

# **STRENGTHENING THE RACE RELATIONS ACT**



**T**he Race Relations (Amendment) Act 2000 received Royal Assent on 30 November 2000. Its main provisions are expected to come into force in April 2001.

The Race Relations (Amendment) Act 2000 strengthens and extends the scope of the 1976 Race Relations Act; it does not replace it. This first major reform of the 1976 Act is targeted at the public sector – hospitals, schools, police, local councils, government ministers – but the standards expected of public bodies should influence practice in the private sector.

## CHANGES TO THE 1976 RACE RELATIONS ACT

The new Act strengthens the 1976 Act in two major ways:

- **it extends protection against racial discrimination by public authorities**
- **it places a new, enforceable positive duty on public authorities.**

The Act also introduces other important changes:

- it makes Chief Officers of Police liable for acts of discrimination by officers under their direction or control
- it allows complaints of racial discrimination in certain immigration decisions to be heard as part of 'one-stop' immigration appeals
- it prohibits discrimination by ministers or government departments in recommending or approving public appointments, and in the terms and conditions, or termination, of such appointments, or in conferring honours, including peerages; the Act will apply to any new arrangements for appointing members of the House of Lords
- it allows complaints of racial discrimination in education to be brought directly before county or sheriff courts without, as now, having to be referred first to the Secretary of State for Education
- it limits the circumstances in which 'safeguarding national security' can be used to justify discrimination.

This leaflet is intended to:

- inform individuals, community organisations, trade unions and public authorities about the wider protection against racial discrimination, and about the new public sector duty contained in the Act
- encourage all public authorities to prepare for the new ways of thinking and working that will be expected under the amended Race Relations Act when it comes into force.

This leaflet provides a summary of the main provisions of the Act and is not intended to be a definitive statement of the law.

## PROHIBITING DISCRIMINATION

### How is the scope of the Race Relations Act extended?

The Race Relations (Amendment) Act extends the Race Relations Act 1976 to prohibit discrimination in all functions of public authorities. Like the Human Rights Act 1998, the new Act defines a public authority very widely. Anyone whose work involves functions of a public nature must not discriminate on racial grounds while carrying out those functions.

This means that all the functions of public authorities, such as central and local government, the police and the NHS, will be subject to the Race Relations Act. The Act will also apply to any private or voluntary agency carrying out any public functions such as running schools, prisons or immigration detention centres, enforcing parking controls or providing residential care. All such activities must be free of racial discrimination.

### Are there any exceptions?

Yes, the main functions outside the Act are:

- parliamentary functions
- judicial proceedings
- functions of the security services
- decisions not to prosecute
- certain immigration and nationality functions, where it will remain lawful to discriminate on grounds of nationality or ethnic or national origin – but not race or colour.

### **Doesn't the Race Relations Act already outlaw discrimination by public authorities?**

Yes, all public authorities must observe the Act in relation to their employment practices and their activities in the areas of education, housing and the provision of goods, facilities and services.

The important change is that, under the amended Race Relations Act, it will be unlawful for *any* public authority to discriminate on racial grounds – directly, indirectly or by victimisation – in carrying out *any* of its functions. In particular, for the first time, the full force of the Race Relations Act will apply to the regulatory or enforcement powers exercised by bodies such as the police, customs and excise, the prison service, local authorities and licensing bodies. It will also apply to any private organisation responsible for carrying out such functions – for example security companies assisting with immigration control.

### **Does the new Act cover the police?**

Yes. The Act now makes it unlawful for any police officer to discriminate on racial grounds in carrying out any policing functions, such as conducting stops and searches, arresting and detaining suspects, assisting victims and controlling demonstrations.

For the first time, too, Chief Officers

of Police will be liable for all acts of discrimination by any officer under their command, unless they can show that they have taken all reasonable steps to prevent the discrimination. Individual officers who discriminate will also be liable.

To avoid prejudice to criminal proceedings or a criminal investigation, a county or sheriff court may, on application, make an order delaying the hearing of a racial discrimination case.

The new positive duty that the Act places on public bodies also applies to the police.

### **Will it be unlawful for the immigration service to discriminate?**

Yes, but to a more limited extent than other public authorities. The full force of the Race Relations Act now applies to immigration officers carrying out policing functions such as searches or arrests made in relation to immigration offences.

In relation to other functions, it will be unlawful for immigration officers to discriminate on grounds of race or colour. Discrimination on grounds of nationality or ethnic or national origin will also be unlawful, except where this is authorised by a government minister, or under immigration legislation or rules.

Entry Clearance Officers working outside the UK will also be subject to the Act.

Complaints of racial discrimination in decisions relating to the right to enter or remain will be determined (along with any human rights complaints) under the 'one-stop' immigration appeals procedure.

## **ENFORCEABLE PUBLIC DUTY**

### **What is the new positive duty on public authorities?**

In the long term, this duty may be the most significant aspect of the amended Race Relations Act, because it gives statutory

force to the imperative of tackling institutional racism.

- **General duty.** The Act replaces section 71 of the 1976 Act with a new general duty. This requires the public authorities listed in a Schedule to the Act to have due regard to the need to eliminate unlawful discrimination and promote equality of opportunity and good race relations in carrying out their functions. They will be expected to consider the implications for racial equality of everything they do; for example allocating council housing, closing or opening a hospital or a school, and managing prisons, among many others.
- **Specific duties.** The Home Secretary may, by order, impose specific duties that state what each public authority must do in order better to comply with the general duty. There could be different duties imposed on different types of authorities. Scottish ministers will be able to impose specific duties on Scottish public authorities. The National Assembly of Wales must consent to any order imposing specific duties on Welsh public authorities.
- **Codes of practice.** The CRE is given the power to issue codes of practice to provide practical guidance to public authorities on how to fulfil their general and specific duties.
- **Compliance.** The critical feature of the new duty is that it will be enforceable. If the CRE is satisfied that a public authority is *not* complying with its specific duties, the CRE will be able to serve a compliance notice. This will require the authority to comply with its duties and inform the CRE of the measures it has taken. If necessary, the CRE can ask the county court or sheriff court to order the authority to comply.

Compliance with the new duty

could also be the subject of inspections or audits by, for example, OFSTED, Her Majesty's Inspectorate of Schools in Scotland, HM Inspectorate of Constabulary, HM Inspectorate of Constabulary in Scotland, HM Inspectorate of Prisons, the Audit Commission, the Accounts Commission, the National Audit Office and Audit Scotland.

### **How will this duty differ from the duty under section 71 of the 1976 Race Relations Act, which it replaces?**

The duty under section 71 in its original form was not enforceable. As a result compliance has been extremely uneven and inconsistent. The new general duty, and any specific duties imposed by the Home Secretary or Scottish ministers, will be audited or inspected in the same way as other statutory duties. Most importantly, where a public authority appears not to be taking necessary measures, the CRE will have the power to take enforcement action, ultimately through the courts. Additionally, the new duty applies to a much wider range of public authorities.

### **Which public authorities will be subject to the new positive duty?**

The public authorities to which the new public duty will apply are listed in a new Schedule contained in the 2000 Act. This finite list is different from the wider definition of 'public authority' that applies to the prohibition of discrimination described above.

Currently, the Schedule includes:

- all ministers and central government departments
- local authorities, regional development agencies and enterprise networks



- police authorities
- health authorities, health boards, NHS trusts and primary care trusts
- governing bodies of maintained schools, colleges and universities
- the Housing Corporation, Scottish Homes, housing action trusts.

The Home Secretary can add or delete authorities by order, and the CRE expects that a number of authorities will be added to the list after Home Office consultation.

### **What exactly will public authorities be expected to do?**

The new duty applies to the way public authorities carry out their various functions, including employment of staff. The contents of the specific duties, and how they might apply to different types of public authorities, will be decided following public consultation by the Home Office and the Scottish Executive. This consultation is likely to take place in early 2001.

The CRE expects that the specific duties on public authorities could include:

- a duty on all public authorities to monitor their staff by ethnicity
- a duty to assess the impact on racial equality of proposed policies, and to consult on them
- a duty to monitor the impact on racial equality of existing policies and practice.

The CRE will be issuing codes of practice containing practical examples of how different types of public authorities can comply with their general and specific duties. It is intended that there will be codes for central government departments, local government, educational bodies, the police and the NHS, as well as a general

code for all other authorities. Once they come into force, any of these codes can be referred to in legal proceedings.

The CRE will consult very widely before submitting the codes to the Home Secretary, who will consult Scottish ministers and the National Assembly for Wales before placing them before Parliament.

### **When will the public duty come into effect?**

The government says that the general duty should come into effect in April 2001, along with the other main parts of the Act. Before that date, the CRE will publish non-statutory guidance to help authorities understand what they will be expected to do to comply with the general duty.

Orders imposing the specific duties will be made following the public consultation, but may not come into effect until the codes of practice have been issued, which is likely to be towards the end of 2001.

## **PREPARING FOR CHANGES IN THE LAW**

### **What should public authorities be doing now?**

Some public authorities have already introduced many of the changes that the Act will require, largely in response to the Stephen Lawrence Inquiry Report and its definition of institutional racism. Those authorities that have not yet begun to look at what they do, or fail to do, should not wait until the Act or the specific duties come into force before doing anything. They should start now.

- **Definition.** Define all your functions – what you must do, and what you can do. Then identify – by ethnicity and other relevant criteria – the people for whom you should be providing various services.
- **Consultation.** Talk to your employees

and to people affected by your policies and practices, including people from ethnic minorities. Listen to their concerns and pay attention to their perceptions of your organisation's stand on racism and racial equality.

- **Monitoring.** Set up systems to monitor your work force and the outcomes of your policies and practices.
- **Assessment.** Examine the impact of your policies and practices and ask whether all ethnic groups are being treated fairly. Do they have equal opportunities and equal access to benefits, facilities and services? If not, why not?

- **Change.** Where the evidence from monitoring shows unequal outcomes between different ethnic groups, consider what changes are needed, and take action to prevent direct or indirect discrimination and to promote greater equality.

- **Implementation.** Where your organisation already has good policies on racial equality, make sure they are understood and put into practice at every level within the organisation. The policies should also be reinforced through staff performance appraisals and disciplinary procedures.

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## COMMISSION FOR RACIAL EQUALITY

The Commission for Racial Equality was set up by the Race Relations Act 1976 with the duties of:

- working towards the elimination of discrimination.
- promoting equality of opportunity and good relations between persons of different racial groups.
- keeping under review the working of the Act, and, when required by the Secretary of State or when it otherwise thinks it is necessary, drawing up and submitting to the Secretary of State proposals for amending it.

*The Commission for Racial Equality works in partnership with individuals and organisations for a fair and just society which values diversity and gives everyone an equal chance to work, learn, and live free from discrimination, prejudice and racism.*

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