

Legislation Pertaining to Race

Racial discrimination

Discrimination can be direct or indirect. 'Discrimination occurs when someone is treated less favourably because of their difference, but more often when someone's difference and needs are not recognised'.

The Race Relations Act 1976 makes it unlawful to discriminate against a person, directly or indirectly on racial grounds in:

- Employment
- Education
- Housing; and in the
- Provision of goods, facilities and services.

Racial grounds include the grounds of race, colour, nationality – including citizenship – or ethnic or national origins. Groups defined are: Africans Caribbean's, Gypsies, Indians, Irish, Pakistanis, Travellers, Jews and Sikhs.

Summary of Legislation

The two main items of legislation in relation to Race are the Race Relations Act 1976 and the Race Relations (Amendment) Act 2000.

In addition, the Race Relations Act 1976 (Amendment) Regulations 2003 were brought in to strengthen the original Race Relations Act 1976.

The Race Relations (Amendment) Act 2000 was brought in to strengthen and extend the scope of the 1976 Race Relations Act - it does not replace it.

In November 2005, the Commission for Racial Equality (CRE) published its revised Statutory Code of Practice on Racial Equality in Employment. The Code was developed to replace the CRE's original code of practice, the *Code of Practice for the Elimination of Racial Discrimination and the Promotion of Equality of Opportunity*, published in 1984. The new code of practice took legal effect on **6 April 2006**. Until April, the old code still applied.

The Race Relations Act 1976

The Race Relations Act 1976 makes it unlawful to discriminate against anyone on grounds of race, colour, nationality (including citizenship), or ethnic or national origin. It applies to:

- jobs
- training
- housing
- education
- the provision of goods and services.

It also makes it unlawful for public bodies to discriminate while carrying out any of their functions. As a result of the Race Relations Act, public bodies are obliged to make sure their employment procedures and service delivery do not have a disproportionate impact on particular ethnic or national groups. The Act has been strengthened twice, with additional duties being placed on public bodies - see below.

The Commission for Racial Equality is a publicly funded, non-governmental body set up under the terms of this Act and has powers to investigate bodies and issue compliance orders where necessary.

Note: In 2000, The Race Relations (Amendment) Act 2000 was brought in to strengthen and extend the scope of the 1976 Race Relations Act - it does not replace it.

Race Relations (Amendment) Act 2000

The Race Relation (Amendment) Act 2000 places a **general** duty on a wide range of public authorities to promote race equality.

Section 71 states, "Every body or other person specified.....shall, in carrying out its function, have due regard to the need –

- to eliminate unlawful racial discrimination;
- to promote equality of opportunity; and
- to promote good relation between people of different racial groups.

This includes services commissioned by public authorities.

Section 19B states "it is unlawful for a public authority in carrying out any function of the authority to do any act which constitutes discrimination".

In order to ensure that authorities are complying with this duty they will need to consider several guiding principles:

1. Promoting racial equality is obligatory for public bodies
2. Public bodies must meet the duty to promote racial equality in all relevant functions.
3. The legislation applies regardless of the size of the local black and minority ethnic population.
4. The weight given to racial equality should be proportionate to its relevance.

In order to fulfil the **general** duty public bodies will need to:

- Identify which of their functions are relevant
- Prioritise the function based on their relevance to racial equality
- Assess how these relevant functions and any related policies affect racial equality.
- Consider how policies may need to be changed, where necessary, to meet the duty and to make those changes.

The aim of the duty is to make race equality an integral part of the way public organisations work, by placing it at the centre of policy and decision making, service delivery, employment regulation and enforcement. The fundamental objective is to improve public services for everyone by eliminating discrimination and promoting race equality. It is a matter of fair access to services *not* positive discrimination.

The Race Relations Act 1976 (Amendment) Regulations 2003

The Race Relations (Amendment) Regulations 2003 modify the Race Relations Act 1976 in the following ways:

- Indirect discrimination on grounds of race or ethnic origin or national origin is extended to cover informal as well as formal practices
- The concept of a 'Genuine Occupational Requirement' is introduced for situations where having a particular ethnic or national origin is a genuine requirement for the employment in question
- The definition of discriminatory practices is extended to cover those that *would* put particular groups at a disadvantage, rather than only those where there is proof that a disadvantage has been experienced
- The Act is extended to give protection even after a relationship (such as employment in an organisation, or tenancy under a landlord) has finished.
- The burden of proof is shifted, meaning an alleged discriminator (such as an employer or landlord) has to prove that he or she did not commit unlawful discrimination once an initial case is made.

New Statutory Code of Practice on Racial Equality in Employment

In November 2005, the Commission for Racial Equality (CRE) published its revised statutory code of practice on racial equality in employment. The new code of practice took legal effect on **6 April 2006** and replaces the CRE's original code of practice, the *Code of Practice for the Elimination of Racial Discrimination and the Promotion of Equality of Opportunity*, published in 1984.

The new code of practice reflects the law as it stands today and benefits considerably from the body of discrimination law that has accumulated since the original Race Relations Act was passed in 1976.

The code is a statutory code, which means that it has been approved by the Secretary of State and laid before parliament. The code does not have the force of law, but any employment tribunal must take the code into account, if it is relevant, therefore, failure to follow the code could go against the employer.

The revised code of practice covers all employers in England, Scotland and Wales; some organisations such as employment and recruitment agencies; workers and former workers; and applicants for employment, training and promotion.