



The Scottish Parliament  
Pàrlamaid na h-Alba

## EQUAL OPPORTUNITIES COMMITTEE

### AGENDA

17th Meeting, 2008 (Session 3)

Tuesday 2 December 2008

The Committee will meet at 9.30 am in Committee Room 1.

1. **Decision on taking business in private:** The Committee will decide whether to consider mainstreaming guidance in private at a future meeting.
2. **Decision on taking business in private:** The Committee will decide whether to consider its approach to an inquiry into female offenders in the criminal justice system in private at a future meeting.
3. **Reporter:** The Committee will take evidence on the increasing levels of sexual imagery in goods aimed at children, in a round-table discussion, from

Ed Mayo, Chief Executive, Consumer Focus;

Dr Agnes Nairn, Academic writer, researcher and consultant. Professor of Marketing, EM-Lyon Business School;

Tom Narducci, Senior Consultant, National Society for the Prevention of Cruelty to Children;

Ann Henderson, Assistant Secretary, Scottish Trades Union Congress;

Damien Carnell, Trainer/Consultant.

4. **UK Equality Bill:** The Committee will take evidence on the UK Government's proposed Equality Bill from—

Vera Baird QC MP, Solicitor General, UK Parliament.

5. **Offences (Aggravation by Prejudice) (Scotland) Bill (in private):** The Committee will consider a draft report to the Justice Committee.

**EO/S3/08/17/A**

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The papers for this meeting are as follows—

**Agenda Item 3**

Briefing paper

[EO/S3/08/17/1](#)

**Agenda Item 4**

Briefing paper

[EO/S3/08/17/2](#)

**Agenda Item 5**

Draft report

[EO/S3/08/17/3 \(P\)](#)

**Equal Opportunities Committee**

**17<sup>th</sup> Meeting, 2008 (Session 3), Tuesday 2 December 2008**

**Sexual imagery in goods aimed at children – issues for discussion**

**Background**

1. At its meeting on 30 September 2008, the Committee agreed to hold a roundtable discussion on the increasing levels of sexual imagery in goods aimed at children.
2. In considering this matter, the Committee has agreed that the following issues should form the basis of its consideration:
  - the increasing prevalence of such imagery aimed at children;
  - the parties that have contributed to this situation;
  - the impact this imagery has on children, in particular whether participants are aware of any negative effects associated with increasingly sexualised imagery; and
  - the measures that can be taken to ensure that these goods are not targeted at children.
3. For members' information:
  - Annexe A (page 2) contains written submissions from:
    - Dr Agnes Nairn;
    - Playboy Enterprises International Inc, which is unable to attend the evidence session. There is an initial response declining the Committee's invitation, and a second more detailed response to three specific questions posed by the Committee; and
    - the Scottish Retail Consortium, which is unable to attend the evidence session;
  - Annexe B (page 13) contains brief biographical information on the roundtable participants.

**Terry Shevlin  
Clerk to the Committee  
November 2008**

## ANNEXE A – WRITTEN SUBMISSIONS

### WRITTEN SUBMISSION FROM DR AGNES NAIRN

I note that the discussion relates to the following issues.

1. Why there is an increasing prevalence of such imagery aimed at children
2. Who the parties are that have contributed to this situation
3. What impact this imagery has on children, in particular whether participants are aware of any negative effects associated with increasingly sexualised imagery
4. What could be done to ensure that these goods are not targeted at children

Issue 1: I would like to raise these issues:

- **Definitions** of “sexual imagery”
- The **empirical evidence** for “increased levels”
- Distinctions between **goods** and services sold, **advertising and marketing** for such goods and services and general **media** influences

Issue 2: I would like to comment on the parties and give some **recent examples**.

Issues 3, 4: I would like to draw attention to the findings of two important pieces of international research conducted over the last 12 months.

- American Psychological Association (2007). ***Report of the APA Task Force on the Sexualisation of Girls.*** ([www.apa.org/pi/wpo/sexualisation.html](http://www.apa.org/pi/wpo/sexualisation.html))
- Parliament of Australia Senate (June 2008). ***Inquiry into the sexualisation of children in the contemporary media environment.*** ([www.aph.gov.au/Senate/committee/eca\\_ctte/sexualisation\\_of\\_children/tor.htm](http://www.aph.gov.au/Senate/committee/eca_ctte/sexualisation_of_children/tor.htm))

### 1. Increasing prevalence of sexual imagery

#### Defining “Sexual Imagery”

The issues surrounding sexual imagery in goods aimed at children are extremely complex and the impacts hard to gauge and disentangle. For this reason I believe clear definitions are important.

Research on this subject has typically made a distinction between “sexualisation” (in the case of children, premature and inappropriate sexualisation) and “healthy sexuality”. Satcher (2001: cited in APA, 2007) notes that “Healthy sexuality is an important component of both physical and mental health, fosters intimacy, bonding, and shared pleasure, and involves mutual respect between consenting partners.” In contrast APA (2007) note that sexualisation occurs when:

- a person’s value comes only from his or her sexual appeal or behaviour, to the exclusion of other characteristics;

- a person is held to a standard that equates physical attractiveness (narrowly defined) with being sexy;
- a person is sexually objectified – that is, made into a thing for others' sexual use, rather than seen as a person with the capacity for independent action and decision making and/or
- sexuality is inappropriately imposed upon a person.

This may be a useful distinction and set of definitions. It may be helpful to distinguish between sexuality (which can be discussed with children in a responsible, age-appropriate context within schools and families) and situations in which sexualisation is currently being encouraged in particular for commercial gain.

### **Empirical Evidence for Increased Levels of Sexual Imagery**

Related to the issue of definitions is the vexed question of compiling empirical research which shows that sexual imagery in goods aimed at children has, indeed, increased. I would be interested to discuss whether such evidence exists, what is measured and how and over what time period. A related empirical question might be whether its prevalence is currently at some unacceptable level and how one would establish that level.

### **Goods, advertising and media**

Inappropriate sexualisation of children may occur through goods or services purchased or through the advertising and marketing of goods and services. Moreover the media consumed by children may also contain sexual imagery and references which prematurely sexualise children. It might be useful to define the scope of the discussion and whether greater emphasis is to be placed on goods/services themselves, advertising or the more ubiquitous media backdrop to children's lives.

## **2. Parties which have contributed**

The Australian Parliament report notes that "This is a community responsibility which demands action by society. In particular, the onus is on **broadcasters, publishers, advertisers, retailers and manufacturers** to take account of these community concerns." I would suggest that in Scotland all of these parties are likely to have contributed to the current situation (however it is defined and measured) and should thus share responsibility in any proposed solutions.

Here are some recent examples of sexual imagery used in the sale of goods or services aimed at children which have been censored by regulators or vilified by media commentators. These cover goods themselves and advertising aimed at children.

- In 2007 complaints were made about the children's clothes catalogue "No Added Sugar" which showed children in a number of sexually provocative positions. The Advertising Standards Authority upheld the complaints and asked that the images not be used again.

- The pole dancing kits available in Tesco and Asda caused great press consternation although I am unaware of whether complaints were made or, indeed, who these would be made to.
- The use of the Playboy Bunny logo on stationery sold by WH Smith in its School section also resulted in widespread negative press coverage.
- On 19<sup>th</sup> November 2008 the ASA asked Coca Cola to withdraw a poster advertisement because it implied that an underage girl was in a sexual relationship with an adult man.
- The internet site [www.addictinggames.com](http://www.addictinggames.com) which is owned by Viacom (which in turn owns MTV and Nickelodeon) contains salacious games. As the site carries adverts for children's virtual world sites such as Neopets it is clearly aimed at children. Children are encouraged to add "naughty games" to their Facebooks pages and blogs.
- It should be noted that as the ASA do not have remit to adjudicate over websites (as opposed to paid for advertising on websites) they would currently not be able to act over any complaints made about this. Undesirable content on websites accessed by children is an issue which requires more scrutiny internationally.
- The music industry has been singled out for the lyrics of songs aimed at young people and for the objectified depiction of women in music videos. The Australian Parliament recommended that broadcasters review their classification of music videos specifically with regard to sexualising imagery.

Here we can see a range of parties who have been singled out as contributing to unacceptable sexualisation of children in a commercial context.

### **3. What impact does sexual imagery have on children**

A number of academic studies have been conducted around the effects of the sexualisation of young people. Most of this work has been done on girls (the APA report in America looked only at girls) and there is a need for more work on effects on boys. In particular we are lacking research on how more readily available pornography on the internet and by mobile phone affects boys. We are also lacking research on younger children – perhaps understandably given the ethical considerations involved in researching this topic.

Research shows that effects relate both to how children see themselves and how they see others which means that premature and inappropriate sexualisation affects children's own psychological (and sometime physical) wellbeing and also their relationships with family and friends. Work has been done around gender stereotyping, body image, anorexia and bulimia, mental health, relationships, violence and life opportunities.

Key findings from previous studies are as follows:

- Girls exposed to sexualising and objectifying media are more likely to be dissatisfied with their bodies and experience depression and lower self esteem. These effects are not as great for African American girls.
- When girls objectify themselves they tend to do less well at school as they believe the best path to power and acceptance is through physical appearance rather than academic or extra-curricular achievement. This may affect later life opportunities.
- Girls' exposure to passive role models affects their own perception of their sexuality.
- Girls' peer relationships are affected as acceptance and rejection of individuals is based on conformity with a narrow beauty ideal which involves sexual presentation and competition for boys.
- Boys' attitudes towards girls and their views of dating, sexual harassment and sexual violence are affected by exposure to media which sexualizes girls.

There is also a contrasting (smaller) body of literature which claims that the wider availability of pornography produces a "democracy of desire" creating more egalitarian and diverse forms of sexual expression which can be accessed by girls and boys – thus creating more equality between the sexes. Some research claims that girls' use of the Playboy bunny logos are ironic and are an active assertion of girlhood rather than a passive acceptance of objectification by men. There is also evidence that girls are now more likely to take the lead in early sexual activity than in the past.

#### **4. What could be done to ensure that these goods are not targeted at children?**

I believe that the issue is wider than simply restricting the targeting of goods at children. All the parties mentioned above have a role to play in insuring that the negative effects of premature and inappropriate sexualisation are understood and minimised.

The ASA report suggests a variety of approaches to counteract a more general sexualisation of girls. The report makes suggestions involving

- Schools (including media literacy, comprehensive sex education programmes and the encouragement of sports and other extra curricular activities),
- Families (watching programmes together so that parents can encourage critical awareness)
- Active girls' groups (in the virtual world through blogging and forums and in the real world through events)
- Government (through creating public awareness campaigns and funding more research).

The Australian Parliament report from June of this year made the following recommendations.

- Commissioning of a major longitudinal study to gauge the long term effects of premature and inappropriate sexualisation of children.
- Reviewing classification of music videos

- Creating children's TV Channels
- Public awareness campaigns
- Sex education programmes
- Review of advertising standards process

I would suggest that there is both a lot to be learnt from this work in Australia and USA and that more research is needed in UK (particularly longitudinal work) in order to understand these complex social effects. Work to date has tended to be with young adults rather than children, with girls rather than boys and with heterosexuals rather than gays and lesbians.

I would also suggest that the parties cited could already take some action. The industry associations in particular could be involved through reviewing codes of practice and ensuring strong self-regulation and policing is in place. It is also important to involve young people in any process which affects them. Children need to be protected from harmful effects but they also need to be well equipped to deal with them.

**Dr Agnes Nairn**  
**26 November 2008**

**WRITTEN SUBMISSIONS FROM PLAYBOY ENTERPRISES INTERNATIONAL  
INC**

I am writing to thank the Scottish Parliament's Equal Opportunities Committee for inviting me to participate in the round-table discussion on the increasing levels of sexual imagery in goods aimed at children, scheduled for 2 December. I appreciate the Committee's willingness to include Playboy in this discussion of an important issue.

However, I feel that, as Chairman and CEO of Playboy Enterprises Inc., I would have little to contribute to this conversation. From the publication of our first magazine 55 years ago, all the way up to the present day, Playboy has marketed its magazines and other products exclusively to an adult audience. Today, we are proud that Playboy-branded products are marketed to consumers in 150 countries around the globe, and that our brand represents style, sophistication and fun to millions of adults worldwide.

Certainly, we share your concerns about ensuring a healthy environment for children. We work diligently alongside our licensing partners to make sure that our retailers position and market our products appropriately. As detailed in my letter to Ms. Camilla Kidner, dated 20 August 2008, we provide direction and training on correct merchandising techniques to all of our licensees. We stress that Playboy products should be merchandised in a way that appeals to consumers over 18 years of age and that Playboy products should not appear in-store in the vicinity of brands that are more appropriate to children.

Internally, Playboy's public relations and marketing personnel are keenly aware that our brand targets only adults. For that reason, we limit our advertising and public relations efforts to media outlets aimed at adult audiences.

I believe the members of the Equal Opportunities Committee may be interested in [www.takeparentalcontrol.org](http://www.takeparentalcontrol.org), a visually rich, interactive website that we created to help parents understand, monitor and filter the content available to children through the electronic media. Through this website, Playboy has underscored our serious commitment to helping parents keep unwanted programming away from their children. We believe initiatives such as Take Parental Control are important in protecting parents' rights to make decisions for their own families.

As a woman business leader and as a longtime advocate for women's rights, I am proud to be the steward of an iconic brand that is recognized around the globe. I believe that the Playboy brand's popularity rests on our consistent advocacy for freedom of expression, in the United States and around the world.

I know that the people of Scotland cherish the individual right of free speech, just as we do here in the United States. As your Committee discusses the important issue of protecting children from inappropriate sexual material, I hope you will seek effective and thoughtful means to balance the protection of

children and the rights of adults to make their own choices about what they say, see, read, write and wear.

In closing, let me state clearly and for the record: Playboy has never knowingly marketed our products to children. We will never do so, nor will we allow our licensees to do so. For that reason, I would have no experience or expertise to share with the Committee, and thus I am respectfully declining your invitation to attend this meeting.

I know that the representatives of the Scottish Retail Consortium who will be attending will capably express the interests and concerns of our licensing and retail partners on Dec. 2. I look forward to visiting the United Kingdom later in the coming year and continuing to build productive business relationships with partners in Scotland and throughout Europe.

**Christie Hefner**  
**Chairman and Chief Executive Officer**  
**Playboy Enterprises Inc**  
**31 October 2008**

Ms. Hefner has asked me to respond to questions raised in your letter regarding Playboy's participation in the Equal Opportunities Committee's roundtable discussion on 2<sup>nd</sup> December 2008. As Vice President of Playboy's retail marketing and merchandising, I work with our licensees to ensure that our products are merchandised and marketed according to our brand guidelines, and Ms. Hefner thought I might be able to provide some additional insight.

In response to your questions:

- Playboy does not advertise or market to consumers under the age of 18. We respect the ability of parents to provide appropriate supervision and to make responsible, thoughtful decisions about the items their children buy, wear and own. We are attaching a copy of the guidelines we use with our licensees, and you will see that we are quite specific about how our products should be marketed. We also give presentations to reinforce these messages. Playboy products are sold in literally thousands of stores around the world and on countless web sites, which means that it is virtually impossible for us, like other large licensors, to monitor every sale or sales outlet. As a result, we all must work with our licensees to help ensure that products are handled responsibly.
- The film *House Bunny* was produced and marketed by Sony Pictures. The film's central character is a young woman in her late 20's, and the story focuses on men and women of

college age. The film's 12A certificate was issued independently by the British Board of Film Classification.

- We appreciate your bringing the website [REDACTED] to our attention. This site is not one of our authorized e-tailers, and we are working with our licensees to determine how they accessed our products. We are deeply concerned by the unsanctioned marketing language on the website. As you and other members of the Committee are no doubt aware, most e-commerce purchases are made via credit card, which usually indicates that an adult played some role in the transaction.

Additionally, we were surprised and disappointed that some members of your Committee chose to release selected portions of Ms. Hefner's previous letter to the media, allowing her comments to be taken out of context. As you noted in your last correspondence, Ms. Hefner's reply to the Committee was reasoned and responsible and designed to help in your upcoming deliberations.

Please let me know if I can be of assistance in providing the Committee with any additional information.

**Lorna Donohoe**  
**Vice President, Retail Marketing and Merchandising**  
**Playboy Enterprises Inc.**  
**21 November 2008**

## **PLAYBOY FASHION & LIFESTYLE**

### **GLOBAL RETAIL PARTNER MERCHANDISING GUIDELINES**

Welcome to the world of Playboy Retail! We are excited about our retail partnership and look forward to working with you to bring Playboy's exciting fashion and lifestyle products to your customers. Following are some general guidelines to which we request you to refer as you prepare to showcase Playboy in your stores. Please review carefully and contact Lorna Donohoe, VP of Worldwide Retail Marketing and Merchandising, with questions or concerns.

### **PLAYBOY POSITIONING STATEMENT**

Targeting trend-conscious men and women, 18 to 34, Playboy brings its iconic legacy and unique brand assets to life through fun and sexy fashion/products, retail stores and entertainment experiences for those who aspire to the good life.

### **GENERAL MERCHANDISING GUIDELINES**

When merchandising Playboy product in your stores, please ensure that:

- All product features a proper Playboy hangtag with hologram confirming its authenticity, along with your store's hangtag and clearly marked price.
- All product merchandised in a cohesive, non-cluttered display alongside brands that mirror Playboy's audience and brand aesthetic **Playboy merchandise should NOT appear in-store in the vicinity of non adult character brands of brands that target shoppers under 18, such as Disney, Hello Kitty, Warner Bros., Hannah Montana, Nickelodeon, Betty Boop, etc.**
- Sale signage calls out discounted items ONLY and is easily distinguished from new arrivals.

### **SIGNAGE**

In order to present your customers with a sense of Playboy's heritage and reputation as a global fashion brand, archival imagery, seasonal photo shoot images and complementary thematic in-store signage are available for use in your Playboy retail environment. These images should be changed seasonally and/or can also be used as a promotional device to promote sales and other promotions. **Use of in-store signage MUST be submitted for approval through your Playboy sales representative or distributor and include an approved trademark notice. Please allow a minimum of two weeks for approval.**

### **RETAIL DESIGN AND FIXTURING**

Please work with your Playboy sales person or distributor for inspiration on how to present Playboy products in a fun, concise manner in your store(s). Playboy's in-house Creative team is also available to consult on Playboy retail design projects (development of new fixture, adaptation of fixture, new shop-in-shop, etc.) for your store(s). Please contact Playboy Retail Marketing for further instruction.

### **IN-STORE EVENTS**

There are a wide range of promotional opportunities available to Playboy's global retail partners, including possible sweepstakes, in-store appearances by Playboy Playmates and other celebrities, trunk shows featuring exclusive limited-edition product, in-store exhibitions of Playboy archival art and photos, and more. We respectfully request that you contact Lorna Donohoe in Playboy Retail Marketing to discuss proposals for any promotional activities prior to submitting an Event Request Form (attached).

### **EMPLOYEE TRAINING**

Your employees will occasionally receive questions about the Playboy brand and our products that may not be covered in your own employee training guidelines. Please contact Lorna Donohoe to schedule employee training and brand orientation workshops.

**WRITTEN SUBMISSION FROM THE SCOTTISH RETAIL CONSORTIUM (SRC)**

1. The Scottish Retail Consortium (SRC) is the lead trade association representing the whole range of retailers in Scotland, from the large multiples and department stores through to independents, selling a wide selection of products through centre of town, out of town, rural and virtual stores.
2. SRC members are responsible retailers and impose strict marketing, advertising and promotional standards to all goods sold in their stores, be they branded or own brand products. Retail takes the legal restrictions and requirements governing the sale, promotion and display of the goods they sell very seriously, often carrying out internal audits and constant reviews to ensure goods they sell are compliant with the law and their own policies.
3. In particular, the marketing and sale of age-restricted products is a key area of activity which goes above and beyond the law. Staff undergo rigorous training to understand that products such as alcohol and tobacco, as well as video games, DVDs, magazines and CDs are not suitable for all customers and policies such as 'Challenge 21' are proactively implemented to ensure that inappropriate products are not sold to young customers.
4. The SRC does not believe that much of the Committee's focus is relevant to the retail sector – these issues are more aimed at the manufacturing and advertising sectors. However, we acknowledge our front-facing role in the seller of products and therefore will attempt to address some of the points made.
5. We are not convinced that there is an increasing prevalence of such imagery aimed at children and we ask the Committee to consider undertaking research in this area before making such a statement.
6. The SRC's members are family retailers. They are names commonly associated with the High Street, town centres and well respected out of town shopping centres. Members' businesses depend on good reputations and trusted names and, therefore, the products on sale have to be of a standard and a level that does not cause offence to customers.
7. Most retailers advertise directly to parents, not children. Toys in particular are advertised to adults to buy for their children. This means that the products must be of a kind that parents would be happy for their children to have access to.
8. A significant proportion of employees in the retail sector are parents, typically mothers working part time. As communication is key in the retail sector, staff can often be the first to raise an issue with products, during daily meetings or discussions on popularity of goods. This 'sense check' is a good way of ensuring a high standard of products are on sale.
9. The SRC's larger members all have customer service telephone lines, available for the public to complain about products they have seen in store.

Retailers will respond rapidly to calls to these lines and often products can be removed from shelves even after a very low complaint rate. In retail, the 'customer is king' and therefore their views are taken very seriously indeed.

10. The SRC's smaller members may not utilise such technology however they are, arguably, able to get closer to the customer due to the one to one nature of smaller stores. This means they must be in tune with their customers' demands and views on products, otherwise that customer will simply shop elsewhere. This affects the goods they choose to stock and the branding they sanction.

11. The SRC believes that education is the key to preventing inappropriate imagery from selling well to children. Children themselves need to understand the marketing that some less responsible companies use and parents must not shy away from talking to their children about such products. Ultimately, parents have a key role in their children's access to branding and they should ensure that the standards they espouse are important are shared by their children.

**Fiona Moriarty**  
**Director**  
**Scottish Retail Consortium**  
**25 November 2008**

**ANNEXE B - BIOGRAPHICAL INFORMATION  
ON THE ROUNDTABLE PARTICIPANTS  
(sourced from the web)**

**Consumer Focus**

The Committee originally agreed to invite the National Consumer Council (NCC) to the roundtable. The NCC recently merged with two other consumer organisations, energywatch and Postwatch, to become Consumer Focus. It is a statutory organisation campaigning for a fair deal for consumers in England, Wales, Scotland, and, for postal services, Northern Ireland. The new approach allows for more joined-up consumer advocacy, with a single organisation speaking with a powerful voice and able to more readily bring cross-sector expertise to issues of concern.

**Dr Agnes Nairn**

Dr Agnes Nairn is an academic researcher, writer and consultant based in Bath. She is Professor of Marketing at two of Europe's leading business schools: EM-Lyon Business School in France and RSM Erasmus University in the Netherlands.

Her book *Consumer Kids*, co-authored with Ed Mayo of Consumer Focus is to be published in January 2009. It takes a look at what is happening as children are increasingly targeted by corporations.

Agnes is currently on a panel convened by the Department for Children, Schools and Families to assess the evidence for the impact of the commercial world on children's wellbeing.

**National Society for the Prevention of Cruelty to Children (NSPCC)**

Most of the NSPCC's work is with children, young people and their families.

It works to achieve cultural, social and political change - influencing legislation, policy, practice, public attitudes and behaviours and delivering services for the benefit of young people.

**Its aim**

We want to see a society where all children are loved, valued and able to fulfil their potential. To do this, we have four objectives:

- To mobilise everyone to take action to end child cruelty.
- To give children the help, support and environment they need to stay safe from cruelty.
- To find ways of working with communities to keep children safe from cruelty.
- To be, and be seen as, someone to turn to for children and young people.

**Scottish Trades Union Congress**

The STUC purpose is to co-ordinate, develop and articulate the views and policies of the trade union movement in Scotland and, through the creation of real social partnership, to promote: trade unionism; equality and social justice; the creation and maintenance of high quality jobs; and the public sector delivery of services.

**Damian Carnell**

Damian Carnell is a trainer and consultant on domestic violence work with men and young people. He works to prevent anti-gender violence and stated that: "From boyhood, men read into the messages that we see around us, from men's institutionalised superiority over women, and privileges of being male, to negative stereotypes of girls and women. It's no wonder that 35 per cent of boys aged 11-16 believe it is justified to abuse women"<sup>1</sup>.

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<sup>1</sup> *The Independent*, 22 February 2007

## Equal Opportunities Committee

17<sup>th</sup> Meeting, 2008 (Session 3), Tuesday 2 December 2008

### The Equality Bill

#### Introduction

1. This paper provides background information to members in advance of their questioning of Vera Baird QC MP, Solicitor General, on the proposed UK Government equality bill. The Government intends to introduce a bill at some point in 2009.
2. The Equal Opportunities Committee invited its stakeholders to submit any questions that they would like the Committee to pose to the Solicitor General. The questions that have been submitted are contained in the annexe, on page 4 (stakeholders have been informed that the Committee cannot guarantee that all questions will be asked).
3. The annexe also suggests other broad issues that members may wish to explore with the Solicitor General.

#### Background: chronology

4. The United Kingdom Government launched the *Discrimination Law Review* in February 2005, which considered “the opportunities for creating a clearer and more streamlined equality legislation framework which produces better outcomes for those who experience disadvantage while reflecting better regulation principles”. The Discrimination Law Review’s findings resulted in a consultation paper, *A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain*, which was published in June 2007.
5. The Government recently published *The Equality Bill - Government Response to the Consultation*, which summarises the responses it received to the Discrimination Law Review consultation and which also provides detailed commentary on the content of the equality bill (an electronic version of this document can be found by following this [link](#)).
6. On 26 June 2008, the UK Government’s Equalities Office published *Framework for a Fairer Future – the Equality Bill*, which provides a shorter commentary on the bill than the above document. A summary of the main points of this document – which has been circulated to members – is contained in paragraphs 8 – 15 (an electronic version can be found by following this [link](#)).
7. It is also helpful to point out that the Government’s work in this area has taken account of the findings of the independent *Equalities Review*, which was chaired by Trevor Phillips. This review involved an investigation into the

causes of persistent discrimination and inequality in British society. The final report was published in February 2007 and can be found by following this [link](#).

### **The proposed equality bill: main issues**

8. The foreword to *Framework for a Fairer Future – the Equality Bill* sets out the purpose of the proposed bill: “to strengthen protection, advance equality and declutter the law”<sup>1</sup>.

9. There are various actions the Government intends to take to achieve these purposes, which are grouped together under the following headings:

#### **a. Introduce a new Equality Duty on the public sector**

10. The Government intends to:

- introduce a new streamlined Equality Duty to replace the race, disability and gender equality duties, which will also cover gender reassignment, age, sexual orientation and religion or belief.

#### **b. End age discrimination**

11. The Government intends to:

- make it unlawful to discriminate against someone because of their age when providing goods, facilities and services or carrying out public functions.

12. It should be noted that the new law will ban unjustifiable age discrimination against over-18 year olds. It will not affect the differential provision of products or services for older people where this is justified - for example free bus passes for over-60s. The specifics of the new law will be set out in secondary legislation made under the equality bill. Consultation is currently underway on how the bill will impact on areas such as health and social care, and the financial services sector.

#### **c. Require transparency**

13. The Government intends to:

- ensure that public sector employers publish clear information about their progress on important equality issues.
- improve transparency in the private sector through public sector purchasing.
- ban secrecy clauses which prevent people discussing their own pay.

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<sup>1</sup> The Discrimination Law Review intended to modernise and simplify equality legislation, while the Government has stated that the equality bill will simplify and strengthen the law. However, this does not mean that the bill will seek to consolidate existing discrimination legislation e.g. the Race Relations Act.

- work with the Equality and Human Rights Commission and businesses to improve equality practice.

**d. Extend the scope of positive action**

14. The Government intends to:

- extend positive action so that employers can take under-representation into account when selecting between two equally qualified candidates.

**e. Strengthen enforcement**

15. The Government intends to:

- allow employment tribunals to make wider recommendations in discrimination cases, which will benefit the wider workforce and help to prevent similar types of discrimination occurring in the future.
- allow discrimination claims to be brought on combined multiple grounds. However, the Government notes that “This is a very complex area and we are exploring this further, including how the legislation would work in practice and what the costs and benefits would be”.
- in the light of the Civil Justice Council’s recommendations, consider the case for introducing representative actions in discrimination cases and consult on any proposals for reform.
- support trade union equality representatives in their roles.

**The role of the Solicitor General**

16. Vera Baird QC was elected MP for Redcar in 2001 and became a member of the government in 2006. She was appointed Solicitor General in 2007 (further biographical information can be found by following this [link](#)).

17. The Attorney General and the Solicitor General (the Law Officers of the Crown, together with the Advocate General for Scotland), have three main functions:

- Guardians of the public interest.
- Chief Legal Advisers to the government.
- Criminal Justice Ministers.

## ANNEXE: QUESTIONS FOR THE SOLICITOR GENERAL

Members may wish to explore the following broad issues with the Solicitor General:

- a. Page 7 of *Framework for a fairer future* sets out reasons why the Government thinks the law should be strengthened. Most of these examples relate to the workplace, but one relates to schooling. Other parts of the document refer to the health service and the financial services sector. **In simple terms, will the bill cover all activities inside and outside the workplace, and will it offer the same level of protection to all equality strands?**
- b. Trevor Phillips, chair of the Equality and Human Rights Commission, has recently stated that he wants to see 'positive action' for those hardest hit in the economic downturn, particularly the white working class who feel threatened<sup>2</sup> (“... in some parts of the country, it is clear that what defines disadvantage won't be black or brown, it will be white. And we will have to take positive action to help some white groups, what we might call the white underclass.”) **Do these comments suggest that a focus on “special measures previously targeted at ethnic minorities” has failed to take account of disadvantages facing other groups? If so, does this suggest a deeper flaw in a strand-based approach to tackling inequality?**
- c. Is there a case for legislation being extended on other grounds, for example, to carers or on the basis of wealth inequality or social class?
- d. are there any specific issues relating to the bill that have been raised by the Scottish Government and that have still to be resolved by the UK Government?
- e. newspaper reports have stated that some Ministers want the Government's commitments to extending flexible working rights and to extending positive action to be scrapped, given the current economic climate<sup>3</sup>. **Can the Solicitor General confirm that the Government is still committed to such measures and to introducing the equality bill?**
- f. the equality bill would extend positive action so that employers can take under-representation into account when selecting between two equally qualified candidates (e.g. the employer could decide to appoint the female rather than the male candidate, or vice versa).

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<sup>2</sup><http://www.equalityhumanrights.com/en/newsandcomment/Pages/CBIMigrationsummit.aspx>

<sup>3</sup> <http://www.telegraph.co.uk/news/newstopics/politics/labour/3410292/Harriet-Harman-insists-flexible-working-will-be-extended-despite-Lord-Mandelsons-claims.html>

**In making this decision, are employers only able to refer to “under-representation” in their own workforce or to wider, societal under-representation?**

- g. certain newspapers frequently report on equality issues in terms of “political correctness”. **Does this approach damage attempts to engender greater equality and, if so, is there any corrective action that the Government can take? Or, is it fair comment to suggest that questionable actions have sometimes been taken in the name of equality and that there is therefore a need for greater clarity from the Government on what actions are permitted?**
- h. The Equalities Review chaired by Trevor Phillips stated that there should be a new definition of equality<sup>4</sup> as “we do not have a consistent and clear understanding of the causes of inequality and what to do about it”. **Does the bill reflect this new definition of equality?**

### **Questions from stakeholders**

The questions that have been provided by stakeholders have been grouped together under the broad headings below. While there is an overlap between some questions, particularly on religion, the original wording has been retained in all cases:

### **SCOPE OF THE BILL**

#### **Engender**

**Question 1:** Regarding the measures covered in the UK Equality Bill, who is going to have the power and capacity to monitor all of these?

#### **STUC**

**Question 2:** In the introduction of a Single Equality Duty, how does the Government intend to ensure that existing provisions in the Race, Disability and Gender Duties are not watered down, and how will it ensure that the devolved administrations have the opportunity to place specific duties?

**Question 3:** Why is the UK Government not setting out a statement of intent within the Bill to clarify the purpose of the Bill, which could make a significant difference in how the Bill is interpreted and implemented by employers, public services, the courts, and others?

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<sup>4</sup> “An equal society protects and promotes equal, real freedom and substantive opportunity to live in the ways people value and would choose, so that everyone can flourish.

An equal society recognises people’s different needs, situations and goals and removes the barriers that limit what people can do and can be.”

**GENDER/EQUAL PAY****STUC**

**Question 4:** The Office of National Statistics revealed on 14 November that UK wide the gender pay gap has increased to 17.1% from 17% - (in Scotland slight decrease from 14.9% to 13.5% - along with an even wider pay gap for part time women.) **Given the persistence of the gender pay gap, and the fact that the statutory Code of Practice on Equal Pay recommends equal pay audits as “the most appropriate method of ensuring that a pay system delivers pay free from sex bias”, why is the UK Government not including a requirement for all employers to conduct gender pay audits and act on the findings?**

**Question 5:** Given the estimated 50,000 equal pay cases lodged in Employment Tribunals in Scotland, which strongly suggests structural discrimination, can you outline the Government’s views on representative action, and how it intends to amend the law to tackle systemic discrimination?

**Question 6:** Why is the Government not considering allowing hypothetical comparators in Equal Pay cases? The requirement for an actual comparator makes it difficult to challenge situations where there is occupational segregation, and the undervaluing of women’s work.

**DISABILITY****RNID**

**Question 7:** Will the Government commit to extending discrimination or harassment faced by people because they are associated with a disabled person across the full scope of disability discrimination legislation rather than confine it to employment only?

**Question 8:** While the Government is committed to retaining the strength of existing *general* duties relating to disability equality duties, will they retain the provision to treat disabled people more favourably?

**Question 9:** With regard to the *specific* duties relating to the disability equality duties, will the Government retain the principle about the involvement of disabled people?

**Question 10:** The ‘anticipatory’ duty requires providers of goods and services to anticipate the needs of disabled people. **Would the Government consider extending this anticipatory duty to employment and occupation, qualification bodies and housing providers?** Doing so would make a considerable advancement for disability equality.

**Question 11:** While the Bill is proposing to improve awareness raising amongst the judiciary and grant an additional power for employment tribunals,

effective enforcement of the Disability Discrimination Act has been limited because of difficulties in bringing cases to court in the first place. **Would you agree that the UK Government and Scottish Government should carry out a review of access to justice for disabled people, including legal aid and access to information and advice?**

**Question 12:** What plans does the Government have with regard to using public procurement as a lever to bring about equality in the private sector?

**Question 13:** Will the Government commit to signing and ratifying the Optional Protocol of the UN Disability Convention which will allow individuals to take a complaint to a Monitoring Committee, after they have exhausted the legal process in their country?

**Question 14:** Will the Government commit to signing and ratifying Protocol 12 of the European Convention of Human Rights which provides a freestanding right not to be discriminated against?

### **National Deaf Children's Society**

**Question 15:** Does the Solicitor General consider that the UK should join 41 other countries and ratify the UN Convention on the Rights of People with Disabilities without reservation, particularly around access to sign language, as a matter of urgency in order to support the imminent introduction and passage of the UK Equality Bill?

## **LGBT/ SEXUAL ORIENTATION**

### **Equality Network and Scottish Transgender Alliance**

**Question 16:** School education is covered by anti-discrimination law for most strands, including sexual orientation. **Given the difficulties and bullying faced by young transgender people in Scottish schools, would the Government consider levelling up the gender reassignment strand anti-discrimination law to include school education?**

Explanation: School education is excluded from the goods and services anti-discrimination law for the gender reassignment strand at the moment. Despite the majority of respondents to the Discrimination Law Review asking for this anomaly to be removed in the Equality Bill, the Government has so far said no, on the grounds that there are very few transgender people at school. The STA and Equality Network disagree with that reasoning, and point out that there is a huge amount of gender stereotyping and gender-based bullying in schools that causes real problems for transgender pupils.

**Question 17:** Since the Government announced its original proposals for the Equality Bill, the proposed EU Directive on goods and services discrimination has been published. The Directive will require a ban on harassment by providers of goods and services, across the strands. **Given that lesbian, gay**

**and bisexual people in Scotland report being harassed by providers, will the Government consider extending the sexual orientation goods and services anti-discrimination law, in the Equality Bill, to cover harassment, rather than waiting until required to do that by the EU Directive?**

Explanation: The goods and services anti-discrimination law on grounds of race and gender covers harassment as well as direct and indirect discrimination. But for sexual orientation and religion/belief, harassment is excluded from the goods and services law, although included in employment anti-discrimination law. Most employment cases on the sexual orientation ground are harassment cases, not discrimination cases. The proof requirements differ for harassment and discrimination cases. The Equality Network believes there are significant levels of harassment on grounds of sexual orientation, by providers of goods and services, that are not caught by the existing discrimination law, and that the strands should be harmonised now to include harassment, as will be required in a few years by the new EU Directive.

### **Humanist Society Scotland**

**Question 18:** In the area of sexual orientation, what provisions will be made to avoid any discrimination against same sex marriages?

## **RELIGION/BELIEF**

### **Engender**

**Question 19:** How do we reconcile the inclusion of religion or belief in the new Equality Duty when religion has so often provided the institutional framework for systemic discrimination against, for example LGBT people and women?

### **Humanist Society Scotland**

**Question 20:** What provisions will be made in the Bill to avoid employment discrimination by denominational schools, which enjoy financial support from public money?

**Question 21:** What provisions will be made in the Bill to avoid discrimination against the children who opt for a different religion or belief to that of the establishment in a denominational school, which enjoys financial support from public money?

**Question 22:** What provisions are there to avoid giving special privileges to religious courts vis-à-vis the state courts?

**Question 23:** Has the Bill any provisions to repeal the previous Acts in which any discriminations (e.g., on the basis of sexual orientation or religion or belief) were allowed or required?

**Question 24:** Should the Bill make clear that where there is a clash between religion/belief, which is a human construct, and any of the other equality strands, all of which have to some extent a genetic base, that religion/belief should never be accepted as a valid reason for discrimination?

**Question 25:** Should the Bill ensure that to achieve equality for the one third of the Scottish population, who have no religious belief, no privileges should be given to those with religious beliefs?

**Question 26:** In the light of the ruling of the European Court of Human Rights in the cases of Kokkinakis v Greece and Manoussakis v Greece, that the State should not pass a value judgement on beliefs, should the State ensure that it does not give special privileges to some beliefs, which prejudices those who do not share those beliefs?

### **Scottish Council of Jewish Communities**

**Question 27:** Does the Bill recognise the potential for conflict between different equality strands (e.g. faith and gender or sexuality), and how is it proposed to resolve these?

**Question 28:** Will the Bill accept that compliance with one equality strand should be a statutory exception to the requirement to comply with another?

**Question 29:** How will it ensure that any other resolution does not effectively create a hierarchy of equalities, and so itself be in breach of its own principles?

### **STUC**

**Question 30:** How will the Bill deal with potential conflict that may arise between strands (for example between sexual orientation and religion and belief), and how will the Government ensure that very necessary single strand activity can still be pursued?

### **AGE**

#### **British Insurance Brokers' Association**

**Question 31:** Is there a possibility that the Government's efforts to tackle harmful age discrimination in the financial services industry could lead to unintended consequences?

## **Save the Children**

**Question 32:** The UK Government is rightly taking the step to outlaw age discrimination in the provision of goods, facilities and services. Yet how can it justify excluding under-18s from this new protection?

**Question 33:** What would convince the UK Government for the need to extend the protection to under-18s?

**Question 34:** We understand that education and children's services will be excluded from the age element of the integrated equality duty. Can you clarify what the UK Government means by children's services?

**Question 35:** Why does the UK Government feel the need to exclude school students from protection from discrimination related to pregnancy, maternity and gender re-assignment?

**Question 36:** Will the Government consider placing positive duties on public transport providers and public buildings to make reasonable adjustments in relation to babies and young children?

## **RACE**

### **Grampian Racial Equality Council**

The Equality Bill proposes to introduce a 'tie break rule' which will mean that if two equally qualified candidates apply for a job and one of them is from an ethnic minority background which is under-represented within the workforce of the employer, the selection panel can legally offer the position to the ethnic minority person on positive action grounds.

As the Equal Opportunities Committee and the Solicitor General know, the principle of no less favourable treatment has been enshrined in British race relations legislation for decades. On this basis one cannot justify treating another less favourably on grounds of that person's race, colour, nationality or ethnic origin. This principle will be abandoned if the Equality Bill becomes law, on the basis that we have reached a stage where the pursuance of greater workplace diversity warrants speeding up the process.

However, it is clear that global markets and relations in all spheres of business, including education, have brought seismic changes to Scotland. It is also evident that the benefits of diversity are better recognised today than at any time since the introduction of our equality laws. Considerable progress has been made since the Race Relations Act 1976 came into force 30 years ago and this has been accelerated by the introduction of the public sector duties set out in the Race Relations (Amendment) Act 2000.

For instance, research, referred to in the Government's Framework for a Fairer Future document, found increases in the proportion of ethnic minority

people in the workforces of public authorities; improvements in community relations; an increase in access to services and improved customer satisfaction. The Equalities Review, chaired by Trevor Philips, concluded that the public sector duties have been the lever for these changes. Moreover, in Scotland, for the first time, children from immigrant communities, namely, Indian, Pakistani, Bangladeshi and Chinese origin, have overtaken the indigenous European Scottish population in academic attainment. Figures published by the Scottish Government in March 2008 show that the exam results of ethnic minority children, including those of multi-ethnic backgrounds, surpass those achieved by their European-Scottish counterparts.

Perhaps due to these developments, alongside the current credit crunch facing the country, the Chair of the EHRC, Trevor Philips, (27th October 2008, Daily Telegraph), has argued that Ministers should allow councils and education authorities to introduce positive action measures *favouring* young "white" people instead of ethnic minorities. He called for this measure on the grounds that they are unable to compete equally with highly-skilled immigrants and that taking action now may ward off anti-immigrant feeling in the UK during the financial crisis.

**Question 37:** Given that there appears to be no clear consensus on who should be the beneficiary of positive action strategies or why they should be introduced, and that differing economic, demographic, political, social and other exigencies will continue to arise in the future and *appear* to give weight to the argument that the principle of no less favourable treatment should be abandoned, how can Scotland justify taking this route and what damage will it do to race relations if we decide to throw out the baby with the bath water?

## EQUALITY REPS

### STUC

**Question 38:** Why is the UK Government not legislating to give statutory rights to Trade Union Equality Reps within the Equality Bill? Equality Reps can support employers and employees and negotiate for best practice in equality and diversity in the workplace. However, they need the statutory basis to be effective; why won't the UK Government support them?

## HARASSMENT

### STUC

**Question 39:** To promote a tolerant and inclusive Scotland it is vital to give a message of zero tolerance on harassment wherever and whenever it occurs. Why is the Government not acting to protect individuals from harassment outside the employment field, or at least placing an obligation on providers to promote good relations within their establishments?

**PROCUREMENT****STUC**

**Question 40:** Public procurement seems to be the only tool in the current Bill to influence and effect change in the private sector. How will the Equality Bill ensure that private companies providing goods and services to the public sector are meeting established good practice standards, such as having dignity at work policies, conducting equal pay audits etc?

**EUROPEAN UNION****Association of Chief Police Officers in Scotland**

In the recent case of Centrum voor gelijkheid van kansen en voor racismebstrijding V Firma Feryn NV (European Court of Justice (Second Chamber) 10 July 2008), the European Court of Justice ruled that in order to find that an employer has directly discriminated (contrary to the EU Discrimination Directives), it is not necessary that there be an identifiable victim of that discrimination.

Previous UK law (Cardiff Women's Aid V Hartup (EOR 57)) distinguished between an advertisement that indicated an "intention to discriminate" and an act of discrimination itself. It held that only the statutory enforcement agency could bring proceedings in respect of an intention to discriminate. This judgement may now be questioned in light of the Firma Feryn ruling as sanctions "must be available to persons who consider that they have suffered discrimination".

This suggests that those who are put off applying by the terms of an advertisement should be able to bring their claim before a tribunal without having previously gone through a futile application process. There is a potential impact where an employer asserts the protection of a genuine occupational requirement when a claimant wishes to challenge the requirement and where an advertisement specifies age ranges.

**Question 41:** Will this ECJ judgement be accommodated in the Equality Bill?

**Gaelic****Bòrd na Gàidhlig**

(the "Bòrd"; website:<http://www.bord-na-gaidhlig.org.uk/welcome.html>) is a statutory body created under the *Gaelic Language (Scotland) Act 2005* (the "Act"). Under the Act, the Bòrd has general functions which include promoting and facilitating the promotion of the use and understanding of the Gaelic language and of Gaelic education and Gaelic culture. These functions are to be exercised by the Bòrd with a view to securing the status of the Gaelic language as an official language of Scotland commanding equal respect to the English language through, among other things, increasing the number of

persons who are able to use and understand the Gaelic language and encouraging the use and understanding of the Gaelic language. Under the Act, the Bòrd has a range of powers through which it exercises its functions. These include the power to require any Scottish public authority, certain cross-border public authorities and the Scottish Parliamentary Corporate Body to prepare a Gaelic language plan (collectively, “public authorities”). In such plans, public authorities must set out the measures that they will take in relation to the use of the Gaelic language both in their internal processes and in the provision by them of any services to the public. In order in particular to provide services to the medium of Gaelic to the public, public authorities will need staff members who are able to speak Gaelic, and in order to ensure that such provision occurs, they may have to recruit staff members who are fluent in Gaelic.

Our first two questions are as follows:

**Question 42:** Would the Solicitor General confirm that any duties which a public authority assumes as part of its Gaelic language plan is not inconsistent with any existing Equality Duty to which the authority is subject and will not be inconsistent with any new Equality Duty which may be imposed under a Single Equality Bill?

**Question 43:** More particularly, in order to satisfy the terms of a Gaelic language plan required by the Bòrd under the Act, a public authority may need to designate certain posts as being posts in which Gaelic is an essential or a desirable job qualification. Would the Solicitor General confirm that any such designation is not inconsistent with any existing Equality Duty to which the authority is subject and will not be inconsistent with any new Equality Duty which may be imposed under a Single Equality Bill?

We understand that some Welsh-speakers working in the private sector in Wales have been told not to use the Welsh language in speaking with each other in the work place or in providing service to members of the public who wish to conduct their business through the medium of Welsh, and that in some cases such employees have faced disciplinary action for having used Welsh. Though we are aware of no such instances with respect to the use of Gaelic in Scotland, we are concerned that the ability of Gaelic speakers to use their language in such circumstances is not subject to such restrictions and disciplinary action. Our third question is as follows:

**Question 44:** Would the Solicitor General confirm that any attempt to prevent the use of a minority language such as Gaelic in the workplace would be prohibited under a Single Equality Bill?

Finally, we understand that some private and voluntary sector employers in Scotland may wish to encourage the use of Gaelic in providing services to the public and even in their internal processes. Although the Bòrd cannot require such private and voluntary sector bodies (or Westminster departments, for that matter) to prepare and implement such plans, such plans would clearly be in the spirit of those which the Bòrd can require of public authorities. Furthermore, we are of the view that the promotion of the use of Gaelic in the

private and voluntary sector is important in achieving the aims of the Act and in discharging our statutory function of promoting and facilitating the promotion of the use of Gaelic. In order to implement such plans, though, the private or voluntary sector employer may, like a public authority, have to designate certain posts in which Gaelic is an essential or a desirable job qualification. In this context, we would pose one final question:

**Question 45:** Would the Solicitor General confirm that the designation by a private or voluntary sector organisation of a post as being one in which Gaelic is an essential or a desirable job qualification, for the purposes of implementing a voluntary Gaelic language plan, would not be inconsistent with a Single Equality Bill?