

# Enterprise and Regulatory Reform Bill - Second Reading - clause 56

Organisation: House of Lords

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## Lord Marland:

The package of measures on equalities reflects the Government's clear commitment to equalities and the maintenance of core protection under equalities law, while addressing legal requirements which are not necessary or helpful. We want the **Equality and Human Rights Commission** to focus on its core functions as an independent equality body and an A-rated national human rights institution. We are therefore repealing vague and unnecessary duties and powers from the Equality Act 2006-the legislation that established the commission.

## Lord Stevenson of Balmacara:

Far less welcome in Part 5 are the measures undermining the **Equality and Human Rights Commission**. Why are the Government seeking to repeal the general duty on the ECHR which seeks to promote fundamental values of humanity and decency in our society? After all, the commission's statutory remit was the product of cross-party agreement when the Equality Act 2010 was passed. The **EHRC** is currently taking forward plans to change the way it works, responding to the changing economic, financial, demographic and social context but also, and particularly, the significantly reduced resources allocated to it by the Government. It recently published a new, three-year strategy and is implementing a new organisational design and operating model to deliver its work more effectively. We therefore agree with the commission when it argues that, if the Government wish to legislate further in this area, they should use the opportunity to strengthen the commission's accountability to Parliament thereby making it better able to fulfil its mandate as Britain's equality regulator and better ensure its continuation-which I gather is in doubt-as a national human rights institution in accordance with the Paris principles.

**Lord Lester of Herne Hill:** My Lords, I will focus only on the equality provisions. I welcome Clause 74, which adds a new and significant power enabling employment tribunals to require defaulting employers to provide equal pay audits. I also support the removal by Clause 56 of some provisions relating to the **Equality and Human Rights Commission** that were included in the Equality Act 2006. At the time, we on these Benches supported the previous Government in their inclusion, but experience has shown that these vague and aspirational provisions have blurred the commission's focus. Their removal will not impair the commission's core functions or jeopardise its well deserved "A" status at the UN, but should enhance its effectiveness.

Clause 56 repeals Section 3 of the Equality Act 2006, which sets out the commission's general duty. It repeals Section 10, which imposes a duty on the commission to promote good relations between members of different groups. It repeals Section 27, which enables the commission to arrange to provide conciliation in non-employment disputes, and it amends Section 12 by reducing the frequency with which the commission has to publish a report from three to five years. The commission's briefing of September 2012 explained:

"The Commission concludes that these changes are unlikely to have a significant adverse impact on its work".

I agree with that assessment and should explain the reasons why.

The commission will continue to have all functions relating to equality and diversity, as well as promoting understanding or the importance of human rights, encouraging good practice in relation to human rights, promoting awareness, understanding and protection of human rights and encouraging public authorities to comply with Section 6 of the Human Rights Act. The commission will remain obliged to have particular regard to the importance of exercising the powers conferred in relation to the convention rights. It will monitor the effectiveness of the equality and human rights enactments. It will publish information, undertake research and training, give advice and guidance, issue codes of practice, conduct inquiries and investigations, issue unlawful act notices, require the preparation of action plans, give legal assistance, and have the capacity to institute or to intervene in legal proceedings, whether for judicial review or otherwise. It will still assess compliance with public sector duties and be able to issue compliance notices.

None of these powers and duties will be affected by Clause 56, and the commission will be stronger and more effective as a result, led by its excellent new chair, the noble Baroness, Lady O'Neill, and professionally managed under a new chief executive, Mark Hammond, who has been in post since July 2011, and his board. The statutory guarantees of the commission's independence from unnecessary government interference will remain, notably the obligation for the Secretary of State to have regard to the desirability of ensuring that the commission is under as few constraints as reasonably possible in determining its activities, its timetables and its priorities. There is the obligation also for the Government to pay to the commission such sums as appear to the Secretary of State,

"reasonably sufficient for the purpose of enabling the Commission to perform its functions".

Apart from the lamentable state of the law on equal pay, British equality legislation is the finest anywhere. It is essential that the commission should be a strong and effective public authority rather than a poorly managed and politicised NGO, a commission carrying out its demanding public functions with a clear strategy and skilled professional staff. It has underperformed

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since it was set up, and the Joint Committee on Human Rights on which I serve has been critical of its record. By removing vague and unnecessary duties and powers, the Bill will focus the commission's legislative mandate on its core equality and human rights functions. The commission needs a board with strong business and corporate governance skills to provide strategic leadership. It needs to work more in partnership with others so that it is greater than the sum of its parts. The JCHR may wish to take on a greater role in scrutinising the commission's business plan. This was suggested by the noble Baroness, Lady O'Neill, in her pre-appointment hearing with the JCHR and would have the virtue of increasing the profile and transparency of the commission's work for Parliament.

The commission has a well deserved UN "A"-rated status as a national human rights institution. The UN High Commissioner for Human Rights and the chair of the International Coordinating Committee have expressed concern about, among other things, the cuts made to the commission's budget. As part of the 2010 spending review, the coalition Government announced plans to reduce the commission's budget from a baseline of £55 million to £26.8 million by 2014-15. The Government announced a comprehensive review of the commission's budget in May 2012 to examine the level of funding that is reasonably sufficient for the commission to perform effectively its core functions as a national expert on equality and human rights issues, a strategic enforcer of the law and a guardian of human rights.

The commission is not alone. The JCHR and devolved institutions also play a vital role, as do Parliament and the independent judiciary.

We look forward to the outcome of the review of the commission's budget. The commission's independence is well protected by the statutory scheme, but it is also important that it is accountable to the Government and Parliament for the way in which it uses taxpayers' money. I hope that the JCHR and other bodies with human rights functions will have a greater opportunity to understand, challenge and scrutinise how that money is put to best use. I emphasise that nothing in the Bill or the current review should jeopardise the Commission's "A" status; on the contrary, it should go from strength to strength.

**Baroness Campbell of Surbiton:** My Lords, I am delighted to return to the Chamber today after a long period of illness. I am even more delighted to be accompanied by my assistant. She is a new, stronger voice who will enable me to continue contributing to debates in your Lordships' House. I thank your Lordships for your understanding and agreeing to this new and unique arrangement. This is equality in action; and it is how we achieve equality that I wish to address in this debate. I am, however, daunted by having listened to the noble Lord, Lord Lester. I admire him above all other legal experts in the field of equality and human rights. Imagine how especially daunted I am, as I am not convinced that the repeal of the general duty will enhance the Equality Act and the work of the [Equality and Human Rights Commission](#). I first declare an interest as a founder and former commissioner of the [Equality and Human Rights Commission](#).

This summer, the opening ceremonies of the Olympic and Paralympic Games provided us with spectacular and moving accounts of the values and ideals that have shaped and continue to shape Britain: that every individual should be able to achieve his or her full potential, uninhibited by prejudice or discrimination; respect for human rights and for the dignity and worth of each individual; and equality of opportunity and mutual respect. It is because we in Britain treasure these values so highly that, in 2006, we passed legislation to establish an institution to be their advocate and guardian—the [commission for equality and human rights](#). These values are those incorporated into the commission's general duty, which the Government intend to repeal by Clause 56.

The general duty offers not only a statement of values and mission; it also distinguishes the commission from those disinterested regulatory bodies whose purpose is confined only to promoting and enforcing compliance with legislation. Parliament invested in the [EHRC](#) the task of working towards the vision set out in its

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general duty by drawing on, but not being confined to, existing equality and human rights law and standards. It requires the commission to promote the values which the legislation represents, not just the legislation itself. Through doing so, Parliament also made clear the precise character and scope of the commission's purpose and role. It was to be an agent of change, encouraging and supporting the development of a society in which these values are upheld. Parliament endowed the commission with a broad suite of hard and soft powers. Without the general duty, the [EHRC](#) would be left simply to address equality and human rights in the here and now, with no mandated direction as to what it should work towards.

Section 3 also underpins the commission's independence. This continued independence is required if Britain is to continue to benefit from a national equality body recognised by the European Union, a national human rights

institution recognised by the United Nations and an independent mechanism under the United Nations Convention on the Rights of Persons with Disabilities. If Section 3 is repealed, the character and scope of the commission will be fundamentally diminished and its independence placed at risk. Britain will lose a statutory champion of values which underpin modern democracy. Is that really what this House wants to endorse? Indeed, is such a fundamental change really understood by all in government? I cannot believe that this is really what our modern democracy wants from the [EHRC](#).

The decision on whether to repeal Section 3 is, I believe, of utmost significance. For me, it is a choice between a strong independent body, committed to promoting and safeguarding British values irrespective of the Government of the day, and a much diminished and far less independent body, confined to promoting the enforcement of law. At this time of economic hardship, the British people need to take comfort from the values that bind us as a mutually supportive nation. It therefore deeply saddens and concerns me that the Government have chosen, on the occasion of a Bill designed largely to reduce red tape for business, to seek to erase fundamental values from British law. I urge the Government to reconsider this potentially harmful proposed reform and I ask your Lordships to safeguard Section 3 by keeping it where it belongs.

#### **Lord Low of Dalston:**

I will touch only on the changes proposed in Part 5 to equality law, the remit of the [EHRC](#) and the procedures available in equality cases, as these have already been dealt with very fully by the noble Lord, Lord Lester, and the my noble friend Lady Campbell. As someone who was heavily involved in debates on the Equality Bill, which led to an Act commanding widespread support in your Lordships' House less than three years ago, it pains me to see such an assault on a piece of legislation-which embodies so many of the values of a liberal society with broad, cross-party support-so soon after its enactment.

As the noble Lord, Lord Lester, has reminded us, Clause 56 repeals Section 3 of the Equality Act 2006, which sets out the commission's general duty. It repeals Section 10, which imposes a duty on the commission

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to promote good relations between members of different groups. It repeals Section 27, which enables the commission to arrange to provide conciliation in non-employment disputes and it amends Section 12 by reducing the frequency with which the commission has to publish a report from every three years to every five years. The [EHRC](#)'s general council has described this as the abolition of the [EHRC](#) by stealth. As the noble Lord, Lord Lester, has indicated, there are different views about just how much impact this will have; but removing the general duty of the commission to promote human rights and a society free from discrimination and prejudice, and abolishing the commission's duty to promote good relations between different groups in society, feels to me like a pretty fundamental alteration to the remit of the [EHRC](#).

**Baroness Dean of Thornton-le-Fylde:** Much has been said about Clause 56 and later clauses in the Bill in relation to the [Equality and Human Rights Commission](#). The noble Baroness, Lady

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Campbell, whom we are all delighted to see back in the House today, made a strong case in regard to the removal of the general duty. That provision in the Equality Act went through with cross-party support, not 20 years ago but very recently in the past few years. I ask the Minister: what is the Government's intention in regard to the future of the [Equality and Human Rights Commission](#)-not what its role will be, but its future? I asked myself that question when I read the Bill and other briefing material. By 2014-15, the budget for this organisation will have been cut by 62% and 72% of its staff will have gone. The commission was formed by the merger of three independent organisations, which were brought together in the past few years. In addition, last month it shut down its helpline. It received 40,000 calls a year but is no longer available. It has to end its grant programme.

The Government have brought in a new chair and are bringing in new board members who have stronger business skills and experience. However, the organisation covers racial equality, gender equality, human rights and equality across the board, so why specify in one area when what is needed is a commission that has a range of skills? I ask the Minister whether the statement that if there is insufficient progress made on these changes the Government will move to implement more substantial reform, is a coded message to say, "We will end the [Equality and Human Rights Commission](#), break it up and put it into different departments". What is the long-term plan? Has the commission been given an agenda that will lead it to fail? If the Bill goes through as it stands, it will assist that failure.

**Lord Ouseley:** My Lords, I shall focus my concerns on the equality aspects of the Bill. I welcome the statements made by the noble Baronesses, Lady Campbell and Lady Dean, and the noble Lord, Lord Low, in support of the provisions that I shall refer to-namely, Clauses 56, 57 and 58.

The noble Lord, Lord Lester, said that we have some of the best equality legislation across the whole world. The UK can rightly and justly be proud of the legislative framework that has been created since the mid-1970s to

tackle inequalities essentially about race, gender and disability, and more recently the enactment of more coherent equality legislation incorporating a wider range of protected characteristics that has enabled us to enhance that framework. However, the implementation of equality policies and the enforcement of our laws have been patchy to say the least. Parliament passed legislation with a clear definition of unlawful discrimination, enabling it to be challenged, to make

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equality of opportunity more accessible and above all to promote good relations between different groups of people with one or some of the protected characteristics that make up our diverse society.

This reform Bill reminds me of what I would call a rollback Bill. It almost takes us back to some of the darker ages of poor employment practices by employers. It should be an opportunity to consolidate the progress made to date on the equality front by encouraging more of the practices that have worked for our society, employers and employees while seeking to improve outcomes where appropriate. Instead, we have before us in these clauses another attempt to dismantle the equality infrastructure that has been built up—the architecture for which was expertly and carefully crafted by the noble Lord, Lord Lester of Herne Hill, starting some four decades or more ago. He has continued to devote himself to protecting human rights and fighting for equality legislation and its enforcement.

As someone who has had the privilege of running large, medium and small organisations as well as a small business, I support unequivocally the eradication of unnecessary and time-wasting bureaucratic burdens. I also appreciate the necessity of information gathering for scrutiny, analysis and monitoring purposes as part of efficiency, effectiveness and accountability in any organisation's operations. In so far as they relate to the Equality Acts of 2006 and 2010, Clauses 56, 57 and 58 fail to achieve the balance necessary to remove bureaucratic burdens and retain fairness, particularly in the context of the respective rights of employers and employees.

Whether by intention or not, the Bill would remove the rights to reasonable redress for employees who have been treated unfairly, restrict access to justice and render the **EHRC** impotent at a time when prejudice and hatred are on the increase. The Government's own Equalities Office report, *Changing Attitudes to Equality*, indicated as much. When we look at the data and statistics on hate crime, there are huge concerns. At the same time, the Government are imposing employment tribunal fees and cutting legal aid and the funding of advice agencies. Above all, with the ethos associated with this particular Bill, they are encouraging employers to ignore equality legislation, abandon good and best practices and become cavalier in how they treat their employees.

Virtually everyone involved in equality work has told the Government that these clauses will have an adverse impact on our society and have the potential to damage race and community relations in Britain. It is disheartening to know that the Government blatantly ignored their own consultation results, which indicated only minority support for their proposals. Surely the minimal perceived benefits for employers through these clauses would be worthless if there was deteriorating social and community cohesion to contend with.

The **EHRC**'s general duty and its duty to promote good relations are fundamental to the core purpose of the 2006 Equality Act. On that, I agree with my noble friends Lady Campbell and Lord Low of Dalston, and disagree with the noble Lord, Lord Lester. If the **EHRC** does not undertake such promotional activity purposefully and with statutory underpinning, who else

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will do it? Many public bodies, voluntary organisations and businesses seek to pursue their activities purposefully with a view to achieving inclusion, equality, fair treatment and good relations—all contributing to better social cohesion. However, they have had help, support, prompting and occasional coercion from the various statutory bodies when they existed to yield the positive benefits from such actions.

During my stint as chair of the Commission for Racial Equality, which preceded the recent legislation in 2006 and 2010, we relied on the Section 71 provision of the Race Relations Act 1976 to apply—in elastic and creative ways—what was then a more limited concept to identify and challenge exclusion, prejudice and bias in any organisational practices. The duty was also used purposefully to assist the commission in enabling people from different backgrounds to achieve greater interaction, better mutual understanding and secure improved relationships. I note that in a recent parliamentary briefing, the **EHRC** states that,

"these changes are unlikely to have a significant adverse impact on its work."

I do not know if it said that to satisfy the Government to ensure its survival, particularly in the light of all the massive reductions that it has already experienced in its budget and which will continue to decimate the organisation and its capacity to do anything useful or purposeful. On the one hand, I agree with what it says, because it failed to use the provision in the way that it was intended. A light-touch, invisible regime was not what was envisaged or needed. The previous Government were as culpable for this failure as this Government. On the other hand I disagree with it, because it is an outrageous thing to say and demonstrates a serious incapacity to

lead on such a dynamic, creative and central concept and achieve collaboration across employers and organisations to secure the success intended and required.

**Baroness Thornton:** My Lords, I am very pleased to participate in this Second Reading debate and to be part of my noble friend's Bill team. We will try to do something useful with what is a pretty terrible Bill. Having worked on the Public Bodies Bill and the health Bill, there is quite a lot of competition for that prize with this Government. As other noble Lords said, the Bill is incoherent. It provides no compelling vision, no consistent message and no connected approach across government to drive growth. That is a shame.

I will concentrate on Clauses 56, 57 and 58, which are no less than a systematic undermining of the UK's entire equalities infrastructure for what appears to be no reason other than dogma and political spite, which I hope at least the junior partners in the coalition will not support. The clauses relating to the **Equality and Human Rights Commission**-as even Vince Cable admitted-have no significant impact on business growth. The Government's own impact assessment states that either they will have a negative impact or they will add nothing to the main purpose of the Bill. So why are they here? There is no tangible, quantifiable, empirical evidence linking the measures put forward in Clauses 56, 57 and 58 to business growth.

Clause 56 covers changes to the **Equality and Human Rights Commission's** statutory powers and duties. I beg to differ from what I thought was the rather complacent view of the noble Lord, Lord Lester, about the dangers that face this body. The Bill seeks to amend Part 1 of the Equality Act 2006, which sets out the **Equality and Human Rights Commission's** statutory powers and duties. It repeals Section 3, which sets out the general duty of the commission. It repeals Section 10, which imposes a duty on the commission to promote good relations between members of different groups. It repeals Section 19, which gives the commission powers in association with Section 10. It repeals Section 27, which enables the commission to make arrangements for the provision of conciliation in certain non-employment related disputes, and it amends Section 12, which requires the commission to monitor and report every three years on its progress. It reduces from three to five years the frequency with which the commission is required to publish a report on its progress.

These legislative changes should not be considered in isolation. In addition to the proposal to amend the legislative basis of the **EHRC**, the Government are undertaking a range of actions that seriously threaten the commission's independence and effectiveness. By 2014-15, the **EHRC** will have had its budget cut by

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62%. It will have lost 72% of its staff compared to when it was established in 2007. These are disproportionate cuts. They will make the **EHRC** about the same size as the former Disability Rights Commission-just one of the three equality commissions that it replaced.

In addition, the new framework document between the **EHRC** and the Home Office pays little heed to Part 4 of the Equality Act 2006, which states:

"The Minister shall have regard to the desirability of ensuring that the Commission is under as few constraints as reasonably possible in determining ... its activities ... its timetables, and ... its priorities".

This has drawn concern from the chair of the ICC, who stated that the new framework document significantly limits the **EHRC's** freedom,

"to determine priorities without undue influence by the Government".

The **EHRC** works to reduce inequality, eliminate discrimination and strengthen good relations between people. Undertaking these functions effectively requires proper funding of the **EHRC**, and the retention of its full legal remit and independence. I do not say that the **EHRC** needs to be funded-in case the Minister is under any illusions-as it currently is. Of course it has to play its part, as do all other government departments. However, the figures that I cited-

**Lord Lester of Herne Hill:** As the noble Baroness accused me of complacency, perhaps I could ask her to confirm that nothing in these changes will affect the guarantees of independence that together we wrote into the 2006 Act-some of which she referred to-nor the functions on enforcement that I quoted in my speech. The changes deal only with aspirational matters.

**Baroness Thornton:** I think that the noble Lord is quite wrong, and I will go on to say why. According to the Paris principles, a national human rights institute needs to enjoy financial autonomy that will enable it to determine its priorities and activities. General observation 2.6 on adequate funding, issued by the sub-committee on accreditation of the International Coordinating Committee of National Human Rights Institutions, states:

"Financial systems should be such that the NHRI has complete financial autonomy. This should be a separate budget line over which it has absolute management and control".

The actions of the Government are undermining the [EHRC](#)'s celebrated A status. Is their intention to preside over the downgrading of our national equalities and human rights body so that we can join Sri Lanka, Kazakhstan and the Congo, for example, with a B status, for whatever reasons those countries may have a B status-it could be that they do not have a body or that their body is not independent of their Government-instead of being part of the A status group, which includes most of the western world?

Section 3 of the Equality Act requires the [EHRC](#) to encourage and support a society based on freedom from prejudice and discrimination, individual human rights, respect for the dignity and worth of each individual, equal opportunity to participate in society and a mutual respect between groups based on understanding, valuing diversity and a shared respect for human rights. Section 3

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provides a guiding vision for the [EHRC](#) that unifies equality and human rights, which we discussed in 2006. While it is recognised that improvements are needed in the governance and management of the [EHRC](#), confusing that with changing its legislative-provided remit is unjustifiable. Time should be allowed for the newly-appointed chair to implement the changes she wishes to make before the purpose of the organisation is undermined.

Vince Cable admits that there is no business advantage to be gained from removing Section 3 and terms it simply a piece of "legislative tidying-up". However, there is a significant risk that removing Section 3 will prove to be a substantial loss. Professor Sir Bob Hepple QC, who I know has been a partner in crime of the noble Lord, Lord Lester, over many years, says that it has the potential to leave the Equality Act rudderless. Can the Minister explain exactly what getting rid of this general duty will do to encourage enterprise and grow the economy, or even what part of this duty puts a bureaucratic burden on business?

As to Section 10 of the Equality Act, which covers the duty to promote good relations, I can only assume that someone got out of the wrong side of the bed in a bad temper to draft this legislation to repeal the [EHRC](#)'s duty to promote good relations between members of different groups. That duty has been used in the past to include guidance on tackling political extremism in local elections, the kick racism out of football campaign and work carried out to improve social cohesion following the riots and troubles in Northern Ireland cities in 2001. Without this duty, the [EHRC](#) will be concerned only with regulating the vertical relations between organisations and individuals, rather than being able to undertake initiatives aimed at and positively influencing wider public attitudes and improving relations between individuals and groups. We need to keep all of this duty in the original legislation. As I have said, this legislation poses a threat and may lead to the removal of our A-grade status, which is a very serious matter.

#### **Lord Sheikh:**

I also welcome the proposed changes in some powers and duties of the [Equality and Human Rights Commission](#), and the proposed amendments to the Equality Acts of 2006 and 2010.

#### **Baroness Brinton:**

The [Equality and Human Rights Commission](#) has had its difficulties in the past, not least in its failure to deliver value for money and have its accounts signed off for three years. I am sure that it is time to review the way that it operates. While Clause 56 reduces its very broad responsibilities to concentrate on its activities in core areas, it is good that no powers and duties under the Equality Act 2006 have been removed. It is vital that we have an [EHRC](#) that is fit for purpose, able to deliver its core functions well and can continue with its huge progress in the past few years, including groundbreaking legal cases and inquiries exposing exploitation of migrant workers in the meat-packing industry, harassment of disabled people, discrimination in home care and the finance industry, and equality deficiencies in the Treasury's 2010 spending review.

#### **Lord Young of Norwood Green:**

We have heard some fascinating comments on the [Equality and Human Rights Commission](#). As one of the architects of the legislation behind that, the noble Lord, Lord Lester, brings a wealth of experience to that matter. He criticised Clauses 57 and 58 on third-party harassment and vulnerable minorities. A clear difference of opinion has emerged on this issue. I and my noble friends are worried about the general remit of the [Equality and Human Rights Commission](#). I take this opportunity to welcome back the noble Baroness, Lady Campbell. I congratulate whoever it was behind the scenes in the House who assisted her to make a full contribution. It is great to see her back making that contribution. We share her concern about the general remit. A number of noble Lords made very powerful contributions on that issue, not least the noble Lord, Lord Ouseley, who also brings a wealth of experience to the debate. He asked where the evidence was with regard to third-party harassment. Noble Lords asked about the evidence time and time again.

The noble Lord referred to the views of the General Counsel of the [EHRC](#), John Wadham, on abolition by stealth. I will counter that with a quotation from Mr Wadham, who stated:

"This Bill reduces our powers and our remit, but not in a way that we are overly concerned about".

So there.

**Lord Marland:**

There were a number of questions about the **Equality and Human Rights Commission**. It is absolutely fundamental that it should retain its A-grade status and the Government are committed to that. However, it is quite difficult when an organisation does not fulfil its audit commitments and does not manage its finances as well as it should. The commission is in the position it is not as a result of government interference, but through the organisation itself. I think that under the leadership of the noble Baroness, Lady O'Neill, it will be in a very good place.