1. The Equality and Human Rights Commission (the Commission) was established in statute in the Equality Act 2006 and came into being on 1 October 2007. The Commission champions equality and human rights for all, working to eliminate discrimination, reduce inequality, protect human rights and to build good relations, ensuring that everyone has a fair chance to participate in society.

2. The Commission welcomes the opportunity to respond to the Housing (Scotland) Bill. The Commission, along with a number of other stakeholders, has worked with the Scottish Government from the early stages of the bill. We are grateful for the transparency shown during the drafting process and welcome many of the changes that resulted from that process.

3. **The Regulator's Functions (section 3):** The Commission support a duty being placed on the Scottish Housing Regulator (SHR) to perform its functions in a way which ‘encourages equal opportunities’. However, research\(^1\) undertaken by the Commission has demonstrated that the impact of this type of duty in existing Scottish legislation\(^2\) has been limited, due in part to uncertainty on the part of devolved public bodies as to what the duties require them to do. There was a strong call for guidance on this matter and also the interaction of such duties with the public sector equality duties imposed by the UK parliament.

4. The research also suggested that a lack of reporting or monitoring of the equal opportunity duties makes application of the duty problematic; one participant in the research stated:

   > A real weakness [of the duty] is the lack of follow through. It sends a signal to public authorities that there will be no sanction for noncompliance. Leadership is critical from both the Government and Parliament if public authorities are to take equality seriously.\(^3\)

   The Commission would welcome further detail about how this duty will work in practice, what will be required of the SHR as a result of this duty and how compliance with the duty will be monitored.

5. **Public Sector Equality Duty and the SHR:** The new body established by this legislation has been tasked with regulating and monitoring the provision of social housing in Scotland. The Commission recognises the importance of this role and would welcome confirmation from ministers that the SHR will be covered both by the general public sector duty to be introduced through the Equality Bill currently before the UK Parliament and by the specific duty regulations which will follow from Scottish Ministers. The Scottish Government has recently consulted on proposals for the specific duties in Scotland. The Commission’s response to this consultation sets out our thoughts about this process and is available from our website.
6. **Public Sector Duties and Registered Social Landlords:** The Commission would draw your attention to the decision in Weaver v London and Quadrant Housing Trust (LQHT) [2009] EWCA Civ 587 which states that the provision of social housing is inherently public in nature and there should not be a distinction between local authority tenants and tenants of an RSL. Given this decision, we would welcome confirmation from the Government that RSLs will be listed as bodies to whom the General Equality Duty applies, in respect of their public functions.

7. **Rights of Gypsy Travellers:** The Commission has concerns around the current lack of security in the rights of gypsy travellers occupying local authority caravan sites. The exemption of such sites from the protection of the Mobile Homes Act 1983 is incompatible with the European Convention of Human Rights, specifically article 8: the right to respect for private and family life. It is possible that this absence of protection may have been remedied as a result of an oversight in legislative drafting but the position is unclear and therefore unsatisfactory. Legislation to clarify the situation and ensure that these crucial rights are guaranteed is needed.

8. It is generally understood that local authority sites for Gypsy Travellers in Scotland are covered by the Caravan Sites Act 1968, which provides very limited security of tenure, and that these sites are exempt from the greater protection afforded by the Mobile Homes Act 1983. Under the 1968 Act, there is no requirement that certain conditions, which act as a safeguard against arbitrary eviction, are met before an order for eviction is granted. This contrasts with the greater protection which occupiers of other caravan sites have under the Mobile Homes Act 1983. Under that Act site owners can only get a court order for eviction if the court is satisfied that it reasonable to grant it. Section 5 of the 1983 Act exempts local authority sites from its protection.

9. Such a difference in protection is incompatible with article 8 of the ECHR as was confirmed by the European Court of Human Rights in the case of Connors v UK (2005) 40 EHRR 9; [2004] HLR 52. In that case Mr Connors and his family were gypsies who had occupied a Council gypsy site for many years under a licence which was then terminated and possession sought and granted in the County Court. Under English law, there was no requirement for the local authority to show justification for the interference with the Connors’ article 8 rights. The European Court of Human Rights held that the absence of appropriate procedural safeguards whereby the local authority would be required to show article 8(2) justification amounted to a violation of the Connors’ article 8 rights.

10. The House of Lords has confirmed this position in the case of English case of Doherty v Birmingham City Council [2008] 3 WLR 636. It was held that excluding gypsies on local authority sites from the statutory protection provided by the Mobile Homes Act 1983 Act was “incompatible with the defendant’s right under article 8 of the Convention to respect for his home”.
11. In England and Wales, the same exemption has applied to exclude local authority sites for gypsy/travellers from the Mobile Homes Act 1983. Steps have already been taken there to remedy this deficiency. Section 318 of the Housing and Regeneration Act 2008 was passed, to remove the exemption in England and Wales, although it is not yet in force.

12. It is arguable that, as a result of what appears to be a legislative drafting mistake, the Mobile Homes Act 1983 does apply to local authority gypsy/traveller sites in Scotland. This arises because the exemption under section 5 was defined by reference to section 24(8A) of the Caravan Sites and Control of Development Act 1960, which has since been repealed by the Local Government etc (Scotland) Act 1994, s 180(1), (2), Sch 13, para 54, Sch 14. Thus the exemption becomes redundant, with the effect of extending the Mobile Homes Act to cover council gypsy travellers sites.

13. However the position is unclear and the Commission has concerns that courts may not be supportive of this argument. To achieve clear compliance with human rights requirements therefore an amendment of the 1983 Act is required.

Equality and Human Rights Commission
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