

# RACE RELATIONS (AMENDMENT) ACT 2000

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## 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

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

## **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.

### ***Section 3: Certain Appointment Functions Outside the Employment Field***

42. Section 4 of the 1976 Act covers discrimination against applicants and employees.

Section 76 of the 1976 Act covers discrimination in relation to government appointments where section 4 does not apply. Before the 2000 Act, section 76 was limited to appointments made by a Minister or government department. Section 3 of the 2000 Act **inserts sections 76(3) to (15) into the 1976 Act** to cover additionally appointments, dignities and honours made or conferred on the recommendation or with the approval of a Minister or government department. This includes, for example, appointments or conferrals by the Queen which are made on the recommendation of a Minister.

### **Sections 76(3) to (11)**

43. New sections 76(3) to (11) make it **unlawful** for a Minister or government department to discriminate on race grounds in making a recommendation, or giving or refusing an approval, or making arrangements for determining who should be recommended or approved, for appointment to an office or post where section 4 of the Act does not apply, or for conferring dignities and honours.

### **Sections 76(12) to (15)**

44. **Sections 76(12) to (15)** provide that the **remedy** for unlawful discrimination under sections 76(5), 76(9) and 76(11) is by way of an application to the High Court, or in Scotland the Court of Session.

### **Section 4: Police: Extension of Liability of Chief Officers, Etc**

45. **Section 4 inserts new sections 76A and 76B** into the 1976 Act. This provision makes a police authority liable for acts done by it to a constable. It also makes chief officers of police (a chief constable of a police force in Scotland) liable for the acts done by him to a constable and vicariously liable for acts of race discrimination by constables under his direction and control. It also provides for compensation, costs or expenses awarded as a result of a claim to be paid out of the police fund (in Scotland, payments by the police authority).
46. Section 32 of the 1976 Act makes employers liable for the acts of their employees. This allows an individual who has been discriminated against by another in the course of that other's employment to bring an action against the employer as well as against the discriminator. There is a defence for the employer, under section 32(3) of the 1976 Act, that he or she took reasonable steps to prevent the act of discrimination. This defence also now applies by virtue of the 2000 Act in respect of chief officers of police.

### **Section 5: Criminal Investigations and Proceedings**

47. Section 57 of the 1976 Act contains provisions for enforcement of claims under Part III of the Act.
48. Section 65(1) of the 1976 Act provides for forms ("section 65 questionnaires") to be submitted by the aggrieved person who considers he may have been discriminated against to the respondent, in order to help the person decide whether to institute proceedings and to present more effectively his case. The questions may relate to the respondent's reasons for doing any relevant act or to related matters. Section 65(2)(a) provides for the respondent's reply to be admissible as evidence in the proceedings. Section 65(2)(b) provides that, if it appears to the court that the respondent deliberately, and without reasonable excuse, omitted to reply within a reasonable period or that his reply was evasive or equivocal, adverse inferences may be drawn from that fact, including an inference that the respondent committed the unlawful act.
49. Section 5 amends sections 57 and 65 of the 1976 Act .
50. Section 5(1) of the 2000 Act **inserts new sections 57(4A), (4B), (4C) and (4D) into the 1976 Act**. The new subsections make provision in relation to remedies available to claimants, and to the power of courts hearing cases to grant a stay of the civil proceedings (a sist in Scotland), in particular circumstances.

### **Section 57(4A)**

51. Section 57(2) of the 1976 Act provides that, when a claim is brought in a designated county court (a sheriff court in Scotland), all remedies are obtainable that would be obtainable in the High Court (the Court of Session in Scotland). New **section 57(4A)** restricts the ability of the court to grant certain remedies to a claimant when the claim

is brought under section 19B against a public investigator or public prosecutor. There is no limitation on the court's ability to grant a remedy of damages or a declaration (a declarator in Scotland). But the section limits the power of the court to grant other remedies, for example injunctive relief, unless it is satisfied that such a remedy would not **prejudice a criminal investigation**, a decision to institute criminal proceedings, or any criminal proceedings.

### **Section 57(4B)**

52. New **section 57(4B)** provides definitions of criminal investigation and public investigator functions for the purposes of section 57.

### **Sections 57(4C) and (4D)**

53. The Civil Procedure Rules already make it possible for a party to apply for, and for the court hearing a case under the Act to grant a stay of the proceedings (a sist in Scotland) including where there is a risk that those proceedings might interfere with a criminal investigation or criminal proceedings. **Sections 57(4C) and (4D)** make provision relating to the circumstances in which the court hearing a case under section 19B **must grant a stay** in cases where a party to the proceedings has applied for a stay of the proceedings on the grounds of prejudice to particular criminal proceedings, a criminal investigation, or a decision to institute criminal proceedings. The court shall grant a stay unless it is satisfied that the continuance of the proceedings under section 57(1) would not result in prejudice to the case.

### **Sections 65(4A) to (4C)**

54. Section 5(2) of the 2000 Act **inserts new sections 65(4A), (4B) and (4C)** into the 1976 Act. These enable a respondent to proceedings under new section 19B to decline to answer a **section 65 questionnaire** without the risk of adverse inferences being drawn where:
- at the time of doing the relevant act the respondent was carrying out public investigator or public prosecutor functions; and
  - he or she reasonably believes that to respond, or to give a different response, would be likely to prejudice any criminal investigation, any decision to institute criminal proceedings, or any criminal proceedings, or would reveal the reason behind a decision not to institute, or not to continue, criminal proceedings.

### **Section 6: Immigration and Asylum Appeals**

55. Section 57 of the 1976 Act provides that proceedings under Part III of the Act shall be brought in a designated county court (a sheriff court in Scotland). Section 77 of the Immigration and Asylum Act 1999 establishes a "one-stop" procedure for immigration and asylum appeals, where all grounds for appeal must be adduced before the immigration appellate authorities in appeal proceedings against an immigration or asylum decision.
56. Section 6 of the 2000 Act **inserts new section 57A** into the 1976 Act. It provides that race relations complaints relating to immigration decisions may be brought before the immigration appellate authorities under Part IV of the Immigration Appeals Act 1999, in the same way as appeals lodged on human rights grounds. *Appellate authority* is defined in section 77(6) of the Immigration and Asylum Act 1999 as an adjudicator, the Immigration Appeal Tribunal, or the Special Immigration Appeals Commission.
57. **Section 57A(1)** prevents an **immigration claim** being made to the county court if an appeal could be brought, or is pending, before the immigration appellate authorities. It also prevents a further appeal to the county or sheriff court if an appeal on race relations' grounds to the immigration appellate authorities is dismissed.



58. **Section 57A(2)** defines immigration claims in respect of immigration decisions as a claim that a person has committed an act of discrimination against the claimant which is unlawful by virtue of section 19B or that section and sections 32 and 33 of the 1976 Act.
59. **Section 57A(3)** prevents the county court from **questioning a decision of the immigration appellate authorities** that a particular act was discriminatory and unlawful under section 19B. Where the immigration appellate authority finds that a person has been the subject of race discrimination under section 19B the appeal may be allowed on that ground only, and the matter may be referred to the county or sheriff court to assess a claim for damages under section 57(1). This section prevents the immigration appellate authorities' decision in respect of section 19B from being overturned.
60. **Section 57A(4)** prevents the county court from **challenging the immigration decision** to which an immigration claim relates, or an appeal determination in respect of such a decision. There is the possibility that an immigration claim might be made to the county or sheriff court only after the conclusion of an appeal to the immigration appellate authorities on other grounds, as a means of delaying the enforcement of an immigration decision. The amendment seeks to avoid the likelihood of the court granting an injunction against the enforcement of the immigration decision, by preventing the court from questioning that decision.
61. Subsections (3) and (4) of section 6 of the 2000 Act also **amend section 65 of the Immigration and Asylum Act 1999**, which creates a new right of appeal to the immigration appellate bodies on human rights grounds against decisions affecting a person's entitlement to enter or remain in the United Kingdom which are alleged to be unlawful under section 6(1) of the Human Rights Act 1998. They provide that there shall in addition be a **right of appeal to the immigration appellate bodies on the grounds of racial discrimination**.

### **Section 7: National Security**

62. **Section 42** and section 69(2)(b) of the 1976 Act together provide that an act of race discrimination is not unlawful if done for the purposes of safeguarding national security, and that a Ministerial certificate is conclusive evidence that an act was done for that purpose. The power to issue such conclusive certificates has been found by the European Court of Human Rights, in the case of *Tinnelly and McElduff* 249 EHRR 1999, to be incompatible with article 6(1) of the European Convention on Human Rights.
63. Section 7 of the 2000 Act removes the power of the Minister to issue a conclusive certificate in relation to non-employment cases. (The Employment Rights Act 1999 removed the power in relation to employment cases.) It also changes the national security defence so that it is not sufficient that a discriminatory act was done for the purpose of safeguarding national security, it must also be justified by that purpose.
64. **Section 7(1)** amends the **national security defence** under section 42 of the 1976 Act. The effect is that it will no longer be a complete defence to show that an act was done for the purposes of national security. It will, in addition, now need to be shown that the act was justified for that purpose. This provision is in the same terms as sections 90 and 98 of the **Northern Ireland Act 1998 (c. 47)** which applies to the national security defence in relation to claims of discrimination under that Act.
65. **Section 7(2)** repeals the power of a Minister to issue a **national security certificate**.

### **Section 8: National Security Procedure**

66. Section 8 of the 2000 Act **inserts a new section 67A** into the 1976 Act which makes provision for courts to adopt certain special procedures when dealing with cases under the Act that raise national security issues.
67. **Section 67A(1)** provides that **rules may be made** enabling a court, where it considers it expedient for national security reasons, to:
- exclude the claimant, and/or his representative(s), and/or court assessors, from all or part of proceedings;
  - allow an excluded claimant or representative to make a statement to the court; and
  - take steps to keep the reasons for its decision secret.
68. **Section 67A(2) to (4)** also provide that, where a claimant and his representatives have been so excluded from proceedings, the Attorney General or, in Scotland, the Advocate General for Scotland, **may appoint a person suitably qualified** to represent the interests of a claimant. It provides that this person shall not be responsible to the claimant. These provisions are based on similar provisions in section 6 of the Special Appeals Commission Act 1997.

### **Section 10: Short Title, Commencement and Extent**

69. The substantive provisions of the Act will **come into effect** on the date or dates specified by order by the Secretary of State.

### **Schedule 1: Bodies and Other Persons Subject to General Statutory Duty**

70. Schedule 1 to the 2000 Act inserts **Schedule 1A** into the 1976 Act. It lists those persons and classes of persons that are to be subject to the **general duty to promote race equality** under section 71(1). The Schedule covers the main central and local government bodies, the police, educational bodies and housing bodies amongst others.
71. It does not list the vast majority of Non-Departmental Public Bodies. Nor does it list private bodies carrying out functions of a public nature. However, it will be possible to add these bodies (so far as relevant) to the Schedule by order.

### **Schedule 2: Consequential Amendments**

72. **Schedule 2** makes **consequential amendments** arising out of the main provisions of the Act.
73. **Paragraph 1** brings the description of **Scottish grant-aided schools** in section 17 of the 1976 Act into line with the description in Schedule 1 to the 2000 Act.
74. **Paragraph 2** removes the reference to **section 19** of the 1976 Act from section 27(1) of the 1976 Act, since section 19 has been repealed.
75. Part III of the Act does not generally apply outside Great Britain. In general, this will be the position under new section 19B. **Paragraph 3** extends the application of section 19B so that it applies to the grant or refusal of **entry clearance** outside Great Britain.
76. **Section 53** of the Act provides that no proceedings shall be brought for race discrimination other than as provided for under the Act. **Paragraph 4** amends section 53 to enable **proceedings** under the Act also to be brought as provided for under **section 65 of the Immigration and Asylum Act 1999**.



77. **Paragraph 5** amends section 53 to provide that **judicial review** of acts relating to the appointments newly covered by section 76 is not available under section 53, except as provided for under section 76.
78. **Paragraphs 6 and 7** remove the reference to **section 19** of the 1976 Act from section 57(5) of the 1976 Act.
79. **Paragraph 8** allows an **enforcement notice** served by the CRE in respect of an immigration decision to be appealed in the civil courts. This places immigration decisions on the same footing as other areas of decision-making under section 59 of the 1976 Act.
80. **Paragraph 9** provides that a finding of unlawful discrimination by the Immigration Appellate Authority in an immigration case will trigger the CRE's power to seek an **injunction** under section 62 of the 1976 Act.
81. **Paragraph 10** provides that persons making immigration claims to the immigration appellate authorities are denied access to the assistance provided by **section 65** for obtaining information from the respondent concerning the alleged act of discrimination. This will ensure that the same procedures are followed in race discrimination claims made to the immigration appellate authorities, as for any other immigration case.
82. **Paragraph 11** extends section 66 of the 1976 Act to allow the CRE to give **assistance** to people in immigration proceedings before the Immigration Appellate Authority or the Special Immigration Appeals Commission.
83. **Paragraph 12** amends section 67 of the 1976 Act in order to protect those applicants whose visa applications are successful but nevertheless consider that they have been discriminated against by an **entry clearance** officer outside Great Britain. It ensures that redress is available in the county court.
84. **Paragraphs 13 and 14** provide that the **six month time limit** for lodging a race relations complaint to the county court or sheriff court in relation to an immigration matter begins once that immigration matter has been dealt with under immigration legislation. This will be relevant where a person is happy with an immigration decision but wishes to complain of discrimination.
85. **Paragraph 15** amends section 69(2) of the 1976 Act. Section 69(2) deals with the evidential burden in proceedings under the 1976 Act. It provides that where a Minister of the Crown **certifies** that he has approved a particular arrangement or condition, this shall be conclusive evidence that he did so. This amendment applies this provision also to appeals under Part IV of the 1999 Act. It does not prevent the court from deciding whether the action complained of fell within that approval and whether it was unlawful or not.
86. Section 73(1)(b) of the 1976 Act allows the Secretary of State by **order to amend the Act**, following consultation with the CRE, to make lawful an act which would otherwise be unlawful under particular provisions of the Act. The order is subject to the affirmative resolution procedure. **Paragraph 16** adds section 19B to this list of provisions.
87. Section 75 of the 1976 Act makes provision in relation to the **application of the Act to the Crown**. Subsection (1) of section 75 provides that the Act applies to acts of public authorities "as it applies to an act done by a private person." This has been interpreted, in the case of *R v Entry Clearance Officer, Bombay ex parte Amin* [1983] 2 AC 818 as meaning that if an act of a public authority could not be done by a private person, the Act does not apply to that act. Subsection (2) of section 75 provides that Parts II and IV of that Act apply to service for purposes of a Minister of the Crown or government department (other than service of a person holding a statutory office), service on behalf of the Crown for purposes of a person holding a statutory office or purposes of a statutory body or service in the armed forces, as they apply to employment by a private person. **Paragraph 17 of Schedule 2 to the 2000 Act** provides that sections

75(1) and 75(2) of the Act do not apply to sections 19B to 19F, sections 71(1) to 71E, including Schedule 1A and section 76A of the 1976 Act and makes express provision about how those provisions apply to the Crown. Paragraph 17 provides that the relevant provisions bind the Crown.

88. **Paragraph 18** replaces the reference to **section 16** in section 75(3) of the 1976 Act with a reference to the new sections 76A and 76B that will replace it.
89. **Paragraphs 20-22** make provision to align references in the **Local Government Act 1988** to section 71 of the 1976 Act with the new section 71.
90. **Paragraphs 28 and 29** extend the **Lord Chancellor's existing jurisdiction** under the Special Immigration Appeals Commission Act 1997 to make rules regulating the exercise of appeals under that Act. At present the Lord Chancellor has no power to make regulations overning appeals before the Special Immigration Appeals Commission on race relations or human rights grounds. These paragraphs remedy this.
91. **Paragraphs 30 and 31** amend the **School Standards and Framework Act 1998** to ensure that the requirement in Schedules 4 and 5 of that Act for school organisation committees and adjudicators to have regard to the obligations placed on local education authorities and school governors which is contained in Part III of the 1976 Act, also apply to the obligations placed on those bodies by the duty to promote race equality contained in section 71 of the 1976 Act.
92. **Paragraph 32** amends **section 65(3) of the Immigration and Asylum Act 1999**. This deals with the circumstances in which an immigration appellate authority has jurisdiction to hear a question, and the circumstances in which a decision may be taken to allow an immigration appeal. This paragraph adds to these circumstances where a question arises as to whether a public authority has racially discriminated against the appellant in taking a decision relating to his entitlement to enter or remain in the UK.
93. **Paragraph 33** amends **section 65(5) of the Immigration and Asylum Act 1999**. This deals with the circumstances where a decision may be taken to allow an immigration appeal.  
**Paragraph 33** adds to these circumstances where an immigration appellate authority decides that a public authority has racially discriminated against the appellant.
94. **Paragraph 34** amends the side-note to **section 65 of the Immigration and Asylum Act 1999** so that it refers to racial discrimination as well as human rights.
95. **Paragraph 35** amends **section 72(2) of the Immigration and Asylum Act 1999**. It provides that where an asylum claimant is to be removed to a safe third country in accordance with arrangements between member states, or to a designated country under section 12 of the 1999 Act, no appeal may be made on race discrimination grounds whilst that person is in the UK if the Secretary of State certifies that the allegation of discrimination is manifestly unfounded. This brings procedures in respect of such claims into line with human rights claims.
96. **Paragraph 36** amends **section 73(2) of the Immigration and Asylum Act 1999**. It provides that where a person makes an immigration appeal on the basis that he has been racially discriminated against but has already had an appeal against the immigration decision finally determined, the Secretary of State may certify that the second claim could reasonably have been made at the first appeal, a purpose of the late claim would be to delay removal from the UK and that there was no other legitimate reason for making the claim. The effect of certification is that the appeal relating to the second claim is regarded as finally determined. This brings it into line with human rights appeals.
97. **Paragraph 37** amends **section 74(7) of the Immigration and Asylum Act 1999**. It provides that any claim of discrimination brought under the Immigration and Asylum appeals system must be included in a written statement of additional grounds to be

lodged with any appeal. This brings such claims within the one-stop appeals process established under Part IV of the Immigration and Asylum Act 1999 in the same way as human rights claims.

98. **Paragraph 38** amends **section 76(3)(a) of the Immigration and Asylum Act 1999**. It provides that even where a person fails to mention a claim of discrimination in his grounds of appeal or statement attached to that appeal, he may still rely on discrimination as an issue during the course of his appeal. This brings procedures in respect of such claims into line with human rights claims.
99. **Paragraphs 39 and 40** amend **Schedule 4 of the Immigration and Asylum Act 1999**. The effect is that any race discrimination claim brought under Part IV of the 1999 Act may be certified as manifestly unfounded. If the adjudicator agrees that the claim has been correctly certified, the appellant is unable to appeal to the Immigration Appeal Tribunal.
100. A consequential amendment has also been made to the existing certification procedure in paragraph 9 of Schedule 4 to the Immigration and Asylum Act 1999, for applications for political asylum and for claims under the Human Rights Act.

### **Schedule 3**

101. This Schedule makes **repeals** consequential on the provisions in the 2000 Act.