Submission from Commission for Racial Equality (CRE) Scotland for the Legal Profession and Legal Aid (Scotland) Bill

At this point CRE Scotland does not have a detailed response to make to the Legal Profession and Legal Aid (Scotland) Bill. However we would like to remind you that in terms of statutory instruments made under the Race Relations Act 1976 (as amended) (RRA) the Scottish Ministers are required to have arrangements in place for assessing and consulting on the likely impact of their proposed policies on the promotion of race equality.

That means that the Scottish Ministers must publish a RES which shall include:

- arrangements for assessing and consulting on the likely impact of their proposed policies on the promotion of race equality;
- monitoring their policies for any adverse impact on the promotion of race equality;
- publishing the results of such assessments and consultation and monitoring as are mentioned above;
- ensuring public access to information and services which they provide; and
- training staff in accordance with the general duty under s71 of the RRA and the duties mentioned above.

The duty to publish a Race Equality Scheme with the above arrangements was introduced to improve performance of the general statutory duty (the general duty) set out in section 71(1) of the RRA. This states that those subject to the Act shall, when carrying out their functions, have ‘due regard’ to the need to:

- eliminate unlawful racial discrimination; and
- to promote equality of opportunity and good relations between persons of different racial groups;

The view of CRE Scotland is that as soon as it is known that a particular policy or legislative proposal may be developed one of the first questions should be what the policy or legislative proposal will actually mean for people, depending on their race.

All policy and legislative proposals and changes to existing legislation should be screened to identify if they are relevant to the general duty. If the screening indicates that a policy or legislative proposal is relevant to the general duty it should then be fully assessed by the carrying out of an appropriate Race Equality Impact Assessment (REIA). Both the screening and the REIA should be based on regular consultation with people who are likely to be affected by the proposed policy or legislative proposal or who have an interest in it. There should also be formal consultation when the draft policy or legislative proposal is nearing completion. Assessment for racial equality should be seen as an essential part of all stages of policy development, from conception to implementation.

One of the general purposes of the REIA is to consider adequately and then adjust or remove, where appropriate, aspects of proposed policy or legislative proposals which could be discriminatory or have a negative impact on good race relations before they are introduced. Monitoring for compliance with the general duty should continue to take place in relation to existing policy and legislation. It should be clear from what has already been said in this letter that CRE Scotland believes that it is not sufficient for policies or legislation to first be the subject of assessment after either have been introduced.

CRE Scotland is of the view that the Legal Profession and Legal Aid (Scotland Bill) is of relevance to the promotion of race equality and we would therefore expect the Scottish Ministers to have carried out a REIA. We do not believe that the current equal opportunities statements contained in the Policy Memorandums to Bills are thorough enough to constitute an REIA. At this stage we would therefore urge the Committee to consider whether the Scottish Ministers have carried out an appropriate REIA in its scrutiny of the Legal Profession and Legal Aid (Scotland) Bill.
CRE Scotland believes that a thorough consideration of race equality both by the Executive and the Parliament will ultimately lead to the development of better, more appropriate policies and legislation.

If the Committee would like further information relating to this submission, please do not hesitate to contact me as above.