

5 June 2006

Submission on the Interim Report dd 20 March 2006

by the Women and Equality Unit: *Getting Equal*

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Introduction

1. The Society was founded in 1866 and current Honorary Associates are listed below. We were closely involved with the consultation over the Employment Equality (Sexual Orientation) Regulations 2003
2. The NSS approves the Government's decision to use the power contained in The Equality Act 2006 to prohibit sexual orientation discrimination in the provision of goods, facilities and services, education, the exercise of public functions and other areas by the introduction of regulations. As the Partial Regulatory Impact Assessment at Annex B recognises, sexual orientation is alone amongst the equality strands in that it has only partial protection at present, and consequently doing nothing is not a tenable option.
3. We regret, however, that provisions about Sexual Orientation have not been included in the main body of the Act that the Government tabled, because it had no option as a result of pressure applied in the House of Lords. Lord Lester's earlier Equality Bill included sexual orientation discrimination provisions,¹ and as early as 15 June 2005 he called for it in connection with the current bill².
4. We understand that the omission from the Government's Bill was as a result of pressure from religious organisations. The Government's failure to include sexual orientation in the main Bill gives out an unfortunate signal, to say the least. It is lamentable, but not altogether surprising, that the Government should have caved into this pressure – rather than stand out to protect the disadvantaged (especially when the main source of oppression comes directly or indirectly from religious organisations).
5. The late inclusion of Sexual Orientation protection has materially adverse consequences. The practical consequences of the inclusion coming at such a late stage are much more regrettable still. It meant that it was not practical to include detailed wording in the main Bill and subject it to the rigours of debate. It was only as a result of the rigours of debate that some of the more extreme religious exemptions in part 2 of the Equality Bill were moderated, and even then not to the extent we would have hoped. Instead, Sexual Orientation discrimination is to be dealt with as a statutory instrument. The relevant SI will be drafted by the Government only subject to cursory debate, amendments are not permissible and the only option Members have is whether to accept or reject the Affirmative Resolution.

¹ Lords Hansard 14 Jan 2003 : Column 136

<http://www.publications.parliament.uk/pa/ld200203/ldhansrd/vo030114/text/30114-04.htm>

² 15 Jun 2005 : Column 1234

<http://www.publications.parliament.uk/pa/ld200506/ldhansrd/vo050615/text/50615-09.htm>

6. The previous legislative provisions to outlaw discrimination on grounds of sexual orientation, the Employment Equality (Sexual Orientation) Regulations 2003, were also made by a Statutory Instrument (S.I.2003/1661). Our experience on that occasion was that religious demands for broad exemptions were largely acceded to, while calls for exemptions to be minimised were completely ignored.

Religious pressure

7. The historical record of how the Church of England succeeded in its objective of obtaining wide exemptions to the operation of the Employment Equality (Sexual Orientation) Regulations 2003 gives us no confidence that the Government will resist similar pressure in respect of the proposed secondary legislation. The Church of England Archbishops' Council pressurised the DTI into giving a wide exemption to organised religion on the grounds of Sexual Orientation Regulation 7(3). It is bitterly ironic and deeply revealing of official attitudes that this wide ranging exemption:

- a) was granted after the public consultation closed
- b) without any reference to any group representing those who would be disadvantaged by it.
- c) was exemption to religious organisations, the ones most likely to discriminate, and through their doctrine (and similar doctrines by other religious bodies) have historically created much of the prejudice which has caused much suffering and makes such legislation necessary even now.
- d) was sought by a church whose clerics are widely thought to have a very much higher proportion of homosexuals in their ranks than the population as a whole.
- e) the wording of Regulation 7(3) followed almost verbatim the wording demanded by the Church.

We therefore urge those drafting the current SI to err on the side of protecting the vulnerable, rather than give unwarranted religious exemptions.

8. A brief critique of The Christian Institute and Evangelical Alliance's publications about the forthcoming Sexual Orientation Regulations³ is included below, because we believe the assumptions underlying the positions they take deserve careful scrutiny. We comment on three common themes we found (quotes are from either organisation's publications on the forthcoming regulations):

- "Homosexuality is not a fixed trait like race or sex" and therefore "sexual orientation human rights are to be regarded as on a par with religion and belief human rights – not with rights relating to race, sex and disability" (our emphasis). We believe their contention on the "trait" is unsupported by the overwhelming weight of medical evidence. Despite its presentation as a fact, it is an opinion and a contested one. To propose that LGB people, who as a group suffer substantial prejudice, should be afforded a diminished protection to those afforded on grounds of race or sex, would appear grotesque to most fair-minded people.

³ http://www.christian.org.uk/soregs/sornewsletter_apr06.pdf and <http://www.eauk.org/public-affairs/humanrights/upload/GettingEqualPreamble.doc>, both extracted on 4 June 2006

- Overstating the threat of the legislation: “The potential criminalisation of the major part of the religious community in the UK is obviously not conducive to the public good.”
- Equating calls for some limitation on religious exemptions to outright discrimination: “each strand wishes to exercise its rights to discriminate legally against the other”. The implied equivalence is false: We can imagine the uproar from either of these bodies to a proposal that anyone LGB could refuse services to anyone on the grounds that they were religious. Historically, religion has played a significant role of in the discrimination faced by LGB people. In our view, it is unchallengeable that religion is the major source of discrimination encountered by homosexuals. Furthermore, religion acts as a brake on the removal of forms of discrimination by its disproportionate influence on the formation of policy and legislation.

9. This religious influence extends much further than the enforcement among adherents of religious doctrine, much of it rooted in the social fabric thousands of years ago. It extends also to current social attitudes influenced by religious teaching and attitudes in recent centuries even among those who are no longer under the direct influence of religious bodies. Such religious influence can also affect all citizens when it is reflected and perpetuated in legislation, or as a motivation in those seeking to obstruct changes to legislation. In the NSS’s campaigns for equality, it is our experience that we are frequently able to make common cause with groups representing other strands, particularly in the field of sexual orientation, in opposition to the demands of religious organizations.

10. *Getting Equal* identifies a series of very important new protections and rights for LGB people in para.2.1. It is noteworthy in this context that of the four new protections and rights, the equalisation of the age of consent for gay men, the repeal of s.28 and the Civil Partnership Act 2005 were vociferously opposed by religious groups, and those groups also sought amendments to limit the application of rights (and thereby weaken protection) contained within the Employment Equality (Sexual Orientation) Regulations 2003. The role religion has played in seeking to limit these rights and in fostering negative attitudes to LGB people should be borne in mind when considering submissions seeking alterations to of exemptions from these regulations.

11. Effective regulations will indicate that the Government treats sexual orientation discrimination with the same seriousness afforded to discrimination on the grounds of disability, sex, race and religion or belief. In particular, we commend the approach that the regulations should apply generally to goods, facilities and services, using similar definitions and approaches to those contained in the Equality Enactments as described in para 3.6 n.1 and the limited approach to exemptions to their application.

12. We anticipate that this Consultation exercise will attract a significant number of submissions from religious organisations which will argue for more and wider exemptions to those outlined in *Getting Equal*. The Foreword states that the reason for the introduction of these regulations is to ensure that gay men, lesbians and bisexual people should have the same basic rights and freedoms as heterosexual people. In order to ensure that this intention is carried forward into real change, we urge the Government to resist the calls of religious organisations for wider exemptions, and to stand firm with its proposals.

Part one is a summary of our replies to the consultation, and part two expands on some of the replies.

Part One: Summary Table

A simple one-word answer is given to each question: [E] refers to an expansion in part two.

Q.1 Do you agree that the new S. O. regulations should apply to goods, facilities and services?	Yes
Q.2 Should the concept of goods, facilities and services have the same scope as in other equality legislation, in particular Part 2 of the Equality Act 2006?	Yes
Q.3 a: Do you agree that we should provide an exemption from the prohibition on sexual orientation discrimination so that services to meet a specific and justified need can be provided separately to different groups on the basis of their sexual orientation?	yes [E]
Q.3 b: What specific activities would such an exception need to apply to?	[E]
Q.4: Do you agree that premises should be covered by the sexual orientation regulations?	Yes
Q.5 Do you agree that an exemption should be provided for selling or letting of private dwellings as described in this consultation paper?	yes [E]
Q.6 Do you agree that private members clubs should be included in the sexual orientation regulations?	Yes
Q.7 What is your view on our proposal that both private members clubs and associations should be permitted to include having a particular sexual orientation as a membership criterion, but only where this criterion is explicitly connected to the purpose for which the club has been established?	Approve [E]
Q.8 a: Do you agree that the new sexual orientation regulations should apply to public functions as well as to goods, facilities and services?	yes
Q.8 b: Do you think that any specific additional exceptions might be needed from a prohibition on sexual orientation discrimination in the exercise of public functions?	no [E]
Q.9: Do you agree that schools should be covered by the sexual orientation regulations?	yes
Q.10: Are there any circumstances in which you consider that schools, or a part of the schools sector, should be exempted from the regulations?	no [E]
Q.12: Do you consider that an exemption should be provided from the regulations for some of the activities of religious organisations?	yes
Q.13 a: Do you agree that these exemptions should be restricted to activities that are primarily doctrinal?	yes
Q.13 b: If there are any other activities that you consider should be covered by an exemption, what are they and why do you consider they need to be exempted?	none
Q.14: Do you agree that an exception should be provided for charities that provide services specifically to people because of/according to their sexual orientation?	yes [E]
Q.15 a: Do you agree that the sexual orientation regulations should include direct and indirect discrimination as well as victimisation?	yes
Q.15 b: Are there any particular considerations or situations that should be taken into account in how such provisions are drafted?	yes [E]
Q.16: Do you agree that discriminatory practice should be included in the scope of the sexual orientation regulations?	yes
Q.17: Do you agree that discriminatory advertising should be included in the scope of the sexual orientation regulations?	yes
Q.18: Do you agree that instructions to discriminate should be covered by the S O regulations?	yes
Q.19: Do you agree that validity of contracts should be covered by the sexual orientation regulations?	yes
Q.20: Do you agree that the enforcement provisions for the sexual orientation regulations should match those for the other equality enactments?	yes [E]
Q.21: Do you have any comments on the Government's plans for how the sexual orientation regulations will be enforced and supported by the CEHR?	yes [E]

Part two: Commentary on Marked Questions

Q.1 Do you agree that the new Sexual Orientation regulations should apply to goods, facilities and services?

Q.2 Should the concept of goods, facilities and services have the same scope as in other equality legislation, in particular Part 2 of the Equality Act 2006?

We have already noted our approval of the scope of the regulations and the aim to provide protection from discrimination which accords with that provided for other strands. Adopting a different model for these regulations would fail to provide a coherent approach to equality and could hamper the development of a Single Equality Bill. If a more restricted model were adopted, it would also fail to deliver equal rights for LGB people.

Q.3 a: Do you agree that we should provide an exemption from the prohibition on sexual orientation discrimination so that services to meet a specific and justified need can be provided separately to different groups on the basis of their sexual orientation?

Q.3 b: What specific activities would such an exception need to apply to?

Exemptions should include sexual health clinics (as suggested in note 3.11) and counselling groups.

Q.5 Do you agree that an exemption should be provided for selling or letting of private dwellings as described in this consultation paper?

There has been much opposition from some owners of B&Bs to these proposals. In our view, those who open their houses to the general public to make a living are running businesses not manifesting their religious belief and should be no more entitled to turn away people under sexual orientation discrimination legislation than they would be under, for example, racial discrimination legislation..

Q.7 What is your view on our proposal that both private members clubs and associations should be permitted to include having a particular sexual orientation as a membership criterion, but only where this criterion is explicitly connected to the purpose for which the club has been established?

In spite of the recent legal reforms which have benefited LGB people, they are still subject to threats, harassment and attacks. Until these dangers have passed, we recommend that the regulations should permit the existence of clubs and associations where LGB people can meet and relax without fear under positive discrimination provisions.

Q.8 b: Do you think that any specific additional exceptions might be needed from a prohibition on sexual orientation discrimination in the exercise of public functions?

As stated above, we consider that the scope of the regulations should mirror that of the other equality enactments which do include public functions. We strongly support the statement that the prohibition will apply to anyone exercising a public function, including where a public function is being undertaken by a private or voluntary body on a public authority's behalf.

Any exemption for private or voluntary bodies acting on a public authority's behalf could be a major source of discrimination and one aimed at people who are already vulnerable. What concerns us particularly in this context is the emergence of faith-based welfare and social services which involves the delivery of sometimes essential services via religious organizations. Such discrimination is even more objectionable and unacceptable if it is funded by the public purse, as much faith based welfare will be. One of the major sources

of discrimination against LGB people has been religion, and religious organizations have sought to justify their right to discriminate; religious organizations sought and obtained significant exemptions to The Employment Equality (Sexual Orientation) Regulations 2003.

If, as *Getting Equal* proposes, it would be unacceptable for a public authority to provide a public function without a prohibition on discrimination, it is, in our view, unconscionable for the regulations to allow that authority to step around its responsibilities by delegating its functions to a private or voluntary body without an identical safeguard for the ultimate recipients of the service.

In general we consider that the prohibition should apply as widely as possible but we accept that some limitations as set out in 3.23 may apply.

We should have liked for some explicit examples to have been given of the sort of exceptions needed for government bodies, rather than terse but unhelpful “to safeguard national security”, for example.

Q.10: Are there any circumstances in which you consider that schools, or a part of the schools sector, should be exempted from the regulations?

We support the statement at 3.24 that the new regulations should extend current protection to include access to and the provision of education in both the maintained and independent sectors. We are concerned, however, by the suggestion in 3.31 that there will be consideration of special provision to enable faith schools to “balance the new obligations with their need to operate in a way that is consistent with their school’s ethos”.

The use of the apparently neutral word “balance” implies that there is a way to resolve this issue which does not involve capitulation on one side or the other. This is not the case. In fact, this is the sort of issue which goes to the heart of the regulations’ purpose. Special provision for faith schools would, in our view, result in the propagation of beliefs such as those of the Catholic Church which teaches that homosexuals are “intrinsically disordered”, and some Islamic scholars who still support criminalising homosexual behaviour with the death penalty attached; the context for such propagation is classes from which individual pupils, who may be homosexual themselves, have no right to withdraw. In effect, the state would be conniving with certain faith groups in continuing to spread prejudice against LGB people. It seems to us that no reasonable parent should object to impartial, non-confessional presentation of information about the religions of humanity and how human beings reproduce and relate to each other sexually. Where there is a clash between the ethos of a faith school and the intentions of the proposed regulations, there is an ancient religious teaching which over the centuries has created the prejudice and ignorance which have necessitated the legislation in the first place.

Therefore to suppose that it is possible to “balance the obligations” is to suppose one can square the circle. In effect, the state would be conniving with certain faith groups in continuing to spread prejudice against LGB people. Any “special provision” will once again give special privilege to faith groups. We therefore expect at the very least that there is no movement from the position stated in note 3.33.

Furthermore, any “special provision” will grant special privilege to faith groups which should alert us to the need for caution. There is no suggestion that the propagation of sincerely held beliefs that homosexuality is morally wrong and should be punished by death should be

allowed to be taught *unless* founded in religious belief or doctrine. Since it is felt necessary to prohibit such behaviour when it emanates from simple bigotry, then this underlines the undesirability at which the prohibition is aimed. In fact the pernicious effect of special provision for (only) faith schools may be even greater since arguments against bigotry may be countered by appeals to reason and evidence whereas this will not work against doctrine and belief which stand apart from rational analysis.

Q.12: Do you consider that an exemption should be provided from the regulations for some of the activities of religious organisations?

Q.13 Do you agree that these exemptions should be restricted to activities that are primarily doctrinal? If there are any other activities that you consider should be covered by an exemption, what are they and why do you consider they need to be exempted?

We recognise that there are claims that the regulations could impact on “aspects of religious activity or practice” in the light of doctrine or the beliefs of followers of a religion. We have no wish for the regulations to “impede religious observances or practices that arise from basic doctrines of a faith” (para.3.33) but we suspect that these will be comparatively rare occurrences in any event.

Our far greater concern is that religious organizations will exert enormous pressure for exceptions to the regulations to be defined in the widest possible terms and that this will harm (if not invalidate) the purpose of the regulations in the first place. We strongly agree with the starting point as set out in para. 3.33 that exceptions should be limited to “activities closely linked to religious observance or practices that arise from the basic doctrines of a faith”.

We note with approval in particular the absence from this formula of a reference to “strongly held religious convictions of a significant number of the religion’s followers” as contained in Reg.7(3) of the Employment Equality (Sexual Orientation Regulations 2003. We have criticized the wording in that legislation on the basis that it offers too wide a scope for discrimination. It is inappropriate for an exception granted to an organization (as opposed to an individual) to offer protection for both sanctioned and unsanctioned opinions. We think that excepting strongly held belief would allow bigotry to flourish even if doctrine officially opposed it.

Whilst doctrine is associated with an organization as a whole, the views of a sub-section of any such organization, by definition, cannot be and therefore do not represent its ethos. On occasion, significant numbers (which we could envisage constituting just a few hundred people in a small independent congregation or small minority faith community) of the membership of a religion hold very extreme views on issues such as sexuality which are not necessarily matters of doctrine. It is, in our view, objectionable that such views are given protection in existing legislation when they are not even recognized doctrine, and may fly in the face of recognized doctrine. Whilst we agree that the scope of these regulations should reflect that of existing legislation, we do not agree that they should be drafted in identical terms where existing legislation is unfair. We strongly urge that the starting point in 3.33 is adopted without revision or extension.

We also agree strongly that there is no case for exempting religious organizations providing wider services to the community with a social or welfare aspect (para.3.34). As commented above under Public Functions, many of the recipients of such services are already vulnerable and could be doubly disadvantaged and isolated among their communities by the operation of such exemptions if allowed. Similarly, we agree that there should be no exemptions to organizations that are contracted by a public authority to deliver a service on its behalf (para.3.36) again for the reasons set out above under Public Functions.

Q.15 a: Do you agree that the sexual orientation regulations should include direct and indirect discrimination as well as victimisation?

Q.15 b: Are there any particular considerations or situations that should be taken into account in how such provisions are drafted?

Care should be taken that there are no uncertainties allowing religious leaders to instruct the faithful to discriminate in ingenious/disingenuous ways.

Q.16 Do you agree that discriminatory practice should be included in the scope of the sexual orientation regulations?

Q.17 Do you agree that discriminatory advertising should be included in the scope of the sexual orientation regulations?

We agree that discriminatory practice should be included in the scope of these regulations and that this should also be extended to other equality enactments, so that the CEHR can exercise its enforcement powers without discrimination across all the strands.

We also agree that discriminatory advertisements should be within the scope of these regulations.

We note that there is no proposal to include harassment in these regulations at this stage (para.4.18). We await the conclusions of the Discrimination Law Review. As a preliminary comment, however, we do not accept that the benefits and disadvantages of harassment law apply with equal force for all the strands and would in theory support the concept of legislation to make harassment on grounds of sexual orientation unlawful.

Q.21: Do you have any comments on the Government's plans for how the sexual orientation regulations will be enforced and supported by the CEHR?

We note the expectation that the CEHR will be a body that provides expert information, advice and guidance on all areas of discrimination law. (para.5.8). The difficult interplay between religion and sexual orientation discrimination requires special caution in the delivery of advice to people experiencing problems with sexual orientation discrimination. The structures of the CEHR must reflect the fact that both religious and non-religious people may face such discrimination, and that discrimination may come from a complainant's own religion or from a religion with which they have no connection. The CEHR must have robust practices in place to deal with conflict of rights and to deal with conflict within and between strands.

We note that the CEHR's ability to issue a Code of Practice. It is our recommendation that a single Code is issued to deal with the provision of goods, facilities and services across several grounds where discrimination is unlawful. This is in our view preferable to separate codes of practice. This is partly to reflect reality; employers and service providers will not experience each set of legislation in isolation but through real life situations in which employees or customers have multiple identities which give rise to cumulative rights and protections. It is also to preserve a sense of coherence throughout the equality enactments, both current and proposed, and avoids the inference of special treatment for any strand or section within a strand.

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NSS Response to Equalities Review: Interim Report

Our response to the “Equalities Review, Interim Report for consultation”¹ is shown below. The Society was grateful for the invitation to put our case directly to a member of your Review Team at a round table discussion on 28 March 2006.

A. Who we are, and some background

The National Secular Society (NSS) was founded in 1866 by radical MP Charles Bradlaugh, and is the most prominent organisation in Britain supporting the rights of the non-religious. We campaign for the separation of church and state and for an end to religious privilege.

The NSS distinguished supporters are listed at the foot of this page.

The NSS has championed human rights and equality throughout its 140 year history. More recently we have submitted written evidence and been called to give oral evidence to a number of official bodies such as Royal Commissions (most notably that on the Future of the House of Lords), Select Committees of both Houses of Parliament for example on education and religious offences.

On the EU Employment Directive we campaigned in the European Parliament, securing a change in the Directive. In connection with its implementation, we worked closely with DTI officials at pre-consultation and consultation stages, meeting then on numerous occasions, and also discussed issues in detail individually with ministers.

¹ Currently on http://www.theequalitiesreview.org.uk/upload/assets/www.theequalitiesreview.org.uk/interim_report.pdf and published in early 2006.

Honorary Associates: Graham Allen MP Robert Marshall-Andrews QC MP Prof. Peter Atkins Iain Banks Lorraine Barrett AM Edward Bond Michael Cashman MEP Colin Challen MP Nick Cohen Prof. Richard Dawkins Lord Desai Rt. Hon. Michael Foot Prof. A C Grayling Dr. Evan Harris MP Patrick Harvie MSP Christopher Hitchens Paul Holmes MP Prof. Ted Honderich Kelvin Hopkins MP Sir Ludovic Kennedy Graham Linehan Baroness Massey of Darwen Lord McIntosh of Haringey Jonathan Meades George Melly Sir Jonathan Miller Taslima Nasrin Lord O'Neill of Clackmannan Lord Peston Harold Pinter Philip Pullman Lord Raglan Claire Rayner Martin Rowson Joan Ruddock MP Joan Smith Dr. David Starkey Lord Taverne QC Polly Toynbee Baroness Turner of Camden Gore Vidal Prof. Lord Wedderburn of Charlton QC

B. Concerns regarding Data

1. The NSS has a number of concerns regarding the way data on religion and belief is collected, processed and used, and the consequences of this for the delivery of equality.

(a) The Census

2. We are concerned about increasing government reliance on the census for information about religious and non-religious affiliation.

Grounds for our Concern

3. Our concerns over the Census figures are set out in detail in the attached response by the NSS to the Consultation by the Office of National Statistics² a copy of which we provided when visiting your offices on 28 March 2006. Briefly, it is our view that the figures give a grossly exaggerated picture of religious adherence. Responses are very sensitive to the exact wording of the question. For comparison, we cite the British Social Attitudes Survey carried out in 2001, the same year as the Census, by the National Centre for Social research in which 41% said that they did not belong to a religion. For methodological and statistical reasons set out in Appendix 1, we place higher reliance on the latter survey.

4. These discrepancies have significant implications for any policy formation, analysis process or religion/belief monitoring, both in terms of how the information is requested and in respect of the comparanda by which collected data is measured. This is true regardless of whether analysis covers individual belief or of group allegiance. Religion and belief can be a deeply sensitive matter and official requests for information on them may cause unwelcome intrusions into a person's private life. Particularly in strongly patriarchal communities, as many ethnic minority communities are, questions on sensitive issues may not even be given to members of the household to complete. Even if they are, any controversial or compromising questions may simply not be answered, or if they are, frank answers are unlikely to be given. This is one built-in bias in the census: completion by the head of the family, who is likely to be male and overall be older and more conservative than those whose for whom he is completing the data.

² Also available on

<http://www.secularism.org.uk/uploads/35430434015cc7c284491961.pdf?CPID=4d84e7f0be1a4bf20258953bcdfed2df>

5. As noted above, even small changes in wording can produce significantly differing responses, not so much between minority religions but between those who express a religious affiliation and those who do not. This has obvious disadvantages for the non-religious. For example, we believe that some groups representing minority religions place a high value on the role of monitoring especially given the “data desert”, but the benefits (and an absence of disadvantage) of any such process must be available to all.

Although the NSS (and others) have provided the Equalities Review with other statistical sources on religion and how they regard it to the population (e.g. the Home Office 2001 Citizenship Survey), we are concerned at suggestions that this material lacks depth simply because it is not longitudinal and may not readily allow further analysis. Statistical recording of religion/belief data as a whole is relatively recent (official collection started with the 2001 Census) and it would appear that this criticism could apply equally to all such data, including the Census.

6. Given that the Equalities Review Terms of Reference include providing an understanding of the long term and underlying causes of disadvantage that need to be addressed by public policy, and making practical recommendations on key policy priorities for (among others) the Government and public sector, it is in our view essential that the Equalities Review team not only treat the Census figures with caution but also evaluate *all* official data on open and equal terms.

The Nature of our Concerns

7. We can already see reliance placed on census figures in studies such as the Review of the Evidence Base on Faith Communities prepared for the ODPM. Despite the recognition of “an issue about the relationship of census data on religion to religions as they are lived and practiced”, this is not dealt with as an issue concerning the accuracy of the fundamental data. If, as we maintain, a significant part of the Census material on religion and belief is flawed, it follows that in our view the whole is vitiated as a source reference and that work on “decoding” that Census material may unwittingly magnify distortions leading to unfair results.

8. Treating the Census data as a reliable picture of religious and non-religious belief is not our only concern. Perhaps more worrying is inappropriate presentation of the data which can be misleading and overstate religious affiliation. An example is the Government's synthesis of UK statistics on the official www.statistics.gov.uk website which creates a serious distortion of the England and Wales figures in overstating religious affiliation and substantially understating the No Religion figure (see Appendix 1, 11 ff, n.12 for full details and references). Far from "decoding", this distortion makes the true situation harder to discern, let alone interpret. Unless the Equalities Review appreciates the fundamental nature of our concerns with the available data and its use, not only will the cause of equality not be served, it will actually be hindered.

(b) the Data Desert

9. The Interim report uses the phrase data desert to describe shortfalls in available evidence in some areas which include religion and belief. Clearly this absence of source material is not something which the Equalities Review can solve but the danger lies in treating the absence of data as a problem which impacts equally on the different elements in this strand. It is clear that this is not so and that the problem is getting worse.

10. *"It has only been in the last decade that the dimension of religion has begun to move into centre-stage in policy considerations..."* Review of the Evidence Base on Faith Communities 6.2. Previously, with the dimension of religion (and indeed belief) no more than in the wings of policy formation, all were treated equally fairly, or unfairly, by its relative unimportance. This comparatively recent trend (which the NSS opposes) to move religion centre-stage has not, however, been coupled with any parallel move to place the interests of the non-religious at the heart of policy formation.

11. Several Government studies and reports, most notably from the Home Office, have focussed on the religious to the virtual exclusion of the specifically non-religious. The most blatant instance of this that we have found is the Home Office Research Study 274 Religion in England and Wales: findings from the 2001 Home Office Citizenship Survey³ publ 2004.

³ <http://www.homeoffice.gov.uk/rds/pdfs04/hors274.pdf> published 2004

12. The survey is directed solely towards the “faith communities”, and information about anyone else is incidental. There is a Faith Communities Unit, but no corresponding unit for the remainder of the population. And of course the hundreds of thousands in the minority communities (now seemingly all transmuted into religious communities) who are not religious have effectively become disenfranchised non-persons on whose behalf ‘their’ religious leaders speak.

13. As shown above, the Government itself is in some cases directly responsible for some of this data desert, which suggests some serious questions, not least of which is whether there is an institutional attitudinal problem. The Government appears to be institutionally religiophilic (or even less elegantly non-religiousphobic), which leaves at least half of the population disconnected in some way from engagement with the Government.

13. The non-religious are less likely than before to have their voice heard, and therefore are facing new and emerging discrimination. Indeed, it is a vicious cycle in which the non-religious will be increasingly overlooked since, we are told, data collection is driven by policy needs but policy has a pre-determined preference to investigate problems associated with or impacting differentially on religious groups. This means that further data collection and data analysis will be limited solely to one element of the religion and belief strand, namely religion.

14. If the shortfall or data desert is approached in this partial way it will increasingly disadvantage the non-religious and those who do not identify themselves in terms of their religion or belief. The 2001 Home Office Citizenship Survey shows that when asked: “what says something important about you if you were describing yourself”, religion came just ninth in the list of priorities. Even more significantly, four times as many thought religion was not important to their identity as those who did. We recognize the considerable variation in the attitude of importance of religion between different ethnic groups but nonetheless, current government emphasis on only the religion element of this strand is disproportionate and the benefit, if any, which it produces is directly at the expense of those overlooked.

15. Absence of information on religion and belief was historically neutral; now that one side of the equation is becoming better understood, the absence of information on the non-religious is a harmful political creation. We are concerned that absence of information is taken as an indication that there is a parallel absence of issues to be addressed for the non-religious, and fails to put the experience of certain religious groups in a true context.

16. We are also concerned that this approach will result in those experiencing social, legal or other forms of discrimination or inequitable treatment will feel the need to identify themselves as religious in order to focus state attention on their plight and that this will further distort the true picture.

C. Lack of Recognition of the Negative role of Religion as a Cause of Inequality

1. The positive force for good that some religious organisations represent in a number of aspects of their work, for example to combat poverty and to promote ideas of social responsibility, sometimes causes the fact that religions often form hindrances of the most entrenched kind to full equality to be overlooked. The NSS believes that this important negative role has not yet been fully explored by the Equalities Review Panel.

2. As we said in our original submission, in our view, it is unchallengeable that religion is the major source of discrimination, yet this fact is rarely acknowledged. Religion acts as a brake on the removal of forms discrimination by its disproportionate influence on the formation of policy and legislation. This religious influence extends much further than the enforcement among adherents of religious doctrine, much of it rooted in the social fabric thousands of years ago. It extends also to current social attitudes influenced by religious teaching and attitudes in recent centuries even among those who are no longer under the direct influence of religious bodies. Such religious influence can also affect all citizens when it is reflected and perpetuated in legislation, or as a motivation in those seeking to obstruct changes to legislation.

3. Religion is a source of discrimination not just against the non-religious, but also affecting several of the equality strands, in particular sex, and sexual orientation discrimination. In our campaigns for equality, it is our experience that we are frequently able to make common cause with groups representing these other strands in opposition to the demands of religious organizations.

4. In our original submission, we referred to examples of the negative role played by religion such as the socially divisive effects of faith schools and attitudes that deny full equality on the basis of gender or sexuality. We note that the Equalities Review Interim Report makes reference to the fact that LGBT responses to the call for evidence often mention discrimination by religious groups in employment and education, and to the internal opposition within this strand. This highlights a significant conflict of rights both internally and between strands. The response of religions to the advent of new legislation to promote equality is to seek, even on occasions to demand, wide exemptions designed to allow existing patterns of behaviour continue rather than to admit change.

5. In our view, the group most likely to want to discriminate, especially on religion/belief, sex and sexual orientation, are the religious. As the Christian Institute acknowledge, “proportionately, [religious believers] are far more likely to believe that homosexual practice is wrong”⁴. Yet this is the very group to whom the Government caves in and grants most licence to discriminate, thereby fatally undermining the whole objective of equality legislation.

6. It is with this background in mind that we register our concern over the working definition of equality, in particular the Review Panel’s preference for a “capabilities” approach (Interim Report Chap. 5). Although the Interim Report claims that this approach avoids the paternalism and authoritarianism associated with policies framed in terms of achieving equality of outcome, it fails to point out that it may encourage the paternalism and authoritarianism associated with religion. Based as it is on acceptance that what individuals are able to do in their lives depends crucially on the context in which they live, it does not appear to recognize that although some may seek to achieve equality within that context, for others equality will be achieved by *escaping* from their context. The limiting aspects of religion, even one which individuals may on occasion identify as their own, can mean that for some, particularly women and gays, this variation on equality of opportunity may be less and not more liberating.

7. Within communities which are characterised by strong religious commitment and/or patriarchal attitudes, some people are especially vulnerable to having their human rights abused. They include women and homosexuals, whether or not they themselves are religious. We suspect a higher incidence of this problem within minority ethnic groups, but those involved in extreme sects and very religious families are also at higher risk. For them, the community or family religion (and the predominantly male power structures that come with it) are all too often a source of oppression, or the religious power structures help to reinforce oppression exerted at home.

⁴ http://www.christian.org.uk/soregs/sornewsletter_apr06.htm Sexual Orientations Briefing Feb/April 2006

8. Even in this country, many do not enjoy all of their human rights – such as of freedom of conscience, family life, freedom of association and even education. Examples include ‘honour killings’ and the failure to secure any convictions for female genital mutilation, both the subject of concerns by the Metropolitan Police. For these victims, the prospect of faith based welfare will not be welcome; welfare provided neutrally by the state would be preferable by far.

9. We deeply regret the Equality Review has not faced these vital issues head on. We hope that this is not because cultural and/or religious sensitivities have inadvertently taken precedence over helping those whose human rights are seriously compromised by direct or indirect religious pressure.

10. We note that the Review Panel recognizes that analyzing in terms of Groups, such as the strands, is not enough and may even be unhelpful, but the reasons given focus on analytical shortcomings rather than the fact that the problem in some cases may lie in the nature of the group itself and the restrictions caused to individuals by their membership (actual or perceived) of it.

D. Interaction Between Status and Triggers

1. Once again, we feel that the role of religion has been underplayed or worse, ignored, in the analysis of status, life stages and trigger episodes. It is no surprise that the Interim Report identifies that most people think that the both the worst kinds of inequality and the best remedies are in education and employment.

2. The delivery of education has historically been influenced by and in part controlled by religion, notably the Church of England, and this influence and control are being extended currently by both the proportionate increase of church schools and the inclusion in the state sector of schools of other religions. Similarly, religious organizations and organizations with a religious ethos claim wide exemptions to employment equality legislation. This can have a significant discriminatory effect for a person of no religion and yet neither of these issues has been taken account of in the analysis of the Interim Report.

3. By any analysis, education must be seen as a significant tool for increasing an individual’s life chances and opportunities. Education is treated in the Interim Report as though the state’s delivery of it is neutral in the same way that, for example, health care is, and we hope will remain.

4. In contrast to education, health care is delivered by health professionals appointed solely for relevant expertise in locations (hospitals, surgeries etc.) chosen for their clinical appropriateness. Individuals may conform to their religious (or other) beliefs by exercising their right to decline specific treatments or to request an individual treatment plan which is in accordance with their requirements. There is not, however, preferential access to services and treatments based on a patient's religion, nor state-funded establishments which provide health services for members of certain religions or denominations only. Whilst health care is delivered in this neutral fashion which is designed to benefit all those in need of health care services efficiently and equally, education is not.

5. We suspect that this is part of the reason so many respondents identified education as providing some of the worst kinds of inequality (see ICM 2005 survey at n.2 below which showed 96% in favour of ending support for faith schools). The manner of delivery of state education is part of the problem, perpetuating disadvantage already suffered by some non-religious, and cannot be treated (as it appears to be in the Interim Report) as simply part of its solution. Ignoring this crucial aspect of state education is misleading for the conclusions of the Equalities Review.

6. There can exist a parental preference for faith schools based on educational attainment and not desire for a religious education. This preference can in itself, lead to an improvement in those preferred schools which, for a number of reasons which we say have nothing to do with religion, either outperform or are perceived as outperforming community schools. Yet access to them is not available on equal terms and the group most likely to experience discrimination in choice of school consists of atheists, and in particular secular atheists who cannot honestly claim that they support a faith school's ethos. Other disadvantaged groups are the poor (Church of England schools have a lower proportion of children entitled to free school meals (one indication of low income families) than non-religious schools⁵, and looked after children regardless of their religion. Anecdotal evidence suggests the disadvantaged groups also include those for whom English is not their first language, children who (or children whose parents) are less articulate, and those with behavioural problems. The proportion of children so disadvantaged is a substantial proportion of the total.

⁵ Hansard, column 608W, 12 Jul 2001

7. Community schools suffer a double discrimination. They are not only deprived of many of the *crème de la crème* pupils, they have to manage as best they can with this substantial group denied entry to religious schools. It is well understood in educational circles that there is a critical proportion of problem children – even just children from economically poorer backgrounds – beyond which the progress of the whole class is materially impeded. We think many community schools, especially in inner city areas have exceeded this critical proportion. If this occurs, the negative discrimination extends beyond the disadvantaged groups to every child in the school. Many of these children desperately need help if they are to escape from any disadvantages to which they are subject. Clearly the less segregation there is of this type, the greater the resilience of the maintained schools as a whole to be able to cope with these children.

6. The Government seems determined to exacerbate this problem by expanding the religious school sector as much as possible, seemingly oblivious to public opinion. Even a *Church Times* survey⁶ showed 75% in favour of phasing out faith schools. Among the wider public, an ICM survey in 2005 found that 96% agreed with the statement '[Prime Minister] Tony Blair should end his support for faith schools'⁷. A front page banner headline declared in the *Guardian* that "Two thirds oppose state aided faith schools"⁸ Yet the Prime Minister seemed visibly shocked and momentarily bewildered when confronted with a press corps overwhelmingly opposed to single faith schools, saying "I hadn't realised that you all felt so strongly"⁹.

7. It is trite to acknowledge that *all* schools should provide good education, and simply not enough for the Interim Report or the Equalities Review Team to rely on this as a reason to ignore the issue of privileged access to schools available to the religious. Quality of and access to education should not be related to personal belief, and tacit acceptance of the status quo reinforces discrimination and social segregation. The power of education to enable social and personal transformation is too important for this discrimination to pass without comment. We fully accept that it is not the role of the Equalities Review to dismantle the faith school system but a failure to pay even lip service to the exclusion of sections of society to an increasing proportion of state schools and to recognize that atheists can suffer social disadvantage in this way does not encourage us that the Belief element of the Religion and Belief strand has been heard by the Review Panel.

⁶ *Church Times* question of the week for 13 April 2006

⁷ New Statesman on-line poll, September 2005

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⁹ (Rt Hon Tony Blair, MP on 25 July 2005 at 10 Downing Street) <http://www.number-10.gov.uk/output/Page7999.asp> and <http://politics.guardian.co.uk/terrorism/story/0,15935,1536365,00.html> The relevant moment was also televised.

5 June 2006

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NSS Response to Equalities Review: Interim Report

Our response to the “Equalities Review, Interim Report for consultation”¹ is shown below. The Society was grateful for the invitation to put our case directly to a member of your Review Team at a round table discussion on 28 March 2006.

A. Who we are, and some background

The National Secular Society (NSS) was founded in 1866 by radical MP Charles Bradlaugh, and is the most prominent organisation in Britain supporting the rights of the non-religious. We campaign for the separation of church and state and for an end to religious privilege.

The NSS distinguished supporters are listed at the foot of this page.

The NSS has championed human rights and equality throughout its 140 year history. More recently we have submitted written evidence and been called to give oral evidence to a number of official bodies such as Royal Commissions (most notably that on the Future of the House of Lords), Select Committees of both Houses of Parliament for example on education and religious offences.

On the EU Employment Directive we campaigned in the European Parliament, securing a change in the Directive. In connection with its implementation, we worked closely with DTI officials at pre-consultation and consultation stages, meeting then on numerous occasions, and also discussed issues in detail individually with ministers.

¹ Currently on http://www.theequalitiesreview.org.uk/upload/assets/www.theequalitiesreview.org.uk/interim_report.pdf and published in early 2006.

Honorary Associates: Graham Allen MP Robert Marshall-Andrews QC MP Prof. Peter Atkins Iain Banks Lorraine Barrett AM Edward Bond Michael Cashman MEP Colin Challen MP Nick Cohen Prof. Richard Dawkins Lord Desai Rt. Hon. Michael Foot Prof. A C Grayling Dr. Evan Harris MP Patrick Harvie MSP Christopher Hitchens Paul Holmes MP Prof. Ted Honderich Kelvin Hopkins MP Sir Ludovic Kennedy Graham Linehan Baroness Massey of Darwen Lord McIntosh of Haringey Jonathan Meades George Melly Sir Jonathan Miller Taslima Nasrin Lord O'Neill of Clackmannan Lord Peston Harold Pinter Philip Pullman Lord Raglan Claire Rayner Martin Rowson Joan Ruddock MP Joan Smith Dr. David Starkey Lord Taverne QC Polly Toynbee Baroness Turner of Camden Gore Vidal Prof. Lord Wedderburn of Charlton QC

B. Concerns regarding Data

1. The NSS has a number of concerns regarding the way data on religion and belief is collected, processed and used, and the consequences of this for the delivery of equality.

(a) The Census

2. We are concerned about increasing government reliance on the census for information about religious and non-religious affiliation.

Grounds for our Concern

3. Our concerns over the Census figures are set out in detail in the attached response by the NSS to the Consultation by the Office of National Statistics² a copy of which we provided when visiting your offices on 28 March 2006. Briefly, it is our view that the figures give a grossly exaggerated picture of religious adherence. Responses are very sensitive to the exact wording of the question. For comparison, we cite the British Social Attitudes Survey carried out in 2001, the same year as the Census, by the National Centre for Social research in which 41% said that they did not belong to a religion. For methodological and statistical reasons set out in Appendix 1, we place higher reliance on the latter survey.

4. These discrepancies have significant implications for any policy formation, analysis process or religion/belief monitoring, both in terms of how the information is requested and in respect of the comparanda by which collected data is measured. This is true regardless of whether analysis covers individual belief or of group allegiance. Religion and belief can be a deeply sensitive matter and official requests for information on them may cause unwelcome intrusions into a person's private life. Particularly in strongly patriarchal communities, as many ethnic minority communities are, questions on sensitive issues may not even be given to members of the household to complete. Even if they are, any controversial or compromising questions may simply not be answered, or if they are, frank answers are unlikely to be given. This is one built-in bias in the census: completion by the head of the family, who is likely to be male and overall be older and more conservative than those whose for whom he is completing the data.

² Also available on

<http://www.secularism.org.uk/uploads/35430434015cc7c284491961.pdf?CPID=4d84e7f0be1a4bf20258953bcdfed2df>

5. As noted above, even small changes in wording can produce significantly differing responses, not so much between minority religions but between those who express a religious affiliation and those who do not. This has obvious disadvantages for the non-religious. For example, we believe that some groups representing minority religions place a high value on the role of monitoring especially given the “data desert”, but the benefits (and an absence of disadvantage) of any such process must be available to all.

Although the NSS (and others) have provided the Equalities Review with other statistical sources on religion and how they regard it to the population (e.g. the Home Office 2001 Citizenship Survey), we are concerned at suggestions that this material lacks depth simply because it is not longitudinal and may not readily allow further analysis. Statistical recording of religion/belief data as a whole is relatively recent (official collection started with the 2001 Census) and it would appear that this criticism could apply equally to all such data, including the Census.

6. Given that the Equalities Review Terms of Reference include providing an understanding of the long term and underlying causes of disadvantage that need to be addressed by public policy, and making practical recommendations on key policy priorities for (among others) the Government and public sector, it is in our view essential that the Equalities Review team not only treat the Census figures with caution but also evaluate *all* official data on open and equal terms.

The Nature of our Concerns

7. We can already see reliance placed on census figures in studies such as the Review of the Evidence Base on Faith Communities prepared for the ODPM. Despite the recognition of “an issue about the relationship of census data on religion to religions as they are lived and practiced”, this is not dealt with as an issue concerning the accuracy of the fundamental data. If, as we maintain, a significant part of the Census material on religion and belief is flawed, it follows that in our view the whole is vitiated as a source reference and that work on “decoding” that Census material may unwittingly magnify distortions leading to unfair results.

8. Treating the Census data as a reliable picture of religious and non-religious belief is not our only concern. Perhaps more worrying is inappropriate presentation of the data which can be misleading and overstate religious affiliation. An example is the Government's synthesis of UK statistics on the official www.statistics.gov.uk website which creates a serious distortion of the England and Wales figures in overstating religious affiliation and substantially understating the No Religion figure (see Appendix 1, 11 ff, n.12 for full details and references). Far from "decoding", this distortion makes the true situation harder to discern, let alone interpret. Unless the Equalities Review appreciates the fundamental nature of our concerns with the available data and its use, not only will the cause of equality not be served, it will actually be hindered.

(b) the Data Desert

9. The Interim report uses the phrase data desert to describe shortfalls in available evidence in some areas which include religion and belief. Clearly this absence of source material is not something which the Equalities Review can solve but the danger lies in treating the absence of data as a problem which impacts equally on the different elements in this strand. It is clear that this is not so and that the problem is getting worse.

10. *"It has only been in the last decade that the dimension of religion has begun to move into centre-stage in policy considerations..."* Review of the Evidence Base on Faith Communities 6.2. Previously, with the dimension of religion (and indeed belief) no more than in the wings of policy formation, all were treated equally fairly, or unfairly, by its relative unimportance. This comparatively recent trend (which the NSS opposes) to move religion centre-stage has not, however, been coupled with any parallel move to place the interests of the non-religious at the heart of policy formation.

11. Several Government studies and reports, most notably from the Home Office, have focussed on the religious to the virtual exclusion of the specifically non-religious. The most blatant instance of this that we have found is the Home Office Research Study 274 Religion in England and Wales: findings from the 2001 Home Office Citizenship Survey³ publ 2004.

³ <http://www.homeoffice.gov.uk/rds/pdfs04/hors274.pdf> published 2004

12. The survey is directed solely towards the “faith communities”, and information about anyone else is incidental. There is a Faith Communities Unit, but no corresponding unit for the remainder of the population. And of course the hundreds of thousands in the minority communities (now seemingly all transmuted into religious communities) who are not religious have effectively become disenfranchised non-persons on whose behalf ‘their’ religious leaders speak.

13. As shown above, the Government itself is in some cases directly responsible for some of this data desert, which suggests some serious questions, not least of which is whether there is an institutional attitudinal problem. The Government appears to be institutionally religiophilic (or even less elegantly non-religiousphobic), which leaves at least half of the population disconnected in some way from engagement with the Government.

13. The non-religious are less likely than before to have their voice heard, and therefore are facing new and emerging discrimination. Indeed, it is a vicious cycle in which the non-religious will be increasingly overlooked since, we are told, data collection is driven by policy needs but policy has a pre-determined preference to investigate problems associated with or impacting differentially on religious groups. This means that further data collection and data analysis will be limited solely to one element of the religion and belief strand, namely religion.

14. If the shortfall or data desert is approached in this partial way it will increasingly disadvantage the non-religious and those who do not identify themselves in terms of their religion or belief. The 2001 Home Office Citizenship Survey shows that when asked: “what says something important about you if you were describing yourself”, religion came just ninth in the list of priorities. Even more significantly, four times as many thought religion was not important to their identity as those who did. We recognize the considerable variation in the attitude of importance of religion between different ethnic groups but nonetheless, current government emphasis on only the religion element of this strand is disproportionate and the benefit, if any, which it produces is directly at the expense of those overlooked.

15. Absence of information on religion and belief was historically neutral; now that one side of the equation is becoming better understood, the absence of information on the non-religious is a harmful political creation. We are concerned that absence of information is taken as an indication that there is a parallel absence of issues to be addressed for the non-religious, and fails to put the experience of certain religious groups in a true context.

16. We are also concerned that this approach will result in those experiencing social, legal or other forms of discrimination or inequitable treatment will feel the need to identify themselves as religious in order to focus state attention on their plight and that this will further distort the true picture.

C. Lack of Recognition of the Negative role of Religion as a Cause of Inequality

1. The positive force for good that some religious organisations represent in a number of aspects of their work, for example to combat poverty and to promote ideas of social responsibility, sometimes causes the fact that religions often form hindrances of the most entrenched kind to full equality to be overlooked. The NSS believes that this important negative role has not yet been fully explored by the Equalities Review Panel.

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5 June 2006

Submission on the Interim Report dd 20 March 2006

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Introduction

1. The Society was founded in 1866 and current Honorary Associates are listed below. We were closely involved with the consultation over the Employment Equality (Sexual Orientation) Regulations 2003
2. The NSS approves the Government's decision to use the power contained in The Equality Act 2006 to prohibit sexual orientation discrimination in the provision of goods, facilities and services, education, the exercise of public functions and other areas by the introduction of regulations. As the Partial Regulatory Impact Assessment at Annex B recognises, sexual orientation is alone amongst the equality strands in that it has only partial protection at present, and consequently doing nothing is not a tenable option.
3. We regret, however, that provisions about Sexual Orientation have not been included in the main body of the Act that the Government tabled, because it had no option as a result of pressure applied in the House of Lords. Lord Lester's earlier Equality Bill included sexual orientation discrimination provisions,¹ and as early as 15 June 2005 he called for it in connection with the current bill².
4. We understand that the omission from the Government's Bill was as a result of pressure from religious organisations. The Government's failure to include sexual orientation in the main Bill gives out an unfortunate signal, to say the least. It is lamentable, but not altogether surprising, that the Government should have caved into this pressure – rather than stand out to protect the disadvantaged (especially when the main source of oppression comes directly or indirectly from religious organisations).
5. The late inclusion of Sexual Orientation protection has materially adverse consequences. The practical consequences of the inclusion coming at such a late stage are much more regrettable still. It meant that it was not practical to include detailed wording in the main Bill and subject it to the rigours of debate. It was only as a result of the rigours of debate that some of the more extreme religious exemptions in part 2 of the Equality Bill were moderated, and even then not to the extent we would have hoped. Instead, Sexual Orientation discrimination is to be dealt with as a statutory instrument. The relevant SI will be drafted by the Government only subject to cursory debate, amendments are not permissible and the only option Members have is whether to accept or reject the Affirmative Resolution.

¹ Lords Hansard 14 Jan 2003 : Column 136

<http://www.publications.parliament.uk/pa/ld200203/ldhansrd/vo030114/text/30114-04.htm>

² 15 Jun 2005 : Column 1234

<http://www.publications.parliament.uk/pa/ld200506/ldhansrd/vo050615/text/50615-09.htm>

6. The previous legislative provisions to outlaw discrimination on grounds of sexual orientation, the Employment Equality (Sexual Orientation) Regulations 2003, were also made by a Statutory Instrument (S.I.2003/1661). Our experience on that occasion was that religious demands for broad exemptions were largely acceded to, while calls for exemptions to be minimised were completely ignored.

Religious pressure

7. The historical record of how the Church of England succeeded in its objective of obtaining wide exemptions to the operation of the Employment Equality (Sexual Orientation) Regulations 2003 gives us no confidence that the Government will resist similar pressure in respect of the proposed secondary legislation. The Church of England Archbishops' Council pressurised the DTI into giving a wide exemption to organised religion on the grounds of Sexual Orientation Regulation 7(3). It is bitterly ironic and deeply revealing of official attitudes that this wide ranging exemption:

- a) was granted after the public consultation closed
- b) without any reference to any group representing those who would be disadvantaged by it.
- c) was exemption to religious organisations, the ones most likely to discriminate, and through their doctrine (and similar doctrines by other religious bodies) have historically created much of the prejudice which has caused much suffering and makes such legislation necessary even now.
- d) was sought by a church whose clerics are widely thought to have a very much higher proportion of homosexuals in their ranks than the population as a whole.
- e) the wording of Regulation 7(3) followed almost verbatim the wording demanded by the Church.

We therefore urge those drafting the current SI to err on the side of protecting the vulnerable, rather than give unwarranted religious exemptions.

8. A brief critique of The Christian Institute and Evangelical Alliance's publications about the forthcoming Sexual Orientation Regulations³ is included below, because we believe the assumptions underlying the positions they take deserve careful scrutiny. We comment on three common themes we found (quotes are from either organisation's publications on the forthcoming regulations):

- "Homosexuality is not a fixed trait like race or sex" and therefore "sexual orientation human rights are to be regarded as on a par with religion and belief human rights – not with rights relating to race, sex and disability" (our emphasis). We believe their contention on the "trait" is unsupported by the overwhelming weight of medical evidence. Despite its presentation as a fact, it is an opinion and a contested one. To propose that LGB people, who as a group suffer substantial prejudice, should be afforded a diminished protection to those afforded on grounds of race or sex, would appear grotesque to most fair-minded people.

³ http://www.christian.org.uk/soregs/sornewsletter_apr06.pdf and <http://www.eauk.org/public-affairs/humanrights/upload/GettingEqualPreamble.doc>, both extracted on 4 June 2006

- Overstating the threat of the legislation: “The potential criminalisation of the major part of the religious community in the UK is obviously not conducive to the public good.”
- Equating calls for some limitation on religious exemptions to outright discrimination: “each strand wishes to exercise its rights to discriminate legally against the other”. The implied equivalence is false: We can imagine the uproar from either of these bodies to a proposal that anyone LGB could refuse services to anyone on the grounds that they were religious. Historically, religion has played a significant role of in the discrimination faced by LGB people. In our view, it is unchallengeable that religion is the major source of discrimination encountered by homosexuals. Furthermore, religion acts as a brake on the removal of forms of discrimination by its disproportionate influence on the formation of policy and legislation.

9. This religious influence extends much further than the enforcement among adherents of religious doctrine, much of it rooted in the social fabric thousands of years ago. It extends also to current social attitudes influenced by religious teaching and attitudes in recent centuries even among those who are no longer under the direct influence of religious bodies. Such religious influence can also affect all citizens when it is reflected and perpetuated in legislation, or as a motivation in those seeking to obstruct changes to legislation. In the NSS’s campaigns for equality, it is our experience that we are frequently able to make common cause with groups representing other strands, particularly in the field of sexual orientation, in opposition to the demands of religious organizations.

10. *Getting Equal* identifies a series of very important new protections and rights for LGB people in para.2.1. It is noteworthy in this context that of the four new protections and rights, the equalisation of the age of consent for gay men, the repeal of s.28 and the Civil Partnership Act 2005 were vociferously opposed by religious groups, and those groups also sought amendments to limit the application of rights (and thereby weaken protection) contained within the Employment Equality (Sexual Orientation) Regulations 2003. The role religion has played in seeking to limit these rights and in fostering negative attitudes to LGB people should be borne in mind when considering submissions seeking alterations to of exemptions from these regulations.

11. Effective regulations will indicate that the Government treats sexual orientation discrimination with the same seriousness afforded to discrimination on the grounds of disability, sex, race and religion or belief. In particular, we commend the approach that the regulations should apply generally to goods, facilities and services, using similar definitions and approaches to those contained in the Equality Enactments as described in para 3.6 n.1 and the limited approach to exemptions to their application.

12. We anticipate that this Consultation exercise will attract a significant number of submissions from religious organisations which will argue for more and wider exemptions to those outlined in *Getting Equal*. The Foreword states that the reason for the introduction of these regulations is to ensure that gay men, lesbians and bisexual people should have the same basic rights and freedoms as heterosexual people. In order to ensure that this intention is carried forward into real change, we urge the Government to resist the calls of religious organisations for wider exemptions, and to stand firm with its proposals.

Part one is a summary of our replies to the consultation, and part two expands on some of the replies.

Part One: Summary Table

A simple one-word answer is given to each question: [E] refers to an expansion in part two.

Q.1 Do you agree that the new S. O. regulations should apply to goods, facilities and services?	Yes
Q.2 Should the concept of goods, facilities and services have the same scope as in other equality legislation, in particular Part 2 of the Equality Act 2006?	Yes
Q.3 a: Do you agree that we should provide an exemption from the prohibition on sexual orientation discrimination so that services to meet a specific and justified need can be provided separately to different groups on the basis of their sexual orientation?	yes [E]
Q.3 b: What specific activities would such an exception need to apply to?	[E]
Q.4: Do you agree that premises should be covered by the sexual orientation regulations?	Yes
Q.5 Do you agree that an exemption should be provided for selling or letting of private dwellings as described in this consultation paper?	yes [E]
Q.6 Do you agree that private members clubs should be included in the sexual orientation regulations?	Yes
Q.7 What is your view on our proposal that both private members clubs and associations should be permitted to include having a particular sexual orientation as a membership criterion, but only where this criterion is explicitly connected to the purpose for which the club has been established?	Approve [E]
Q.8 a: Do you agree that the new sexual orientation regulations should apply to public functions as well as to goods, facilities and services?	yes
Q.8 b: Do you think that any specific additional exceptions might be needed from a prohibition on sexual orientation discrimination in the exercise of public functions?	no [E]
Q.9: Do you agree that schools should be covered by the sexual orientation regulations?	yes
Q.10: Are there any circumstances in which you consider that schools, or a part of the schools sector, should be exempted from the regulations?	no [E]
Q.12: Do you consider that an exemption should be provided from the regulations for some of the activities of religious organisations?	yes
Q.13 a: Do you agree that these exemptions should be restricted to activities that are primarily doctrinal?	yes
Q.13 b: If there are any other activities that you consider should be covered by an exemption, what are they and why do you consider they need to be exempted?	none
Q.14: Do you agree that an exception should be provided for charities that provide services specifically to people because of/according to their sexual orientation?	yes [E]
Q.15 a: Do you agree that the sexual orientation regulations should include direct and indirect discrimination as well as victimisation?	yes
Q.15 b: Are there any particular considerations or situations that should be taken into account in how such provisions are drafted?	yes [E]
Q.16: Do you agree that discriminatory practice should be included in the scope of the sexual orientation regulations?	yes
Q.17: Do you agree that discriminatory advertising should be included in the scope of the sexual orientation regulations?	yes
Q.18: Do you agree that instructions to discriminate should be covered by the S O regulations?	yes
Q.19: Do you agree that validity of contracts should be covered by the sexual orientation regulations?	yes
Q.20: Do you agree that the enforcement provisions for the sexual orientation regulations should match those for the other equality enactments?	yes [E]
Q.21: Do you have any comments on the Government's plans for how the sexual orientation regulations will be enforced and supported by the CEHR?	yes [E]

Part two: Commentary on Marked Questions

Q.1 Do you agree that the new Sexual Orientation regulations should apply to goods, facilities and services?

Q.2 Should the concept of goods, facilities and services have the same scope as in other equality legislation, in particular Part 2 of the Equality Act 2006?

We have already noted our approval of the scope of the regulations and the aim to provide protection from discrimination which accords with that provided for other strands. Adopting a different model for these regulations would fail to provide a coherent approach to equality and could hamper the development of a Single Equality Bill. If a more restricted model were adopted, it would also fail to deliver equal rights for LGB people.

Q.3 a: Do you agree that we should provide an exemption from the prohibition on sexual orientation discrimination so that services to meet a specific and justified need can be provided separately to different groups on the basis of their sexual orientation?

Q.3 b: What specific activities would such an exception need to apply to?

Exemptions should include sexual health clinics (as suggested in note 3.11) and counselling groups.

Q.5 Do you agree that an exemption should be provided for selling or letting of private dwellings as described in this consultation paper?

There has been much opposition from some owners of B&Bs to these proposals. In our view, those who open their houses to the general public to make a living are running businesses not manifesting their religious belief and should be no more entitled to turn away people under sexual orientation discrimination legislation than they would be under, for example, racial discrimination legislation..

Q.7 What is your view on our proposal that both private members clubs and associations should be permitted to include having a particular sexual orientation as a membership criterion, but only where this criterion is explicitly connected to the purpose for which the club has been established?

In spite of the recent legal reforms which have benefited LGB people, they are still subject to threats, harassment and attacks. Until these dangers have passed, we recommend that the regulations should permit the existence of clubs and associations where LGB people can meet and relax without fear under positive discrimination provisions.

Q.8 b: Do you think that any specific additional exceptions might be needed from a prohibition on sexual orientation discrimination in the exercise of public functions?

As stated above, we consider that the scope of the regulations should mirror that of the other equality enactments which do include public functions. We strongly support the statement that the prohibition will apply to anyone exercising a public function, including where a public function is being undertaken by a private or voluntary body on a public authority's behalf.

Any exemption for private or voluntary bodies acting on a public authority's behalf could be a major source of discrimination and one aimed at people who are already vulnerable. What concerns us particularly in this context is the emergence of faith-based welfare and social services which involves the delivery of sometimes essential services via religious organizations. Such discrimination is even more objectionable and unacceptable if it is funded by the public purse, as much faith based welfare will be. One of the major sources

of discrimination against LGB people has been religion, and religious organizations have sought to justify their right to discriminate; religious organizations sought and obtained significant exemptions to The Employment Equality (Sexual Orientation) Regulations 2003.

If, as *Getting Equal* proposes, it would be unacceptable for a public authority to provide a public function without a prohibition on discrimination, it is, in our view, unconscionable for the regulations to allow that authority to step around its responsibilities by delegating its functions to a private or voluntary body without an identical safeguard for the ultimate recipients of the service.

In general we consider that the prohibition should apply as widely as possible but we accept that some limitations as set out in 3.23 may apply.

We should have liked for some explicit examples to have been given of the sort of exceptions needed for government bodies, rather than terse but unhelpful “to safeguard national security”, for example.

Q.10: Are there any circumstances in which you consider that schools, or a part of the schools sector, should be exempted from the regulations?

We support the statement at 3.24 that the new regulations should extend current protection to include access to and the provision of education in both the maintained and independent sectors. We are concerned, however, by the suggestion in 3.31 that there will be consideration of special provision to enable faith schools to “balance the new obligations with their need to operate in a way that is consistent with their school’s ethos”.

The use of the apparently neutral word “balance” implies that there is a way to resolve this issue which does not involve capitulation on one side or the other. This is not the case. In fact, this is the sort of issue which goes to the heart of the regulations’ purpose. Special provision for faith schools would, in our view, result in the propagation of beliefs such as those of the Catholic Church which teaches that homosexuals are “intrinsically disordered”, and some Islamic scholars who still support criminalising homosexual behaviour with the death penalty attached; the context for such propagation is classes from which individual pupils, who may be homosexual themselves, have no right to withdraw. In effect, the state would be conniving with certain faith groups in continuing to spread prejudice against LGB people. It seems to us that no reasonable parent should object to impartial, non-confessional presentation of information about the religions of humanity and how human beings reproduce and relate to each other sexually. Where there is a clash between the ethos of a faith school and the intentions of the proposed regulations, there is an ancient religious teaching which over the centuries has created the prejudice and ignorance which have necessitated the legislation in the first place.

Therefore to suppose that it is possible to “balance the obligations” is to suppose one can square the circle. In effect, the state would be conniving with certain faith groups in continuing to spread prejudice against LGB people. Any “special provision” will once again give special privilege to faith groups. We therefore expect at the very least that there is no movement from the position stated in note 3.33.

Furthermore, any “special provision” will grant special privilege to faith groups which should alert us to the need for caution. There is no suggestion that the propagation of sincerely held beliefs that homosexuality is morally wrong and should be punished by death should be

allowed to be taught *unless* founded in religious belief or doctrine. Since it is felt necessary to prohibit such behaviour when it emanates from simple bigotry, then this underlines the undesirability at which the prohibition is aimed. In fact the pernicious effect of special provision for (only) faith schools may be even greater since arguments against bigotry may be countered by appeals to reason and evidence whereas this will not work against doctrine and belief which stand apart from rational analysis.

Q.12: Do you consider that an exemption should be provided from the regulations for some of the activities of religious organisations?

Q.13 Do you agree that these exemptions should be restricted to activities that are primarily doctrinal? If there are any other activities that you consider should be covered by an exemption, what are they and why do you consider they need to be exempted?

We recognise that there are claims that the regulations could impact on “aspects of religious activity or practice” in the light of doctrine or the beliefs of followers of a religion. We have no wish for the regulations to “impede religious observances or practices that arise from basic doctrines of a faith” (para.3.33) but we suspect that these will be comparatively rare occurrences in any event.

Our far greater concern is that religious organizations will exert enormous pressure for exceptions to the regulations to be defined in the widest possible terms and that this will harm (if not invalidate) the purpose of the regulations in the first place. We strongly agree with the starting point as set out in para. 3.33 that exceptions should be limited to “activities closely linked to religious observance or practices that arise from the basic doctrines of a faith”.

We note with approval in particular the absence from this formula of a reference to “strongly held religious convictions of a significant number of the religion’s followers” as contained in Reg.7(3) of the Employment Equality (Sexual Orientation Regulations 2003. We have criticized the wording in that legislation on the basis that it offers too wide a scope for discrimination. It is inappropriate for an exception granted to an organization (as opposed to an individual) to offer protection for both sanctioned and unsanctioned opinions. We think that excepting strongly held belief would allow bigotry to flourish even if doctrine officially opposed it.

Whilst doctrine is associated with an organization as a whole, the views of a sub-section of any such organization, by definition, cannot be and therefore do not represent its ethos. On occasion, significant numbers (which we could envisage constituting just a few hundred people in a small independent congregation or small minority faith community) of the membership of a religion hold very extreme views on issues such as sexuality which are not necessarily matters of doctrine. It is, in our view, objectionable that such views are given protection in existing legislation when they are not even recognized doctrine, and may fly in the face of recognized doctrine. Whilst we agree that the scope of these regulations should reflect that of existing legislation, we do not agree that they should be drafted in identical terms where existing legislation is unfair. We strongly urge that the starting point in 3.33 is adopted without revision or extension.

We also agree strongly that there is no case for exempting religious organizations providing wider services to the community with a social or welfare aspect (para.3.34). As commented above under Public Functions, many of the recipients of such services are already vulnerable and could be doubly disadvantaged and isolated among their communities by the operation of such exemptions if allowed. Similarly, we agree that there should be no exemptions to organizations that are contracted by a public authority to deliver a service on its behalf (para.3.36) again for the reasons set out above under Public Functions.

Q.15 a: Do you agree that the sexual orientation regulations should include direct and indirect discrimination as well as victimisation?

Q.15 b: Are there any particular considerations or situations that should be taken into account in how such provisions are drafted?

Care should be taken that there are no uncertainties allowing religious leaders to instruct the faithful to discriminate in ingenious/disingenuous ways.

Q.16 Do you agree that discriminatory practice should be included in the scope of the sexual orientation regulations?

Q.17 Do you agree that discriminatory advertising should be included in the scope of the sexual orientation regulations?

We agree that discriminatory practice should be included in the scope of these regulations and that this should also be extended to other equality enactments, so that the CEHR can exercise its enforcement powers without discrimination across all the strands.

We also agree that discriminatory advertisements should be within the scope of these regulations.

We note that there is no proposal to include harassment in these regulations at this stage (para.4.18). We await the conclusions of the Discrimination Law Review. As a preliminary comment, however, we do not accept that the benefits and disadvantages of harassment law apply with equal force for all the strands and would in theory support the concept of legislation to make harassment on grounds of sexual orientation unlawful.

Q.21: Do you have any comments on the Government's plans for how the sexual orientation regulations will be enforced and supported by the CEHR?

We note the expectation that the CEHR will be a body that provides expert information, advice and guidance on all areas of discrimination law. (para.5.8). The difficult interplay between religion and sexual orientation discrimination requires special caution in the delivery of advice to people experiencing problems with sexual orientation discrimination. The structures of the CEHR must reflect the fact that both religious and non-religious people may face such discrimination, and that discrimination may come from a complainant's own religion or from a religion with which they have no connection. The CEHR must have robust practices in place to deal with conflict of rights and to deal with conflict within and between strands.

We note that the CEHR's ability to issue a Code of Practice. It is our recommendation that a single Code is issued to deal with the provision of goods, facilities and services across several grounds where discrimination is unlawful. This is in our view preferable to separate codes of practice. This is partly to reflect reality; employers and service providers will not experience each set of legislation in isolation but through real life situations in which employees or customers have multiple identities which give rise to cumulative rights and protections. It is also to preserve a sense of coherence throughout the equality enactments, both current and proposed, and avoids the inference of special treatment for any strand or section within a strand.