SEWEL MEMORANDUM

EQUALITY BILL

Motion

1. The motion to be put to Parliament is:

> **Equality Bill:** "That the Parliament agrees the principles contained in the provisions of the Equality Bill, including the power to impose duties on public authorities, so far as those provisions relate to matters within the legislative competence of the Scottish Parliament or confer functions on the Scottish Ministers, and agrees that those provisions should be considered by the UK Parliament."

Background and Content of the Bill

2. The Equality Bill was introduced to the UK Parliament on 18th May 2005, the previous version, introduced on 2 March and published on 19 May 2005, having fallen as a result of the UK General Election. Full explanatory notes for the Bill have been prepared jointly by the Department of Trade and Industry, the Department for Constitutional Affairs and the Home Office and are available on the website of UK Parliament at

www.publications.parliament.uk/pa/ld200506/ldbills/002/en/06002x--.htm

3. The Bill is predominantly concerned with matters outwith the legislative competence of the Scottish Parliament; its main provisions:

- establish the Commission for Equality and Human Rights (CEHR) and define its purpose and functions;
- make unlawful discrimination on the grounds of religion or belief in the provision of goods, facilities and services, education, the use and disposal of premises, and the exercise of public functions; and
- create a duty on public authorities to promote equality of opportunity between women and men ('the gender duty'), and prohibit sex discrimination in the exercise of public functions.

It is in four Parts and has four Schedules.

- *Part 1* including Schedules 1, 2 and 3 establishes the CEHR and sets out its duties, general powers, enforcement powers and the interpretation of this Part of the Bill. Dissolution of the existing equality Commissions is also covered in this Part of the Bill.
- *Part 2* sets out provisions prohibiting discrimination on grounds of religion or belief in the provision of goods, facilities and services, education, the use and disposal of premises and the exercise of public functions.

- *Part 3* sets out provisions prohibiting sex discrimination in the exercise of public functions and creates a public sector duty to have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity between women and men.

- *Part 4* including Schedule 4 contains general supplementary material including repeals, Crown application, commencement and extent.

4. The matters dealt with in the Bill are, as matters relating to equal opportunities, almost entirely reserved by Schedule 5 of the Scotland Act 1998. However, there are two exceptions to the reservation. One allows the Scottish Parliament to legislate for the encouragement (other than prohibition or regulation) of equal opportunities, and in particular the observance of the equal opportunities requirements. The other allows the Scottish Parliament to legislate for the imposition of duties on any office holder in the Scottish Administration, or any Scottish public authority with mixed functions or no reserved functions, to make arrangements with a view to securing that the functions of the office-holder or authority are carried out with due regard to the need to meet the equal opportunity requirements. Against this background, the Bill offers an opportunity also to make some limited but useful provision in areas in which, by convention, legislation at Westminster is subject to the consent of the Scottish Parliament. The purpose of this memorandum is to provide information specifically about those aspects of the Bill.

Purpose of Relevant Provisions

5. In line with the Partnership Agreement's commitment to social justice, equal opportunities and human rights, the purpose of limited provisions for which consent is sought is, in summary .

- to ensure that the operations of the CEHR reflect and respect the devolution settlement (Part 1 of the Bill);

- to ensure appropriate application in Scotland of the gender duty (Part 3 of the Bill).

Part 1 – The Commission for Equality and Human Rights

6. It is proposed in schedule 1 that the CEHR should have a Scottish Commissioner, who would be appointed by UK Ministers with the consent of the Scottish Ministers.

7. The new Commission will take a promotional role in human rights. The Scottish Ministers have made a commitment in the Partnership Agreement to establish a Scottish human rights commission and clause 7 of the Bill makes provision to prevent the new body operating within areas of devolved competence in pursuance of its human rights functions. However, there may be occasions where for practical purposes it would be preferable for the CEHR to operate in the devolved area of human rights in Scotland as its remit in relation to equality and diversity for example may well involve devolved human rights issues in any given investigation. The CEHR will therefore have the power to operate in the area of devolved human rights in Scotland, but only if it obtains the consent of the Scottish commission.

8. Clause 12 will allow the new Commission to advise the Scottish Ministers on the effects of enactments.

9. Clause 15 gives the new Commission the authority to issue codes of practice in relation to the equality enactments. In so far as the codes of practice relate to the public sector duties of Scottish bodies and cross-border bodies with Scottish functions, under the new Section 76A and 76B of the Sex Discrimination Act 1975, Section 71 of the Race Relations Act 1976 and Sections 49A or 49D of the Disability Discrimination Act 1995, the Secretary of State will be required to consult Scottish Ministers.

Part 3 – Public Functions: Sex Discrimination

10. In relation to the gender duty, what is within devolved competence is the power for the Scottish Ministers to impose specific duties in secondary legislation on Scottish public authorities, or cross border public authorities in relation to their Scottish functions, to ensure that those functions are carried out with due regard to the need to meet that duty. This would fall within devolved competence under the terms of the second exception to the equal opportunities reservation in schedule 5 to the Scotland Act.

11. The Scottish Executive proposes that the provisions for the creation of a public sector duty to promote equality of opportunity between men and women should extend to Scotland.

12. The new Section 76A of the Sex Discrimination Act 1975, inserted by clause 81 of the Bill, will impose a statutory duty on public authorities to have due regard to the need:

- To eliminate unlawful discrimination, and
- To promote equality of opportunity between men and women.

13. The Section 76B, as inserted by clause 83 of the Bill, introduces a power to allow the Secretary of State to impose specific duties and Section 76C gives Scottish Ministers powers to impose specific duties on Scottish bodies or the Scottish functions of cross-border bodies (after consulting the Secretary of State) where they think this will ensure better performance of it's duties under Section 76A. The general duty to promote equality of opportunity between men and women and the elimination of unlawful discrimination will therefore impact on devolved areas of responsibility and the powers in 76B fall within the terms of the exception to the reservation.

14. Clause 84 inserts a new section 76E into the Sex Discrimination Act 1975 which requires consultation with Scottish Ministers on draft codes of practice.

Financial Implications

15. The Regulatory Impact Assessment from the UK Government estimates total one-off implementation costs across the whole GB public sector at between £10.5 and £18.3 million with ongoing annual costs of between £3 and £6 million. Roughly 10% of this would fall to the Scottish public sector. These costs would be offset by the benefits which consumers of public services can expect to enjoy from better planned and delivered services and higher

productivity within the public sector workforce to the extent that these are promoted by the provisions of the Bill.

Scottish Executive
May 2005