COMMISSION FOR RACIAL EQUALITY

SHADOW REPORT

UNITED KINGDOM'S SECOND REPORT TO THE COUNCIL OF EUROPE UNDER THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

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For queries: Peter Reading
Head of European and International Legal Policy
preading@cre.gov.uk
00 44 207 939 0061

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1. INTRODUCTION

The Commission for Racial Equality (CRE) is pleased to provide for the first time a shadow report to the UK government's report on its fulfilment of its obligations under the Framework Convention for the Protection of National Minorities.

The CRE has the following duties under the Race Relations Act 1976 (RRA):

- to work towards the elimination of discrimination and harassment;
- to promote equality of opportunity and good race relations between people of different racial groups; and
- to keep under review the workings of the RRA.[1]

One of the CRE's primary goals is to create an integrated society based on three inter-related principles:

- **Equality** - for all sections of the community - where everyone is created equally and has a right to fair outcomes
- **Participation** - by all sections of the community - where all groups in society should expect to share in decision-making and carry the responsibility of making society work
- **Interaction** - between all sections of the community - where no-one should be trapped within their own community in the people they work with or the friendships they make.

Where possible our report has attempted to follow the format of the government's report for reasons for consistency and clarity. We also note that we have only provided comments to the particular articles of the Convention or discrete issues where we consider it necessary or we are able to given limited resources.

1.1 Executive Summary

The CRE welcomes a number of major legislative and policy developments the government has implemented in protecting and promoting the rights of national minorities since its first report in 1999. In particular the CRE welcomes a number of legislative developments including:

- the introduction of the duty to promote racial equality on public authorities and a prohibition on public authorities (subject to certain exceptions) from discriminating in exercising any of their functions under the Race Relations Act 1976;
- the implementation of the EU Race Directive and the EU employment directive;
- increasing penalties for racially aggravated offences and creating religiously aggravated offences and an offence for incitement to religious hatred;
- creating laws prohibiting discrimination on grounds of religion and belief in employment, vocational training, and more recently in relation to provision of

[1] Section 43, Race Relations Act 1976.

goods facilities and services, education, housing, advertisements, and public authorities in the exercise of their functions;
- the Discrimination Law Review to improve, harmonize and simplify equality legislation relating to the six strands of race, religion, gender, disability sexual orientation and age to create a Single Equality Act (SEA).

The CRE also welcomes the government's decision to create the Commission for Equality and Human Rights (CEHR) which will commence operating in October 2007. The Commission is an important step given that it will not only take over the responsibilities of the CRE, Equal Opportunities Commission (EOC) and Disability Rights Commission (DRC) regarding race relations, gender and disability issues, but will also have jurisdiction in other areas of equality law and policy regarding religion and belief, sexual orientation and age. In addition it will also be the first governmental body with a duty to promote awareness, understanding and protection of human rights (this is discussed in greater detail in relation to article 4 below).

The CRE also welcomes a large number of policies the government has implemented across public sectors in sectors such as education, employment and health which have reduced some of the barriers national minorities face to achieve substantive equality.

However, the CRE considers that despite improvements in protection from discrimination and some steps towards substantive equality and better relations between different groups in British society, we are far from eliminating discrimination and disadvantage faced by national minorities.

It is also vital to take into consideration the fact that British society is changing rapidly in a number of ways that means there are new pressures on the government and threats to national minorities in terms of discrimination and growing disadvantage:

- with connected issues of globalization and migration, increasing numbers of migrants are coming to live in the UK;[2]
- there are changing demographics in the UK meaning that the percentage of ethnic minority people of the total population is increasing[3]
- world events relating to terrorism have increased discrimination, prejudices and fears towards Muslims and impacted on community relations.

The CRE has a number of concerns which we consider require action are:

Meaning of national minorities under the Convention:
- the position of the CRE is that the government's approach to the meaning of national minorities only by reference to racial groups that have been recognised as such in case law is too narrow and creates arbitrary distinctions and is not reflective of the purpose of the Convention;

[2] Figures from the Office for National Statistics in 2005 indicated increasing net migration into the UK and that in 2005 a record 582,000 came to live in the UK: http://news.bbc.co.uk/1/hi/uk/4359756.stm
[3] see Equalities Review Final Report pages 40-41.

Discrimination:

- discrimination in employment and as criminal acts against national minorities remains widespread and the law prohibiting discrimination needs to be more comprehensive, effective and consistent;
- some groups have faced particularly concerning levels and new forms of discrimination, prejudice or exploitation and these include Gypsies and Travellers, Muslims and new migrants from Eastern Europe.
- as a result of changes in laws and government policies it is increasingly difficult for national minorities to access justice if they wish to bring claims of discrimination;
- the manner in which the government exercises stop and search powers is disproportionate with respect to national minorities and the government has failed to take adequate measures to rectify that and prevent discrimination.

Achieving substantive equality and an integrated society

- substantial inequalities still exist between a range of ethnic minorities and the rest of society across a number of sectors such as employment, education, health and criminal justice;
- Gypsies and Irish Travellers continue to face substantial equality across Great Britain and this has been compounded by problems associated with a lack of suitable housing in terms of permanent and temporary sites. The CRE inquiry and report Common Ground highlights that increasing numbers of sites is crucial within the context of the race equality duty, reducing community tensions and promoting good race relations;
- in relation to promoting equality, the equality duty on public authorities needs to be made outcome rather than process focused and public authorities need to take more leadership in making equality a strategic priority;
- in the context of the equality duty, public authorities should be compelled to use procurement actively in achieving greater equality within the organisations which provide contractual services and in the manner in which goods or services are delivered;
- there are in some sectors such as housing and education trends of greater segregation of communities. There is also a lack of active participation of national minorities in economic and public life. As a result the government needs to research, measure and develop policies to improve interaction and participation of national minorities.

The role of the media

- some sectors of the media's reporting of a number of groups such as Gypsies and Travellers, asylum seekers and refugees and new migrants from Eastern Europe has often been largely negative, based on stereotypes and inaccurate;
- the current mechanisms for regulating discriminatory reporting within the Press Complaints Commission are insufficient as they only permit action to be taken where an article discriminates against a particular individual rather than groups generally;
- the media should take leadership in recognizing its powerful effect and taking responsibility for developing a more effective regulatory system against all forms of discrimination.

1.2 Delay in reporting

The CRE is concerned that the government was very late in producing its second report to the Council of Europe, which was due on 1 May 2004 but was not received until 22 February 2007, almost three years late. The government has provided no explanation in its report as to why the report has been delayed.

As a result of the delay beyond two years from the date the second report was due, we note that the Committee of Ministers authorized the Advisory Committee to commence monitoring fulfillment of the UK government's obligations under the Convention in September 2006.[4] The long delay in reporting in our view inhibits the aim of periodic reporting and responding to recommendations of the Advisory Committee. We are also concerned it may demonstrate a lack of political will to fully implement the Convention in practice and promote the importance of the Convention in British society.

1.3 Scotland

Our major concerns regarding Scotland are:

- the Scottish Executive's lack of a strategic approach to race equality;
- the weak powers of the Scottish Commission for Human Rights (SCHR); and
- continued inequality faced by Gypsies and Travellers in Scotland.

Below our concerns regarding a lack of strategy are discussed and the concerns regarding the SCHR and Gypsies and Travellers are discussed in the section on article 4.

The Scottish Executive's strategy on race equality is relevant to all the rights under the Convention and sections in the government's report dealing with Scotland. In December 2006 the CRE Scotland provided its submission to Scottish Executive's draft National Race Equality Strategy and Action Plan. CRE Scotland welcomed the Scottish Executive's commitment to change and willingness to engage in a range of initiatives to tackle racism and promote race equality. However, we believe further work was needed to ensure the strategy and action plan achieve their goals and provide a framework for dealing with the challenges of race equality in the 21st century.

The need for more work was for two reasons. First, we believe that the draft action plan could not deliver the vision and aims outlined. Second and more importantly, we believe those vision and aims themselves must be revised to reflect a more progressive approach to race equality, followed by further work to establish more effective priorities for action, as well as an infrastructure for delivering accelerated change.

Our main submissions on and concerns with the draft strategy were:

<u>Vision and aims</u>
The draft strategy set out the vision of a Scotland free from racism and racial discrimination, a truly equal Scotland. Tackling racism is a key theme and specific

[4] CM/Del/Dec (2003)832/4.2, 974th meeting, 27-28 September 2006.

actions have been identified to achieve it; by contrast there was limited discussion of achieving substantive equality and no specific actions are identified to achieve it. At times, the draft strategy seems to imply that tackling racism in itself will bring about greater equality.

We know this is not the case. Although the majority of people condemn racism and strongly support the principle of equality, they do not feel that racial inequality is a pressing concern and are more likely to support further equality opportunities for older people and disabled people than for particular racial groups.

Despite a decline in overt racial discrimination in the last decade, Britain overall is becoming more unequal. In education, employment and housing, for example, poor outcomes for some ethnic groups have not improved and for some groups have become even worse. Other ethnic groups experience inequality when despite strong qualifications and skills, a good job and decent housing they are still not able to participate equally in civic and political life.

If these racial inequalities were removed it would benefit everybody. However, this point did not come across in the draft strategy which was aimed at majority groups only in so far as they are described therein as the main perpetrators of racism. The strategy could be more effective if it highlighted not only the negative impacts of racism but the benefits for everybody of a truly equal Scotland.

We were also struck by the mismatch between the strategy and the race equality duty. Rather than tackling racism after the event, the purpose of the duty is to prevent racial discrimination occurring in the first place by placing primary responsibility on those public agencies best placed to achieve this. The duty is designed to put equality considerations at the heart of public agencies' work. It is a *positive* duty to actively promote race equality and good race relations as well as eliminating racial discrimination. To be effective, there are four areas in which this must be felt: policymaking and consultation, policy monitoring, service delivery, and employment practices. Although the draft strategy does aim to drive up public sector performance on race equality, we are concerned that the focus seemed to be mainly on service delivery when progress currently is particularly poor in assessing and monitoring the impact of policies on race equality and mainstreaming race equality actions from the outset in strategic planning.

So while we agreed that removing the fear and reality of discrimination is a prerequisite for equality, it is crucial that the strategy goes further and clearly describes its equality aims coupled with specific actions to achieve greater equality in practice. In particular, we were concerned that the draft strategy was based on a traditional, narrow definition of equality of opportunity which means treating everyone the same. This approach conflicts with the race equality duty which requires public bodies to take account of the constraints imposed on a person by the external factors which create and sustain equality gaps – such as poverty or a poor education. In our view, the strategy must give a clearer explanation of what is meant by not only equality but also race equality gaps and equality penalties, and whether this strategy aims to reduce gaps, penalties or both, and in which fields. This work to clarify and develop further the Executive's vision of equality will also be important in preparation for the establishment of the Commission for Equality and Human Rights in October 2007.

Actions to deliver change

With 39 'outcomes' and over 100 actions, none of which have been prioritised for action before March 2008, the CRE submitted that the draft action plan would be unlikely to achieve the desired outcomes. In order to be effective, the action plan must include a tighter description of outcomes, set clear race equality targets and measures for monitoring progress towards them, allocate transparent accountabilities for delivery and establish priorities for action with timescales. Actions should be stretching and go beyond work that is already underway and that the Executive and others are/should be doing in order to meet their duties under the Race Relations Act. Equally, actions and progress measures must be sufficiently robust to achieve progress. For example, actions to 'take ethnicity into account' and 'meet with' are not likely to be effective, and progress cannot be measured by numbers of presentations and meetings.

Infrastructure for delivering change

Scotland lacks an infrastructure to encourage and support Scottish Executive departments and others to make progress towards race equality. The strategy and action plan should therefore include a further section on infrastructure to ensure that delivery partners are not held back by the factors which currently hamper progress in every portfolio area including:

i) Data

Without improved data the Executive cannot assess the true extent of racial inequality and will not be able to measure accurately the impact of its strategy. The CRE submitted that the Executive cannot achieve its aims without a commitment to implement new data collection systems immediately to provide accurate measures of Scotland's ethnic diversity and of trends in racial inequality in the main areas of government activity.

In March 2007 CRE Scotland also responded to the Scottish Executive's consultation on improving statistical services in Scotland. The Executive had already consulted users of ethnicity data to identify data gaps and users' needs. The Race Equality Advisory Forum (1999) and the Ethnic Minorities and the Labour Market Sub Group (2006) were two examples of consultation which identified the main data gaps and needs. In addition, the CRE throughout this period repeatedly made clear its concerns particularly about the lack of ethnicity data relating to the labour market, skills and training, education and migration.
The Executive's current commitment is to ensure that 'wherever possible' ethnicity data is available to inform policy formulation.[5] At the same time, it is widely understood and accepted that it is almost never possible to provide good quality ethnicity data. The reason for this limitation is important. The reason most often given is that it is harder to collect data about people who form a very small proportion of the total population. However, in our view the problem is not smaller groups, but rather established ways of collecting data that neglect not only smaller groups (such as ethnic minorities), but also transient groups (such as new migrants).

We urged the Executive to develop this proposal further so that the focus is not simply on agreeing what data is required, but on how established ways of working need to change to ensure that core statistical services in Scotland promote equality.

[5] Scottish Executive (2002) *Committing to Race Equality* p7

ii) Race equality impact assessments
Many Executive departments and agencies are still not carrying out proper REIAs because they mistakenly judge their portfolio to be race neutral and/or they lack the data. We submitted that for the strategy to be effective steps must be taken to ensure that the Executive and its agencies carry out proper REIAs, for example by ensuring systematic use of a robust assessment template across agencies and by identifying and building expertise.

iii) Capacity and expertise
While significant investment has been made by the Executive and other public agencies into race equality *awareness* training (as part of the training requirements of the race equality duty) CRE experience indicated that in many crucial areas there remains a fundamental lack of real race equality (or equality) *expertise* within mainstream environments. Good intent is frequently not backed up by the technical capacity to deliver effective impact assessment work or inclusion of the relevant issues in strategic planning processes. The One Scotland Many Cultures website defines equality as 'being treated the same way as other people' and it is not uncommon for the CRE to be advised by senior Executive and public sector staff that achieving equality comes from treating people the same – adopting the 'colour-blind' approach that has been discredited for years. Such a lack of expertise inhibits effective mainstreaming, hampers the delivery of positive action measures and once again further reduces the likelihood of the action plan as drafted would deliver fairer outcomes.

iv) Budget
Other than grants which appear unconnected to strategic priorities, no clear budget was set aside for the Executive's future race equality work making it difficult for stakeholders to help develop a strategic approach. Within that there are particular concerns about the negative impact of short term funding for race equality work which include: skills loss, inability to plan strategically, poor outcomes and competition rather than partnership. We submitted it was crucial therefore that race equality targets are linked to core work in the budget processes and the 2007 spending review.

v) Leadership
Racial inequalities persist within every Scottish Executive Minister's portfolio, from Enterprise and Lifelong Learning to Public Services Reform. Realizing the goals of this strategy requires a much stronger focus on race equality by all departments. We submitted that targets should be assigned to specific Scottish Executive departments and agencies in order to ensure that all Ministers take responsibility for achieving them.

Following our submission on the draft National Race Equality Strategy and Action Plan the Scottish Executive announced that further substantial revisions to the strategy were required and have postponed publication until after the Scottish Parliamentary elections in May 2007.

1.4 Northern Ireland

The CRE does not have jurisdiction over race relations issues in Northern Ireland, and as a result it is not providing any comments on the government's report with respect to Northern Ireland.

1.5 Wales

Our major concerns regarding Wales are:

- The Welsh Assembly Government's Race Equality Scheme
- A technical point: Page 13, paragraph 42 of the UK Governments second report (Article 4)
- Local Government BME Housing Strategies (Article 4)
- Gypsy and Traveller Issues (Article 4)
- Local Authorities (Art 15)

One indirect concern is:

- Welsh Language (Art 5 and 9)

The Welsh Assembly Government's Race Equality Scheme

The Welsh Assembly Government is committed to producing a single Equality Scheme in 2008. CRE's main concerns in respect to this commitment include:

Operational Ability to Deliver

The Welsh Assembly Government will need to make significant progress to achieve a Single Equality Scheme in 2008, which fulfils the legislative requirements of the race, gender and disability duties. Despite stated and clearly well intended commitments made by the senior management of the Welsh Assembly Government, civil servants have not as yet; found a way to successfully fulfil these commitments.

Therefore, whilst the commitment is being made at a strategic level within the Welsh Assembly Government this commitment is not being sufficiently translated to enable civil servants to produce tangible race equality outcomes through the ongoing operation of the Assembly Government.

Race Equality Impact Assessments

There has been an identified need to establish a robust impact assessment toolkit by the Welsh Assembly Government. This need has been recognised as a strategic priority by senior management within the Assembly Government. However, as explained above the transition of this strategic commitment to implementing a system which produces effective outcomes has been slow. It appears to be the result of a misunderstanding of the demands of the impact assessment process by civil servants chosen to deliver on this agenda. CRE Wales recognises and welcomes the commitment of senior management to implement successful and robust impact assessment initiatives but we believe that the Assembly Government need to adopt a more realistic and achievable response through building knowledge and capacity of this process.

CRE Wales has welcomed the opportunity to engage with the Welsh Assembly Government on this agenda, as the implementation of a robust impact assessment process is imperative to the creation successful race equality outcomes.

Page 13 Para 42, Wales, Promotion of Equality (Article 4)

Sections 48 and 120 of the Government of Wales Act 1998 have now been replaced by sections 35 and 77 respectively of the Government of Wales Act 2006. The wording of the new text represents a major step forward for the Assembly. Section 35(1) broadens the scope of section 48, through requiring the Assembly to have due regard to the principle of Equal Opportunities in all Assembly proceedings as opposed to merely requiring that "its business is conducted with due regard to the principle that there should be equality of opportunity for all people", as required by section 48.

Similarly, section 77 is more empowering than section 120, by committing Welsh Ministers to promote equality in carrying out their functions rather than the Assembly[6].

Local Government BME Housing Strategies (Article 4)

In 2002 the Welsh Assembly Government launched the BME Housing strategy Action Plan for Wales. One of the main priorities for social landlords since April 2004 has been the requirement to have an individual Black and Minority Ethnic (BME) housing strategy or to be a partner in a regional BME housing Strategy.

Local Authorities in Wales are required to prepare, agree and publish Local housing Strategies that incorporate BME Housing Strategies during the first half of 2007. They are assisted in this by the requirement of Local Market Housing assessments (LMHA) and guidance by the Welsh Assembly published in October 2006. In the same month, new statutory Code of Practice on Racial Equality in Housing came into force.

CRE Wales undertook an evaluation project to ascertain the progress made in respect to these Local housing Strategies[7]. The findings of this evaluation project are concerning, they include;

- Local Authorities in Wales have achieved few, if any at all, positive steps towards BME Housing Strategies being mainstreamed, monitored and assessed within organisations.
- Very few Local Authorities are making significant steps forward in any of the areas discussed that might produce progress toward their responsibilities under the RRA.
- Rural/urban areas in Wales may, and in a lot of circumstances will, require different approaches and practice in within housing services.

The Welsh Assembly Government Minister for Social Justice and Regeneration stated in the introduction of the Welsh Assembly Government Guidance for Housing Strategies, "The review of local housing strategies demonstrated that whilst all local authorities had developed BME Housing Strategies, very few had demonstrated how race equality issues had been mainstreamed within wider housing policy." The evidence within the

[6] Full text of the Government of Wales Act 2006 available at, http://www.opsi.gov.uk/ACTS/acts2006/20060032.htm

[7] Local Authority BME Housing Strategies in Wales: A report from CRE Wales, February 2007, available at http://www.cre.gov.uk/Wales/200702%20BME%20Housing%20Report%20English.doc

CRE Wales report shows that race equality issues are still not being mainstreamed within wider housing policy. This raises concerns in relation to the new Local Housing Strategies.

Gypsy and Traveller Issues (Article 4)

The National Assembly for Wales' Equality of Opportunity Committee took up the Gypsy and Traveller issue in 2003, the scrutiny of this issue resulted in a review into the service provision of health, education and accommodation issues. The resulting identified weaknesses have mandated government action, which is driving some important advances in public policy in relation to Gypsy and Travellers.

The key difference between approach in Wales and elsewhere is the commitment that has eventually (and so far) been taken on by the Assembly - both in terms of follow up to and the launch of it's response to the Pat Niner Report[8], on the Accommodation Needs of Gypsy-Travellers in Wales that they commissioned on site provision.

The Assembly Gypsy and Traveller Unit, set up by the Welsh Assembly Government in January 2007, will provide a significant strategic instrument for pursuing Local Authorities in terms of progress (or lack of) in addressing these issues. However, a current concern in Wales is that as the Assembly has only made some additional funding available for site refurbishment, there is no new funding available towards the creation of new sites - whether permanent or Transit.

Whilst in North Wales the North Wales Police Authority is pressing for greater site provision, and for more strategic working between the Local Authorities of North Wales. A further challenge for Wales is the lack of any established and active representative organisations for Travellers or Gypsies. In common with many other minorities in Wales - this community is dispersed and diverse.

Local Authorities (Article 15)

The work of Local Authorities in respect to their Race Equality Duty has been of ongoing concern for CRE Wales. Since 2002 Local Authorities in Wales have been required to produce a Race Equality Scheme to fulfil its public duty under the RRA.

Growing concerns have been express by CRE Wales that Local Authorities have been failing to show due regard to the race equality practice in creating and implementing proportionate realistic and achievable Race Equality Schemes. Local Authorities in Wales have been historically slow in getting schemes into place. Further some authorities prepared elaborate schemes which are too concentrated on process and fail to focus properly in prioritised outcomes. Consequently, it is important that authorities set achievable actions that affect the workings of the authority and bring improved race equality outcomes for the local authority area.

CRE Wales is currently engaged in a sector-wide research and evaluation project to discern the state of progress in respect to the race equality practice of Local Authorities.

[8] available at http://www.wales.gov.uk/documents/cms/2/EqualityOfOpportunityCommittee/37D6B01D000A0FB60000125300000000/28371f576e2f4bbf2928e47a3aac2953.pdf

As part of its regulatory function CRE Wales, in concluding this project, will produce a report detailing the current state of Race Equality Schemes of local authorities in Wales and disseminate this information.

The UK government's assertions that all public bodies are committed to promoting equality and diversity and demonstrate this commitment through producing a Race Equality Scheme and through fulfilling their General duty[9], it is not demonstrated in a robust manner in the ongoing work of Local Authorities in Wales to date. Greater knowledge of the state of affairs of Welsh Local Authorities will be known at the conclusion of this project.

Welsh Language (Art 5 and 9)

The provision for Welsh Language as stipulated under the Welsh Language Act 1993 has only indirect concern for CRE Wales. Simply stated the terms of CRE Wales operational mandate does not directly cover language. However, CRE Wales may be engaged on matters of Welsh language on an indirect discrimination basis, on grounds of national origin. Whilst CRE Wales has not been actively engaged in this issue, we welcome the promotion of the Welsh language as a key aspect of diversity and its role in creating a confident identity that is being formed as Wales seeks to become truly bilingual.

The main authority for the regulation, promotion and facilitation of the use of Welsh Language is the Welsh Language Board. The Welsh Language Board is a statutory organisation, funded by the National Assembly for Wales. It was established in December 1993 under the terms of the Welsh Language Act.

The Board seeks to work in partnership with public sector bodies, private businesses and voluntary organisations, offering advice and resources to help service providers in Wales to give a natural choice of language to their customers. Subsequently, the main point of contract for inquiries regarding language should be address to the Welsh Language Board.

[9] Page 86, Para 398, "The United Kingdom's Second Report to the Council of Europe Under the Framework Convention for the Protection of National Minorities", Department for Communities and Local Government.

2. Practical arrangements made at national level for following up the results of the first monitoring cycle on the implementation of the Framework Decision

The draft report does not in our view provide sufficient information on this issue. The Advisory Committee's Outline for State Reports states that the report should follow its outline. Under the section on practical arrangements the following supplementary information is requested:

"a. please indicate the follow-up activities organised at national, regional and local level, the persons and authorities implicated, the conclusions adopted and their dissemination to interested parties (including publication, where appropriate);

b. please indicate what steps have been taken to publicise the results of the first monitoring cycle, as well as the impact of these steps: publication, dissemination, translation of the relevant documents (opinion, State comments, resolution) into the official language(s) and the minority languages where appropriate (including measures to promote awareness of the Framework Convention);

c. please indicate the steps taken and the outcome of these steps, in order to improve participation by members of civil society in the process of implementing the Framework Convention at the national level (including the means used to increase the level of information, consultation and participation of members of civil society in the different stages of the Framework Convention monitoring procedure);

d. please indicate what steps have been taken to continue the dialogue in progress with the Advisory Committee, including those taken to keep it regularly informed of any action taken in response to the results of the first monitoring cycle (see section 3 of the country relevant Resolution adopted by the Committee of Ministers). Please also indicate the outcome of these steps."

The draft report has given no indication of what steps (if any) it has taken under (a) or (b) above to follow up the results of the first cycle, for example by publicising the results and promoting the awareness of the Framework Convention. In our view it is important that the government indicate what steps it is taking at local and regional levels to implement Advisory Committee's recommendations regarding the previous report and to promote awareness of the Convention, not only amongst public authorities but also the general public. Without such information it is not possible to access whether the government is actually applying recommendations and whether the Convention is making a practical difference to peoples' lives.

3. Measures taken to improve implementation of the Framework Convention in response to the Resolution adopted by the Committee of Ministers in respect of the United Kingdom

ARTICLE 1

The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation.

3.1 Non-signature and ratification of Optional Protocol 12 of the ECHR

The CRE welcomes the work of the government in relation to international conventions on human rights, including the incorporation of the European Convention on Human Rights (ECHR) by the enactment of the Human Rights Act in 1998.

However, in relation to discrimination specifically, the CRE notes that the government has failed to sign and ratify Optional Protocol 12 to the ECHR which provides a free-standing right to non-discrimination:

> *"1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*
> *2 No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."*

Optional Protocol 12 is intended to rectify the defect of article 14 (which only prohibited such discrimination in the enjoyment of other Convention rights) and also provide express protection from discrimination by public authorities. The Protocol entered into force 1 April 2004 and has (as of November 2006) been ratified by 14 Member States of the Council of Europe.

The government's reasons for refusing to sign and ratify the Optional Protocol has been stated in evidence to the UK parliamentary Joint Committee on Human Rights:

"…the government states that whilst it agrees in principle that the ECHR should contain a free-standing guarantee of non-discrimination, it considers that the text of Protocol 12 contains "unacceptable uncertainties", in particular—

- *The potential application of the Protocol is too wide, since it covers any difference in treatment, applies to all "rights set forth by law" in both statute and common law and could therefore lead to an "explosion of litigation";*
- *"Rights set forth by law" may extend to obligations under other international human rights instruments to which the UK is a party;*
- *It is unclear, pending decisions by the ECtHR, whether the protocol permits a defence of objective and reasonable justification of a difference in treatment, as applies under Article 14 ECHR."*[10]

[10] Joint Committee on Human Rights, Seventeenth Report, session 2004-05, paragraph 31

The position of the CRE is that the government should sign and ratify the Optional Protocol and agrees with the reasoning of the Joint Committee on Human Rights that:

- the rights enshrined in Protocol 12 are rights which the government has accepted through its international commitments to human rights instruments such as ICERD, ICCPR and ICESR;
- the European Court of Human Rights would be likely to apply the new Protocol in accordance with the settled principles of Strasbourg jurisprudence, including the principle of objective and reasonable justification of discriminatory treatment.[11]

The signature and ratification of the Optional Protocol would also be in furtherance of its commitment to protect national minorities under the Framework Convention for Protecting National Minorities as it provides specific reference to grounds such as language, and association with a national minority.

ARTICLE 2

The provisions of this framework Convention shall be applied in good faith, in a spirit of understanding and tolerance and in conformity with the principles of good neighbourliness, friendly relations and co-operation between States.

ARTICLE 3

1 Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.

2 Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.

3.2 The meaning of national minorities

When the Convention was drafted in 1994 no specific definition of “national minorities” was included as agreement could not be reached between all Member States and it was decided that it was appropriate for individual states to interpret their own domestic situations in defining such groups.

The provisions of the Convention do however provide indicators or what are relevant considerations:

- a common religion, language, traditions and cultural heritage: article 5;
- an geographical area traditionally inhabited by the group or in substantial numbers: article 10(2);
- self-identification as a national minority: article 3(1)

The UK government first report
In its first report in July 1999 on the measures it had taken to fulfill its obligations under the convention, the government stated (para 45) that as the UK had no legal definition of

[11] Ibid paragraph 34.

the term “national minority”, it had decided to use the definition of a “racial group” set out in the Race Relations Act 1976 (RRA 76). It stated that case law defined the Scots, Irish and Welsh as being racial groups under the RRA 76 by virtue of their national origins. However, the UK report made clear that, while the UK Government had received various representations seeking recognition of the Cornish as a national minority, it did not consider them to constitute one as they had not been recognised in any case law as a racial group.

The Council of Europe Advisory Committee Report
The Advisory Committee on the Framework Convention, in its opinion on the UK Report adopted on 30 November 2001, considered that there was “scope for covering further groups within the scope of the framework convention”, mentioning the Cornish and religious groups, such as Muslims, in particular. It found that “it would be possible to consider the inclusion of persons belonging to these groups in the application of the Framework Convention on an article-by-article basis”. It took the view that the UK Government should consider this, in consultation with those concerned.

In particular the committee stated:

“11. The Advisory Committee underlines that in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country. The position of the United Kingdom is therefore deemed to be the outcome of this examination.

12. Whereas the Advisory Committee notes on the one hand that Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, it notes on the other hand that this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, it stresses that the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.

13. For this reason the Advisory Committee considers that it is part of its duty to examine the personal scope given to the implementation of the Framework Convention in order to verify that no arbitrary or unjustified distinctions have been made. Furthermore, it considers that it must verify the proper application of the fundamental principles set out in Article 3.

14. The Advisory Committee strongly welcomes the inclusive approach of the United Kingdom in its interpretation of the term “national minority”. The Advisory Committee notes that the term “national minority” is not a legally defined term within the United Kingdom, but that the State Report is based on the broad “conventional” definition of “racial group” as set out in the Race Relations Act (1976). Under this Act “racial group” is defined as “a group of persons defined by colour, race, nationality (including citizenship) or ethnic or national origin”. This includes the ethnic minority communities. The Courts have furthermore interpreted the term and found it to include the Scots, Irish and Welsh by virtue of their national origin. On a case-by-case basis the Courts have also included Roma / Gypsies as well as Irish Travellers (also defined as a racial group for the purposes of the Race Relations (Northern Ireland) Order (1997)), Sikhs and Jews.

15. The Advisory Committee notes that the Courts have the possibility of defining which groups amount to a “racial group” under the Race Relations Act (1976). The Advisory

Committee however notes that there are certain groups that have not (or not yet) been included within the definition while others have and that this may raise issues of inequalities between groups. In this respect it is noted in particular that Jews and Sikhs have been so included, while Muslims and other religious groups have not.

16. The Advisory Committee notes that the Government does not consider the people of Cornwall to constitute a national minority. The Advisory Committee however notes that a number of persons living in Cornwall consider themselves to be a national minority within the scope of the Framework Convention. In this, the Advisory Committee has received substantial information from them as to their Celtic identity, specific history, distinct language and culture.

17. Notwithstanding that the Courts have an important role to play through defining a "racial group" under the Race Relations Act (1976), the Advisory Committee considers that there remains scope for covering further groups within the scope of the Framework Convention. The Advisory Committee is of the opinion that it would be possible to consider the inclusion of persons belonging to these groups in the application of the Framework Convention on an article-by-article basis and takes the view that the United Kingdom authorities should consider this issue in consultation with those concerned."

The position of the UK government in its second report

The government stated that it noted the Advisory Committee's suggestion for an extension of the Framework Decision's application on an article-by-article basis, but that they had provided no practical advice on how this could be done. Although consulting with Cornish groups on the issue, the government has decided to maintain its interpretation based on racial groups under the RRA and therefore does not consider the Cornish or other groups such as Muslims to be national minorities.

The CRE position

There are a number of reasons why the CRE considers at the interpretation of the government as to what constitutes a national minority is not appropriate and too narrow:

a) as the Advisory Group stated in its opinion, Member States should take a broad approach in interpreting national minorities without any arbitrary or unjustified distinctions, and specifically take into consideration article 3 which emphasizes the importance a group identifying themselves as a national minority.

b) applying the criteria that a group must have been recognised in a court as a racial group under the RRA to qualify as a national minority ignores the fact that the RRA and Convention are completely different types of instruments. The RRA is a domestic Act of the UK parliament that provides individuals with directly enforceable rights in courts. As a result, in order to determine liability in a claim of racial discrimination it must be determined first whether a group constitutes a racial group. Whereas the Convention as an agreement entered into by the UK government which has not been incorporated into domestic law (unlike the incorporation of the European Convention of Human Rights by the Human Rights Act) and does not provide individuals with directly enforceable rights.

The focus on having to have had the group recognised as a racial group by case law is unnecessarily narrow approach and not in accordance with the purposes of the Convention.

c) the fact that the UK government states that a group must have been recognised in case law as a "racial group" is also arbitrary.

For example, at the time of the first report of the UK government, Irish Travellers had not been recognised as a racial group, but they have since. Similarly, Scottish Travellers have not yet in law been recognised as a racial group but it is likely they would be on the same criteria of ethnic origin of Gypsies and Irish Travellers and the CRE considers that the government should treat them as a racial group for the purposes of the provision of public services and the race equality duty (see the section on Scottish Gypsies and Travellers in the section on article 4).

d) The RRA criterion used by the Government may not have been applied consistently, in that reference is made in the first UK report to Gaels and Ulster Scots[12] (not just in terms of languages but as groups of people), and we are not aware of any case law which legally recognises them as racial groups for the purposes of the RRA.

e) The application of the RRA criterion specifically excludes Muslims as a national minority given they are not a racial but a religious group, which was recognised by the Advisory Group. The 2001 census identified over one and half million people in England and Wales as Muslims.

Comprehensive legislation has been introduced since its first report to outlaw religious discrimination in employment, and other sectors such as the provision of goods and services, education, housing, as well as for incitement to religious hatred.[13] This indicates that the government recognised the gap in protection and discrimination faced by religious groups, many of which may also constitute ethnic minorities, such as Asian Muslims. It is clear that Muslims over the last five years have increasingly faced some of the most serious levels of discrimination and prejudice, which has been manifested religiously aggravated attacks, stop and search practices, as well as treatment in the media.

The Convention also in a number of the articles refers specifically to protecting religious identities which may indicate an intention to protect religious groups.

Further, an inconsistency is created by the government's approach since Jews and Sikhs are considered national minorities by reason of them having been recognised as racial groups, but Muslims are not.

The position of the CRE is therefore that in relation to the meaning of "national minorities" the government should take a broader approach than only using the criteria of a racial group that has been recognised in case law and should reconsider its position on groups such as the Cornish and Muslims.

[12] see paragraphs 154, 156 and 159 of the first UK government report.
[13] Expected to come into force in April 2007

3.3 Census categories for 2011

In 2006 the CRE submitted a detailed submission to the Office for National Statistics on its consultation regarding proposed categories of ethnic minorities in the 2011 census. The concerns regarding Gypsies and Travellers are detailed in the section on article 4.

Our main concerns on other issues were:

Migrants from Central and Eastern Europe

- there have been recent and sudden increases in immigrants from Eastern and Central Europe (the A8 countries of Latvia, Lithuania, Estonia, the Czech Republic, Slovakia, Slovenia, Poland and Hungary) since those countries joined the EU in 2004, leading to increasing demands on service provision. Some local authorities are particularly concerned that inadequate population estimates have lead to insufficient central funds to meet service demands (which may in turn motivate hostility). We also have concerns that any disadvantage experienced by these groups may not be addressed adequately because of a failure by some public bodies to recognise that ethnic minorities can be White or that race equality policies need to meet the need of all ethnic groups (and not just visible ethnic minorities).

- currently the proposed "White Other" category would not capture the numbers of people from such countries. Although the CRE does not believe there is a currently an obvious, practical way to capture these communities through an ethnicity question (although a new language question may go some way to address the issue of service delivery) we urged the ONS, in partnership with departments delivering policy to give further thought about how best to capture the characteristics of these groups, either through the census or by other means.

Black Africans

- the proposed category of "Black African" in England and Wales is too broad and the CRE recommended that ONS consider expanding the category. A possible set of proposed categories are suggested in the recent Scottish Executive consultation on the 2011 census with a regional breakdown using these categories seems to be the most suitable method for understanding the diversity better. They are the same regional categories used by African Union and UN so likely to be widely understood.

National Identity

- the CRE supports the introduction of a new separate question on national identity for example enabling distinctions between English, Welsh and Scottish.

Languages spoken

- the CRE supports continuation of a question on Welsh language proficiency and new questions being introduced on ability to speak English and other languages to help access integration of ethnic minorities and disadvantage.

ARTICLE 4

1 The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.

2 The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.

3 The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.

3.4 Discrimination

i) Cases before the courts and access to justice

The figures for racial discrimination claims in Employment Tribunals (which have jurisdiction over employment claims) over the last three years has been low (3492, 3317, 4103) which represent on average only about 3% of total claims.[14] And of the racial discrimination claims made in 2005/06 only 3% of those we successful although 31% we successfully conciliated at the Advisory Conciliation and Arbitration Service (ACAS).

For non-employment claims that must be brought in county courts we do not have figures on racial discrimination claims as they do not indicate claims by type. However we do not believe there to be many claims per year and likely to be substantially fewer that employment tribunal claims. The 'Hepple' review into UK anti-discrimination of 2000 noted that between 1977-1989 the average number of race cases lodged in the former designated courts was 24 per year. This average may have been further affected by the post-CPR requirement that the particulars of a non-employment discrimination claim must be spelt out in some detail at an early stage, a requirement that is likely to impact disproportionately on under or unrepresented claimants.[15]

A number of developments during the last five years means that it is increasingly difficult for persons who believe they have been racially discriminated against to obtain access to justice:

- in relation to funding, there is no pre-appeal stage public funding available from the Legal Services Commission for discrimination complaints in employment[16], and whilst theoretically available for non-employment litigation, costs are more likely to be awarded against unsuccessful claimants, than is the case in employment discrimination matters. This probably acts as a disincentive to potential claimants to the County / Sheriff Courts.

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[14] http://www.employmenttribunals.gov.uk/publications/documents/annual_reports/ETSAR05-06.pdf

[15] See p.120 of Hepple, B., QC, Coussey, M., & Choudhury, T., (2000) Equality: a new framework. Report of the independent review of the enforcement of UK anti-discrimination legislation' (Hart Publishing: Oxford)

[16] Legal help is available for certain employment discrimination matters in Scotland. See p.302 of McColgan, A., (2005) 'Discrimination Law: Texts, Cases and Materials' (Hart Publishing: Oxford)

- the Community Legal Service within the Legal Services Commission is responsible for distributing monies to organisations and claimants that are, respectively, advising on or pursuing civil actions. The CRE has in the past expressed its concern that no express directions have been made by the Secretary of State thus far that discrimination cases (as a distinct category in employment and non-employment) should attract legal funding;

- all the statutory equality commissions (CRE, DRC and the EOC) have over the last few years taken an increasingly strategic approach to supporting cases only where the case tests an area of law or will affect a large number of people. This has meant that far fewer cases have received full representation by the CRE in the last few years.[17]

- the powers under the Equality Act 2006 of the CEHR to provide assistance to individuals will be more discretionary than under the Race Relations Act so there is a question mark currently about how much assistance will be provided to individuals in the new organization;

- there are currently insufficient numbers of other organisations whether in the private or voluntary sectors, that have the resources or expertise to provide assistance to persons wanting to make a discrimination claim. For example, although some Citizens' Advice Bureaus provide advice in discrimination claims most currently don't have sufficient expertise or funding resources[18];

- there have also been proposals in the Carter review of procurement for legal aid funding that will affect discrimination claims: firstly the proposal to cease Level 1 funding work from April 2007 which is a cost effective way to provide initial advice to employees, and secondly, the fixed fee proposal by the Legal Services Commission/ Department of Constitutional Affairs which fails to take into account the complexity of employment/ discrimination claims[19].

ii) Legal Developments and the Discrimination Law Review

The CRE very much welcomed the Government's decision to initiate a Discrimination Law Review in February 2005. Over the past two years the CRE has been regularly involved in the review process to ensure that the proposals for a new Single Equality Act (SEA) in Britain include, amongst other things, effective protections and measures for national minorities.

The CRE has for a number of years campaigned for the inconsistencies and uneven standards with Britain's various anti-discrimination legislation to be rectified. The DLR is

[17] See CRE annual report 2005, page 22 Table 2: only 1 case in received full representation for Jan-Dec 2004 and only 3 cases received full representation from Jan-Dec 2005: http://www.cre.gov.uk/downloads/ar05_main.pdf

[18] "Challenging Discrimination: a challenge for Citizens Advice Service", Barbara Cohen and the 1990 Trust, January 2006.

[19] North Kensington Law Centre Annual Review 2005/06, page 8-9.

a welcome step in the right direction, and we fully hope and expect that Britain will ultimately have a new, and hopefully also a clear and powerful, Single Equality Act by 2009. We anticipate that the government will release its Green or White Paper the UK Government's planned public consultation (outlining the proposed contents of the SEA) in the next month or two.

The CRE's work thus far has involved:

- In April 2006 submission of a detailed set of ideas & suggestions for the content of the Green Paper on a Single Equality Act for Britain.

- Since late 2005 having regular meetings with the DLR team on a range of issues that relate to the future content of a SEA (see below for an outline of these matters).

- From November 2006 finalisation and continued development of a range of CRE positions on matters relating to the scope & content of a new SEA in Britain (again see below for details of these positions).

- Continued consultation work with colleagues and external partners on the above ideas, suggestions, and developing / finalised positions for a future SEA. This work will accelerate in the coming months and will very much inform what we hope to be a detailed & authoritative response to the Government's Green Paper on this SEA.

- Passing over the CRE's position on a future SEA to our replacement body, the Commission for Equality & Human Rights (the CEHR), with effect from October 2007. The CEHR should be in a perfect position to advocate effectively for a clear, holistic, consistent and genuinely effective SEA for Britain.

Our priorities for the content of the new SEA include:

- An expressly principled SEA that is clear and accessible to individuals, as well as containing good powers for the enforcement of non-discrimination rights and of equality standards generally.

- Clear and wide protections against unfair discriminatory treatment – including against newly unlawful multiple discrimination & multiple harassment. We recommend that protection against unfair discrimination & harassment is widened to include not only claims on the traditional grounds of race, sex, disability etc., but also to enable victims to get redress for the reality of multiple discrimination and / or harassment, such may be suffered by Black Women, or children from Gypsy & Traveller communities.

- Powerful equality duties on that require practical action, good equality outcomes, including in and through the important sphere of public procurement. In particular on procurement we wish to see incorporated into the equality duty separate

requirements concerning equality that relate to the various stages of procurement and procurement contracts.

New equality obligations must build upon the strengths and shed the weaknesses of the existing Race & Disability, and forthcoming Gender Equality Duties.

- Flexible, broad & powerful arrangements in a SEA for positive measures that seek to eliminate or lessen historic race-based disadvantage. This should include, where appropriate, relevant positive action measures.

- Strong enforcement arrangements for bodies such as the CEHR to use when they are addressing or upholding good non-discrimination & equality practice. These should enable enforcement action to take both soft and hard forms, ranging from general inquiries into problem areas and mediation in individual cases at one end of the spectrum, to investigations with binding recommendations, action plans and general court action at the other end.

- Appropriate, effective & genuinely dissuasive sanctions and remedies in all cases litigated under the SEA. Victims of unlawful discrimination and / or harassment in one, or a combination of the key grounds of race, sex, disability, sexual orientation, religion or belief, and age should be compensated appropriately and sanctions should as far as possible be preventative that is to lessen the likelihood of repetitive discrimination & harassment.

We have concerns, nonetheless that the Government's consultation will not give any, or adequate attention to at least three important issues for a SEA in Britain. These are:

- Practical access to justice through a new SEA for victims of unlawful discrimination or harassment. This should entail genuine access, locally & nationally, to informed advice on the merits or weaknesses in the complaints, as distinct from the necessary but not sufficient advice facilities of telephone helplines and websites. This 'gap' is especially problematic as the SEA will cover an unprecedented range of non-discrimination matters, spanning many grounds.

- Provision for 'class-type' actions to secure appropriately broad protection for named & unnamed groups of persons suffering unlawful discriminatory treatment. Whilst it is recognised that there is some limited provision for group litigation in existing Employment Tribunal Regulations & Civil Procedure Rules, we regard it appropriate that the Green Paper invites comments on the sufficiency or not of these existing provisions.

- Finally, we are concerned that the Government's consultation will not sufficiently consider the relationship between equality duties and the private sector. The latter is the employer of the vast majority of Britain workers, and unfortunately is also an arena of unlawful discrimination and harassment. It is also important as public authorities are increasing entering into procurement contracts whereby private sector companies supply goods, facilities and services. We are concerned that the government will not include in its consultation whether there is the need

for specific duties relating to public procurement and the private sector when they enter into such contractual arrangements.

In relation to criminal law, we welcomed the Racial and Religious Hated Act 2006 which introduced a new offence of incitement to religious hatred (which is expected to become operational in Spring 2007). However we are concerned this law only applies to England and Wales and there is no protection from incitement to religious hatred in Scotland which in our view the Scottish government should rectify by introducing appropriate legislation.

3.5 Equalities Review

The Equalities Review released its final report on 28 February 2007.[20] The review considered the underlying causes of continuing inequality in Britain, makes practical recommendations to reduce those inequalities in order to inform the modernisation of equality legislation and the development of the Commission for Equality and Human Rights. The CRE made submissions to the review's consultation in 2006.

The report indicates that with a rapidly changing British society as a result of globalisation, migration, and internal demographic changes, the numbers of persons from ethnic minorities is increasing and new methods are required to tackle inequalities.[21]

The final report highlights that persistent inequalities exist in relation to ethnic minorities, gender, and disability, often resulting in multiple disadvantage and across areas of education, employment, health and criminal justice. A number of specific recommendations were made in that respect. The ones relating to ethnic minorities were:

- narrow gaps in school-age educational attainment for ethnic minority pupils, including a focus on gaps in the primary phase;
- reduce disproportionate exclusions for ethnic minority pupils and pupils with special educational needs, including in England milestones on implementation of the priority review of Black exclusions;
- narrow employment gaps between ethnic minorities and the working age population, including a particular focus on Pakistani and Bangladeshi women;
- reduce disproportionality in the criminal justice system including a cross-Government strategy to address the wider factors that contribute to the rates of offending among young Black men;
- tackle the under-representation of particular groups in the judiciary.[22]

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[20] http://www.theequalitiesreview.org.uk/upload/assets/www.theequalitiesreview.org.uk/equality_review.pdf

[21] See Chapter 2 Equalities Review Final Report.

[22] See p 86 Final Report

The report also makes recommendations on ten steps to achieve greater equality:

1: Defining equality: using the definition proposed in the report;

2: Building a consensus on equality

3: Measuring progress towards equality: having all public bodies using the same framework, agreeing priorities, setting targets and evaluating progress

4: Transparency about progress: all sectors publishing more information on their performance on equality

5: Targeted action on persistent inequalities: this includes proposing greater use of positive action measures and tackling prejudice

6: A simpler legal framework

7: More accountability for delivering equality: this includes recommendations to establish an Equalities Select Committee in parliament to review equalities issues, making equality a part of each public sector organization's performance management framework to create greater leadership on equality issues, and that media take greater accountability by the Press Complaints Commission reviewing its complaints mechanism

8: Using public procurement and commissioning positively: three suggestions were made that the public sector equality duty should specifically require public authorities to use procurement as a tool to achieve greater equality; that the private suppliers would be required to adopt the same specific equality duties as the public authorities, and that the private suppliers would be required to monitor the equality needs of groups to which the goods or services are provided

9: Enabling and supporting organisations in all sectors: specifically the simplification and broadening of the law on positive action is recommended and further use of positive action

10: A more sophisticated enforcement regime.[23]

3.6 Human Rights Commissions

England and Wales

The CRE welcomes the government's decision to establish the CEHR which will be the first governmental body with responsibility for promoting the understanding and protection of human rights in Great Britain. This is a long overdue step given that the Human Rights Act came into force in 1998 and that the government at that time indicated its intention in enacting the HRA was not merely that it be a technical

[23] see Chapter 5, Equalities Review Final Report.

instrument, but that it lead to the development of "a culture of human rights". It is also an important step given:

- comments last year by some politicians of the purported possible need to amend or even repeal the Human Rights Act or to withdraw from the European Convention of Human Rights in order to ensure greater public safety[24];
- recent misconceptions and myths concerning human rights within the general media and by some politicians[25].

The Department of Constitutional Affairs (which currently has responsibility for human rights issues within central government) was asked in May 2006 by the Prime Minister to conduct a review of the effectiveness of the HRA. It concluded that the Act was overall working effectively, that it did not require amendment but that the government should play a proactive role in myth-busting and explaining to the public of how the Act can benefit the general public in practical ways. [26]

It is hoped that the CEHR will play vital role in such proactive work. In addition, by linking work on human rights and equality issues across six strands of race, religion, gender, sexual orientation, disability and age, it is hoped that the new body will by able to advance often interrelated work on human rights and equality as well as cross strand issues such as multiple discrimination.

Scotland

The Scottish Commission for Human Rights Bill creating the Scottish Commission for Human Rights completed its passage through the Scottish Parliament on 2 November 2006. The Commission is yet to commence but we understand that it is intended to commence operating at about the same time as the CEHR, but may commence later given parliamentary elections in Scotland in May 2007.

In Scotland, the Commission for Racial Equality together with the Equal Opportunities Commission and the Disability Rights Commission have strongly welcomed the new body but have been jointly lobbying about our concerns that the powers it has been given are not sufficient. The three Commissions have argued that in relation to devolved issues and human rights the Scottish Commission for Human Rights should at least have parity of powers with the CEHR.

The CEHR cannot take human rights action in Scotland in relation to devolved matters unless it has the consent of the Scottish Commission for Human Rights. The vast majority of human rights issues that may arise in Scotland, seem likely to arise in relation to matters devolved to the Scottish Parliament rather than in relation to reserved matters, which the CEHR has the power to deal with as it does in England and Wales. For example, justice, the courts, the police, prisons, health, education and local government are all devolved to the Scottish Parliament and so the CEHR will not be able to take

[24] See Joint Committee on Human Rights 32nd report of session 2005-06, The Human Rights Act: the DCA and Home Office Reviews, page 8
[25] Ibid at paragraphs 67-72
[26] DCA, Review of the Implementation of the Human Rights Act, July 2006, page 42

human rights action in Scotland in relation to these issues unless it has the consent of the Scottish Commission for Human Rights.

Despite the efforts of those who have lobbied for more extensive powers for the Scottish Commission for Human Rights, these issues have not been resolved. The "Scotland-shaped hole" which was carved out of the Equality Act in relation to human rights has not been filled by the human rights body created by the Scottish Parliament.

The Scottish Commission for Human Rights will, in some important respects, have lesser powers than the CEHR. In particular, unlike the CEHR it does not have:

- a duty to protect human rights;
- the power, except in very limited circumstances, to conduct inquiries into individual public authorities (unless it extends the inquiry to all such public authorities);
- the power to support or give advice to assist individuals in claims or legal proceedings; and
- powers to instigate judicial review proceedings in its own name to ensure compliance with human rights obligations.

The Scottish Commission for Human Rights will however have the power to grant consent to the CEHR to take action in the areas it does not have the power to take action itself. This could create odd outcomes, particularly since the Scottish Commission for Human Rights is accountable to the Scottish Parliament. The CEHR, is not accountable to the Scottish Parliament and there have been concerns voiced there and elsewhere about the CEHR taking human rights action in Scotland in relation to devolved issues, in a manner that the Scottish Parliament has expressly rejected for the Scottish Commission For Human Rights.

Discussions are believed to be underway in relation to how the CEHR and the Scottish Commission for Human Rights will work together. Whilst it would always have been desirable for the CEHR and the Scottish Commission for Human Rights to work closely with each other, not least to reduce the likely confusion in the minds of the public who seek assistance with human rights issues, the lesser powers that have been given to the Scottish Commission for Human Rights now make that close working essential. It is to be hoped that detailed arrangements will be put in place at the earliest opportunity setting out how the two human rights bodies will work together. Such arrangements would appear to be very important if there is to be successful monitoring, protection and promotion of human rights in Scotland and parity, as far as is possible, between Scotland and England and Wales on this important issue.

3.7 Promotion of equality

<u>The Race Equality Duty</u>
The Race Relations (Amendment) Act 2000 created a positive duty on most public authorities in Great Britain to promote racial equality by having "due regard" to the need

to eliminate unlawful discrimination, promote equality of opportunity and good race relations in all their functions.

In July 2003 the CRE published the results of a survey of over 3500 public authorities which assessed the nature, extent, and quality of the response from public authorities to the statutory duty to promote race equality, six months after the specific duties became enforceable.[27] This found that implementation of the duty was very patchy and there was a general lack of understanding of the different elements of the duty.

Our main concerns with the duty over the last few years are that:

- the requirements under the duty are not action orientated. As a result, in many public authorities work under the duty is too process orientated. For example although most public authorities have produced Race Equality Schemes setting out the policies and functions they consider relevant to the performance of the duty, large numbers do not apply the scheme in a practical manner to improve their work regarding race equality;

- a number of public authorities are not properly conducting or failing to conduct race equality impact assessments to determine whether any new policy will have an adverse impact on race equality;

- as a result of the above factors the race equality duty is in many public authorities not actually mainstreamed into all the functions of public authorities. The results of the Police Services Formal Investigation (see section on article 6) and Common Ground Inquiry regarding local authorities' and Gypsies and Irish Travellers reflect this.

We also point out that in February 2007 the CRE announced that it is carrying out a formal investigation into the extent to which the Department of Health is failing to meet its duty to promote race equality under the Race Relations Act 1976. The CRE has on several occasions urged the Department of Health to address inequalities at all levels but found that Race Equality Impact Assessments (REIAs) were not satisfactorily being carried out on the Department's policies.

As the regulator of the Race Relations Act, the CRE is using its legal powers to investigate the Department's approach, attitude and commitment, by how it assesses the impact of race equality on its new policies.

3.8 The Private Sector

Ethnic Minority Employment Taskforce (EMETF)

The CRE is committed to working with government and key stakeholders to significantly reduce the 15% employment gap between ethnic minorities and their white counterparts.

[27] "Towards Racial Equality: an evaluation of the public duty to promote race equality and good race relations in England and Wales", CRE and Schneider Ross, July 2003.

The CRE has been a member of the EMETF since its inception in September 2003, and has played an active role in the taskforce to ensure it moves beyond well meaning words and aspirations, towards reducing the disproportionate barriers experienced by ethnic minorities in the labour market.

While progress has been made, the CRE has reservations about the effectiveness of the taskforce in driving change. The taskforce needs to be more sharply focused and adopt a more project orientated approach to its work.

Currently too much time is spent at taskforce meetings listening to reports and presentations from government departments and other stakeholders. Given the high level representation at the meetings this is not an effective use of time. More focus needs to be placed on outcomes, with the taskforce's primary role being a prompter of action and a monitor of progress to enable change to be delivered.

One of the priorities of the taskforce is procurement. The government currently spends over £120 billion on goods, works and services from the private sector. This provides a potentially powerful lever to influence suppliers to government to promote equality in the workplace, and send a message to employers more widely.

The taskforce is exploring different approaches to procurement in three pilots run by the Department for Work and Pensions, Home Office and Department for Education and Skills.

The CRE strongly supports the use of public procurement as a lever to promote race equality to the private sector and close the employment gap. As a result, we support the introduction on new specific elements of an equality duty which relate to procurement as part of the Single Equality Act (see section on DLR above). Research by the University of Bristol into the impact of positive action policies in the US and Canada found that the single most effective tool in terms of increasing the employment of women and minorities was the use of contract compliance in government contracts.[28]

The CRE is however disappointed with the slow progress that has been made with regards to the procurement pilots, and that certain government departments have not been able to find 'suitable' contracts.

The CRE's view is that race equality is relevant to every contract because a supplier's employment practices are relevant to government under their obligation to promote equality of opportunity and eliminate race discrimination.

[28] "Developing positive action policies: learning from the experiences of Europe and North America", Centre for the Study of Ethnicity and Citizenship, University of Bristol, on behalf of the Department for Work and Pensions, 2006.

Extension of the race equality duty to the private sector

The CRE does not currently support extending the positive duties placed on public authorities following the Race Relations (Amendment) Act 2000 to the private sector.[29] The legislation should only be extended to the private sector if the rationale exists.

One of the factors informing such a rationale is the extent to which it may be evidenced that the implementation of the race equality duty has led to significant changes within the public sector. The more it becomes possible to demonstrate this has been the case, the stronger becomes the case for extending positive duties to the private sector.

However, as outlined above, we believe that insufficient evidence of this exists at this stage to make the case for its extension to the private sector. Imposing additional legislation on the private sector at this time may result in the sector viewing such a duty as a burden, with equality and diversity viewed negatively, as opposed to a benefit to the business.

CRE's work on promoting racial equality in the private sector

Promoting the code of practice on racial equality in employment

The code of practice on racial equality in employment was published on 6 April 2006. The code was updated to reflect the current legislative framework as well as the modern working environment. It is a statutory instrument which requires courts to take its recommendations into account, if they are relevant, in cases brought under the Race Relations Act (RRA). The CRE cannot, however, take any action against organisations for not following its recommendations.

The code aims to give practical guidance to all employers regardless of size on how to meet their obligations under the RRA and related legislation.

The CRE has been actively encouraging employers to adopt better employment practices through the code of practice which gives advice on the whole process from recruitment to promotion. This has included promoting the code at events such as the CBI conference and TUC Black Workers Conference, to articles in the media and trade press.

Procurement

As mentioned above the CRE strongly supports the use of procurement to improve employment practices in the private sector. The CRE has published guidance on race equality for public authorities as, following the enactment of the Race Relations (Amendment) Act 2000, there had been little systematic use of public purchasing power to promote good practice in race equality.

The CRE will continue to work with government to develop practical contract terms to help promote race equality. We will use our role on the EMETF to ensure progress is made in the procurement pilots to build race equality conditions into government contracts, and that such conditions are an integral feature of all future contracts.

[29] Note this is a different issue from whether or not there should be separate public duties concerning procurement which will affect the private sector if the seek to enter into public procurement contracts.

The CRE is strongly supportive of building equality conditions into the 2012 Olympics contracts to ensure that ethnic minorities living in the five London boroughs hosting the Games will benefit from its legacy.

The CRE is also encouraging large companies to build race equality conditions into their business to business contracts so that change can be delivered through supply chains in the private sector.

Race for the Professional

Race for the Professional (RFTP) sets out to promote race equality in and through professional bodies by creating a network through which aspiration and expertise can be shared.

Admission to the network is dependant upon commitment to the following:

- Introduce ethnic monitoring according to best practice.
- Commitment to CRE input to one of their annual conferences (or equivalent) at an appropriately strategic point.
- Commitment to the production of guidance for their members in promoting race equality appropriate to their field.
- Commitment to diversity training for their staff.
- Development of an outreach strategy to attract and retain ethnic minority members.
- Embed diversity training in their qualification routes

The outcome from the project is that by 2013 entrance to the professions will be representative of society as a whole.

Professional bodies such as the Chartered Institute of Personnel and Development, the Law Society, the Chartered Institute of Purchasing and Supply, and the Institute of Charted Accounts are all members of the network.

Small and Medium Enterprises (SME) Engagement

SMEs employ over 50% of the private sector workforce and account for over 50% of turnover. Due to their very size (less than 250 employees) SMEs often lack a formal HR function. This is especially true for small or micro businesses, where often the owner-manager will be responsible for a multiplicity of functions within the business including HR, without possessing any formal qualifications or experience in this area.

Despite good intentions racial equality often comes a long way down the list of priorities for SMEs. A large percentage will not have formal equal opportunities policies or use equal opportunities forms when recruiting. Even where equal opportunities forms are used, the data gathered is often not monitored or measured, thus making the forms redundant. SMEs simply do not consider race equality to be important or particularly relevant to their business.

Although a plethora of information and advice exists for SMEs it is not always of use of relevant to their needs and interest. The language used, size and format of advice is often not tailored to SME needs. Case studies, although useful to contextualise the advice, are often taken from large companies, who SMEs cannot identify with. There is

also a bewildering array of central, regional and local agencies providing guidance, much of which is not properly marketed so many SMEs are not aware of its existence.

The CRE is working on a project to improve engagement with SMEs. While the CRE guide 'Race Equality and the Smaller Business' published in 2004 has been a useful starting point, more focus needs to be placed on how we work with smaller businesses. The project is designed to inform the work of the CEHR by ensuring it is able to serve the needs of small businesses when developing new advice and guidance.

Leadership

Improving diversity in leadership remains a persistent challenge. While improvements have been made in equality and diversity at senior level, progress is too slow, and most boardrooms are not reflective of the demography of the UK.

Research by Dr Val Singh of Cranfield School of Management "Report on Diversity of FTSE 100 Directors" 2004 illustrates that people from ethnic minorities are still under-represented in senior management and on the boards of UK FTSE 100 companies. The main finding of this study is that only 19 FTSE 100 companies have any directors with non-white ethnicity.

The lack of diversity at senior management level is of concern to the CRE as it indicates that the opportunity and ability to progress within organisations is being denied to ethnic minorities. Diversity in leadership is often key to driving improvements in racial equality throughout the organisation as a commitment is present from the top down.

As the CRE will dissolve at the end of September 2007 it does not have the budget or resources to undertake the work it hoped to in this area. For this reason the CRE recommends that the government (DWP / DCLG) take on this work to include:

1. Updating the Cranfield School of Management report on Diversity in FTSE 100 Directors. This will provide an accurate picture of where we are today, and how things have progressed since 2004.
2. Extending the FTSE 100 Cross Mentoring Scheme to include ethnic minorities. Its current focus is on improving the number of women at board level.

3.9 The role of positive action in promoting equality

The Government's report (from paragraph 51) sets out various measure to promote equality which may be considered in general terms as positive action measures in fields including employment, healthcare, and the ethnic minority voluntary and community sector. Some of the projects target ethnic minority groups specifically, while others benefit the entire community but would probably be more advantageous to some ethnic minority groups because of their particular positions within society[30].

[30] for example ethnic minorities are more likely to be unemployed disproportionately and measures to increase employment rates would indirectly benefit them

The Government fails however to discuss the legal framework for positive action measures in Great Britain which are intended to achieve, as article 4 indicates, "full and effective" or substantive equality rather than mere formal equality. The CRE believes that the narrowness of the current positive action provisions may actually be hampering achievement of full and effective equality.

Overview of positive action

The CRE considers positive action to be any lawful measure which is taken with the aim of promoting equality of opportunity – levelling the playing field – for all racial groups protected by the Race Relations Act. The type of measures envisaged by our definition include for example, having in place equality policies, equality proofing policies and practices, removing any element of direct or indirect discriminatory criteria identified in those policies and practices, continuously monitoring practices and procedures to ensure they are always equality sound, offering opportunities for training in and encouraging the take up opportunities in particular types of work and accommodating cultural needs.

As stated, positive action is about lawful measures to address inequality and therefore, excludes any form of positive discrimination – preferential or reverse. Thus it is not possible within Great Britain to use race, ethnic or national origin as a criterion for jobs, admissions to educational establishments or accessing goods, facilities or services.

The CRE believes that positive action is essential to achieving 'full and effective equality' and that unless its use is more widely encouraged that opportunities for real progress will be missed. The CRE considers that soft forms of positive action for example; implementing equality policies and reviews and monitoring of policies are frequently used. However, we do not know to what extent more progressive forms for example, training and encouragement are utilised. In our experience, organisations that try to make use of these progressive forms of action find themselves confined by the Race Relations Act.

Overview of the legal framework of positive action under the Race Relations Act

The Race Relations Act prohibits discrimination on racial grounds in employment, membership of professional and trade associations, unions and private members clubs, education, public functions, housing and goods and services. There are statutory exceptions to the rule against non-discrimination under sections 35-37 of the RRA allowing for positive action training and encouragement in employment and accommodating special needs of a particular racial group. These provisions are permissive and are narrowly drawn to avoid any possibility of positive discrimination.

In the context of training and encouragement for employment purposes it possible to rely on the provisions in two circumstances.[31] First, any person can offer facilities for training or encouragement to a particular racial group in particular work where there is demonstrable under-representation of that racial group in the particular work over a period of twelve months in Great Britain; or if not for the whole of Great Britain then a part of it. Secondly, an employer can offer training in particular work to staff of a particular racial group or encourage non-employees of a particular racial group to take

[31] Sections 37 and 38 RRA

advantage of doing particular work. The employer has to show that the racial group in question has been under-represented over a twelve month period at the establishment or in the area from which they would normally recruit. Professional trade organisations and unions can also offer training and encouragement to members of a particular racial group, opportunities to hold posts within or to take up membership of the trade organisation or union.

Outside of employment, the Act allows for any acts which are done to afford persons of a 'particular racial group access to facilities or services to meet the special needs of persons of that group with regard to their education, training or welfare…' (section 35).

Limitations of the legal framework

The CRE considers that the existing provisions, especially in today's climate, are unduly restrictive and that they may actually be failing the aim of levelling the playing field for disadvantaged groups. We consider this to be the case for a number of reasons-

- A number of initiatives which might aid in accelerating change fall outside the scope of the provisions. Some examples are –

    - Support networks - in some professions and vocations members of ethnic minority groups, because of their small numbers and experiences of institutionalised discrimination within the profession or vocation, form support networks to ensure as far as possible that their views, concerns and interests are represented. Examples are the Black Police Association, the Asian Lawyers Association, Black workers groups. These groups argue that this type of support structure is necessary to enhance their welfare in the profession or vocation. However because they limit membership to particular racial groups to the exclusion of others racial groups, they effectively breach the section of the Act which prohibits discrimination in access to membership of professional or trade associations (section 11 and/or 25). The positive action provisions under the Act do not cover such professional groups.

    - Recognition awards – there are a number of initiatives which seek to recognise the achievements of ethnic minority groups, who are systematically denied such recognition in mainstream events. Examples are Black Enterprise Awards and Asian Business Awards, both of which award Black and Asian business owners for their successes in business. We consider that awards constitute the provision of a facility and therefore, discrimination in distribution is prohibited. It is highly unlikely that such awards would be exempted by the positive action provisions of the Act.

- While training and encouragement are necessary features, in some circumstances, for improving equality of opportunity for ethnic minority groups; this is not always the problem that needs to be addressed. Examples of situations which demonstrate this point are –

    - In the legal profession 26% of ethnic minorities take a law degree and 25% enrol with the regulatory body, the Law Society. Yet only 9% are entered

onto the roll and 8% hold practicing certificates[32]. This huge gap between those enrolling with the Law Society and who are entered on the rolls and obtain practising certificates suggest that training and/or encouragement are not necessarily core problems. We do know that ethnic minorities have greater difficulty obtaining training contracts which is the last stage to becoming a qualified solicitor. Quite clearly, training and/or encouragement would not help ethnic minorities get through the door.

- A number of public sector authorities have been set equality targets by the government to improve the representation of ethnic minorities – and women – within their sectors. Taking the Metropolitan Police Force as an example, they have been set a target of 25% by the year 2010. However, the Metropolitan Police have argued that they have utilised lawful positive action measures but because of their recruitment process - a waiting list system - they are unable to achieve their set target unless they can fast-track ethnic minority recruits over white candidates on the waiting list. This would be a clear breach of the Act as it amounts to positive discrimination.[33] However, the problem is not one of merit but simply about a process. Should the law allow for the ethnic minority candidate to be fast-tracked over the white candidate to achieve representation?

The examples cited illustrate some of the particular limitations of our laws on positive action. While they are quite progressive perhaps compared to some Member States they also present significant problems for achieving full and effective equality.

Improving the existing law

The CRE firmly believes that the laws are too restrictive and need to be reviewed to allow greater flexibility. We consider that provisions similar or the same as the positive action provisions in the Race Directive and the Equal Framework Directive would offer such flexibility.[34] We have advocated the government considers this option as part of its Discrimination Law Review: the other existing equality commissions – the Equal Opportunities Commission and the Disability Rights Commission - and the report of the Equalities Review[35] agree with our proposals.

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[32] It has been difficult to find figures which show how many go on to take the legal professional exams – the Legal Practice Course – and how many pass or fail although there is some evidence that the pass rate for ethnic minorities are lower compared to whites

[33] Section 4 of the Act makes it unlawful to discriminate in the arrangements made for deciding who should be offered a job.

[34] Article 5 of the EU Race Directive 2000/43/EC for example provides that:
"With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin."

[35] The Equalities Review (2007) *Fairness and Freedom: The Final Report of the Equalities Review* Cabinet office www.theequalitiesreview.org.uk

3.10 Evolving patterns of discrimination, inequality or exploitation

i) Improving opportunities for Gypsies and Travellers

England and Wales

Status and numbers

Gypsies and Irish Travellers have both been recognised as racial groups in case law in England.[36]

Estimates of numbers vary but consensus amongst estimates appears to be somewhere around the 300,000 mark in houses and around 90,000 semi-nomadic Gypsies and Irish Travellers (similar in size to the Bangladeshi community which was 275,000 in England in 2001). The ONS is currently testing a new ethnic category for the 2011 census which should give us more accurate figures for the first time.

The current situation of Gypsies and Travellers

The situation of Gypsies and Travellers in England and Wales remains seriously disadvantaged in comparison with the wider society and other national minorities. They are the most frequent targets of prejudice, ahead of refugees and asylum seekers, gay and lesbian people and people from other ethnic minorities.[37] Discrimination against them remains widespread, such as the use of 'No Travellers' signs and they have the poorest life chances of any ethnic group today.

Part of the reason for the extreme disadvantage faced by Gypsies and Irish Travellers is the significant shortage of authorised transit and permanent sites available for Gypsies and Irish Travellers. The government estimates that between 2,500 and 4,000 more pitches will be needed by 2007. The CRE inquiry Common Ground (see below) also indentified that approximately half of the authorised sites were located in areas poorly suited to residential use, often close to motorways or major roads, rubbish tips, industrial activity or sewage works.

The January 2006 Caravan Count showed that there are over 15,500 Gypsy and Traveller caravans in England with the following breakdowns: 79% caravans are in authorised sites – roughly equally split between local authority and private sites,[38] 14% were on unauthorised developments (where Gypsies and Travellers own the land but do not have planning permission), and 7% were on unauthorised encampments (where Gypsies and Travellers do not own the land and planning consent has not been given for use as a Gypsy and Traveller site). Since 1996 the number of caravans has remained

[36] CRE v Dutton [1989] 1 All ER 306 and O'Leary and others v Allied Domecq (2000)
[37] MORI (2003) Understanding prejudice: Attitudes Towards Minorities
[38] All site data from DCLG website

fairly constant, but the number of caravans on unauthorised developments has increased, while those on unauthorised encampments has decreased.

Relations between Gypsies and Irish Travellers and other members of the public are also a particular cause for concern for the CRE. People from these groups often lead separate, parallel lives. Proposals for authorised sites often attract strong local opposition and the appearance of unauthorised encampments and developments causes considerable local tension. In addition local and national media coverage has usually been hostile.

The CRE inquiry Common Ground into site provision and promoting race equality

The CRE recognised the link between site provision, discrimination and community tensions and as a result launched an inquiry in October 2004 into local authorities' arrangements for planning, providing and managing sites, in the context of their statutory duty to promote race equality and good race relations.

In assessing the evidence the CRE looked in particular at how these arrangements affected race relations in local communities, and life chances for Gypsies and Irish Travellers. The inquiry also considered the question of conventional housing for Gypsies and Irish Travellers, and the role of the police in policing sites and managing unauthorised encampments.

The inquiry was based on survey responses from 236 local authorities across England and Wales, nine case study authorities where detailed interviews of staff and analysis of policies was undertaken, and more than 400 responses to a public call for evidence.

In May 2006 the CRE launched its report on the inquiry which made a number of key significant findings and recommendations to local authorities and other stakeholders.[39] Some of the key findings were:

- Over two-thirds (67%) of local authorities say they have had to deal with tensions between Gypsies and Irish Travellers and other members of the public. They give three explanations for this:
  • 94 per cent of these authorities say unauthorised encampments are one of the chief problems;
  • 46 per cent point to planning applications and enforcement; and
  • 51 per cent speak of general public hostility.

- Community tensions mainly take the form of complaints by local residents to the council (61%), and hostile media coverage (43%).

- The most significant overall consequence of these tensions is public resistance to providing any more public or private sites.

- The approach taken by most local authorities to discharging their

[39] A summary and the full report are available on the CRE website: http://www.cre.gov.uk/downloads/commonground_summary.pdf (summary) and

responsibilities to Gypsies and Irish Travellers drives and perpetuates a vicious circle of failure to provide services, and poor race relations.

• Over two-thirds of local authorities have experienced tensions in their communities over sites, authorised and unauthorised, or admit to general public hostility towards Gypsies and Irish Travellers.

• The irresponsible behaviour of a small minority of Gypsies and Irish Travellers entrenches public hostility towards these groups as a whole, and damages community relations.

• Most local authorities do little to find long-term solutions to the underlying problems, or to encourage all parties to be more understanding of each other. Large public meetings turn into rallies urging a full stop to providing sites, while ill-considered media statements by some councillors inflame the situation even more.

• The result is mounting tension and hostility, putting councillors under intense public pressure not to provide sites or services for sites. Many councillors find themselves caught in a 'catch-22' situation: public anger about unauthorised encampments and developments – the visible consequence of unmet need for sites – erects a political barrier to dealing with the primary cause of the problem, which is the shortage of sites.

• Many councillors find themselves unable to give strong local leadership on these issues, and respond to pressure either by doing as little as possible to tackle the shortage of sites, or by actively resisting the provision of sites and services. Often this goes hand in hand with 'informal' methods of providing for Gypsies and Irish Travellers that allow councillors partially to meet immediate needs without attracting public criticism.

• This perpetuates the shortages of sites (and the probability of unauthorised encampments and developments) and leads to inadequate resources for managing public sites, and unauthorised encampments – the source of tensions in the first place – completing the vicious circle.

In relation to site provision, the new regime under the Housing Act 2004 requires local authorities to assess housing needs in their area of Gypsies and Irish Travellers, identify specific locations for sites in their plans and consult the public at an early stage. While this should lead to a significant increase in sites, objections to authorities' proposals may also rise when possible locations are identified. Unless local authorities change their current approach to site provision similar problems will be encountered and disadvantage faced by Gypsies and Irish Travellers perpetuated,

Some key recommendations to local authorities and other stakeholders were:

- Local authorities need to provide strong local leadership regarding Gypsy sites, and allocate responsibility at a senior officer level.

- Strategic and long-term approaches to enforcement and site provision should be developed as part of overall strategy on housing, linked to health, education and an overarching communications strategy.
- They should work proactively to promote good community relations and build integrated communities, and actively tackle mutual misunderstandings and stereotypes.
- Other local, regional and national bodies need to provide support and encouragement to help local authorities take this work forward.

The CRE will shortly be commencing follow up work by sending letters to all the stakeholders to which recommendations in the report were made, including local authorities, central government, Police Forces, voluntary sectors and Gypsies and Irish Traveller Representatives. This will be done in order to access what progress has been made approximately one year after the launch of the report and a report of results will be prepared by the CRE in summer 2007.

Ethnic monitoring

One of the recommendations in the Common Ground inquiry is the introduction of two new and separate ethnic categories of Gypsy and Irish Traveller in all local authorities' ethnic monitoring arrangements in order that they can determine how many Gypsies and Irish Travellers live or pass through their areas. This will help them in complying with their race equality duty with respect to those groups (for example in carrying out race equality impact assessments) and whether changes in policies and services are required. To date only DfES school pupil surveys monitor Gypsies and Travellers.

In relation to the next census in 2011, the CRE submitted in January 2007 its response to the Office of National Statistics (ONS) which has responsibility for the census in England and Wales. We indicated that we supported in general terms the proposed introduction of a new category concerning Gypsies and Irish Travellers but that we did not agree with the proposal of "Gypsy/Romany/Irish Traveller" as it would not distinguish between the different groups. We submitted that each group should be separated to allow for identification of the numbers of each group (there being differences in culture and traditions of English Gypsies, Roma and Irish Travellers) and that the ONS should set up a small working group to consider this specific issue in fulfillment of its race equality duty requirement to consult relevant groups. Our discussions with the ONS are still ongoing on this issue.

Education

Educational attainment of Gypsies and Irish Travellers is the lowest amongst all ethnic groups and actually getting worse: In 2005, 15% (23% in 2003) of Gypsy pupils and 23% (42%) of Irish Traveller pupils in England obtained five or more A*-C GCSEs, compared with an overall average of 55% (51%).[40] Gypsy and Irish Traveller children, particularly those of secondary age, have much lower levels of school attendance than pupils from

[40] DCLG (2006) Improving Opportunity Strengthening Society: One Year On

other groups. By Key Stage 3, it is estimated that only 15-20% of Traveller pupils are registered or regularly attend school.[41]

Eligibility for Free School Meals provides a further indication of the relative deprivation of different ethnic minority communities. Two-thirds of Gypsy & Irish Traveller children, 53.2% of Bangladeshi, 35.9% of Pakistani and 37.5% of Black African secondary school pupils are eligible, compared with 18% of the White British population.[42]

We believe that there need to be more done to help this group and are concerned that the *Traveller Education Grant* was merged into the *Vulnerable Children's Grant* at a time when Traveller attainment is getting worse.

Employment

Unemployment is high among Gypsies and Travellers and few of the general programmes set up to tackle unemployment have initiatives or schemes developed specifically for Gypsies and Travellers, who need training in practical skills as well as opportunities to obtain qualifications for skills they already have. Gypsies and Travellers rarely use New Deal or Jobseeker Plus.

Service providers do not really understand the barriers they face, and give little thought to how their services might be tailored to meet Gypsies' and Travellers' needs.
It is believed that many of them may be missing out on benefits they are entitled to, due to low levels of adult literacy, lack of support and suspicion of benefits fraud.[43]

Anecdotal evidence, and evidence from complaints we receive, suggests that Gypsies and Travellers might be unlawfully discriminated against when they apply for jobs. Many who do work conceal their ethnicity, while those who do not, or whose ethnicity is discovered, report harassment.

Health

Gypsies and Irish Travellers are more prone to ill-health Levels of prenatal mortality, stillbirths and infant mortality are significantly higher than the national average. It is estimated that, on average, Gypsy and Irish Traveller women live twelve years less than women in the general population and Gypsy and Irish Traveller men ten years less than men in the general population.[44] A census carried out in Leeds of their Gypsy and Traveller population found an average life expectancy of 50, around 30 years less than the average. [45]

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[41] OFSTED, The Education of Travelling Children: a survey of educational provision for Travelling Children (1996)
[42] Ethnicity & Education: The evidence on minority ethnic pupils aged 5-16, DfES, June 2006
[43] From response to consultation on CRE Gypsy and Irish Traveller Strategy, 2004
[44] Crawley, ippr (2003) Moving Forward, January 2004.
[45] Baker, M (2005) Gypsies and Travellers Leeds Baseline Census 2004-2005. Leeds: Race Equality Council.

Criminal Justice

Little research has been conducted on Gypsies' and Travellers' experiences of the criminal justice system. However, indications of high levels of racist incidents; lack of trust in the police; inequalities in sentencing, including pre-sentence reports and sentencing outcomes; difficulties in obtaining bail; and disproportionately high numbers of stops and searches.

The report *Moving Forward: How Gypsy and Irish Traveller Communities can be more Engaged to Improve Policing Performance* was produced for the Home Office by John Coxhead, Derbyshire police and published in July 2005.

This along with the CRE's *Common Ground* and early feedback from the recent inspection of equality and diversity within the police service highlighted serious concerns about the nature of the policing experienced by Gypsy and Irish Traveller Communities. In response to these findings, the reports laid out a number of recommendations to improve the service the police provide to Gypsies and Irish Travellers.

As a result of these reports, a group called the Home Office Gypsy and Irish Traveller Policy Group was convened by Home Office in July 2006 to act as a governing body to explore how best to drive forward and monitor progress against the policing recommendations of the reports and ensure that they are successfully put in place. The group comes to this work form a policing perspective, but it has been formed in order to take a holistic approach to moving forward on Gypsy and Irish Traveller issues and is working in partnership with DCLG Gypsy and Traveller Task Group, to address the needs of the community. The group's proposed objective is to ensure that current legislation is being adhered to as well as laying out an action plan encouraging key stakeholders to take responsibility for report recommendations. The aim is to improve the situation for Gypsy and Irish Traveller communities working towards a more collaborative relationship with police forces and local authorities.

We welcome the creation of this group but it is too early for us to know how much change has been enacted in policing.

Concerns have also been expressed about the disproportionate rates of deaths in custody, particularly of Irish Travellers[46] who have difficulty coping in prison. A number have committed suicide.

Scotland

Status and numbers

Although Scottish Gypsies and Travellers have not to date been recognised as a racial group in case law, the CRE believe that there are strong arguments that both Gypsies/Travellers and Scottish Gypsies/Travellers should be recognised in Scotland as distinct racial groups under the RRA. We are concerned that this has not been established and have made it a priority to bring or support an appropriate case which, we hope, will establish the necessary legal precedent in Scotland.

[46] Both in The Heavens Report (Home Office, 2003) and in our formal investigation of the prison service in England and Wales (CRE, 2003)

In recognition of the arguments that all Gypsies and Travellers should be recognised as a distinct racial group in Scotland the Scottish Executive, Scottish Parliament, Convention of Scottish Local Authorities (COSLA) and Association of Chief Police Officers Scotland (ACPOS) have all recommended that in the provision of public services Gypsies/Travellers should be treated as though they are a racial group under the RRA. We welcome this recommendation and urge all public authorities to follow it. We also welcome the fact that the Scottish Executive has included Gypsies and Travellers in the 2006 Scottish Census Test.

The current population of Gypsies and Travellers in Scotland is unknown. Scottish Executive estimates put it at between 1,628 and 2,077 people[47], but this excludes the thousands of Gypsies and Travellers living in housing for all or part of the year. Many people are afraid to identify themselves as a Gypsy and Traveller because of the extreme discrimination and prejudice they have experienced in the past. Consequently Scottish Gypsies and Travellers estimate that their community actually includes more than 15,000 people.

Work of CRE Scotland and the role of the media
In 2006 CRE Scotland launched its Gypsy/Traveller strategy for 2006/07 which identifies specific work relating to bringing about legislative change, clarifying the status of Scottish Gypsies/Travellers under the Race Relations Act (see section on status and numbers above), challenging racist reporting in the media and supporting community groups.

In October 2006 CRE Scotland published a new leaflet for journalists, which contains information about the key issues that affect Gypsies/Travellers in Scotland, plus advice about terminology and how to deal with issues of concern. The leaflet was produced as CRE Scotland was concerned that media coverage on Gypsy and Traveller issues is often unbalanced, inaccurate and based on stereotypes. The information below is taken from the leaflet which can be downloaded from our website at:
http://www.cre.gov.uk/downloads/scotlands_gypsy_travellers.pdf

Gypsy and Traveller sites
In spite of Scottish Executive guidance stating that planning authorities must identify Gypsy/Traveller sites, the number of all-year council-owned pitches for Gypsies/Travellers in Scotland has declined from 560 in 2003 to 480 in 2006.[48]

Current council site provision does not meet the needs of Scottish Gypsies/Travellers. Although three-quarters of council-owned Gypsy/Traveller pitches are currently let,[49]

[47] Scottish Executive (2006) Gypsies/Travellers in Scotland: The Twice-yearly Count - No. 9: January
2006 (web-based), Scottish Executive (2005), Gypsies/Travellers in Scotland: The Twice-yearly count - No 8: July 2005 (web-based).
[48] Scottish Executive (2006) Gypsies/Travellers in Scotland: The Twice-yearly Count - No. 9: January
2006 (web-based) and Scottish Executive (2004) Gypsies/Travellers in Scotland: The Twice-yearly
Count - No. 4: July 2003 (web-based).

three mainland councils still do not provide any sites and half of the councils who responded to a recent survey about services for Gypsies/Travellers indicated that their sites are poorly located. Some are crossed by electricity pylons; others are within 300 metres of a motorway; on land liable to flooding; close to a large electricity substation or close to active landfill sites.[50] Pitch rents are also high, with one Scottish site currently charging £67.93 a week. More than half (58%) of councils charge higher rents for Gypsy/Traveller pitches than they do for council houses.[51]

Education

Attempts to meet the educational needs and concerns of Scottish Gypsies/Travellers are, at present, patchy. Scottish Gypsies/Travellers view education in a broad sense, which includes the skills they learn from their parents or other elders within the community[52] as well as formal schooling. Most Scottish Gypsies/Travellers value the skills that they can gain at school. However, others are unable to attend school because they are concerned about their safety. In a recent survey three-quarters of young Gypsies/Travellers said they have been picked on by other school pupils because of their background.[53] Some parents have even been advised by teachers to tell their children not to let the other pupils know that they are a Gypsy/Traveller.[54]

Many young Gypsies/Travellers also feel that their culture and heritage is not recognized or valued in school and some suggest that the secondary school curriculum will not equip them with the skills they need. Research among young Gypsies/Travellers has shown that some are keen to gain experience and accreditation in fields such as monoblocking, landscape gardening and forestry work - skills which are not currently taught in schools.[55]

Interrupted learning, as a result of travelling may also have an impact on Gypsy/Traveller children's ability to access mainstream education. Few schools keep formal contact with travelling pupils or record information about the attainment of Gypsy/Traveller pupils.[56]

Forty-three percent of Scottish education authorities have appointed staff to work specifically with Gypsy/Traveller children and young people.[57] While some teachers only provide support within schools, others provide teaching on sites or at roadside camps. The Scottish Executive is also taking action by funding work to develop online learning

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[49] Scottish Executive (2006) Gypsies/Travellers in Communities Scotland (2006) *A review of Services*
for Gypsies/Travellers, Edinburgh.
[50] ibid.
[51] Scottish Executive (2006) Gypsies/Travellers in Scotland: The Twice-yearly Count - No. 9: January
2006 (web-based).
[52] STEP (2004), Issues in school enrolment, attendance, attainment and support for learning for Gypsies/Travellers and school-aged children and young people based in Scottish local authority sites.
[53] Save the Children (2005), Having our Say - peer research by young Gypsies/Travellers.
[54] Equal Opportunities Committee (2005), 5th Report - preliminary findings on Gypsies/Travellers - review of progress.
[55] See 26 above
[56] ibid
[57] ibid

opportunities for Gypsies/Travellers who are travelling or cannot attend school. However, parents and pupils remain concerned that the majority of teachers do not understand Gypsy/Traveller culture, doubt that the curriculum can meet their needs and believe that the pervasive bullying of Gypsy/Traveller children is not being dealt with effectively.

Health

Many of Scotland's health services continue to exclude Gypsies/Travellers. GPs surgeries often refuse to register Gypsies/Travellers as patients and doctors are reluctant to visit sites. As a result Gypsies/Travellers sometimes have no alternative but to seek care through accident and emergency clinics. Research among young Scottish Gypsies/Travellers has shown that 84% feel that access to a doctor or dentist has not improved or has got worse since 2001.[58] Mainstream health education and preventative programmes rarely include Scottish Gypsies/Travellers and the NHS has done little to engage directly with Gypsies/Travellers about their needs and how to meet them.

Inadequate accommodation provision also has an impact on the health of Gypsies/Travellers. Living conditions have a direct impact on health - over 50% of Gypsies/Travellers have spent at least part of their life without access to running water. However, wider accommodation issues, such as insecurity of tenure, limited access to services and distance from extended family can also affect the health of Gypsies/Travellers.

There has been little Scottish specific research into the healthcare needs and experiences of Gypsies/Travellers, but English data shows that Gypsies/Travellers have significantly poorer health than other UK-resident English-speaking ethnic minorities and economically disadvantaged white UK residents.[59] Gypsies/Travellers are more likely to suffer from self reported anxiety, respiratory problems and chest pain than other ethnic groups within the UK population. They also have one of the highest maternal death rates in the UK. Anecdotal evidence suggests that Scottish Gypsies/Travellers experience a similar level of health inequalities as their English counterparts - one Scottish GP estimates that the average life expectancy of Scottish Gypsies/Travellers is only 55 years.[60]

The recent introduction of hand-held health records for Scottish Gypsies/Travellers was viewed as a step forward however, at the time of writing there appear to be difficulties with the implementation of this system.

ii) Muslim communities

In relation to Muslims it is clear that there has been increasing Islamophobia against them in communities and the media. Islamophobia has been defined as the fear and/or hatred of Islam, Muslims or Islamic culture. It can be seen in the belief that all or most Muslims are religious fanatics, have violent tendencies towards non-Muslims, and reject

[58] Save the Children (2005), Having our Say - peer research by young Gypsies/Travellers.
[59] University of Sheffield (2004), The health status of Gypsies and Travellers in England.
[60] Scottish Parliament Press Release (2001), Parliament Committee Calls For Ethnic Minority Status For Gypsy Travellers.

as directly opposed to Islam such concepts as equality, tolerance, and democracy. Islamophobia is a new form of racism, whereby Muslims, an ethno-religious group, not a race, are nevertheless constructed as a race; a set of negative assumptions is made of the entire group, to the detriment of members of that group.[61]

We discuss the problems associated with religiously aggravated offences (relating to Muslims) and stop and search in the section on article 6(2), the effects of anti-terrorism legislation in the section on article 7, the role of the media generally in the section on article 6(1), and issues relating to the wearing of the veil in the section on article 8.

The CRE produced a briefing on Islamophobia as part of its Safe Communities Initiative on defeating organised racial hated, particularly during election periods. It was produced primarily for local councils, schools and community organisations and focused on how they could challenge false and misleading information, including in relation to Muslims.[62]

iii) New Migrants from Central and Eastern European Countries

Although migrants from Central and Eastern Europe may be the subject of less outward hostility than other groups such as asylum seekers and Muslims[63] there is substantial evidence[64] that migrants from the "A8" accession countries that joined the EU in May 2004[65] have experienced significant exploitation in employment. The CRE considers that in some cases such treatment may be racial discrimination or harassment based on nationality or national origins.

Between May 2004 and June 2006, 447, 000 have registered to work in the UK under the Workers Registration Scheme, and this does not include people working here that are self-employed who do not need to register or people that have simply not registered. Exact numbers of such workers currently in the UK are therefore not known but it is estimated by the Home Office that there are over 600,000. Most of those arriving are working in the low paid sectors of agriculture and food processing, cleaning, catering, care, domestic work and construction. This also creates new issues of how rapid changes in numbers of such groups (particularly in rural areas) affects community cohesion and the ability of local authorities to provide services to migrants.

The CRE has been developing its work in this area in a number of ways:

- In December 2005 we held a joint CRE / Trade Union Congress (TUC) seminar entitled "*How can we better protect migrant workers?"* which was attended by approximately fifty policy-makers and practitioners working in this area, including

[61] Definition in CRE briefing on Islamophobia, Safe Communities Initiative, Defeating Racial Hatred: http://www.cre.gov.uk/downloads/SCI_06_IslaPhob.pdf

[62] http://www.cre.gov.uk/downloads/Defeating_organised_racial_hatred.pdf

[63] Ippr report commissioned by the CRE, "The reception and integration of new migrant communities in Britain", summary of report: http://www.cre.gov.uk/downloads/ippr_migrants_research.pdf

[64] Anderson A, Ruhs M, Rogaly B, Spencer S (2006) *Fair Enough? Central and East European migrants in low-wage employment in the UK*. COMPAS

[65] Lithuania, Latvia, Estonia, Poland, Slovakia, the Czech Republic, Hungary, and Slovenia

representatives from trade unions, voluntary sector bodies, academic think-tanks, statutory organisations, the Home Office and employers' organisations.

- in 2006 we held seventeen semi-structured interviews with the Commission for Racial Equality's funded network consisting chiefly of local Race Equality Councils, law centres and voluntary organisations to determine the challenges faced by new migrants;
- in 2006 the CRE also commissioned the ippr to conduct research into the reception and integration of new migrant communities in Britain in the context of the race equality duty on public authorities. That report is due to be released in the next month and found that most local authorities are failing to consider issues relating to new migrants in the context of their race equality duty.

There are a number of forms of exploitation faced by new migrants working in low paid employment:

- p*rovision of poor, over-priced and over-crowded accommodation:* often accommodation is tied to an employer/ gangmaster to ensure the employees remain in positions of dependence;

- c*harging of migrants by agencies and deductions from wages*. A recent report by Citizens Advice described a general "lack of transparency and proportionality surrounding the deductions made by (agencies)"[66]. Though illegal this seems to be common practice with agencies making wage deductions for uniforms, travel or even the placement of a worker in a job;

- l*ow rates of pay, often below the national minimum wage;*

- m*igrants working excessively long hours*;

- *a lack of written contracts of employment, payslips and basic employment rights*;

- e*mployers not paying tax or National Insurance contributions for employees*. Not only is this illegal, but it prevents the worker from obtaining certain social security entitlements;

- s*ummary dismissal and threats of summary dismissal*. Due to lack of effective employment contracts, many migrant workers have no right to protection from unfair dismissal. Where a working visa is dependent on a worker's employment, they may be particularly scared of such threats, and more open to coercion;

- *withholding of worker's documents by employer*. This puts the worker more firmly under the control of the employer;

- *denial of the right to join a trade union.* Though some employers of migrant workers seem to have a good relationship with trade unions, there are clearly instances where this is not the case. One recent TUC report recounted the open

[66] Citizens Advice Bureau (2005) *Home from Home?* pp7-8

hostility and threats of violence its organisers had faced from some employers in the construction industry in the north east of England[67];

- *violence and threats against the person.* There is evidence that certain employers threaten or even physically assault their workers in order to coerce them;

- *unsafe working conditions.* The Morecambe Bay tragedy in which 21 Chinese cockle pickers died in February 2004 was a terrible example of fatally unsafe migrant working conditions. More generally, migrants often work in agriculture or construction, where there is a greater risk of injury than other sectors. Where contracts are weak or non-existent, workers may not be protected by the Health and Safety at Work Act.

Another major problem faced by migrant workers is that many of them work under temporary contracts through employment agencies. This affects such migrant workers rights in a number of ways as (unlike employees), temporary workers don't have the rights to claim unfair dismissal, redundancy pay, take maternity or paternity leave or request flexible working or sick leave.

A report by the TUC on temporary agency workers entitled "Temporary Agency work across the EU"[68] noted that:

- unlike most EU Member States there is no right to equal treatment for agency workers in the UK and employment agencies are not required to have a license to operate;
- of the 20 EU countries for which information is available, only temps in the UK, Hungary and Ireland do not have the right to be paid the same as a permanent employee doing a similar job;
- although there is a regulator for employment agencies in the UK called the "Employment Agency Standards Inspectorate", which has the power to investigate complaints and prosecute agencies for misconduct, in 5 years between 1999 and 2004, the EAS prosecuted just 24 temporary employment agencies and only banned 7 individuals from operating as employment agencies.

In relation to enforcement of migrant workers' rights, there have been some positive developments in the UK such as the introduction of the DTI's National Minimum Wage Helpline which investigates complaints of being paid below the minimum wage. In addition, the Gangmasters Licensing Authority has also recently been created following the Morecombe Bay cockle pickers tragedy.

The Gangmasters Licensing Act of 2004 creates a compulsory licensing system for gangmasters and employment agencies who supply workers in agricultural activities, gathering shellfish and related processing and packaging activities. The system is intended to prevent exploitative practices and importantly provides protection for both

[67] TUC (2006) *Organising Migrant Workers in Construction: Experiences from the North East of England*.
[68] "The EU Temp trade: Temporary Agency work across the European Union", TUC, 17 June 2005.

legal and illegal workers. However the GLA only has jurisdiction in those particular sectors.

Given the inadequate enforcement and protection of new migrant workers rights, the CRE believes the government should consider introducing a number of measures including:

- establishing equal or similar rights for temporary agency workers as employees. This would best be done by legislation at domestic and international levels.

  At EU level a Temporary Agency Workers Directive has been proposed and would provide similar rights for agency workers to employees however it has stalled due to Member States being unable to agree the terms of the rights.

  At the global level the United Nations Convention on the Protection of Migrant Workers provides the most comprehensive protection for migrant workers including seasonal workers and self employed workers which many A8 new migrants are. It entered into force on 1 July 2003 but has not been ratified by the UK government.

- in relation to enforcement and protection of rights establishing an overarching government body with responsibility for enforcement action against all employers and employment agencies. Laws could also be enacted to require all employment agencies to have licenses and the enforcement body could have responsibility of that licensing.

ARTICLE 5

1 The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.

2 Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.

ARTICLE 6(1)

1 The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.

3.11 CRE integration agenda

Article 5 and 6(1) relate to promoting diversity while encouraging interaction between all communities. The CRE has been working on the similar issues by developing an integration agenda. This is based on three inter-related principles:

- **equality** – for all sections of the community – where everyone is treated equally and has a right to fair outcomes;
- **participation** – by all sections of the community – where all groups in society should expect to share in decision-making and carry the responsibility of making society work;
- **interaction** – between all sections of the community – where no-one should be trapped within their own community, amongst the people they work with or the friendships they make.

The CRE understanding of integration does not mean assimilation where minority groups are expected to give up their identities and cultural/religious practices in order to adopt the norms of the majority. Our integration agenda stresses the importance, indeed relies on the very nature of diversity within the nation as a whole.

The element of participation is discussed in greater detail in the context of article 15 as it relates specifically to participation issues.

The CRE believes that there is a need for the government to further develop its work on integration as there is a disturbing lack of interaction between different communities and participation of ethnic communities in economic and public affairs. These concerns were raised by the then CRE Chair Trevor Phillips in September 2005[69] in which he highlighted patterns of increased segregation in British society. This has taken various forms:

[69] "Sleepwalking to segregation": http://www.cre.gov.uk/Default.aspx.LocID-0hgnew07s.RefLocID-0hg00900c002.Lang-EN.htm

- **increasing development of "ghettos"** where people live predominantly in areas with people of the same ethnic minority. For example, the number of people of Pakistani heritage in what are technically called "ghetto" communities trebled during 1991-2001; 13% in Leicester live in such communities (the figure 10.8% in 1991); 13.3% in Bradford (it was 4.3% in 1991).

- **segregation in schooling**: a study[70] of the Tower Hamlets area in London indicated that in primary schools in 2002, 17 schools had more than 90% Bangladeshi pupils; 9 schools had fewer than 10%.

  In the 15 secondary schools, figures from Ofsted reports since 2000 show that three denominational schools (of which two are Roman Catholic) had fewer than 3% Bangladeshi pupils, whereas two schools had over 95% Bangladeshi pupils and a further three over 80%.

- **segregation in friendships:** in 2004 and 2005 the CRE commissioned research into friendships patterns of Whites and ethnic minorities.[71]

  In relation to White people, in 2004 94% of white Britons said that all or most of their friends were white and in 2005 it rose to 95%. In 2005, 55% – could not name a single non-white friend, and this was true of white Britons of all ages, classes and regions.

  In relation to ethnic minority Britons the picture was even bleaker. In 2004, 31% of ethnic minority Britons said that most or all of their friends were from ethnic minority backgrounds; we found that this trend was stronger among the young than the old. In 2005, this figure grew to 37%. In addition, 47% of ethnic minority Britons who last year said that most or all of their friends were white has now shrunk to 37%.

The CRE welcomed the government's decision in June 2006 to create a Commission on Integration and Cohesion, a fixed term advisory body that is considering how local areas can make the most of the benefits delivered by increasing diversity - but will also consider how they can respond to the tensions it can sometimes cause. It aims to develop practical approaches that build communities' own capacity to prevent problems, including those caused by segregation and the dissemination of extremist ideologies.

In February 2007 the CRE provided a formal submission to the Commission's national consultation on what different organisations think integration and cohesion means to them, and what practical steps can be taken to make British communities more cohesive and integrated places to live. Our detailed views can be viewed on the CRE website.[72]

[70] "The New East End: Kinship, Race and Conflict", The Young Foundation
[71] http://www.cre.gov.uk/downloads/yougov_results.pdf
[72] http://www.cre.gov.uk/Default.aspx.LocID-0hgnew0q6.RefLocID-0hg00900f006.Lang-EN.htm

3.12 The role of the media in reporting on national minorities

We have created a separate section dealing with the media as the CRE considers that the media plays a significant role in affecting relations between different groups in Great Britain. This section examines their role generally and the specific role of the Press Complaints Commission in the context of regulating potentially discriminatory reporting. The discussion of the PCC in this section rather than in relation to article 6(2) (as the government report has done) is for ease of convenience.

The CRE believes that the reporting of issues relating to national minorities such as Gypsies, ethnic minority migrants, and asylum seekers in some sectors of the UK press are often biased, stereotyped and inaccurate. This also has implications for good race relations, potentially shaping the way in which sections of the public view asylum seekers, refugees, new migrants and even ethnic minorities more broadly. The CRE shares the same concerns about the national minorities in the UK media that were expressed by the United Nations Committee on the Elimination of Racial Discrimination in response to the sixteenth and seventeenth periodic reports of the UK and Northern Ireland:

"13. The Committee is concerned about the increasing racial prejudice against ethnic minorities, asylum seekers and immigrants reflected in the media and the reported lack of effectiveness of the Press Complaints Commission (PCC) to deal with this issue.

The Committee recommends that the State Party consider further how the Press Complaints Commission could be made more effective and could be further empowered to consider complaints received from the Commission for Racial Equality as well as other groups or organisations working in the field of race relations."[73]

The CRE notes that there are positive examples of race reporting, some of which are celebrated annually at the CRE's Race in the Media Awards[74]. Moreover, projects can be identified which aim to foster a more informed and positive debate on race issues, including asylum and immigration, at the local level. One such project is run by the Leicester Mercury newspaper, which has formed a group drawn from the local community to give advice on editorial issues[75]. On a national level, the Society of Editors has published a booklet to help those writing about our changing and diverse communities to avoid the pitfalls of stereotyping, inaccuracy and giving needless offence to certain groups[76].

However, in a number of certain high-circulation newspapers coverage of national minorities is often negative. Research commissioned by the CRE in 2004 found that "*immigration and asylum have been treated in a negative way (by the press) and*

[73] Concluding observations of CERD, 10 December 2003.
[74] See: http://www.rima.org.uk/
[75] The editor of Leicester Mercury created an informal discussion group to advise the local media. Attendees included the leader and chief executive of the city council, the chief executive of the local racial equality council, police, representatives from the city's council of faiths, academics, school principals and governors, and staff from local TV and radio stations. The group works with the local paper to challenge negative local press coverage of newer ethnic minority communities.
[76] Society of Editors / Media Trust, 2005, *Reporting Diversity - how journalists can contribute to community cohesion* *http://www.communities.gov.uk/index.asp?id=1502400*

constructed as problems or threats, with key themes being the reduction of migrant rights, the burden on the welfare state, and the dishonesty of migrants…A significant finding of research on asylum seekers/refugees and the British media has been the repetitive use of certain terms and types of language. Asylum seekers are described as a 'flood' or 'wave' and as 'bogus' or 'fraudulent'"[77].

The CRE notes that coverage has often conflated genuine asylum seekers, refugees and economic migrants (regular and irregular) into one category. As one report by the Institute for Public Policy Research (ippr) states, "*the misuse of terminology is not merely sloppy, it underlines the way in which these papers…view all incomers, of whatever status, as unwanted aliens*"[78]. In some respects therefore, coverage of one national minority in the press runs the risk of promoting hostility not just towards that group (such as asylum seekers) but new migrants in general, and even established ethnic minority communities.

Although the relationship between press coverage and public opinion on immigration is complex, research generally indicates that press and media plays a role in setting the political agenda and in influencing attitudes. One of the research reports commissioned by the CRE found: "*there is consensus that media discourses on asylum, refugees and immigration…reinforce negative stereotypes and an inflammatory and derogatory vocabulary has become commonplace…Research suggests that media coverage does have an effect on attitudes (and behaviour) towards asylum seekers, refugees and immigrants, but the causal relationships are extremely complex. Media messages are seen to be filtered by the audience. However, in general, hostile attitudes are strengthened in a cycle of reinforcement which needs to be interrupted by addressing both pre-existing attitudes and media messages*"[79]. These findings are corroborated by other reports[80].

Role of media regulators in preventing discriminatory reporting

In relation to the communications industry (television and radio), it is regulated by a public authority but independent body called Office of Communications (Ofcom). However in relation to the print media they have a self-regulatory system operated by the Press Complaints Commission.

In relation to the PCC, the CRE is pleased that it has produced guidance on reporting of refugees and asylum seekers in 2003.[81] However the CRE does not consider that the guidance has been sufficient to prevent negative and prejudicial reporting, particularly in tabloid media or that it has been successful in reducing community tensions.

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[77] N Finney and E Peach of the Information Centre for Asylum Seekers and Refugees, 2005, *Attitudes towards asylum seekers, refugees and other immigrants*, commissioned by the CRE. p54 http://www.cre.gov.uk/downloads/asylum_icar_report.pdf

[78] R Greenslade, 2005, *Seeking scapegoats: Coverage of asylum in the UK press*, the Institute for Public Policy Research (ippr), p21

[79] Finney and Peach, 2005, pp59-60

[80] M Lewis, 2005, *Understanding attitudes to asylum in the UK*, by (jointly funded by the CRE and published by ippr); H Crawley, 2005, *Evidence on attitudes to asylum and immigration: What we know, don't know and need to know*, COMPAS Working Paper No. 23, Oxford: University of Oxford

[81] 23 October 2003.

As a result, the CRE notes that it wrote to the PCC on 21 April 2006 asking that the Code of Conduct governing the conduct of members of the press be amended in order to seek to avoid media reporting that inflames community tensions and may discriminate against racial groups. Two amendments were suggested:

- the inclusion of the concept of "gross exaggeration" in the Clause 1 accuracy clause to avoid exaggerated reporting which may increase tensions; and
- an amendment to clause 12 which prohibit discrimination against an individual. The CRE called on the prohibition to be widened to any discrimination against racial, ethnic or religious groups.

The CRE is concerned that there have been a number of complaints made to the PCC in the last five years or individuals that consider groups (such as asylum seekers or Gypsies) are being discriminated against in media reporting. The response of the PCC was that the non-discrimination provision only protects the rights of individuals that are named in articles, and references to groups are not protected.[82] The PCC has repeated this argument in its response to our letter dated 21 April 2006, refusing to amend the PCC.[83] The CRE does not believe this is a valid argument as there are precedents in anti-discrimination law that prohibit discrimination even where there is no individual targeted. For example, under section 29 of the Race Relations Act, discriminatory racially advertisements are unlawful even though no individual may actually have claimed to have suffered discrimination as a result of the advertisement.

The CRE considers that although it is important to uphold the media's right to freedom of expression, the PCC equally has an obligation as the regulator to ensure that media reporting is not only non-discriminatory against individuals but also wider racial or religious groups, particularly where reports may be likely to incite racial or religious hatred.

[82] See for example the PCC Complaint Ryder v The Sun which involved a complaint of an individual against a Sun campaign against Gypsies and Travellers.
[83] Letter from the PCC to the CRE, dated 10 May 2006.

ARTICLE 6(2)

2 The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.

3.13 Racially and religiously aggravated offences

The Crime and Disorder Act 1998 created new laws permitting increased sentences for racially aggravated violence and harassment in relation to a range of offences such as harassment, criminal damage, wounding and common assault. In 2001, the Anti-Terrorism, Crime and Security Act extended these offences to religious aggravation.

An offence will be racially or religiously aggravated if:

- at the time of the offence or immediately before or after the offender demonstrates hostility to the victim based on their membership of a racial or religious group; or
- it was wholly or partially motivated by hostility towards members of a racial or religious group.

If courts decide that offences were racially or religiously aggravated, they shall treat that as an aggravating factor in increasing sentences.[84]

A key recent case regarding racially aggravated offences under section 29 of the Crime and Disorder Act 1998: R v D [2005] EWCA Crim 889 which was before the Court of Appeal. The CRE also intervened in this case.

The issue was whether the use of the word “immigrant” to a vicitm of an assult could constitute a racial group for the purposes of the Act. The Court of Appeal held that a broad approach should be taken with regardss to defining a racial group under the Crime and Disorder Act 1998 in order to provide adequate protection, that the term “immigrant” had to be looked at in context and that it may be a reference to not only being”non-British” but belonging to a particular racial group. The trial judge had therefore erred in his judgment that section 28 did not apply.

The judgment has important implications in cases were generic terms are used such as immigrant, foreigner, or asylum seeker.

The key source for all data on race or religion as an aggravating factor in crimes is *Statistics on Race and the Criminal Justice System (Home Office)*, the most recent 2005 issue (covering 1April 2004 - 31 March 2005) was published by the Home Office in July 2006: see Chapter 3, pages 8 – 17. This includes statistics on racist incidents, racially or religiously aggravated charges and prosecutions. To see the full go to: http://www.homeoffice.gov.uk/rds/pdfs06/s95race05.pdf.

The CRE welcomes the government’s commitment to implementing and enforcing the laws on racially and religiously aggravated offences at police and prosecution (Crown Prosecution Service) level which has been reflected in the increases in recording and

[84] Section 82 Crime and Disorder Act 1998.

prosecution of such offences.[85] The CRE also welcomes the police *Hate Crime Manual* (2000) which is an excellent detailed and practical standard of what police officers should do at each stage and in many different scenarios, which victim's representatives can hold them to, and which has driven up performance.

The CRE is however concerned at the level of racially or religiously aggravated offences (37,028 for 2004/05). Although this only this reflects the number of persons charged and not those prosecuted or cautioned in court (7,276 in 2004), it indicates that the level of such offences remain high. The Police Forces should therefore continue their focus on such crimes, particularly in light of the findings of the Stephen Lawrence Inquiry and the CRE inquiry into the Police Service in England and Wales (see Racist incidents).

Muslim communities

A problem with Police recording is that nationally[86] they do record differences between racist incidents and faith hate incidents. As a result they also do not publish the distinction between numbers of incidents relative to different religions, such as Muslims. This makes it impossible to determine the level of incidents against Muslims.
The figures of religiously aggravated charges although recorded also do not distinguish between different religions. The CRE recommends that the government adopt new recording and publishing measures of faith hate incidents and religiously aggravated charges which indicate the religion of the victim.

However there is some evidence which indicates that Muslims are disproportionately targeted. For example the Crown Prosecution Service “Racist Incident Monitoring Annual Report” 2004-05 indicates that 23 of the 34 cases where the religion of the victim attacked was indicated were Muslim (ie 67%).[87] It is also important to bear in mind that this only represents cases that reach the stage of prosecution before the courts.

In addition, in the aftermath of the bombings on 7 July 2005, the London Metropolitan Police Service recorded a rapid rise in faith hate incidents, recording 366 incidents in the five weeks afterwards.[88]

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[85] The Home Office 2005 report indicates that the police recorded 37,028 racially or religiously aggravated offences in 2004/5, a 6% increase from the previous year (34,996 in 2003/4). Of this total, 61% were harassment, 15% criminal damage, 14% less serious wounding and 10% common assault, a similar pattern to that in the previous year (Table 3.2).

A total of 7,276 persons were cautioned or prosecuted at courts for racially aggravated offences in 2004, a rise of 15% over the previous year. Of these, 24% were aged under 18 years (Table 3.3). Of the 6,379 persons prosecuted at magistrates’ courts in 2004, 2,985 (47% - up from 43% the previous year) were convicted and 38% were either acquitted or their case was terminated early. A total of 976 (15%) persons were committed to Crown Court for trial (Table 3.3).

[86] Note that the London Metropolitan Police Service does record faith hate incidents
[87] Muslims in the European Union: Discrimination and Islamophobia, EUMC report 2006, page 85.
[88] Ibid page 86.

3.14 Incitement to Racial Hatred

These provisions are laid down in Part III of the Public Order Act 1986 which provides that it is an offence to use threatening, abusive or insulting language whether verbally or in a publication, which a person intends or having regard to all the circumstances of the case is likely to stir up hatred against any racial group.

In addition in 1994 a new offence was introduced of causing intentional harassment which was intended to deal more effectively with cases of racially offending behaviour, particularly persistent ones.[89] Protection from harassment is also specifically provided for by the Protection from Harassment Act 1997.

In 2001 the maximum penalty for incitement to racial hatred was increased from 2 to 7 years.[90]

Prosecutions for incitement to racial hatred can only be commenced with the consent of the Attorney General and figures are not included in the CPS report. However we have some figures from answers to parliamentary questions which indicate that between 1987 and January 2005, there were a total of 65 prosecutions which resulted in 44 convictions, five acquittals, six cases dropped by the prosecution and ten other outcomes.[91]

Recently there have been several high profile cases concerning incitement to racial hatred. The first was the trial of Nick Griffin and Mark Collett from the far right British National Party. Both were acquitted in November 2006 of all charges relating to speeches they gave to party supporters concerning Asians and Muslims. Collett's comments included:

- alleged rapes of teenagers by gangs of Asians and alleged muggings of elderly white people by young Asians;
- Asian gangs grooming white girls for prostitution;
- "Let's show these ethnics the door in 2004";
- references to criminal asylum seekers and the benefits that get such as tenancies;
- referring to asylum seekers as "cockroaches";
- and white babies being born into a "multicultural hell hole".

Griffin's comments included:

- in relation to the Koran he claimed it states that "you can take any woman you want as long as it's not Muslim women…..Any woman they can take by force or guile is theirs, lawful proper religiously accepted spoils to them."
- "if they get a non-Muslim girl and they get her pregnant, then her community doesn't want her, and the child generally grows up a Muslim, and that's the way this wicked vicious faith has expanded from a handful of cranky lunatics about 1,300 years ago…"

[89] Section 4A of the Public Order Act
[90] The Anti-Terrorism Crime and Security Act 2001.
[91] UK Parliament, House of Lords Questions and Answers, 31 January 2005 http://www.publications.parliament.uk/pa/ld200405/ldhansrd/vo050131/text/50131w02.htm

As a result of the acquittals the Lord Chancellor Lord Falconer and John Reid the Home Secretary, both stated that they would consider the need to amend the law relating to incitement to racial hatred. We are not aware what, if any, steps have been taken since that time.

A number of Muslims were also recently charged with incitement to racial hatred in response to their demonstration in February 2006 to the cartoons of Mohammed in the Danish newspaper Jyllands-Posten in September 2005. They chanted slogans such as "7/7 on its way" and "Europe you will pay with your blood". At least three have recently been convicted of those charges in separate trials and the CRE is considering the summing ups given by the Judge to the jury to consider whether they were consistent with the summing up in the Griffin and Collett trial.

Broadly speaking, the CRE considers that:

- the law on incitement to racial hatred must strike a balance between the need to protect all persons from threatening and abusive language and conduct that incites hatred and the right to freedom of expression;
- generally, the law appears to have worked effectively. But the recent trials of Griffin and Collett and Muslim protesters with contrasting results mean that the government should review the effectiveness of the law (as they said they would), whether it is being applied consistently by the courts.

3.15 Incitement to Religious hatred

Offences relating to inciting religious hatred were introduced in February 2006 by the Racial and Religious Hatred Act 2006 which introduced a new Part 3A to the Public Order Act 1986. The offence has not come into force yet but is expected to in Spring 2007.

The test for religious hatred is higher than for racial hatred as in the UK the law does not prohibit criticism of religion. Religious hatred means hatred against a group of persons defined by reference to religious belief or lack of religious belief.[92] A person is guilty of a criminal offence if they use threatening words or behaviour and they intend to stir up religious hatred against a religious group.[93] It is does not include insulting or abusive language and there is only an offence if incitement is intended.

There is also a specific provision providing protection of freedom of expression which states:

> *"Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease*

[92] Section 29A Public Order Act 1986.
[93] Sections 29B and 29C ibid.

practising their religion or belief system."[94]

The maximum penalty against persons convicted for incitement to religious hatred is 7 years, the same as incitement to racial hatred. Further, similarly to incitement to racial hatred, the consent of the Attorney General is required to commence to prosecute.

The position of the CRE[95] is that:

- it strongly supported the introduction of the law as previously there was only protection for incitement to racial hatred and this created an inconsistency in the law;
- the blasphemy law should be repealed as it goes against freedom of speech and is itself discriminatory as only protects Christians;
- it agrees that in principle the test for proving incitement to religious hatred should be a high in order to permit criticism of religions but the law must adequately protect persons from possible attack;
- once the law is in force the government should closely monitor its effectiveness.

3.16 Racist incidents

The CRE supported the change in the definition of a racist incident and the work the police forces have done in ensuring that such incidents are fully investigated, including as stated above the development of the Hate Crime Manual.

The CRE notes the comments in paragraph 219 of the government that *"…it is vital that it delivers a criminal justice system which represents everyone, promotes equality and in which all may have confidence…".* Despite the findings of the Stephen Lawrence Inquiry concerning institutionalized racism in police forces and the introduction of the race equality duty in 2000 that applies to the police, the CRE has been concerned at the failure of police forces to eliminate racism within the forces and fulfill their race quality duty. This can and does influence (as the Stephen Lawrence inquiry indicated) the manner in which investigations are carried out.

In December 2003 the CRE commenced a formal investigation into the Police Service in England and Wales and released its final report in March 2005.[96] The inquiry was triggered by a BBC television program *The Secret Policeman* which revealed clearly racist views and actions of a number of police officers. The inquiry focused specifically on employment issues, covering the adequacy and effectiveness of race equality schemes for police forces and authorities, the screening and training of recruits, the identification and management of racist behaviour and the disciplinary process, and the effectiveness of grievance procedures. The inquiry found that despite improvements in race equality issues internally, the police forces still had much to improve in eliminating racism, promoting equality of opportunity and promoting good race relations. The CRE liaises with the national Police Diversity Team that is overseeing the implementation of

[94] Section 29J ibid
[95] see http://www.cre.gov.uk/downloads/racialandreligioushatredbill_secondreading.pdf
[96] http://www.cre.gov.uk/downloads/PoliceFI_final.pdf

the recommendations from the report, all of which were accepted by the Home Office, other than three.

The CRE is also concerned that ethnic minorities remain statistically more likely than their White British peers to be the victims of crime. People from ethnic minority communities have significantly higher fears that they will be victims of crime, whilst 9% of murder victims in 2004-05 were Black.[97]

In relation to paragraph 220 of the government report, we note that the most recent report of the Crown Prosecution Service on Racist Incident Monitoring is not for the period 1 April 2004 to 31 March 2005, but for the period 2005 to 2006 although it is not yet available on the Crown Prosecution Service website. As a positive sign the percentages of prosecutions resulting in a conviction or guilty has been rising each year and for last year was 87%.

3.17 Stop and search

The CRE is concerned at the disproportionate levels of stop and searches of persons from ethnic minority communities and the adverse effect that has on community relations.

Police officers have the power to stop and search individuals under a range of legislation, including section 1 of the Police and Criminal Evidence Act 1984 (PACE) as well as section 60 of the Criminal Justice and Public Order Act 1994 and section 44 of the Terrorism Act 2000.

Section 1 of PACE allows an officer who has reasonable grounds for suspicion to stop and search a person or vehicle to look for stolen or prohibited items. Section 60 of the Criminal Justice and Public Order Act allows a senior officer to authorise the stop and search of persons and vehicles where there is good reason to believe that to do so would help to prevent incidents involving serious violence or that persons are carrying dangerous instruments or offensive weapons. Section 44 of the Terrorism Act allows an officer to stop and search persons and vehicles – at a time and place where an appropriate authorisation exists – to look for articles that could be used in connection with terrorism, whether or not there are reasonable grounds to suspect the presence of such articles.

In relation to searches under PACE, 14% of those subject to stop and search procedures were Black British, Black Caribbean or Black African, 7% were Asian and 2% from other ethnic minority communities. Black people and Asian people were statistically six times and 1.8 times respectively more likely than White British people.[98] In relation to the use of powers under the Terrorism Act, for 2004/05 the percentage of Asians and Black persons stopped under section 44(2) was 11% and 6% respectively. This is despite the fact that they represent only 4.4% and 2.2% of the overall population.

[97] Home Office, *Statistics on Race and the Criminal Justice System – 2005*, 2005
[98] ibid page 23.

We believe that the disproportionality is not justified because the proportion of people arrested as a result of being stopped and searched (about 1 in 6) is roughly the same for all racial groups.

In relation to the comments at paragraph 235 of the government report, we do not agree with the emphasis in the comments that *"…recent research has indicated that resident population figures give a poor indication of the population available to be stopped and searched and thus of officer bias in the use of these powers".* In our view it is more accurate to state that such research *suggested* that resident population figures *may not give the best indication* of the population available to be stopped and searched.

In relation to the guidance referred to at paragraph 236, the CRE is concerned that in practical terms the guidance remains largely unimplemented due to lack of resources. Although line mangers are supposed to implement the guidance by examining the patterns of individual officers stop and searches by ethnicity, we have been informed that in practice this is generally not occurring due to understaffing and high workloads.

In relation to the use of stop and search powers under the Terrorism Act we have some particular concerns. We are concerned that the provisions (unlike the provisions under PACE and the Criminal Justice and Public Order Act) do not require reasonable suspicion for a person to be stopped and searched and may not be lawful under the Race Relations Act 1976.

The CRE wrote to the Home Office to express our concerns with the powers in 2005 and 2006. The government has relied on the House of Lords decision in Gillan v Commissioner of Police for the Metropolis [2006] UKHL 12 in stating in response that in its view the powers are lawful. That case was a claim for breaches of human rights under the Human Rights Act 1998 in terms of rights to liberty and private life, but there was no claim of discrimination under article 14. It was not a claim of racial discrimination under the Race Relations Act and therefore a question remains as to whether the powers are in breach of the RRA, applying similar principles to the case of R (on the application of European Roma Rights Centre) v Immigration Officer at Prague Airport [2004] UKHL 55 where UK immigration officials were had to have racially discriminated against Roma seeking to enter the UK.

Article 7

The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.

3.18 The effect of Terrorism Legislation

The CRE has made submissions to the government indicating its concerns with several pieces of legislation relating to terrorism during the last five years. For example it made a submission to Parliament regarding the Prevention of Terrorism Act 2005 which permitted control orders to detain persons (foreign nationals and UK citizens). That Act replaced Part 4 of the Anti-Terrorism, Crime and Security Act 2001 which was repealed on 11 March 2005 following the judgment in the House of Lords of A(FC) and others v Secretary for State for the Home Department.[99] The court found that the detention of foreign nationals suspected of being international terrorists was incompatible with article 5 (deprivation of liberty) and 14 (prohibition on discrimination) of the ECHR.

The CRE's position was that:

- the Government must consider all counter-terrorism proposals and existing legislation within the context of the Race Equality Duty legal framework established through s.71(1) and s.71(2) of the Act and conduct Race Equality Impact Assessments of the such proposed legislation;
- the Bill could have implications for good race and faith relations. The CRE agreed that the Government and the police forces across the UK must engage in extensive counter-terrorism activities to prevent terrorist crime and preserve as far as is possible the national security of the nation. However legislation should seek not to exacerbate any fears of marginalisation or exclusion. This balance and how best it can be achieved should be considered in the process of conducting a full Race Equality Impact Assessment;
- specific provisions may breach rights of liberty under the European Convention of Human Rights, as incorporated in UK law through the Human Rights Act 1998 ('the HRA').

The CRE did not however make any submissions on the Terrorism Act 2006 which, for example, created offences relating to glorifying terrorism.

We also note that On 21 April 2006, the CRE and the University of Birmingham held a seminar on the experiences of Muslim and Irish Communities regarding terrorism laws. It aimed to initiate a dialogue and to tease out the similarities and differences between the Irish and Muslim communities' experiences and responses to anti-terrorism legislation. In particular, the seminar looked at ways of raising awareness of anti-terrorism issues, and how the lessons learned from the Irish and Muslim experiences could be explored in the context of anti-terrorism legislation.

[99] [2004] UKHL 56.

ARTICLE 8

The Parties undertake to recognise that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations.

It is important to firstly point out that the CRE does not have jurisdiction under the Race Relations Act for issues relating to religious discrimination, unless a person's religious group also constitutes a recognised racial group (eg Jews and Sikhs). However it is evident that often these issues are closely related, for example most Muslims in Great Britain are from Asian ethnic groups.

One of the main areas of debate to develop in the last few years in Great Britain and across Europe is the right of Muslim women to manifest their religion by wearing various forms of dress that cover their heads and/or faces. There are differing types of dress but the ones that have been questioned are the niqab that covers the face expect for the eyes, and the burqa which covers the entire face and eyes,

In October 2006, Cabinet minister Jack Straw MP, asked Muslim women from his constituency to remove any veils covering their faces during face-to-face meetings with him. He explained to the media that this was a request, not a demand and that it was in order to better interpret what they were saying. The then Chair of the CRE, Trevor Phillips said that it was important to discuss how wearing the veil could affect interaction between communities but that the aggressive and polarized manner in which the issue was discussed in the media was increasing community tensions and could have potentially lead to riots.[100]

Unlike in some other Member States, there has not been any legislation prohibiting the wearing of veils, however several recent cases have decided that that there was no an inteference with the right to manifest the Muslim religion or religious discrimination when school policies prevented wearing veils. These are discussed below.

3.19 Legislation and cases relating to manifesting religions

The provisions on incitement to religious hatred have been discussed in relation to article 6(2) and refer to those. In relation to Scotland in particular and paragraphs 230-231, we repeat our concern that there has been no legislation introduced to prohibit incitement to religious hatred in Scotland.

The Employment Equality (Religion and Belief) Regulations 2003 prohibited for the first time discrimination on grounds of religion and belief in employment and training. The Equality Act 2006, introduced new provisions to extend protection from religious discrimination in the provision of goods and services, education, housing, discriminatory advertisements and the exercise of all functions by public authorities. The provisions are expected to come into force in Spring 2007.

As a result there are currently only figures for claims of discrimination on grounds of religion and belief in employment. These are contained in the Employment Tribunals annual reports. For the periods 2003/04, 2004/05 and 2005/06 the numbers of such

[100] http://politics.guardian.co.uk/homeaffairs/story/0,,1929008,00.html

claims have been rising each year: 70, 307 to 486 in 2005/06.[101] However in 2005/06 only 9 claims were successful at tribunal with 37% settled by conciliation and 35% being withdrawn.

It is difficult to determine why there have been much lower figures for claims based on religion and belief than, for example, race. One factor may be that the provisions were only recently introduced and the public may not be aware the changes in the law. Of concern is that unlike for race, there is no equivalent body to the CRE where the public can seek advice on possible claims of racial discrimination and seek funding from the CRE to support their claims. The CRE welcomes the fact that the CEHR will have jurisdiction over religious discrimination and will have the power to provide assistance in claims before courts. However, the CRE expressed concerns when the Equality Act 2006 passed through parliament (which set out the powers of the CEHR) that, unlike the CRE, the CEHR would not have a duty to consider requests for assistance and therefore that it may create problems of access to justice for individuals (see the section on article 4).

Azmi v Kirklees Metropolitan Council [2006]

This was an important recent Employment Tribunal case regarding a claim of religious discrimination in employment. Ms Azmi, a devout Muslim, was dismissed for wearing a veil (which covered her whole head apart from her eyes) while she was teaching children in the presence of male colleagues. The school maintained that the children could not interact properly with Ms Azmi because they could not see her mouth or facial expressions and could not hear her clearly, and that after monitoring her lessons it was evident that the children did not engage as well with Ms Azmi when she was wearing her veil.

The claim for direct discrimination did not succeed because it was held that a non-Muslim employee who covered her face would have been suspended for the same reasons. The claim for indirect discrimination was also unsuccessful on the grounds that Ms Azmi was only asked to remove her veil whilst teaching, and the monitoring of her lessons demonstrated that in imposing the rule, the school was purely interested in maintaining educational standards. It was held that the rule was a proportionate means of achieving a legitimate aim because the children needed to be able to communicate properly with their teacher. Ms Azmi's complaint for harassment also failed but her claim of vicitmisation was successful. The decision is being appealed to the Employment Appeal Tribunal and we also understand the claimant is seeking a reference to the ECJ. The case will be important to monitor as the tribunal (and possibly the ECJ) consider in what constitutes direct religious discrimination and what constitutes proportionate and necessary measures justifying indirect religious discrimination.

Begum v Headteacher and Governors of Denbigh High School [2006] UKHL 15
This was another important case which was before the House of Lords. Shabina Begum contended that Denbigh High School acted unlawfully under the Human Rights Act 1998 (which implemented the European Convention of Human Rights into United Kingdom law) by refusing her permission to wear a full-length Islamic gown (a jilbab) at school.

[101] http://www.employmenttribunals.gov.uk/publications/documents/annual_reports/ETSAR05-06.pdf

She argued that the school acted in breach of the European Convention on Human Rights by unjustifiably limiting her right to manifest her religion and belief under article 9, and by violating her right not to be denied education under article 2 of the First Protocol of the Convention.

In 1993 the school had appointed a working party to re-examine its dress code. The governors consulted parents, students, staff and the Imams of the three local mosques. There was no objection to the shalwar kameeze, and no suggestion that it failed to satisfy Islamic requirements. The governors approved a garment specifically designed to ensure that it satisfied the requirement of modest dress for Muslim girls.

The head teacher and her assistant, and also some parents, were concerned that acceptance of the jilbab as a permissible variant of the school uniform would lead to undesirable differentiation between Muslim groups according to the strictness of their views. The head teacher in particular felt that adherence to the school uniform policy was necessary to promote inclusion and social cohesion, fearing that new variants would encourage the formation of groups or cliques identified by their clothing. The school had in the past suffered the ill-effects of groups of pupils defining themselves along racial lines, with consequent conflict between them. The school uniform had been designed to avoid the development of sub-groups identified by dress.

All of the court held that even if there had been any interference with Ms Begum's right to manifest her religious belief (three of the five judges held there had been no interference), it was in the circumstances justified.

It was held that the uniform rule was for a legitimate purpose of protecting the rights and freedoms of the other students, given their concerns of the effect allowing jilbabs to be worn would have had. The interference was also held to be proportionate. The school uniform policy had attempted to respect Muslim beliefs by allowing the shalwar kameeze, the wearing of the shalwar kameeze was found to be acceptable to mainstream Muslim opinion and it was feared be some parents and pupils that permitting the wearing of a jilbab would have adverse repercussions within the school.

ARTICLE 12

1 The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.

2 In this context the Parties shall inter alia provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities.

3 The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.

3.20 Equal opportunities and attainment levels

The experience of ethnic minorities in educational attainment varies considerably. Children from Indian, Chinese and Irish backgrounds have attainment levels which exceed the national average, whilst those from Black Caribbean, Black African, Bangladeshi, Pakistani and Gypsy & Irish Traveller backgrounds consistently fall below the average at all key stages.

In respect of Gypsy and Irish Traveller children, the picture is considerably worse. At Key Stage 1, 28% of Travellers of Irish Heritage and 42% of Gypsy/Roma pupils achieved Level 2 or above in reading compared to 84% of all pupils. At Key Stage 4, 42 % of Travellers of Irish Heritage and 23% of Gypsy/Roma pupils achieved 5+ A*-C GCSE/GNVQs compared to 51% of all pupils.[102]

This problem has been tackled by developing increasingly targeted policies. There is evidence that the attainment gap between Black Caribbean pupils and the average for all pupils has narrowed in every subject at Key Stage 1, Key Stage 3 and at GCSE between 2003-2005. At Key Stage 2 the gap has widened in English and Maths but narrowed in Science.

For Black African and Black Other pupils, the attainment gap has narrowed at Key Stage 3 and at GCSE from 2003-2005 (with the exception of Key Stage 3 Science). However, at Key Stages 1 and 2 the gap has widened for Black African pupils in Key Stage 1 Writing and Maths and in Key Stage 2 English and Maths. For Black Other pupils the gap has widened at Key Stage 1 Maths and across every subject at Key Stage 2[103].

The CRE welcomes this recent progress by the government in relation to some groups and is indicative of what can be achieved when public services collect, analyse and allow detailed ethnicity data to shape services. A focus on particular ethnic communities can help to improve overall results and reduce persistent inequalities.

3.21 Exclusion rates

The CRE is concerned at the disproportionate levels of exclusion rates of ethnic minority children. There is a great deal of variation in exclusion rates from school to school with a large proportion of all exclusions being concentrated in a small number of schools.

[102] DfES *Ethnicity & Education: The Evidence on Minority Ethnic Pupils*, DfES Research Topic Paper, January 2005

[103] DfES *National Curriculum Assessment, GCSE and Equivalent Attainment and Post-16 Attainment by Pupil Characteristics in England 2005*, 2006.

Rates also tend to be highest in areas of high social deprivation. Concern has been raised regarding disproportionately excessive punishments being applied to poor behaviour. Wright et al[104] found that some African-Caribbean pupils felt that were harshly disciplined compared to other pupils. There are also high rates of exclusion amongst young people with Special Educational Needs. Black Caribbean and Mixed White and Black Caribbean pupils are around 1.5 times more likely as White British pupils to be identified as having Behavioural, Emotional and Social Difficulties (BESD)[105].

The ultimate risk that is that many of these young people will become involved in criminal activity. The Equalities Review offers an indication of the financial implications of failing to address this; calculating that 'the taxpayer ends up paying between £15,000 and £50,000 per year for each prison place.'[106] In 2002, a Social Exclusion Unit report found that 49% of male and 33% of female prisoners had been excluded from school and that ethnic minority communities were significantly over-represented in the prison system.[107]

The Commission argues that to correct the existing injustice towards ethnic minorities, and in particular Black boys, schools need to curb the ongoing institutional indifference by developing a personalised *culture of care*. Such a culture would motivate, support and guide pupils and students *before* any personal issues manifest themselves. In other words, teachers and heads of school should become more proactive and develop a desire for achievement with pupils and students from ethnic minorities. Creating a culture of care will not just benefit ethnic minorities but the whole of the school and in particular those groups of pupils who systematically under perform over a period of time.

We also refer to the detailed findings and recommendations contained in the Department for Education and Skills (DfES) report last year into exclusions of Black pupils and urge the government to fully implement its recommendations.[108]

3.22 Segregation and improving interaction

The government should place greater emphasis on reducing educational segregation both in schools and higher education. DfES has acknowledged the existence of segregation within some UK schools.[109] Educational segregation, which in many instances reflects wider local ethnic composition, has a profound impact on the drive to create an integrated society with shared notions of identity. Segregated communities, reinforced by segregated schools, limit the potential for meaningful interaction between different communities and opportunities to reduce the type of misunderstandings which can lead to community tensions.

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[104] Wright, C.et al (2005) *School exclusion and transition into adulthood in African-Caribbean communities,* Joseph Rowntree Foundation

[105] Lindsay, G., Pather, S. and Strand, S. (2006) *Special Educational Needs and Ethnicity: Issues of Over-representation and Under-Representation* Department for Education and Skills Research Report RR757

[106] Equalities Review, *Fairness and Freedom: The Final Report of the Equalities Review*, 2007, p.21

[107] Social Exclusion Unit, Reducing Re-offending by ex-prisoners, 2002, p.21

[108] "Priority Review: Exclusion of Black Pupils "Getting it. Getting it right", DfES, September 2006

[109] DfES*, Ethnicity & Education: The evidence on minority ethnic pupils aged 5-16*, June 2006, p.31

Burgess & Wilson go further in identifying 'high' levels of ethnic segregation within British schools. They record that in 10% of local education authorities, 70% of Bangladeshi pupils would need to move school to reflect the overall racial make up of the authority.[110] Finally, Johnston et al, conclude that in a number of areas of the country, levels of school segregation are higher than residential segregation.[111]

Educational segregation is not limited to schools, but extends to higher education. Fifty-three Higher Education Institutions have less than 5% ethnic minority students.[112] These institutions are largely those older institutions, which are considered the most prestigious. A joint Commission/Guardian report noted that:

> *'There are more black Caribbean students in one post-1992 institution, London Metropolitan University, than there are in the entire Russell Group, which includes Oxford, Cambridge and Imperial College London.'*[113]

However, despite taking into account gender, prior attainment, disability, deprivation, subject of study, type of higher education institution, term-time accommodation, and age, the report said there remained an "unexplained difference" between students from ethnic minority communities and white UK and Irish students.

The DfES report said: "These results potentially have quite serious implications. A number of studies have found that attaining a 'good' degree carries a premium in the labour market, and that this premium has been increasing over time, as the HE system has expanded.

> *"As a result, there is a considerable cost attached to this attainment gap identified in relation to minority ethnic students."*[114]

The Commission has previously concluded that this form of segregation has a profound impact on the subsequent employment experience of ethnic minority students. In January 2006, Trevor Philips stated:

> *"Whether justified or not, in the average employer's mind, a 2:2 from the holy trinity of Oxford, Cambridge or Imperial merely suggests an overactive sporting or social life. A similar degree from outside the top 20 spells an undistinguished academic record. We know who will get the job interview."*[115]

The reality is that there are significant numbers of ethnic minority students within the UK's Higher Education Institutions, however they are disproportionately concentrated in particular parts of the sector and even when they are there; they are less likely than their White British peers to succeed at the highest levels. A study by the Department for Education and Skills (DfES) found that Black Caribbean, Black African and Chinese

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[110] Burgess, Simon and Wilson, Deborah *Ethnic segregation in England's schools*, 2004
[111] *School and Residential Ethnic Segregation: An Analysis of Variations across England's Local Education Authorities*, Johnston R et al, 2006
[112] Guardian Education, *Segregation, 2006 Style*, January 3, 2006
[113] The Guardian, *Black students failing to get into top universities*, January 3, 2006
[114] Ibid
[115] Ibid

students were those least likely to attain first degrees.[116] The report says: "Although the participation of students from minority ethnic communities in higher education (HE) is higher than for students from white communities, the attainment of those who complete a first degree programme (as measured by class of degree) is markedly lower than that of their white peers."[117]

If we are to tackle wider, longstanding inequalities within society, we must address existing patterns of differential attainment, exclusions and segregation within all parts of the education system. As previously noted, the relative wealth of ethnicity data means that this is not only possible, but means that education can serve as an indication of what can be achieved across the wider public sector.

3.23 Participation: recruitment and retention of teachers

DfES has identified that there is a clear gap between the ethnic profile of Britain's schools and the composition of the teaching profession. Asian and Asian British, who represent 3.5% of the overall population, represent just 2.2% of the teaching profession. This figure is particularly stark when one considers the number of senior teachers who are from different ethnic backgrounds.

It is clear that we need a representative teaching profession in order to ensure that our schools reflect wider society and ethnic minority pupils have positive role models from their own communities. The issue has assumed particular importance in the debate regarding the educational performance of Black Caribbean and Black African boys. The dearth of Black male teachers is frequently cited as an underlying reason for the differential experiences of Black boys in UK schools. DfES should consider providing support to those people who are training to become teachers, including childcare and financial support.

3.24 Citizenship education

An independent review led by Sir Keith Ajegbo[118], has made a series of important findings and recommendations aimed at promoting diversity across the schools curriculum and the content of the curriculum for Citizenship Education.

Some key findings were:

- there is huge variation in the amount and quality of Citizenship provision in schools, partly attributed to the flexible or 'light touch' approach, which schools interpret widely. This 'light touch' also presents significant difficulties for Ofsted inspections, which show that almost all schools claim they provide some

[116] Broecke, S. and Nicholls, T. *Ethnicity and Degree Attainment*, Research Report RW92, 25 January 2007.p.26
[117] Ibid
[118] Diversity and Citizenship Curriculum Review, January 2007 http://publications.teachernet.gov.uk/default.aspx?PageFunction=productdetails&PageMode=publications&ProductId=DFES-00045-2007

of their Citizenship across the curriculum; yet most of these schools do not prioritise Citizenship objectives;

- issues of identity and diversity are more often than not neglected in Citizenship education. When these issues are referred to, coverage is often unsatisfactory and lacks contextual depth;

- issues of ethnicity and 'race', whilst often controversial, are more often addressed than issues relating to religion;

- if children and young people are to develop a notion of citizenship as inclusive, it is crucial that issues of identity and diversity are addressed explicitly – but getting the pedagogical approach right will be critical: the process of dialogue and communication must be central to pedagogical strategies for Citizenship.

The key proposal was that the secondary curriculum for Citizenship Education should include a new fourth strand entitled 'Identity and Diversity: Living Together in the UK'. This strand will bring together three conceptual components:

• Critical thinking about ethnicity, religion and 'race'
• An explicit link to political issues and values
• The use of contemporary history in teachers' pedagogy to illuminate thinking about contemporary issues relating to citizenship

The following areas were proposed to be included:
• Contextualised understanding that the UK is a 'multinational' state, made up of England, Northern Ireland, Scotland and Wales
• Immigration
• Commonwealth and the legacy of Empire
• European Union
• Extending the franchise (e.g. the legacy of slavery, universal suffrage, equal opportunities legislation)

It was also proposed that the approach should be supported by a range of measures to ensure that all curriculum subjects adequately reflect the diversity of modern Britain, and that schools are appropriately supported in delivery of this education for diversity.

The Parliamentary Education and Skills Select committee also published a report on Citizenship education earlier this month. This endorsed the recommendation by the Adjegbo Review that a separate stream be established regarding diversity.[119]

The CRE believes that it is important that curriculum is improved in such a manner in order that children develop an understanding of equality, diversity and respect for all groups in British society.

[119] Second Report of session 2006-07
http://www.publications.parliament.uk/pa/cm200607/cmselect/cmeduski/147/147.pdf

3.25 The effect of the Education and Inspections Act

The Education and Inspections Act 2006 came into force in November 2006 and makes wide ranging reforms to the education system in England and Wales. The government has stated that the aim of the Act is create a fairer education system where Governing Bodies of schools have new duties imposed on them. The CRE provided a detailed submission on the Act as it was passing through parliament.[120]

The most important development concerning race relations issues is that the Governing Bodies of all schools will have a duty to promote community cohesion, which will be monitored by the Office for Standards in Education (Ofsted).[121] The CRE welcomes the introduction of this duty in recognizing the wider role of schools in promoting integration at the local level. However, it will be extremely important that the government clarifies how schools will be able to demonstrate their work on promoting community cohesion and what sanctions will be available against schools which do not fulfill the duty.

The Act also merged several existing inspectorates into a single inspectorate to cover the full range of services for children and young people. This will still be known as Ofsted even though it no longer only has inspection functions in relation to education. Recently, the CRE has had fundamental concerns about the way OFSTED is taking an increasingly narrow view of their obligations under the Race Relations Act (RRA). From this approach it is increasingly likely that schools inspection reports will not assess the extent to which schools are promoting race equality and good race relations or taking action to eliminate discrimination unless particular concerns or issues have been identified during pre-inspection analysis of data or information.

The CRE sought an assurance from the government during the passing of the Act in parliament that the new inspectorate would maintain its role in relation to inspecting compliance with the race equality duty. Although such an assurance was provided, it remains to be seen how the new inspectorate performs in practice.

[120] http://www.cre.gov.uk/downloads/educationinspectionsbill_hol2ndreading.pdf
[121] section 38 of the Education and Inspections Act 2006.

ARTICLE 15

The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

3.26 Participation in public affairs and economic life

The CRE welcomes the government's initiatives in increasing participation of ethnic minorities in various sectors, such as recruitment, retention and progression of staff within the Home Office and its agencies such as the Police, Prisons and Probation Services. As stated previously in relation to article 5, the CRE believes that one of the three key elements of work in creating a more integrated society is participation. This requires the development of genuine opportunities for ethnic minorities to participate in the governance and decision-making structures which shape society. However, the CRE is concerned at the limited progress of the government to increase effective participation of ethnic minorities in a number of sectors. There are two main sectors we wish to focus on: public affairs and economic life.

Participation in Public affairs
In order to achieve a truly integrated society, it is vital that people from all communities play a key role in the decision-making structures that govern all aspects of our lives.

The reality is that, at the present time, the key decision-making structures remain out of reach of different ethnic minority communities. There are just fifteen ethnic minority MPs sitting in the current House of Commons, this equates to 2.3%, compared to 7.9% of the population. The Equalities Review has predicted that, at the current rate of progress, it will take until 2080 for the UK to elect a representative House of Commons.[122] The picture at the local level is little better. Only 3.5% of local councillors are drawn from ethnic minority communities.[123] DCLG has recently announced a drive to increase the number of ethnic minority councillors. It is important that the progress of this work is measured.

In relation to the judiciary[124] which make critical decisions concerning criminal justice, immigration claims and discrimination claims, there is an under-representation of persons from ethnic minorities. Although ethnic minorities represent 8 percent of the population, fewer than 4 percent of judges in courts are from ethnic minorities. The position is better in relation to magistrates with 7 per cent coming from ethnic minorities.[125]

The CRE does however welcome several recent reforms of the government aimed at increasing the diversity of the judiciary. The Constitutional Reform Act 2005 transferred responsibility for judicial appointments from the Lord Chancellor to an independent Judicial Appointments Commission (JAC), bringing greater transparency to the appointment process. The commission also has a statutory duty to encourage diversity in the pool of candidates. In addition, the Tribunals Courts and Enforcement Bill is

[122] Equalities Review, 'Fairness and Freedom: The Final Report of the Equalities Review, 2007
[123] IDeA and LGA, *National Census of Local Authority Councillors in England in 2004*
[124] The term judiciary is the collective term for the 43,000 judges, magistrates and tribunal systems who deal with legal matters in England and Wales.
[125] Equalities Review Final Report, February 2007, page 84.

currently passing through the Houses of Parliament and includes clauses to extend eligibility for judicial office. This will create a more level playing field for solicitors and barristers by changing the emphasis from rights of audience to post qualification legal experience. It will also widen the pool of applicants by extending eligibility to legal executives, patent agents and trademark attorneys for certain judicial posts.[126] We hope that these changes will lead to improvements.

Participation in economic life: using public procurement

The use of public procurement can be a vital tool in:

- increasing the number of ethnic minority businesses competing for contracts;
- ensuring that equality considerations are embedded into contractual arrangements with the private sector.

The race equality duty under the Race Relations Act requires public authorities to consider the need to eliminate racial discrimination, promote equality of opportunity and good race relations in the exercise of all their functions which includes procurement.

In addition, the Office of Government Commerce's guidance note on "Social Issues in Purchasing" published in 2006 makes it clear that EU law allows both equality and environmental issues to be taken into account in public sector procurement, where these are relevant to the contract, and provides guidance on how and when this can be done. However in practice the use of procurement to embed equality issues has in practice been limited and inconsistent to date.

It is crucially important that the public sector create a situation in which all business can compete for public sector contracts and other business. The public sector spends around £125 billion a year on a wide range of goods and services. These are procured from private and third sector agencies, yet the take up of public sector contracts amongst ethnic minority suppliers has historically been perceived to be low.[127] This is despite the fact that ethnic minority business is estimated to contribute over £90 billion to the UK economy annually.[128]

The lack of systematic ethnic monitoring of procurement processes means we do not have a definitive view of the situation, however ethnic minority businesses have previously told the CRE that they experience specific barriers in accessing these opportunities. Key reasons for this perceived low take-up are largely rooted in a general lack awareness of contracting opportunities amongst ethnic minority businesses, over-complicated procurement processes and a tendency for public sector agencies to configure contracts in a way which are beyond the means of smaller ethnic minority businesses.

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[126] Statement by Constitutional Affairs Minister Harriet Harman, 12 March 2007, Department of Constitutional Affairs.

[127] Chevin, D. (ed), *Public Sector Procurement and the Public Interest*, Smith Institute, 2005

[128] Ethnic Minority Business Forum, The Way Forward, 2005-2008, 2005

As part of the CRE's work on the Discrimination Law Review, we have developed a position on procurement (as indicated in the section on article 4) and will recommend to the government that within the new equality duty framework of the Single Equality Act, specific duties are introduced which relate to the function of procurement generally and what private contractors must do regarding equality as part of the procurement contracts. Similar recommendations were recently made in the Equalities Review (see above in relation to article 4).

Specific Questions to the United Kingdom for the Second Reporting Cycle

Question 2: implications of the Anti-Terrorism, Crime and Security Act 2001 upon persons belonging to national minorities

As the government has indicated Part 4 of the Anti-Terrorism, Crime and Security Act 2001 was repealed on 11 March 2005 following the judgment in the House of Lords of A(FC) and others v Secretary for State for the Home Department.[129] The court found that the detention of foreign nationals suspected of being international terrorists was incompatible with article 5 (deprivation of liberty) and 14 (prohibition on discrimination) of the ECHR.

As result the government introduced the Prevention of Terrorism Act 2005 which provided for control orders, but which applied to UK and foreign nationals. We note that the government's report has not mentioned a case this is before the courts challenging the legality of the control orders.

The Court of Appeal ruled on 1 August 2006 that the control orders under the Prevention of Terrorism Act 2005 were also unlawful, as deprivation of liberty and contrary to article 5 of the ECHR, which bans indefinite detention without trial. The case is currently on appeal to the House of Lords.[130]

[129] [2004] UKHL 56.
[130] Secretary of State for the Home Department v JJ, KK, GG, HH, NN & LL [2006] EWCA Civ 1141.