1. The Equality and Human Rights Commission was established by the Equality Act 2006 and came into being on 1 October 2007. We are the independent advocate for equality and human rights across the three nations of Great Britain, and we work to reduce inequality, eliminate discrimination, strengthen good relations between people, and promote and protect human rights. We enforce equality legislation on age, disability, gender, gender reassignment, race, religion or belief, and sexual orientation and encourage compliance with the Human Rights Act. In Scotland, we co-locate and work in partnership with the Scottish Human Rights Commission.

2. We welcome the opportunity to comment on the Public Services Reform Scotland Bill, in particular the provisions in Part 6 to improve scrutiny in Scotland following the recommendations of the Crerar review. Our written evidence will concentrate on the interplay of this Bill and the significant new powers it is anticipated will shortly be conferred on Scottish Ministers to place equality duties on devolved public authorities, in particular the implications of these new duties for the way scrutiny bodies undertake their work in Scotland.

3. The public sector in Scotland faces profound challenges in the coming years as it aims to deliver services against the backdrop of significant pressure on Scotland’s, and the UK’s, public finances. This makes it all the more important that every public pound spent has the greatest possible positive impact for the people of Scotland. An effective scrutiny regime for public bodies is central to achieving this; the Commission believes that there exists potential for the more user-focused and collaborative scrutiny regime envisaged in the Bill if the opportunity is grasped to align its provisions with the new equality duties.

Current Commission Work on Audit and Scrutiny

4. In March 2008 the Cabinet Secretary for Finance and Sustainable Growth asked the Accounts Commission to find ways of better planning and scheduling service inspections. The Accounts Commission is working with the main scrutiny bodies to identify opportunities to bring work together, reduce the burden of scrutiny in councils and improve its impact and effectiveness. The Accounts Commission and its scrutiny partners have agreed that Best Value 2 should be the vehicle for a single corporate assessment and for shared risk assessment and scrutiny planning - the shared risk assessment framework is currently being developed.

5. The Equality and Human Rights Commission expects that equality indicators will from a part of this shared risk assessment framework, and will be working with Audit Scotland to develop the approach to equalities in Best Value 2. The Commission in Scotland has also been working with Audit Scotland on a
thematic study of public authorities’ response to the Race Equality Duty, and mainstreaming equalities in Audit Scotland’s work.

6. In June the Commission announced that it is carrying out an assessment into the extent to which the Scottish Government is meeting the public sector equality duties in the development and implementation of its policies and practices with a particular focus on equality impact assessment. The assessment is being carried out with the full co-operation of the Scottish Government, and will look at three policy areas as examples of the way the Scottish Government mainstreams equality into its work. The assessment will focus on:

- Guidance on Local Housing Strategies,
- National Drugs Strategy: The Road to Recovery
- Development of ‘Better Together’ Improvement Programme

7. The assessment work, undertaken using the Commission’s enforcement powers set out in Section 31 of the Equality Act 2006, will lead to reports on the three areas in spring 2010.

8. In July, the Commission launched the Equality Measurement Framework (EMF), and has been in discussion with the Scottish Government, as well as UK government departments and the Welsh Assembly Government, as to how to develop a framework to monitor the central and valuable things in life that people actually achieve - such as enjoying an adequate standard of living, being healthy, having good opportunities for education and learning, enjoying legal security, and being free from crime and the fear of crime. It is particularly concerned with the position of individuals and groups with regard to characteristics such as age, disability, ethnicity, gender, religion or belief, sexual orientation, transgender and social class.

9. There appears to be a clear link between the EMF’s focus on individual’s life experiences and the service user duty in the Public Services Reform Bill. There are also links between the EMF recommendations that audit and inspection agencies help to close data gaps for the non-resident population – for example care home residents, people in detention, hospital inpatients, homeless people – and the Scottish Government’s stated priorities for scrutiny – children, adults in need of support and protection, older people in care.

The UK Equality Bill

10. The Equality Bill, introduced in the UK Parliament in April 2009, will introduce a new equality duty on public authorities, requiring them to have due regard to:

- The elimination of discrimination, harassment and victimisation
- Advancing equality of opportunity between groups
- Fostering good relations between groups

11. In addition, the Bill will give powers to Scottish Ministers to impose specific duties on named devolved public authorities, likely to include bodies such as
councils, health boards, education authorities and the police. The specific duties will set out the steps public authorities are obliged to take to help them meet the general duty. Importantly, it will be for Scottish Ministers to determine the nature and scope of the specific duties for devolved public authorities.

12. The new specific duty should be rigorous in the processes expected of public authorities in making strategic decisions, but should be focused on delivering better outcomes for all sections of the community. We believe that this makes not just for fairer use of finite public resources, but, at a time of fiscal tightening, will ensure more effective decisions on how and where to spend public money.

13. The specific duties on Scottish public authorities could include, for example, the need to produce equality schemes, to report on progress and to undertake equality impact assessments as part of strategic decisions on policy and spending. The Commission welcomes the Minister for Housing and Communities’ indication on 9 June 2009 that, as a result of the new specific equality duties, it should “be the norm” that Scottish public authorities undertake equality impact assessment of all strategic and spending decisions.

14. The EHRC is minded to recommend to the UK Government Equalities Office (GEO) that the specific duties in England and Wales should include a requirement on scrutiny bodies to monitor the extent to which public bodies advance and promote equality, foster and promote good relations between different communities and groups, and take steps to prevent unlawful discrimination. With the Scottish Government’s own consultation on the specific equality duties in Scotland expected shortly, we would welcome further indication from ministers on whether they see value in a similar duty in Scotland, and what implications this might have for the Public Services Reform Bill.

Conclusion: the new Equality Duties and their Implications for Scrutiny Bodies and the Public Services Reform Bill

15. Given the normative effect Scottish Ministers believe the new equality duties will have on public authorities’ strategic decisions in Scotland, the Commission would welcome further detail on what consideration has been given to how best to align the equality duties with the new specific duties contained in Part 6 of the Public Services Reform Bill. This has operational and strategic implications for scrutiny bodies themselves, as well as for work of the public authorities they scrutinise.

16. The proposed duty on scrutiny bodies to take account of the experiences of service users when undertaking scrutiny and improvement activities is particularly relevant to this debate. As has been noted, there has been some valuable work undertaken in this area, but there has yet to be a clear indication from ministers as to how the new duties introduced through the Public Services Reform Bill will sit alongside and be supported by their planned specific equality duties on public bodies.
17. Public finances on Scotland face pressures not seen since perhaps the end of the Second World War. Effective scrutiny of public bodies is fundamental to ensuring that public money is spent as wisely as possible, and the plans for a more user-focused and collaborative scrutiny regime in Scotland can help deliver this. Further consideration is needed however of the interplay of these new duties and the Scottish Government’s plans for new equality duties on public authorities in Scotland, and the Commission looks forward to learning more of Ministers’ plans in this area during the passage of the Bill.

Equality and Human Rights Commission
August 2009

References


v Alex Neil MSP, Minister for Housing and Communities, Equal Opportunities Committee, 9 June 2009 [www.scottish.parliament.uk/s3/committees/equal/or-09/eo09-1002.htm#Col1136](http://www.scottish.parliament.uk/s3/committees/equal/or-09/eo09-1002.htm#Col1136)