

# RACE RELATIONS (AMENDMENT) ACT 2000

---

## EXPLANATORY NOTES

### COMMENTARY

#### *Section 1: Discrimination by Public Authorities*

9. Section 1 of the 2000 Act makes general provision extending the scope of the 1976 Act in relation to public authorities, outlawing race discrimination in functions not previously covered. It does this by **inserting new sections 19B, 19C, 19D, 19E and 19F** into Part III of the 1976 Act, which deals with non-employment cases. Each is explained below. Inserting the new general provision into Part III also has the effect that, except where explicit alternative provision is made, all the enforcement provisions of the existing Act that apply to non-employment cases will also apply to the new provisions. So, for example, except where explicit alternative provision is made, individuals will be able to bring proceedings under the new provision in the same way as for existing non-employment cases - in a designated county court (a sheriff court in Scotland). Other examples of provisions in the existing Act that will apply to the new provision are those relating to court procedures, remedies, the CRE's powers, time limits, and exemptions.

#### **Section 19B**

10. *Section 19B(1)* makes it **unlawful** for a public authority to discriminate against a person on race grounds in carrying out any of its functions.
11. *Section 19B(2)* defines “*public authority*” for the purposes of section 19B. The definition is generic, based on the definition used in section 6 of the Human Rights Act 1998.
12. *Section 19B(3)* provides for **certain exemptions** from the definition of “public authority” at subsection (2) of section 19B, namely the Houses of Parliament and proceedings in Parliament, and the intelligence agencies.
13. *Section 19B(4)* makes it clear that the provision at section 19B(1) only applies when the act of discrimination has taken place in the carrying out of a **public function**.
14. *Section 19B(6)* prevents there being any **overlap** between the new provision and the existing provisions of the Act.

#### **Section 19C**

15. Section 19C provides an exemption for judicial and legislative acts in order to protect the legislative functions of the UK Parliament, Scottish Parliament and National Assembly of Wales and the independence of the judiciary

#### **Section 19D**

16. Section 19D provides that an act in relation to **immigration or nationality functions** is not unlawful under section 19B where it is done by a Minister of the Crown acting personally, or by officials acting in accordance with a relevant authorisation. This reflects the position that Home Office and Foreign and Commonwealth Office officials

who operate immigration policies are required to discriminate between individuals on the basis of their nationality and ethnic or national origin when determining their entitlement to enter or remain in the United Kingdom or their entitlement to protection under various international instruments, including the 1951 UN Convention Relating to the Status of Refugees. The exemptions previously provided in section 41 of the 1976 Act are insufficient to allow immigration, asylum and nationality laws to continue to operate as Parliament intended.

17. **Section 19D(1)** provides that new section 19B applies to an act of a “*relevant person*” carrying out immigration and nationality functions only if that act involves discrimination on the grounds of **colour or race**. Section 19B will not apply to the act of a relevant person carrying out immigration or nationality functions that discriminates on the grounds of **nationality or ethnic or national origins**.
18. **Section 19D(2)** defines a “*relevant person*.” A relevant person is defined as a Minister of the Crown acting personally, or any other person acting in accordance with a “*relevant authorisation*”.
19. **Section 19D(3)** defines “*relevant authorisation*” as being where a requirement is imposed, or express authorisation is given, either with respect to a particular case or class of case, by a Minister acting personally; or with respect to a particular class of case, by any of the enactments mentioned in section 19D(5), or by any instrument made under or by virtue of those enactments. Ministers will continue to be able to make personal decisions in individual cases in the national interest outside the Immigration Rules. Such decisions will be subject to other legal provisions which safeguard human rights, such as the Human Rights Act 1998.
20. **Section 19D(4)** defines “*immigration and nationality functions*” as functions exercisable by virtue of any enactment listed in **section 19D(5)**.
21. **Section 19D(5)** lists the specific **immigration and nationality enactments** which are subject to the exemption. Section 19D(5)(a) excludes from this list sections 28A to 28K of the Immigration Act 1971 so far as they relate to offences under Part III of that Act. The effect of this is to place the immigration service in the same position under the 2000 Act as the police in respect of the investigation and prosecution of offences.

### **Section 19E**

22. Section 19E provides for the Secretary of State to appoint a person (in consultation with the CRE) to monitor section 19D.
23. **Section 19E(3)** sets out the **duties of the Monitor**. In a manner determined by the Secretary of State, the Monitor is to monitor any relevant authorisation given by Ministers to immigration staff to discriminate against another person on grounds of nationality or ethnic or national origin in carrying out immigration and nationality functions. The Monitor is also to monitor any acts done in accordance with such an authorisation.
24. **Section 19E(4) and (5)** requires the Monitor to make an **annual report** on the discharge of his functions and for the Secretary of State to lay this report before Parliament.
25. **Section 19E(6)** allows the Secretary of State to **remunerate** the Monitor.

### **Section 19F**

26. Section 19F provides that section 19B does not apply to a **decision not to institute criminal proceedings**, or, where a decision not to institute criminal proceedings has been taken, to any act done for the purpose of making a decision about criminal proceedings. This exemption will prevent it being possible for a person to use the Act to discover the reasons for a decision not to prosecute, thereby preserving the role of the criminal courts as the sole forum for determining guilt. Section 19F further provides

*These notes refer to the Race Relations (Amendment) Act 2000  
(c.34) which received Royal Assent on 30 November 2000*

that section 19B does not apply to **decisions to terminate, or not to continue, criminal proceedings** once they have been instituted.