

**EXPLANATORY MEMORANDUM TO THE
SCOTLAND ACT 1998 (MODIFICATIONS OF SCHEDULE 5) ORDER 2006**

1. This Explanatory Memorandum has been prepared by the Department of Trade and Industry and is laid before the UK Parliament by Command of Her Majesty.

2. Description

2.1 The Order is being made under section 30(2) of the Scotland Act 1998. It amends Schedule 5 to the Scotland Act by adding the Commission for Equality and Human Rights (“the CEHR”) to the list of reserved bodies in Part 3.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative background

4.1 The Order amends the reservation at paragraph 3(2) of Part 3 to Schedule 5 (Reserved bodies) of Schedule 5 to the Scotland Act 1998. The amendment will add the Commission for Equality and Human Rights (CEHR) to the list of reserved bodies.

5. Extent

5.1 This Order extends to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State for Women and Equality has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Scotland Act 1998 (Modifications of Schedule 5) Order 2006 are compatible with the Convention rights.

7. Policy background

7.1 The Equality Bill, which is currently before Parliament, will replace the existing equality Commissions, the Commission for Racial Equality (CRE), the Disability Rights Commission (DRC) and the Equal Opportunities Commission (EOC) with a Commission for Equality and Human Rights (CEHR) which will take on the work of the existing Commissions and also take responsibility for combating

discrimination on the grounds of sexual orientation, religion or belief and age. The new Commission will also have responsibility for promoting human rights.

- 7.2 As the CEHR will be a non-departmental public body, funded by the Secretary of State and responsible through the Secretary of State to the UK Parliament, it is appropriate that its constitution and functions are reserved to the UK Parliament.
- 7.3 Paragraph 3(2)(c) of Part 3 to Schedule 5 currently lists the Commission for Racial Equality (CRE), Equal Opportunities Commission (EOC) and Disability Rights Commission (DRC) as reserved bodies whose constitution and functions are reserved matters. As the CEHR will eventually take over the work of those bodies, the amendment is necessary to preserve the effect of paragraph 3(2)(c).
- 7.4 The references to the existing equality commissions will be retained in the meantime, as the CEHR will not take on all their functions for at least 2 years. It is expected that those references be tidied up by future section 30(2) order or during a statute law revision exercise once the existing Commissions have been dissolved.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this order, as it has no impact on business, charities or voluntary bodies. This is a constitutional measure that concerns the reservation of legislative competence to the UK Parliament. A full Regulatory Impact Assessment has been carried out for the Equality Bill that will establish the CEHR.
- 8.2 There is no impact on the public sector or public spending.

9. Contact

Katherine Stoate at the Department of Trade and Industry (katherine.stoate@dti.gsi.gov.uk) can answer any queries regarding the order.

EXECUTIVE NOTE

DRAFT : The Scotland Act 1998 (Modifications of Schedule 5) Order 2006 ("the draft Order")

Introduction

1. Section 30(2) of the Scotland Act 1998 ("the 1998 Act") enables Her Majesty by Order in Council to make any modifications of Schedule 4 or 5 that She considers necessary or expedient. By virtue of Schedule 7 to the 1998 Act, Orders under section 30(2) are subject to "Type A" procedure. No recommendation to make the Order is to be made to Her Majesty in Council unless a draft instrument –

(a) has been laid before, and approved by resolution of, each House of Parliament; and

(b) has been laid before, and approved by resolution of, the Scottish Parliament.

2. The draft Order therefore requires the approval of both Parliaments. The Order will come into force on 1st May 2006.

3. The draft Order makes modifications to Schedule 5 to the 1998 Act.

Purpose of the Modification

4. The purpose of the modification is to list the Commission for Equality and Human Rights (in paragraph 3(2)(c) of part III of Schedule 5 to the 1998 Act) as a reserved body.

Policy Background

5. The Commission for Equality and Human Rights will replace these existing equality Commissions and will take on the work of the CRE, EOC and DRC. It will also take responsibility for combating discrimination on the grounds of sexual orientation, religion or belief and age. The new Commission will also have responsibility for promoting human rights.

6. It is policy that the reservation will also relate to the constitution and functions of the CEHR, which will be a NDPB, funded by the Secretary of State, and responsible through the Secretary of State to the Westminster Parliament.

Legislative background

7. Paragraph 3(2)(c) of Part III to Schedule 5 currently lists the Commission for Racial Equality (CRE), Equal Opportunities Commission (EOC) and Disability Rights Commission (DRC) as reserved bodies whose constitution and functions are reserved matters.

8. Amending the reservation at paragraph 3(2)(c) of Part III to Schedule 5 by means of the draft Order will ensure that it accords with current policy by ensuring that only the UK

Parliament can legislate to change the way the body operates, or confer or remove functions of the CEHR. If the CEHR was not a reserved body a number of functions of the CEHR (both in the human rights and equality areas) could come within the Scottish Parliament's power to legislate.

9. This approach has been discussed and agreed with DTI and the Scotland Office.

Financial Implications

10. It is not anticipated that there will be any financial implications for the Scottish Executive.

Scottish Executive
November 2005