Government has made some important

¹⁰⁰ Gypsies and Travellers: Simple Solutions for living together, page 12

and far-reaching commitments and there are individual examples of good practice in different fields across Wales. However, too many local authorities and public bodies continue to fall short of their obligations. One significant area of progress has been the acceptance by the Assembly Government of the need to develop better data on these groups and to implement an over arching strategy for public services in respect of them. It is expected that an all-Wales strategy will be issued for public consultation during the summer of 2009.

The Commission recommends to the government and calls on the Committee to ask:

- **central and devolved governments provide further funding for Gypsy and Traveller site provision to meet the shortfall in adequate housing in Britain;**
- **local authorities to ensure that it increases the numbers of sites for Gypsies and Travellers and that they develop and implement action plans relating to Gypsies and Travellers in their housing strategies to increasing housing provision.**

10. ARTICLE 12: The Right to an Adequate Standard of Physical and Mental Health

Inequalities in Health and Social Care: Issue 26

Embedding human rights in healthcare

England

The Commission considers that in Britain the government should do more to embed a human rights based approach into the strategic policies and practices of the National Health Service (NHS). The Commission welcomes the fact that the new Constitution of the NHS in England refers expressly to the duty on the NHS to respect the human rights of persons, to be treated with dignity and respect, not to be discriminated against and to provide particular support to

disadvantaged groups.¹⁰¹ However, Commission is concerned that the NHS "World Class Commissioning" strategy to improve health and reduce health inequalities at a local level does not actually adequately reflect human rights and equality considerations. The eleven criteria by which Primary Care Trusts in England will have to deliver services and have their performance measured do not include any specific criteria relating to human rights and equality.

Wales

The NHS Centre for Equality & Human Rights was established in 1994 and tasked with embedding human rights principles in the NHS. These principles feature in both the workforce and services long term strategies – 'Designed for work' and 'Designed for Life'. The health service in Wales is currently subject to major reorganisation with the merger of Local Health Boards and Hospital Trusts. The Commission welcomes the greater focus and responsibility for mental health services in the new structures.

Health inequalities

The Commission welcomes and supports the state party's target to reduce health inequalities by 10% by 2010 as measured by infant mortality and life expectancy at birth. However, the Commission is very concerned that not only is the government unlikely to meet the target, but as the government has stated in its submission, health inequalities between the social classes has in fact widened - by 4% amongst men and 11% amongst women.¹⁰² A detailed report by the Parliamentary Health Committee this year has analysed the health inequalities in England , the government's policies to address the inequalities and made detailed recommendations.¹⁰³

¹⁰¹ NHS Constitution, January 2009:
http://www.dh.gov.uk/en/Healthcare/NHSConstitution/DH_093184

¹⁰² Response of the government to the list of issues, paragraph 210.

¹⁰³ House of Commons Health Committee, "Health Inequalities" Third Report of Session 2008-09, 15 March 2009.

In relation to particular groups the Health Committee's report indicated differences in health between ethnic groups, for example Pakistani and Bangladeshi men and women reported the highest rates of poor health and Chinese the lowest.¹⁰⁴ In relation to disabled persons, those with intellectual disabilities experienced poorer health outcomes.¹⁰⁵ The report concluded that in relation to health inequalities the government had failed to take a systematic approach to develop policies in the area based on adequate data, and clear objectives.¹⁰⁶ In addition it found that there was little evidence to suggest that health inequalities relating to gender, age or mental health status are being adequately measured let alone addressed.¹⁰⁷

Scotland

Scotland remains one of the most unequal societies in Western Europe on issues of health outcome, particularly in relation to class and social mobility. At present in Scotland the average male life expectancy in the most deprived wards in Glasgow is approximately 54, whereas only miles away in a less deprived area of the city average life expectancy rises to 76.¹⁰⁸ Little empirical evidence is available by group. One of the major failings of the Scottish NHS is on ethnic monitoring, but research suggests that inequality of access is particularly stark for Scottish Gypsy Travellers, refugee and asylum seekers, people with mental health problems or learning disabilities, and working class men.

Wales

A dedicated formula ('Townsend' formula) has been developed in Wales to target funding at deprived areas where chronic conditions are more prevalent and inequality is most acute. This has resulted in a range of policy initiatives such as the Health Inequalities Fund, the

¹⁰⁴ Ibid at paragraph 23.

¹⁰⁵ Those with schizophrenia are 90% more likely to get bowel cancer, 42% more breast cancer and on average die ten years younger than those without mental health problems: Ibid paragraph 26.

¹⁰⁶ Ibid paragraph 75-79.

¹⁰⁷ Ibid paragraph 160.

¹⁰⁸ World Health Organisation commission on social determinants of health "A Global Approach to Health Equality", p 32 August 2008 – quoting Hanlon, Walsh & Whyte, 2006

Wales anti-poverty strategy, Communities First, and the Sustainable Health ACTION Research Programme.

The White and Black ethnic groups have the highest proportions of limiting lifelong illnesses in Wales (24% and 19% respectively). Those identifying themselves as Chinese and Other ethnic groups have the lowest rates (Welsh Assembly Government 2004). Life expectancy rates remain unequal but a 2006 survey by the Bevan Foundation found that the gap in life expectancy between men and women was closing. Figures released by the Welsh Assembly Government in 2008 show that life expectancy in 2004-6 was 76.6 years for a man and 80.9 years for a woman. Again, there is a paucity of empirical evidence disaggregated by group

The Commission recommends to the government and calls on the Committee to ask it to:

- **take steps to ensure that a human rights based approach to health and social care is embedded in local work by measures such as developing and evaluating service standards;**
- **take steps to reduce widening health inequalities between the richest and poorest socio-economic groups by developing and evaluating policies in the area based on adequate data;**
- **take steps to reduced health inequalities of vulnerable groups such as certain ethnic groups and disabled persons with mental health problems by ensuring that data is collected based on those characteristics to inform policy development.**

11. ARTICLE 13: The Right to Education

Education of Gypsies and Travellers: Issue 32

Poor educational access and attainment of Gypsies and Travellers accompanied by high exclusion rates remains a fundamental problem in the British educational system. In the Commission's view, better provision of authorised and secure pitches are also key to ensuring that Gypsy and Traveller children improve their educational attainment.

In March 2009 the Commission launched a report which reviews inequalities experienced by Gypsy and Traveller communities in Britain.¹⁰⁹ The report includes consideration of the inequalities experienced in education, early years and children's experiences - including leisure and play and youth provision for children aged five and over. It also incorporates the findings from studies involving children that provide an insight into their experiences across many aspects of their lives and documents Government policies, provision and initiatives.

Our research shows that despite some progress, Gypsy and Traveller children remain highly disadvantaged in terms of access, inclusion and achievement and are 'the groups most at risk in the education system'.¹¹⁰ A report by Ofsted, the government Inspectorate for Standards in Education Children's Services and Skills in England has stated that:

*"The vast majority of Traveller pupils linger on the periphery of the education system. The situation has persisted for too long and the alarm bells rung in earlier reports have yet to be heeded"*¹¹¹

¹⁰⁹ Inequalities Experienced by Gypsies and Travellers, EHRC (2009)
<http://www.equalityhumanrights.com/en/publicationsandresources/Pages/InequalitiesGypsyandTraveller.aspx>

¹¹⁰ DfES 2003:3 quoting Ofsted 1999, EHRC Review p.91

¹¹¹ Ofsted "Provision and support for Traveller Pupils" 2003:6, EHRC Review p.91

While Gypsy and Traveller pupils show some relative development through primary school, the inequalities remain and are starkly demonstrated in GCSE results. Moreover, Gypsies and Travellers are the only ethnic group whose performance has deteriorated in recent years. In 2003, 42 per cent of Irish Travellers and 23 per cent of Gypsy / Roma achieved 5+ A*-C GCSEs or GNVQs compared to 51 per cent of all pupils, while in 2007 this dropped to 16 per cent of Irish Travellers and 14 per cent of Gypsy / Roma compared to 59 per cent of all pupils.¹¹²

In 1990, funding to promote access and integration of Gypsies and Travellers in education changed to a central government specific grant with a local authority contribution. Traveller Education Support Services (TESS) were set up more widely across England and to a lesser extent across Wales, resulting currently in a national network of over 100 TESS.¹¹³ Almost twenty years later, our research has found that 'Gypsy and Traveller children's achievement remains sharply below that of all other groups and this inequality is increasing.'¹¹⁴ The Commission has therefore recommended a review of the TESS. We also want to see Gypsies and Travellers incorporated into measures to help combat bullying in schools to create a better learning environment.

Our report indicates very significant inequality in relation to exclusions of Gypsy and Traveller pupils from school. Figures for Irish Travellers suggest they are four times as likely to be excluded than the overall exclusion rate of 0.13 per cent of all pupils.¹¹⁵ Gypsy and Roma pupils are the third mostly likely group to be excluded. The Commission is therefore concerned that the published Government figures on permanent exclusion by ethnic origin from 2005 to 2006 do not include Gypsies and Travellers as an ethnic group.¹¹⁶

¹¹² EHRC Review (2009) pp 91-92

¹¹³ Clark 2006, Derrington 2005, Derrington and Kendall 2007 – see p. 89 EHRC Review (2009)

¹¹⁴ EHRC Review (2009) p.

¹¹⁵ DfES (2005b) research paper, data from 2002/3 – see EHRC Review p. 93

¹¹⁶ DCSF 2008d – see EHRC Review (2009) p. 93

Wales

A report in 2006 by Save the Children in Wales echoes a report the year before by the education inspectorate, Estyn¹¹⁷ which found that secondary education provision for Gypsy Traveller children is patchy. Many schools and local authorities do not have policies in place and lack awareness of good practice to address the specific needs of Gypsy Traveller learners. Often little is done to adapt the curriculum and few schools have identified opportunities within the curriculum to promote the positive aspects of Gypsy Traveller culture. The relevance of the curriculum to the needs, aspirations and motivations of these children are key elements to address in successful transition for Gypsy Traveller children. In addition the amount of money available under the Specific Grant for Education of Travellers and Displaced Persons has not increased from £900,000 in the last 5 years; as more LEAs have applied for this grant, the amount of money available is effectively less per authority.

Scotland

A similar picture emerges in Scotland where research in 2004¹¹⁸ found that *“educational provision across local authorities and schools is patchy and varies from good to very poor, with little or no developed connections in or between schools for providing a relevant and continuous school education responsive to Gypsy/Traveller school-aged children and young peoples’ particular learning needs”*.

Recent developments such as a limited fund to increase the portability of education between schools may assist but the widespread exclusion faced by Scottish Gypsy Travellers --, which has its root in a lack of access to sites and persistent “discrimination and vilification”, continues to mitigate against this. The Scottish

⁸¹ ESTYN. (2005) *The Education of Gypsy Traveller Learners: A Survey of Provision Made by Schools and Local Authorities to Meet the Needs of Gypsy Traveller Learners*. Save the Children (2006) *Scoping Exercise on Education of Gypsy Traveller Children and Young people*

⁸² Welsh Language Board (2006) *2004 Welsh Language use survey, Cardiff, Welsh Language Board*

¹¹⁸ STEP “Issues in school enrolment, attendance, attainment and support for learning for Gypsy/Travellers and school-aged children and young people based in Scottish local authority sites”

parliament's Equal Opportunities Committee found in 2005 that racism and bullying were still issues which made both parents and children feel unsafe in school premises. Other issues of concern were the relevance of the curriculum for young Scottish Gypsy Travellers and alternative forms of access to lessons and the curriculum. Although calculated from a relatively low sample it is clear that Scottish Gypsy Travellers and especially occupational travellers are excluded from schools in Scotland at a higher rate than almost all other ethnic groups.¹¹⁹

The Commission recommends to the government and calls on the Committee to ask it to:

- **undertake a review of Traveller Education Support Services to determine whether reforms are necessary;**
- **incorporate Gypsies and Travellers within measures to combat bullying in schools and educational establishments;**
- **as part of the Government's monitoring of exclusions, disaggregate data for Gypsies and Travellers and take measures to address disproportionate exclusions from these groups;**
- **in relation to Welsh Assembly Government, calls on the forthcoming strategy on Gypsies and Travellers to adapt the curriculum relevant to Gypsy and Traveller needs and ensure that there are adequate resources for implementing the strategy;**
- **in relation to the Scottish Government, calls on it to respond formally to recommendations made by the Scottish parliament on education of Scottish Gypsy Travellers by developing a strategy for inclusion.**

¹¹⁹ <http://www.scottish.parliament.uk/business/committees/equal/reports-05/eor05-05.htm>

12. ARTICLE 15: Cultural Rights

Rights regarding regional languages: Issue 34

The Welsh Language Act 1993 provides that in public administration and justice in Wales, both the English and Welsh languages should be treated on the basis of equality. However, this falls short of providing formal equal status to both languages.¹²⁰ The Act created a statutory Welsh Language Board and placed an obligation on public authorities operating in Wales to draw up Welsh language schemes. These schemes should be subject to formal consultation and then be approved by the Board. They have to be reviewed annually. At present, the Board has limited enforcement powers – this role is formally undertaken by the Welsh Assembly Government.

The Welsh Assembly Government is currently seeking consent from the state party to introduce further legislation on the Welsh language. They intend to use such powers to provide definitive equal status for the Welsh and English languages in Wales, establish a Welsh Language Commissioner, and place duties on a limited number of private sector service providers.

¹²⁰ There are no provisions in any Equality legislation that prohibit discrimination on grounds of language.