

# RACE RELATIONS (AMENDMENT) ACT 2000

---

## EXPLANATORY NOTES

### COMMENTARY

#### *Section 2: Specified Authorities: General Statutory Duty*

27. **Section 2** replaces **section 71** of the 1976 Act, which imposes a general duty on local authorities to promote race equality, **with sections 71, 71A, 71B, 71C, 71D and 71E** which provides for all specified public authorities to promote race equality. Each section is explained below.

#### **Section 71**

28. **Section 71(1)** imposes a **general duty** on public authorities. It places specified public authorities (listed in Schedule 1A) under a duty to have, when carrying out their functions, due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different racial groups.
29. **Section 71(2)** allows the Secretary of State to make an order imposing **specific duties** on public authorities to ensure the better performance by them of the general duty.
30. **Section 71(3)** allows an order under subsection 71(2) to be made in relation to some public authorities but not to others, to impose **different requirements** on different public authorities or categories of public authority. The purpose of this is to allow for proportionality and flexibility. For example, it may be inappropriate to require the same of small public authorities as of a major department of state or local authority.
31. **Section 71(4)** requires the Secretary of State to consult the CRE before making orders under section 71(2).
32. **Section 71(5)** allows the Secretary of State to **amend**, by order, **Schedule 1A**. This enables him to amend the list of bodies in Schedule 1A that are subject to the general duty. He can, in particular, do this by removing bodies from or adding bodies to the list, or by altering existing entries in the list.
33. **Section 71(6)** enables the Secretary of State, when making an order under section 71(2) or (5), also to make incidental, supplemental or consequential provision, including amendment of other enactments. The purpose of this, in relation to the section 71(1) power, is to enable the removal of **overlapping statutory duties** which may already apply to bodies subject to the duty to promote race equality when specific duties are imposed upon those bodies by an order under section 71(2).

#### **Section 71A**

34. Section 71A limits the requirements of the duty to promote race equality in respect of **immigration and nationality functions**. It provides that, whilst public authorities carrying out immigration and nationality functions will be subject to the general duty in so far as it pertains to eliminating unlawful racial discrimination, and to promoting good relations

between persons of different racial groups, they will not be subject to the duty in so far as it requires the promotion of equality of opportunity between persons of different racial groups. This section is required because immigration and nationality policy, by its very nature, denies opportunities to some nationalities that are offered to others.

### **Section 71B**

35. Section 71B deals with **devolution** issues. Under the **Scotland** Act, the subject matter of race relations legislation is a reserved matter with two exceptions: the encouragement (other than by prohibition or regulation) of equal opportunities and in particular the observance of equal opportunities requirements; and the imposition of duties on Scottish public authorities and cross-border public authorities in relation to their Scottish functions. The new general duty may therefore impact on devolved areas of responsibility, and the intention of this section is that the order making powers in relation to the duty should be conferred on Scottish Ministers in line with the devolution settlement.
36. In relation to **Wales**, section 71B provides that the Secretary of State shall consult the National Assembly for Wales before making orders relating to cross-border authorities, and shall make orders relating to Welsh authorities only with the consent of the National Assembly for Wales.

### **Section 71C**

37. Section 71C gives the CRE the power to issue **Codes of Practice** to provide practical guidance to public authorities in relation to carrying out their duties to promote race equality provided for at sections 71(1) and 71(2).
38. The **procedures for preparing and issuing draft Codes**, and consulting on them, are based on the existing procedures in the 1976 Act for Codes on employment and housing. So too are the procedures for Secretary of State approval of the Codes, and for laying the Codes before Parliament. The only difference is that the Secretary of State will be under a duty, in view of devolution, to consult with the Scottish Ministers and the National Assembly for Wales in deciding whether to approve or reject such Codes.
39. A breach of a Code would not be actionable as such, but a Code would be **admissible in evidence** where it is relevant to any issue in proceedings before the court.

### **Section 71D**

40. Section 71D gives the CRE the power to issue a **compliance notice** if it is satisfied that a public authority has failed to comply with any duty imposed by order under section 71(2). A compliance notice would require the public authority to comply with the duty and to  
  
inform the CRE of the steps it has taken to do so. It could also require the public authority to give the CRE other information to verify that the duty has been complied with.

### **Section 71E**

41. Section 71E gives the CRE the power to apply for a **court order** requiring a public authority to provide information required by a compliance notice if that authority has failed to do so, or if the CRE has reason to believe it does not intend to do so. It also provides for the CRE to apply for a court order requiring a public authority to comply with a requirement of a compliance notice, where the Commission considers that that public authority has not complied with it within three months of the compliance notice having been served. The court may grant the order in the terms applied for or in more limited terms.