



# The Equal Rights Trust

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Dimitrina Petrova  
Executive Director

House of Lords,  
London  
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19 April 2013

Dear Member of the House of Lords,

#### **Re: Enterprise and Regulatory Reform Bill 2012-13**

I write on behalf of The Equal Rights Trust (ERT) to urge you to insist on Lords Amendments 35, 36, and 37 to the Enterprise and Regulatory Reform Bill 2012-13 upon the Bill's consideration in the House of Lords on Monday 22 April. ERT is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice. Established as an advocacy organisation, resource centre and think tank, ERT focuses on the complex relationship between different types of discrimination, developing strategies for translating the principles of equality into practice.

ERT has been following developments in relation to the Enterprise and Regulatory Reform Bill 2012-13 (the Bill), the government's proposals in relation to reform of the Equality Acts 2006 and 2010, and the operation of the Equality and Human Rights Commission more generally. ERT is concerned that unless these amendments are ultimately accepted, the Equality and Human Rights Commission will be unnecessarily weakened, and that discrimination against persons on grounds of caste will continue without redress for victims.

#### **Lords Amendments 35 and 36**

Under the Bill as introduced in the House of Commons, the general duty of the Equality and Human Rights Commission (the Commission), as laid down in section 3 of the Equality Act 2006 (the 2006 Act) would be removed. Lords Amendments 35 and 36 to the Bill would delete the provisions in the Bill which remove section 3, thereby retaining the general duty.

ERT believes it would be a serious mistake to repeal section 3 of the 2006 Act. The Report of the Independent Review of the Enforcement of UK Anti-Discrimination Legislation, co-chaired by Sir Bob Hepple (the Report), which laid the foundations for the development of the Equality Acts 2006 and 2010, recommended that there should be a “purposes” clause in such legislation to assist those interpreting and enforcing it. Section 3 of the 2006 Act was included as such a “purposes” clause with cross-party support. It has served as a powerful driver behind the Commission’s work and approach. The government put forward two arguments in favour of the repeal of section 3: the first is that it has no specific legal function, the second that it creates unrealistic expectations. ERT is unconvinced by either of these arguments.

In relation to the first of these, ERT believes that section 3 has, in fact, a very precise legal function which is to assist those interpreting and enforcing the 2006 Act as recommended by the Report. Without section 3, the Equality and Human Rights Commission would have no clear direction and, as Sir Bob Hepple recently commented, would be left “rudderless”;<sup>1</sup> this would risk increasing inconsistencies in the way in which the Act is applied. Significantly, international human rights law makes clear that the right to non-discrimination is both a fundamental human right and a principle of human rights upon which the enjoyment of all other human rights depends.<sup>2</sup> Without section 3, this important statement of principle would be missing from legislation governing the operation of the UK’s only national human rights institution.

In relation to the second argument, ERT does not believe that any evidence has been put forward by the government or others that section 3 creates unrealistic expectations. Indeed, ERT believes that there is evidence to the contrary. In particular, ERT would point to the investigations by the Commission where section 3 has been used. Recently, the Commission undertook an investigation into the Prison Service’s use-of-force policy against young detainees. The Commission undertook the investigation under the public sector equality duty. However, in the absence of section 3 of the 2006 Act, the Commission would almost certainly not have been able to reach the conclusion that it reached: namely that the policy should be changed not only with respect to *black* detainees (against whom force was used disproportionately) but with respect to *all* detainees. This conclusion was possible because of the wider human rights functions under section 3 which permitted the Commission to look more broadly at the question of use of force, rather than focusing narrowly on whether there had simply been differential treatment between black and white detainees. A similar investigation was undertaken by the Commission for Racial Equality (CRE) before section 3 came into force. In that investigation, the CRE was not able to reach the broader conclusion about the appropriate use of force as the focus was on discrimination, and the Prison Service was able to put forward the defence to this allegation by proving that white prisoners were treated equally badly. The link between discrimination and other human rights provided in section 3 ensured that the

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<sup>1</sup> Youtube Video: *Professor Sir Bob Hepple QC talks about Section 3*, 11 April 2013, available at: <http://www.youtube.com/watch?v=BxJZOrfRaLU>.

<sup>2</sup> See, for example, Article 1 of the Universal Declaration of Human Rights which states that “All human beings are born free and equal in dignity and rights”.

Commission was able to recommend that the new use-of-force policy had to be abandoned to the benefit of all detainees.

ERT believes that there is a further reason why the 2006 Act should not be tampered with, which is that is that the United Kingdom currently has a national human rights institution – the Commission – which is regarded by the United Nations as a “Status A” human rights institution and in full compliance with the “Paris Principles”.<sup>3</sup> The Paris Principles set down a number of criteria by which human rights institutions are to be assessed. Principle 2 provides that:

*A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.*

ERT believes that section 3 of the 2006 Act meets this criterion by giving the Commission a broad mandate, which complements and extends the more prescriptive duties laid down in sections 8 and 9 of the Act. ERT believes that removal of section 3 puts the UK’s ability to meet this criterion at risk, and thereby threatens the current “Status A” designation awarded to the Commission by the United Nations. In particular, while Principle 2 does not prescribe the existence of a provision such as section 3, any measure to reduce the mandate of the Commission (which the removal of section 3 would constitute) is self-evidently inconsistent with the requirement to ensure that a national institution has “as broad a mandate as possible”.

The existence of the Commission as a “Status A” body is one of a number of aspects of the system of human rights protection in the United Kingdom which allows the country to maintain a strong position in the field of human rights internationally. The broad mandate provided to the Commission by section 3 is an important symbol of the UK’s commitment to human rights and equality. We believe therefore that the removal of section 3 would create an unwelcome international precedent and that it will do damage to the United Kingdom’s reputation, and its ability to speak authoritatively about human rights with foreign governments.

### **Lords Amendment 37**

Lords Amendment 37 would prohibit discrimination on grounds of caste in the same terms as discrimination is currently prohibited on various other grounds under the Equality Act 2010. The amendment would bring the Equality Act into compliance with the United Kingdom’s international human rights obligations and address a well-documented form of discrimination present in the country.

The United Nations Committee on the Elimination of Racial Discrimination (CERD) has made it clear that discrimination on grounds of caste falls within the scope, and is prohibited under the

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<sup>3</sup> United Nations General Assembly Resolution 48/134, UN Doc. A/RES/48/134, 1994.

Convention on the Elimination of Racial Discrimination,<sup>4</sup> an instrument which the United Kingdom ratified in 1969. In addition, evidence of discrimination of persons in the United Kingdom on grounds of caste has been well-documented by organisations such as the Dalit Solidarity Network UK.<sup>5</sup> Indeed, when CERD last reviewed the United Kingdom in 2011, it re-iterated its general condemnation of discrimination on grounds of caste and recommended that such discrimination be prohibited in legislation in the United Kingdom.<sup>6</sup> ERT believes that the inclusion of Lord Amendment 37 will ensure that the United Kingdom fulfils its obligations under international human rights law and provide the necessary protection for victims of discrimination.

ERT therefore urges you to insist upon Lords Amendments 35, 36, and 37, to which the House of Commons has disagreed, when the Enterprise and Regulatory Reform Bill 2012-13 returns to the House of Lords on Monday 22 April.

Yours sincerely,



Dr Dimitrina Petrova,  
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The Equal Rights Trust

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<sup>4</sup> See Committee on the Elimination of Racial Discrimination, *General Recommendation No. 29: Article 1, paragraph 1 of the Convention (Descent)*, U.N. Doc. A/57/18 at 111, 2002.

<sup>5</sup> See, for example, the Dalit Solidarity Network UK and the International Dalit Solidarity Network, *Caste-Based Discrimination in the United Kingdom: Alternative report submitted to the UN Committee on the Elimination of Racial Discrimination when reviewing the 18th and 19th periodic reports of the United Kingdom at its 79th session: Caste-Based Discrimination in the United Kingdom*, 2011, available at: [http://www2.ohchr.org/english/bodies/cerd/docs/ngos/IDSN\\_UK79.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/ngos/IDSN_UK79.pdf). See also National Institute of Economic and Social Research, *Caste discrimination and harassment in Great Britain*, 2010, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/85523/caste-discrimination.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/85523/caste-discrimination.pdf).

<sup>6</sup> Committee on the Elimination of Racial Discrimination, *Concluding Observations: United Kingdom*, UN Doc. CERD/C/GBR/CO/18-20, 2011, Para 30.