

# Introduction

The Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000 (and referred to in this guide as 'the Act') gives you a statutory general duty to promote race equality. Set out in section 71(1) of the Act, the duty applies to all the public authorities listed in schedule 1A to the Act (as amended by the Home Secretary's order). Appendix 1 to our statutory *Code of Practice on the Duty to Promote Race Equality* (the code) gives the final list. The code came into effect on 31 May 2002, following approval by parliament. Many of the listed authorities provide major public services, such as health, education, local government, and policing. Some (for example, broadcasting authorities, or professional organisations such as the Royal College of Surgeons) are bound by the general duty only so far as their public functions are concerned.

Under the Act and the code, the term 'functions' means the full range of your duties and powers. When carrying out your functions under the general duty, you must aim to:

- eliminate unlawful racial discrimination;
- promote equal opportunities; and
- promote good relations between people from different racial groups.

The general duty's aim is to make race equality a central part of the way you work, by putting it at the centre of policy-making, service delivery, regulation and enforcement, and employment practice.

Promoting race equality will improve public services for everyone. You can meet the duty in your own way, taking account of your functions, the areas you cover, and the size and variety of the communities you serve. Many authorities will use, and build on, arrangements and administrative and information systems they already have – such as those for developing and monitoring policy – to avoid unnecessary work and expense. You should not see the duty as a burden.

To help you to meet the general duty to promote race equality, the Home Secretary has made an order under the Act. This gives you specific duties in the areas of policy-making, service delivery, and employment. These duties apply only to the authorities listed in appendices 2 and 3 to the code. The duties' aim is to improve performance of the general duty. They are not ends in themselves, but the basic steps you must take to meet the general duty.

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Under the specific duties covering policy and service delivery, certain listed public authorities (see appendix 2 to the code) must publish a race equality scheme. If you are one of these authorities, your scheme must include the following.

- It must list the functions and policies (including proposed policies) that you have assessed as being relevant to the general duty to promote race equality.
- It must set out your arrangements to:
  - monitor your policies for any adverse impact (see p 43) on promoting race equality;
  - assess, and consult on, the impact that policies you are proposing to introduce are likely to have on promoting race equality;
  - publish the results of your assessments, consultation, and monitoring;
  - make sure that the public have access to information and services; and
  - train your staff on the general duty and the specific duties.

Under the specific duty for employers, if you are one of the public authorities listed in appendix 3 of the code, you must monitor staff in post and applicants for jobs, promotion, and training, by their racial group. If you have more than 150 full-time staff, you must also monitor, by racial group, the number of staff who:

- receive training;
- benefit or suffer from performance appraisals;
- are involved in grievances;
- are subjected to disciplinary action; and
- end their service with your authority (for whatever reason).

If you are bound by the employment duty, you must publish your ethnic monitoring results every year.

Schools and further and higher education institutions also have specific duties. We cover these in separate guides.

## Enforcing the duties

Under the Act, we have the power to enforce the specific duties. If we believe you are not meeting these duties, we can issue a 'compliance notice'. This is a legal document that orders you to meet the specific duties within a certain timescale. You will also have to tell us how you plan to meet the duties and observe the conditions of the notice. If you do not observe any part of the notice, we can apply to the courts for an order to make you do so. If the court issues the order and you still do not observe the notice, you can face legal action for contempt of court.

## **Status of this guide**

Unlike the code, which can be used in evidence in any legal proceedings under the Act, this guide does not have any legal standing. Although it may be referred to in legal proceedings, the courts do not have to take it into account.

Even so, this guide is an important document, as it is based on the professional judgement of public authorities with wide-ranging practical experience of tackling discrimination and promoting race equality. We recommend that you read this guide together with the code.

This guide contains six chapters. Following this introduction, chapter 2 goes on to explain the general duty. Chapter 3 explains in detail the several parts that make up the specific duty to produce and publish a race equality scheme. Chapter 4 covers the specific duty for employers. Chapters 5 and 6 explain how the duty covers public services and functions that you have contracted out, and work that you do with others, for example through partnerships.

We plan to revise and update this guide regularly, so that it always has the most up-to-date experience and information.

We deal with the important subject of ethnic monitoring in a separate guide.

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### **The legal framework**

- 2.1 The Race Relations Act (see the glossary) defines direct and indirect discrimination, and victimisation (see the glossary for each of these terms). It outlaws racial discrimination in employment, training, education, housing, public appointments, and the provision of goods, facilities and services. The Race Relations (Amendment) Act 2000 came into force on 2 April 2001 and since then the Race Relations Act (the Act) has covered all the functions of public authorities (with just a few exceptions).
- 2.2 Section 71(1) of the Act places a general duty on listed public authorities (see appendix 1). The Act also gives the Home Secretary power to make orders placing specific duties on all or some of these authorities (section 71(2)). Scottish ministers have a similar power over Scottish public authorities (section 71B(1); see the glossary). Under the Race Relations Act 1976 (Statutory Duties) Order 2001, the specific duties discussed in this code came into force on **3 December 2001**.
- 2.3 The Act gives the CRE enforcement powers over the specific duties imposed by the Home Secretary and Scottish ministers. The Act also gives the CRE power to issue codes of practice containing practical guidance on how public authorities can meet the general duty (see chapter 3) and specific duties (see chapters 4, 5 and 6). This is a statutory code, issued for this purpose.

### **The general duty to promote race equality**

- 2.4 This general duty applies to all public authorities listed in schedule 1A to the Act (see appendix 1). The duty's aim is to make the promotion of race equality central to the work of the listed public authorities.

### **Specific duties to promote race equality**

- 2.5 Specific duties have been placed on some public authorities responsible for delivering important public services. The duties involve making arrangements that will help these authorities to meet the general duty to promote race equality.

- a. The public authorities listed in appendix 2 must prepare and publish a race equality scheme. This scheme should set out the 'functions' or 'policies' (see the glossary for both terms) that are relevant to meeting the general duty, and the arrangements that will help to meet the duty in the areas of policy and service delivery (see chapter 4).
  - b. The public authorities listed in appendix 3 must monitor their employment procedures and practice (see chapter 5). Some of these authorities have to produce a race equality scheme. They may find it useful to include the arrangements they make to meet their employment duties in their race equality schemes.
  - c. The educational institutions listed in appendix 4 have to prepare a race equality policy and put in place arrangements for meeting their specific duties on policy and employment (see chapter 6).
- 2.6 Public authorities that introduce effective arrangements, as required under the specific duties, should be able to show that they are meeting the general duty to promote race equality. Taking action to promote race equality should give authorities the evidence they need to show that they are meeting the general duty.
- 2.7 Chapters 4, 5, and 6 give guidance on the specific duties.

## **Liability under the Race Relations Act**

- 2.8 Public authorities are responsible for meeting their general and specific duties. Within each public authority, this responsibility will rest with the groups or individuals who are liable (legally responsible) for the authority's acts or failure to act.

## **Private or voluntary organisations carrying out a public authority's functions**

- 2.9 When a public authority has a contract or other agreement with a private company or voluntary organisation to carry out any of its functions (see the glossary), and the duty to promote race equality applies to those functions, the public authority remains responsible for meeting the general duty and any specific duties that apply to those functions. The authority should therefore consider the arrangements it will need. If the authority's race equality duties are relevant to the functions it is contracting out, it may be appropriate to incorporate those duties among the performance requirements for delivery of the service. For example, a contractor could be required to monitor service users by their racial group, to

make sure the authority is meeting its duties. This would not involve requirements concerning the contractor's internal practices. Whatever action the authority takes, it must be consistent with the policy and legal framework for public procurement.

- 2.10 In addition to specifications for the general duty and any specific duties, public authorities may promote race equality by encouraging contractors to draw up policies that will help them (contractors) to avoid unlawful discrimination, and promote equality of opportunity. Such encouragement should only be within a voluntary framework, once contracts have been awarded, rather than by making specific criteria or conditions part of the selection process. Public authorities should bear in mind that the general duty does not override other laws or regulations on public procurement. In particular, as above, whatever action the authority takes must be consistent with the policy and legal framework for public procurement.

### **Partnership**

- 2.11 Public authorities should take account of their general duty to promote race equality – and any specific duties – when they work with other public, private or voluntary organisations. There is no similar obligation on private or voluntary-sector partners.
- 2.12 Public authorities that are involved in partnership work with other public authorities, or with private or voluntary-sector organisations, are still responsible for meeting their general duty to promote race equality, and any specific duties.
- 2.13 In practice, this will mean that a public authority working within a partnership will need to seek agreement from its partners to arrangements for planning, funding and managing joint work that will allow it to meet its statutory race equality duties. Public authorities should reflect their partnership work in their race equality schemes.

### **Inspecting and auditing public authorities**

- 2.14 Agencies that audit or inspect public authorities are bound by the duty to promote race equality. These agencies need to consider how the duty fits with their inspection or audit obligations. In most cases, inspection and audit bodies should be able to use their existing inspection arrangements to promote race equality.

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### **The general duty**

- 3.1 This chapter explains what public authorities can do to meet the general duty to promote race equality. The duty is set out in section 71(1) of the Race Relations Act (the Act) and it applies to every public authority listed in schedule 1A to the Act (see appendix 1 of this code). Section 71(1) says:

Every body or other person specified in Schedule 1A or of a description falling within that Schedule shall, in carrying out its functions, have due regard to the need

- a) to eliminate unlawful racial discrimination; and
- b) to promote equality of opportunity and good relations between persons of different racial groups.\*

### **Guiding principles**

- 3.2 Four principles should govern public authorities' efforts to meet their duty to promote race equality.
- a. Promoting race equality is obligatory for all public authorities listed in schedule 1A to the Act (see appendix 1).
  - b. Public authorities must meet the duty to promote race equality in all relevant functions.
  - c. The weight given to race equality should be proportionate to its relevance.
  - d. The elements of the duty are complementary (which means they are all necessary to meet the whole duty).

### **'Obligatory'**

- 3.3 Public authorities listed in schedule 1A to the Act must make race equality a central part of their functions (such as planning, policy making, service delivery, regulation, inspection, enforcement, and employment). The general duty does not tell public authorities how to do their work, but it expects them to assess whether race equality is relevant to their functions. If it is, the authority should do everything it can to meet the general duty. The duty should underpin all policy and practice, and it should encourage improvement. It is not necessarily a new responsibility for the authority, just a more effective way of doing what it already does.

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\* For immigration and nationality functions, the general duty does not include the words 'equality of opportunity and' (section 71A(1)).



is important to remember that the three parts are different, and that achieving one of them may not lead to achieving all three. For example, a new equal opportunities policy that is not clearly explained when it is introduced may improve equality of opportunity, but it may also damage race relations and create resentment if staff do not understand how it benefits everyone.

- 3.10 Public authorities should consider and deal with all three parts of the general duty.

### **How to meet the general duty**

- 3.11 Public authorities should consider the following four steps to meet the general duty.
- a. Identify which of their functions and policies are relevant to the duty, or, in other words, affect most people.
  - b. Put the functions and policies in order of priority, based on how relevant they are to race equality.
  - c. Assess whether the way these 'relevant' functions and policies are being carried out meets the three parts of the duty.
  - d. Consider whether any changes need to be made to meet the duty, and make the changes.

### **Identifying relevant functions**

- 3.12 To identify relevant functions, a public authority will find it useful, first, to make a list of all its functions, including employment. It should then assess how relevant each function is to each part of the general duty. As shown in paragraph 3.4, some functions may, by their nature, have little or no relevance.
- 3.13 A public authority should consider setting priorities, and giving priority to those functions that are most relevant to race equality.

### **Assessing impact and considering change**

- 3.14 To assess the impact its functions and policies have on race equality, the authority may find it useful to draw up a clear statement of the aims of each function or policy. It should then consider whether it has information about how different racial groups are affected by the function or policy, as employees or users (or possible users) of services. The authority should also consider whether its functions and policies are promoting good race relations. The authority could get this information from various sources; for example previous research, records of complaints, surveys, or local meetings. These methods should help public authorities to assess which of their services are used by which racial groups, or



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what people think of their services, and whether they are being provided fairly to people from different racial groups. This kind of evidence should help public authorities to decide what they might need to do to meet all three parts of the general duty.

- 3.15 Public authorities may also need to consider adapting their existing information systems, so that they can provide information about different racial groups and show what progress the authority is making on race equality.
- 3.16 To assess the effects of a policy, or the way a function is being carried out, public authorities could ask themselves the following questions.
  - a. Could the policy or the way the function is carried out have an adverse impact on equality of opportunity for some racial groups? In other words, does it put some racial groups at a disadvantage?
  - b. Could the policy or the way the function is carried out have an adverse impact on relations between different racial groups?
  - c. Is the adverse impact, if any, unavoidable? Could it be considered to be unlawful racial discrimination? Can it be justified by the aims and importance of the policy or function? Are there other ways in which the authority's aims can be achieved without causing an adverse impact on some racial groups?
  - d. Could the adverse impact be reduced by taking particular measures?
  - e. Is further research or consultation necessary? Would this research be proportionate to the importance of the policy or function? Is it likely to lead to a different outcome?
- 3.17 If the assessment suggests that the policy, or the way the function is carried out, should be modified, the authority should do this to meet the general duty.