The Equality Bill represents an important advance for equality and human rights. It has been greatly improved in its passage through the Lords, but there are still aspects of it to which we have serious objections.

**Part 1** establishes the Commission for Equality and Human Rights (CEHR). The BHA’s Executive Director, Hanne Stinson, has been intimately concerned with preparations for this body, serving as a member of the DTI’s steering group and in other capacities and the BHA welcomes the Commission. It will provide a unified service in respect of all discrimination and will have welcome human rights duties in addition.

**Part 2** outlaws discrimination based on religion or belief in the provision of goods and services. (Discrimination in employment has already been covered by the Employment Equality (Religion or Belief) Regulations 2003.) However, since the main discriminators are religious bodies themselves, there is cause for alarm at the exceptions from the new duties granted to these bodies by the Bill. Plainly some exceptions are needed, but those currently in the Bill are drawn too widely.

The Bill originally outlawed harassment based on religion or belief. We had the strongest objections to the very wide exceptions it included for religious organisations, but the Lords totally excised religious harassment from the Bill so that the issue could be examined in detail by the Government’s Discrimination Law Review. We welcome this approach which we are convinced is right: discussions with religious bodies and the Home Office have shown how necessary it is to give more thought to the proper definition of the necessary exceptions. It is our understanding that the Government may seek to re-introduce harassment at the Committee stage: if they do, we shall issue a supplementary briefing on our grave concerns.

**Part 3** provides for regulations to be made outlawing discrimination based on sexual orientation. This was added to the Bill in the Lords and is very welcome, though care will have to be taken, when these regulations are drawn up, that religious groups are given no exemptions from them.

**Part 4** deals with sex, race and disability discrimination as it relates to public functions.

We would hope that attention is given to the need to define as narrowly as possible the exceptions for religious organisations in Part 2 (and in the regulations to come under Part 3). Past legislation on discrimination has set out with the object of changing the behaviour of those who practised racial, gender or disability discrimination. If the wording in Part 2 is not tightened, this Bill by contrast risks enshrining in statute the bulk of the religious discrimination it purports to outlaw.
Below are our detailed concerns. **Suggested amendments appear in bold** at the end of the notes on each clause, and in a schedule of amendments at the end of this briefing.

**Part One**

**Clause 10 (4) – Priorities of the Commission**

In determining what action to take in pursuance of this section the Commission shall have particular regard to the importance of exercising the powers conferred by this Part in relation to groups defined by reference to race, religion or belief.

One great benefit of an integrated Commission for Equality and Human Rights (CEHR) is that it will have flexibility to set its own priorities for action based on changing circumstances (see clause 4 of the Bill) and the consultation with stakeholders that it is required to carry out under clause 5. On the other hand, a great fear of representatives from strands newly incorporated into a Commission (such as age, sexual orientation and religion or belief) is that they will not receive due attention.

In this context, for the Bill itself to set the priorities of the CEHR is misguided. Even if it were wise to set the priorities for the CEHR before it has even had a chance to investigate these issues for itself, and to set them in legislative stone for years to come, there is certainly no immediately evident reason why ‘religion or belief’ should be one of those priorities. There are, for example, urgent priorities to be addressed as regards sexual orientation, and this is just as under-resourced an equality strand.

We accept that the CEHR may well, on the basis of its consultations, make race a top priority for its good relations work for the foreseeable future, but we are firmly convinced that the CEHR should have the freedom to determine its own priorities. During the Bill’s passage through the Lords, the government recognised the importance of ensuring the CEHR’s independence of government with a series of amendments to remove the powers of the Secretary of State to direct the CEHR’s activities. The same principles should be applied to setting the CEHR’s priorities for its good relations work.

**We urge the deletion of 10 (4).**
Part Two

Clauses 43 and 76 – Defining ‘belief’

43 Religion and belief

In this Part—

(a) “religion” means any religion,
(b) “belief” means any religious or philosophical belief,
(c) a reference to religion includes a reference to lack of religion, and
(d) a reference to belief includes a reference to lack of belief.

(The wording of clause 76 is the same as that above in 43)

The proposed definition of belief in Part 2, clause 43 of this bill is better than that in the Employment Equality (Religion or Belief) Regulations 2003 (which it will replace by means of clause 76). However, the new definition is still problematic. The OED does not recognise the sense of ‘philosophical’ intended here, and the new definition would logically apply to any purely philosophical belief such as ‘I think, therefore I am’ or ‘entities should not be multiplied except under the compulsion of necessity’!

A definition that diverges from that of the European Convention on Human Rights (see note 1 below) is in any case liable to cause difficulty. A much preferable wording would ensure that belief is interpreted in line with case law under the ECHR (see note 2), which has adequately defined and restricted the term, making clear that the beliefs intended are those that amount to ‘world-views’ or ‘lifestances’ (the German text of the ECHR says Weltanschauung).

When the Human Rights Act 1998 has already incorporated this legal concept of belief in UK law, it would be perverse not to make use of it in all relevant contexts – and in the context of a rights framework, such as is represented by Part Two of this Bill, it is obviously relevant.

Note 1: The Human Rights Act 1998 includes article 9 of the European Convention on Human Rights:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

Note 2: Court cases have given further substance to the meaning of ‘belief’ in this human rights context:

Belief means “more than just ‘mere opinions or deeply held feelings’; there must be a holding of spiritual or philosophical convictions which have an identifiable formal content.” - McFeekly v UK: (1981), 3 EHRR 161
“The term ‘beliefs’ . . . denotes a certain level of cogency, seriousness, cohesion and importance” - Campbell and Cosans v. UK: (1982), 4 EHRR 293 para 36 - (this case related to Article 2 - right to education).

In re Crawley Green Road Cemetery, Luton - St Alban’s Consistory Court: Dec. 2000 - it was held that Humanism was a ‘belief’ within the meaning of the Human Rights Act.

There is no basis, therefore, for concerns that ‘belief’ needs a definition separate from that which it already has in UK law as a result of the Human Rights Act. The term has in fact already been well-defined.

We urge amendments to replace the definitions of belief in clauses 43 and 76 with “‘belief’ is to be construed consistently with that term in schedule 1, article 9 of the Human Rights Act 1998.”

(This wording meets a Government objection to our earlier suggestion of ‘has the same meaning as in schedule 1 to the Human Rights Act 1998’ that it would link the definition of belief too strongly to the HRA.)
Clauses 56 and 57 – Religious organisations and charities performing public functions

Religious organisations and charities defined in 56 (1) and 57 (1) are exempted from duties not to discriminate in certain circumstances, but such organisations and charities may well be carrying out functions of a public nature. For example, they may be providing statutory or other services under contract from a local authority or the NHS. In such circumstances, they should not be exempted from the general law and a clarification is needed that they will not be allowed to discriminate in the performance of such a function.

An amendment was tabled at the Committee stage in the Lords by Baroness Turner and again at Report by Baroness Whitaker which would have added a new sub clause after 56 (5) and 57 (2):

( ) Nothing in this section shall make it lawful for an organisation to which this section applies and which is performing a public function to act contrary to the provisions of section 52(1) in the performance of that function.

The Government objection to this amendment came from Baroness Scotland:

There will be occasions when a particular group has a specific need best met within the context of their own religion and when we might positively encourage an organisation to discriminate to ensure that need was met. An example might be a women's group catering specifically for the needs of Sikh or Muslim women, or a care home for Jewish people that received some public funding. These amendments would place too high a barrier in the way of service providers, who undertake valuable work, and for that reason we cannot accept them.

We accept that there will indeed, in the context of the government's policy of encouraging religion-based provision of public services, be such occasions as Lady Scotland cites. It is clear that nothing in the Equality Bill can reasonably seek to challenge this policy.

However, clauses 56 and 57, as currently worded, do not make it clear that what is being legislated for are only the circumstances described by Lady Scotland. A change is still needed to clear up the ambiguity that is created by clause 52 (1) stating:

    It is unlawful for a public authority exercising a function to do any act which constitutes discrimination.

and clauses 56 (1) and 57 (1) which say that ‘Nothing in this part' shall make it unlawful for religious organisations and charities to discriminate in the specified circumstances.

We believe a change that meets both the desires of Government and the need to ensure religious organisations are not able to discriminate in an unwarranted fashion would be the insertion of the following new sub-clause after 56 (5):
( ) Nothing in this section shall make it lawful for an organisation to which this section applies and which is performing a public function to act contrary to the provisions of section 52(1) in the performance of that function unless in so doing it is acting under and in accordance with a requirement of a contract with a public authority to perform that function.

and the following new sub-clause after 57 (2):

( ) Nothing in this section shall make it lawful for a person to whom this section applies and who is performing a public function to act contrary to the provisions of section 52(1) in the performance of that function unless in so doing he is acting under and in accordance with a requirement of a contract with a public authority to perform that function.

Thus if the NHS (for example) wishes to contract with a Muslim charity to deliver a service to a hard-to-reach group of Muslim women, they will undeniably have the legal power to do so. However, if a religious charity or organisation is contracted to perform a public service that is for everyone, these clauses will ensure there is no undue discrimination in the provision of that service.
Clauses 56, 57 and 58 – Permitted religious discrimination by religious organisations, charities and educational institutions

These clauses set out wide circumstances in which religious organisations (56), charities (57) and educational institutions (58) are permitted to restrict their services or activities on the basis of religion or belief. Some such exceptions from the ban on discrimination are obviously necessary, but it is important that they are not too widely drawn.

Previous versions of the Bill required any restriction to be imposed because it was ‘necessary’ or imposed because it was ‘expedient’. Religious organisations objected to ‘necessary’ as too narrow; we objected to ‘expedient’ because it was too wide.

The current version has dropped any such test at all: it merely says (in clause 56 but the wording in clauses 57 and 58 are almost identical):

But subsections (3) and (4) permit a restriction only if imposed—
(a) by reason of or on the grounds of the purpose of the organisation, or
(b) in order to avoid causing offence, on grounds of the religion or belief to which the organisation relates, to persons of that religion or belief.

In the Lords, Baroness Whitaker proposed that the word ‘imposed’ be changed to ‘reasonably justified’. Baroness Scotland, for the Government, defended their wording which (she said):

requires that there must be a causal connection between the purposes of the organisation and the restriction. It does not, however, go so far as to require that the restriction is necessary. This test is well balanced between the strict necessity and expedience, but should be easily understood by the courts. The words proposed by my noble friend . . . would provide a test which would be less easy to apply. For that reason the wording provided by the draftsman is, in our respectful view, to be preferred.

But the word ‘imposed’ is no test at all – it is certainly not “well balanced between the strict necessity and expedience”. The problem is exacerbated by the phrasing of (a) ‘on the grounds of’ which is wide open if not to outright hypocrisy then at least to the deepest self-deception.

Moreover, (b) is very weak: contrast it with the Employment Equality (Sexual Orientation) Regulations 2003: “to avoid conflicting with the strongly held religious convictions of a significant number of the religion’s followers”.

The tests as a whole also contrast unfavourably with those that prevail in the law on race discrimination. Exemptions in the Race Relations Act exist to promote the interests of underprivileged groups, are well-defined and must be objectively proven. In this Bill they exist to entrench pre-existing discrimination, and protect an assumed right of religious organisations and institutions to discriminate against individuals who do not share their beliefs.
In our view it would be unreasonable for anyone to object to a test of ‘reasonably justified’. The very fact that the law allows for exceptions indicates that exceptions of substance are intended, but unreasonable discrimination should not be allowed.

Lady Scotland said that the test of reasonable justification would be ‘less easy’ to apply. Given that the Bill’s current wording would require no more than a statement by the religious body that the restriction was imposed on the grounds of the body’s purpose or to avoid offence, this may be so, but reasonable justification is the sort of test that the courts do routinely apply and it is the minimum required here.

We propose:

(a) in clause 56(5), delete ‘imposed’ and substitute ‘reasonably justified’

(b) in clause 57(1)(b), delete ‘imposed’ and substitute ‘reasonably justified’.

(c) in clause 58(2), delete ‘imposed’ and substitute ‘reasonably justified’

(d) in clause 56(5), delete (b) and substitute:

‘(b) in order to avoid conflicting with the strongly held religious convictions or beliefs of a significant number of persons of the religion or belief to which the organisation relates’

(e) in clause 58(2), delete (b) and substitute:

‘(b) in order to avoid conflicting with the strongly held religious convictions or beliefs of a significant number of persons of the religion or belief to which the institution relates.’
Clause 59 – Membership requirements

(1) Nothing in this Part shall make it unlawful for a charity to require members, or persons wishing to become members, to make a statement which asserts or implies membership or acceptance of a religion or belief.

(2) Subsection (1) shall apply to the imposition of a requirement by a charity only if—

(a) the charity, or an organisation of which the charity is part, first imposed a requirement of the kind specified in subsection (1) before 18th May 2005, and

(b) the charity or organisation has not ceased since that date to impose a requirement of that kind.

This clause was added in the Lords in order to allow the Scouts and Guides to continue discriminating against atheists by requiring a promise professing adherence to god(s). This practice not only excludes the non-religious, such as humanists, but also Jains, most Buddhists, and all those belonging to non-theistic religions.

Children with these beliefs are welcomed if they are willing hypocritically to pretend a theistic religious faith, but children who conscientiously adopt a non-religious or humanist lifestance are rejected and turned away. The same rule applies to Scout leaders: paedophiles and atheists are the only two groups of people automatically rejected.

This longstanding injustice is one of the few the Bill as it stood would actually have addressed, but now even that has been removed by a Government amendment carefully worded to embrace the hypocrisy encouraged by the Scouts and Guides: it is not that organisations under this clause can require their members to have a religious faith but only the making of “a statement which asserts or implies membership or acceptance”. We know of many instances of such hypocrisy being actively encouraged when children with humanist beliefs seek to join local scouts or guide groups: “just say it: it doesn’t matter”, they are told. This practice causes considerable distress and annoyance to conscientious humanist families.

As it stands, the law will explicitly encourage hypocrisy as a means to gain a benefit – scarcely an admirable piece of moral education for young people from the government.

The Scout and Guide Associations profess to be for everyone: the Scout Association says in its annual report this year: “we underlined our commitment to make Scouting available to those of different faiths and beliefs,” and the vision of the Guide Association, under the heading “Guiding is for everyone!” is “to have sufficient volunteer leaders to enable every girl and young woman to have the opportunity to join Girlguiding UK” Should not a law against religious discrimination force them to recant on a policy so much at odds with these professions of universality? After all, if they were actually to restrict membership to believers they would rule out the 65% of 12-19-year-olds who answered ‘No’ to the question: “Do you regard yourself as belonging to any particular religion?” in a recent DfES survey (Young People in Britain: The
In some areas, the Scouts and Guides are the only local providers of youth activities, apart from those provided directly by churches and other religious organisations. Permitting the Scouts and Guides to continue to discriminate against the non-religious and non-hypocritical actually deprives significant numbers of young people of the benefits of organised youth activities, leaving them with few alternatives to simply ‘hanging out with their friends’.

The time limitation in (2) is an implicit admission from the Government that there is no justification for the exception: it has bowed to pressure from two powerful organisations.

The Scouts and Guides are not just private membership organisations – they receive public money for their work. For example, the Scout Association receives an annual capitation grant from the Ministry of Defence to fund the Sea Scouts, the Guide Association also received a government grant in 2004, and local groups receive significant funding from local authorities every year. For example, in 2004/5, Scouts and Guides groups received local authority funding in the Shetlands, Hertsmere, Stratford, East Dorset, Hampshire, Bromley, Midlothian, Surrey, and North Somerset, to name but a few of the numerous such grants which can be found via a simple search on the Internet.

This clause should be deleted.

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Schedule of amendments

Priorities of the Commission

- Leave out 10 (4)

Defining ‘Belief’

- In 43 (b) leave out ‘means any religious or philosophical belief’ and replace with ‘is to be construed consistently with that term in schedule 1, article 9 of the Human Rights Act 1998’

- In 76 leave out ‘means any religious or philosophical belief’ and replace with ‘is to be construed consistently with that term in schedule 1, article 9 of the Human Rights Act 1998’

Religious or belief groups performing public functions

- Insert a new sub-clause after 56 (5): ‘Nothing in this section shall make it lawful for an organisation to which this section applies and which is performing a public function to act contrary to the provisions of section 52(1) in the performance of that function unless in so doing it is acting under and in accordance with a requirement of a contract with a public authority to perform that function.’

- Insert a new sub clause after 57 (2): ‘Nothing in this section shall make it lawful for a person to whom this section applies and who is performing a public function to act contrary to the provisions of section 52(1) in the performance of that function unless in so doing he is acting under and in accordance with a requirement of a contract with a public authority to perform that function.’

The test triggering exemptions for religious or belief groups

- In clause 56(5), delete ‘imposed’ and substitute ‘reasonably justified’

- In clause 57(1)(b), delete ‘imposed’ and substitute ‘reasonably justified’.

- In clause 58(2), delete ‘imposed’ and substitute ‘reasonably justified’

- In clause 56(5), delete (b) and substitute:

  ‘(b) in order to avoid conflicting with the strongly held religious convictions or beliefs of a significant number of persons of the religion or belief to which the organisation relates’

- In clause 58(2), delete (b) and substitute:
‘(b) in order to avoid conflicting with the strongly held religious convictions or beliefs of a significant number of persons of the religion or belief to which the institution relates.’

Membership requirements

- Leave out 59