



# Race Relations (Amendment) Act 2000

## 2000 CHAPTER 34

*Further extension of 1976 Act to police and other public authorities*

### **1 Discrimination by police and other public authorities**

After section 19A of the Race Relations Act 1976 (in this Act referred to as “the 1976 Act”) there is inserted—

*“Public authorities*

#### **19B Discrimination by public authorities**

- (1) It is unlawful for a public authority in carrying out any functions of the authority to do any act which constitutes discrimination.
- (2) In this section “public authority”—
  - (a) includes any person certain of whose functions are functions of a public nature; but
  - (b) does not include any person mentioned in subsection (3).
- (3) The persons mentioned in this subsection are—
  - (a) either House of Parliament;
  - (b) a person exercising functions in connection with proceedings in Parliament;
  - (c) the Security Service;
  - (d) the Secret Intelligence Service;
  - (e) the Government Communications Headquarters; and
  - (f) any unit or part of a unit of any of the naval, military or air forces of the Crown which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in carrying out its functions.
- (4) In relation to a particular act, a person is not a public authority by virtue only of subsection (2)(a) if the nature of the act is private.

- (5) This section is subject to sections 19C to 19F.
- (6) Nothing in this section makes unlawful any act of discrimination which—
  - (a) is made unlawful by virtue of any other provision of this Act; or
  - (b) would be so made but for any provision made by or under this Act.

**19C Exceptions or further exceptions from section 19B for judicial and legislative acts etc**

- (1) Section 19B does not apply to—
  - (a) any judicial act (whether done by a court, tribunal or other person); or
  - (b) any act done on the instructions, or on behalf, of a person acting in a judicial capacity.
- (2) Section 19B does not apply to any act of, or relating to, making, confirming or approving any enactment or Order in Council or any instrument made by a Minister of the Crown under an enactment.
- (3) Section 19B does not apply to any act of, or relating to, making or approving arrangements, or imposing requirements or conditions, of a kind falling within section 41.
- (4) Section 19B does not apply to any act of, or relating to, imposing a requirement, or giving an express authorisation, of a kind mentioned in section 19D(3) in relation to the carrying out of immigration and nationality functions.
- (5) In this section—
  - “immigration and nationality functions” has the meaning given in section 19D; and
  - “Minister of the Crown” includes the National Assembly for Wales and a member of the Scottish Executive.

**19D Exception from section 19B for certain acts in immigration and nationality cases**

- (1) Section 19B does not make it unlawful for a relevant person to discriminate against another person on grounds of nationality or ethnic or national origins in carrying out immigration and nationality functions.
- (2) For the purposes of subsection (1), “relevant person” means—
  - (a) a Minister of the Crown acting personally; or
  - (b) any other person acting in accordance with a relevant authorisation.
- (3) In subsection (2), “relevant authorisation” means a requirement imposed or express authorisation given—
  - (a) with respect to a particular case or class of case, by a Minister of the Crown acting personally;
  - (b) with respect to a particular class of case—
    - (i) by any of the enactments mentioned in subsection (5); or
    - (ii) by any instrument made under or by virtue of any of those enactments.

- (4) For the purposes of subsection (1), “immigration and nationality functions” means functions exercisable by virtue of any of the enactments mentioned in subsection (5).
- (5) Those enactments are—
- (a) the Immigration Acts (within the meaning of the Immigration and Asylum Act 1999 but excluding sections 28A to 28K of the Immigration Act 1971 so far as they relate to offences under Part III of that Act);
  - (b) the British Nationality Act 1981;
  - (c) the British Nationality (Falkland Islands) Act 1983;
  - (d) the British Nationality (Hong Kong) Act 1990;
  - (e) the Hong Kong (War Wives and Widows) Act 1996;
  - (f) the British Nationality (Hong Kong) Act 1997; and
  - (g) the Special Immigration Appeals Commission Act 1997;
- and include any provision made under section 2(2) of the European Communities Act 1972, or any provision of Community law, which relates to the subject-matter of any of the enactments mentioned above.

#### **19E Monitoring of exception in relation to immigration and nationality cases**

- (1) The Secretary of State shall appoint a person who is not a member of his staff to act as a monitor.
- (2) Before appointing any such person, the Secretary of State shall consult the Commission.
- (3) The person so appointed shall monitor, in such manner as the Secretary of State may determine—
- (a) the likely effect on the operation of the exception in section 19D of any relevant authorisation relating to the carrying out of immigration and nationality functions which has been given by a Minister of the Crown acting personally; and
  - (b) the operation of that exception in relation to acts which have been done by a person acting in accordance with such an authorisation.
- (4) The monitor shall make an annual report on the discharge of his functions to the Secretary of State.
- (5) The Secretary of State shall lay a copy of any report made to him under subsection (4) before each House of Parliament.
- (6) The Secretary of State shall pay to the monitor such fees and allowances (if any) as he may determine.
- (7) In this section “immigration and nationality functions” and “relevant authorisation” have the meanings given to them in section 19D.

#### **19F Exceptions from section 19B for decisions not to prosecute etc**

Section 19B does not apply to—

- (a) a decision not to institute criminal proceedings and, where such a decision has been made, any act done for the purpose of enabling the decision whether to institute criminal proceedings to be made;
- (b) where criminal proceedings are not continued as a result of a decision not to continue them, the decision and, where such a decision has been made—
  - (i) any act done for the purpose of enabling the decision whether to continue the proceedings to be made; and
  - (ii) any act done for the purpose of securing that the proceedings are not continued.”

## 2 Specified authorities: general statutory duty

- (1) For section 71 of the 1976 Act (local authorities: general statutory duty) there is substituted—

### “71 Specified authorities: general statutory duty

- (1) 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.
- (2) The Secretary of State may by order impose, on such persons falling within Schedule 1A as he considers appropriate, such duties as he considers appropriate for the purpose of ensuring the better performance by those persons of their duties under subsection (1).
- (3) An order under subsection (2)—
  - (a) may be made in relation to a particular person falling within Schedule 1A, any description of persons falling within that Schedule or every person falling within that Schedule;
  - (b) may make different provision for different purposes.
- (4) Before making an order under subsection (2), the Secretary of State shall consult the Commission.
- (5) The Secretary of State may by order amend Schedule 1A; but no such order may extend the application of this section unless the Secretary of State considers that the extension relates to a person who exercises functions of a public nature.
- (6) An order under subsection (2) or (5) may contain such incidental, supplementary or consequential provision as the Secretary of State considers appropriate (including provision amending or repealing provision made by or under this Act or any other enactment).
- (7) This section is subject to section 71A and 71B and is without prejudice to the obligation of any person to comply with any other provision of this Act.

### **71A General statutory duty: special cases**

- (1) In relation to the carrying out of immigration and nationality functions (within the meaning of section 19D(1)), section 71(1)(b) has effect with the omission of the words “equality of opportunity and”.
- (2) Where an entry in Schedule 1A is limited to a person in a particular capacity, section 71(1) does not apply to that person in any other capacity.
- (3) Where an entry in Schedule 1A is limited to particular functions of a person, section 71(1) does not apply to that person in relation to any other functions.

### **71B General statutory duty: Scotland and Wales**

- (1) For the purposes of the Scotland Act 1998, subsections (2) to (4) of section 71 (and sections 71(6) and 74 so far as they apply to the power conferred by subsection (2) of section 71) shall be taken to be pre-commencement enactments within the meaning of that Act.
- (2) Before making an order under section 71(2) in relation to functions exercisable in relation to Wales by a person who is not a Welsh public authority, the Secretary of State shall consult the National Assembly for Wales.
- (3) The Secretary of State shall not make an order under section 71(2) in relation to functions of a Welsh public authority except with the consent of the National Assembly for Wales.
- (4) In this section “Welsh public authority” means any person whose functions are exercisable only in relation to Wales and includes the National Assembly for Wales.

### **71C General statutory duty: codes of practice**

- (1) The Commission may issue codes of practice containing such practical guidance as the Commission think fit in relation to the performance by persons of duties imposed on them by virtue of subsections (1) and (2) of section 71.
- (2) When the Commission propose to issue a code of practice under this section, they—
  - (a) shall prepare and publish a draft of the code;
  - (b) shall consider any representations made to them about the draft; and
  - (c) may modify the draft accordingly.
- (3) In the course of preparing any draft code of practice under this section the Commission shall consult such organisations or bodies as appear to the Commission to be appropriate having regard to the content of the draft code.
- (4) If the Commission determine to proceed with a draft code of practice, they shall transmit the draft to the Secretary of State who shall consult the Scottish Ministers and the National Assembly for Wales.
- (5) After consulting the Scottish Ministers and the National Assembly for Wales, the Secretary of State shall—

- (a) if he approves of the draft code, lay it before both Houses of Parliament; and
  - (b) if he does not approve of it, publish details of his reasons for withholding approval.
- (6) If, within the period of forty days beginning with the day on which a copy of a draft code of practice is laid before each House of Parliament, or, if such copies are laid on different days, with the later of the two days, either House so resolves, no further proceedings shall be taken on the draft code of practice, but without prejudice to the laying before Parliament of a new draft.
- (7) In reckoning the period of forty days referred to in subsection (6), no account shall be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (8) If no such resolution is passed as is referred to in subsection (6), the Commission shall issue the code in the form of the draft and the code shall come into effect on such day as the Secretary of State may, after consulting the Scottish Ministers and the National Assembly for Wales, by order appoint.
- (9) Without prejudice to section 74(3), an order under subsection (8) may contain such transitional provisions or savings as appear to the Secretary of State to be necessary or expedient in connection with the code of practice thereby brought into operation.
- (10) The Commission may revoke, or from time to time revise, the whole or any part of a code of practice issued under this section; and, where they revise the whole or any part of such a code, they shall issue the revised code, and subsections (2) to (9) shall apply (with appropriate modifications) to such a revised code as they apply to the first issue of a code.
- (11) A failure on the part of any person to observe any provision of a code of practice shall not of itself render that person liable to any proceedings; but any code of practice issued under this section shall be admissible in evidence in any legal proceedings, and if any provision of such a code appears to the court or tribunal concerned to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.
- (12) Without prejudice to subsection (1), a code of practice issued under this section may include such practical guidance as the Commission think fit as to what steps it is reasonably practicable for persons to take for the purpose of preventing their staff from doing in the course of their duties acts made unlawful by this Act.

#### **71D General statutory duty: compliance notices**

- (1) If the Commission are satisfied that a person has failed to comply with, or is failing to comply with, any duty imposed by an order under section 71(2), the Commission may serve on that person a notice (“a compliance notice”).
- (2) A compliance notice shall require the person concerned—
- (a) to comply with the duty concerned; and
  - (b) to inform the Commission, within 28 days of the date on which the notice is served, of the steps that the person has taken, or is taking, to comply with the duty.

- (3) A compliance notice may also require the person concerned to furnish the Commission with such other written information as may be reasonably required by the notice in order to verify that the duty has been complied with.
- (4) The notice may specify—
  - (a) the time (no later than three months from the date on which the notice is served) at which any information is to be furnished to the Commission;
  - (b) the manner and form in which any such information is to be so furnished.
- (5) A compliance notice shall not require a person to furnish information which the person could not be compelled to furnish in evidence in civil proceedings before the High Court or the Court of Session.

### **71E Enforcement of compliance notices**

- (1) The Commission may apply to a designated county court or, in Scotland, a sheriff court for an order requiring a person falling within Schedule 1A to furnish any information required by a compliance notice if—
  - (a) the person fails to furnish the information to the Commission in accordance with the notice; or
  - (b) the Commission have reasonable cause to believe that the person does not intend to furnish the information.
- (2) If the Commission consider that a person has not, within three months of the date on which a compliance notice was served on that person, complied with any requirement of the notice for that person to comply with a duty imposed by an order under section 71(2), the Commission may apply to a designated county court or, in Scotland, a sheriff court for an order requiring the person to comply with the requirement of the notice.
- (3) If the court is satisfied that the application is well-founded, it may grant the order in the terms applied for or in more limited terms.
- (4) The sanctions in section 71D and this section shall be the only sanctions for breach of any duty imposed by an order under section 71(2), but without prejudice to the enforcement under section 57 or otherwise of any other provision of this Act (where the breach is also a contravention of that provision).”

(2) Schedule 1 (which inserts Schedule 1A into the 1976 Act) is to have effect.

### **3 Certain appointment functions outside the employment field**

- (1) Section 76 of the 1976 Act (government appointments outside the employment field) is amended as follows.
- (2) In subsection (1) for “This section” there is substituted “Subsection (2)”.
- (3) After subsection (2) there is added—
  - “(3) Subsection (5) applies to—

- (a) any recommendation made by a Minister of the Crown or government department in relation to an appointment to an office or post where section 4 does not apply in relation to the appointment; and
  - (b) any approval given by such a Minister or department in relation to any such appointment.
- (4) Subsection (5) also applies to—
  - (a) any recommendation made by a Minister of the Crown or government department in relation to a conferment by the Crown of a dignity or honour; and
  - (b) any approval given by such a Minister or department in relation to any such conferment.
- (5) In making the recommendation, or giving the approval, and in making the arrangements for determining who should be recommended or approved, the Minister of the Crown or government department shall not do an act which would be unlawful under section 4 if the recommendation or approval were an offer of employment and the Crown were the employer for the purposes of this Act.
- (6) Subsections (3) to (5) do not apply in relation to the making of negative recommendations.
- (7) Subsection (9) applies to—
  - (a) any negative recommendation made by a Minister of the Crown or government department, or any refusal to make a recommendation by such a Minister or department, in relation to an appointment to an office or post where section 4 does not apply in relation to the appointment; and
  - (b) any approval refused by such a Minister or department in relation to any such appointment.
- (8) Subsection (9) also applies to—
  - (a) any negative recommendation made by a Minister of the Crown or government department, or any refusal to make a recommendation by such a Minister or department, in relation to a conferment by the Crown of a dignity or honour; and
  - (b) any approval refused by such a Minister or department in relation to any such conferment.
- (9) In making a negative recommendation or in refusing to make a recommendation or give an approval, and in making the arrangements for determining whether to make such a recommendation or refusal, the Minister of the Crown or government department shall not do an act which would be unlawful under section 4 if the recommendation or refusal were a refusal to offer the person concerned employment and the Crown were the employer for the purposes of this Act.
- (10) Subsection (11) applies in relation to any appointment to an office or post where section 4 does not apply and—
  - (a) the appointment is made by a Minister of the Crown or government department; or



- (b) the office or post is an office or post in relation to which a Minister of the Crown or government department has made a recommendation (other than a negative recommendation) or given an approval.
- (11) A Minister of the Crown or government department shall not do an act in connection with—
  - (a) the terms of the appointment;
  - (b) access for the person appointed to opportunities for promotion, transfer or training, or to any other benefits, facilities or services; or
  - (c) the termination of the appointment, or subjecting the person appointed to any other detriment;which would be unlawful under section 4 if the Crown were the employer for the purposes of this Act.
- (12) The High Court may, on an application for judicial review, make a declaration to the effect that a Minister of the Crown or government department has contravened subsection (5), subsection (9) or, in relation to an appointment falling within subsection (10)(b), subsection (11), and may award damages in respect of the contravention.
- (13) In Scotland, the Court of Session may, in a petition for judicial review, grant declarator to the like effect and may award damages in respect of the contravention.
- (14) The sanctions provided by virtue of the operation of section 53(2) to (4) in relation to this section shall be the only sanctions under this Act in relation to appointments, conferments and other acts to which this section applies.
- (15) In this section—
  - (a) references to refusal include references to deliberate omission;
  - (b) references to Ministers of the Crown and government departments include references to the National Assembly for Wales and any part of the Scottish Administration; and
  - (c) references to Ministers of the Crown and government departments so far as they relate to the making of a recommendation or a refusal to make a recommendation, or the giving or refusal of an approval, in relation to a conferment of a peerage for life under section 1 of the Life Peerages Act 1958 include references to any body established by a Minister of the Crown to make such a recommendation to the Prime Minister or to determine whether to give such an approval.”

#### **4 Police: extension of liability of chief officers etc**

After section 76 of the 1976 Act there is inserted—

*“Police*

##### **76A Police forces**

- (1) In this section, “relevant police office” means—
  - (a) the office of constable held—
    - (i) as a member of a police force; or

- (ii) on appointment as a special constable for a police area; or
  - (b) an appointment as police cadet to undergo training with a view to becoming a member of a police force.
- (2) For the purposes of Part II, the holding of a relevant police office shall be treated as employment—
  - (a) by the chief officer of police as respects any act done by him in relation to that office or a holder of it;
  - (b) by the police authority as respects any act done by it in relation to that office or a holder of it.
- (3) For the purposes of section 32—
  - (a) the holding of a relevant police office shall be treated as employment by the chief officer of police (and as not being employment by any other person); and
  - (b) anything done by a person holding such an office in the performance, or purported performance, of his functions shall be treated as done in the course of that employment.
- (4) There shall be paid out of the police fund—
  - (a) any compensation, costs or expenses awarded against a chief officer of police in any proceedings brought against him under this Act, and any costs or expenses incurred by him in any such proceedings so far as not recovered by him in the proceedings; and
  - (b) any sum required by a chief officer of police for the settlement of any claim made against him under this Act if the settlement is approved by the police authority.
- (5) Any proceedings under this Act which, by virtue of this section, would lie against a chief officer of police shall be brought against—
  - (a) the chief officer of police for the time being; or
  - (b) in the case of a vacancy in that office, against the person for the time being performing the functions of that office;
 and references in subsection (4) to the chief officer of police shall be construed accordingly.
- (6) A police authority may, in such cases and to such extent as appear to it to be appropriate, pay out of the police fund—
  - (a) any damages or costs awarded in proceedings under this Act against a person under the direction and control of the chief officer of police;
  - (b) any costs incurred and not recovered by such a person in such proceedings; and
  - (c) any sum required in connection with the settlement of a claim that has or might have given rise to such proceedings.

### **76B Other police bodies etc**

- (1) Section 76A applies in relation to the National Criminal Intelligence Service (“NCIS”) and the National Crime Squad (“the NCS”) as it applies in relation to a police force but as if any reference—
  - (a) to the chief officer of police were to the Director General of NCIS or of the NCS, as the case may be;

- (b) to the police authority were to the Service Authority for the National Criminal Intelligence Service or the Service Authority for the National Crime Squad, as the case may be;
  - (c) to the police fund were to the service fund established under section 16 of the Police Act 1997 (NCIS service fund) or section 61 of that Act (the NCS service fund), as the case may be.
- (2) Section 76A also applies in relation to any other body of constables or cadets as it applies in relation to a police force, but as if any reference—
- (a) to the chief officer of police were to the officer or other person who has the direction and control of the body in question;
  - (b) to the police authority were to the authority by whom the members of the body are paid;
  - (c) to the police fund were to money provided by that authority.
- (3) In relation to a member of a police force or a special constable who is not under the direction and control of the chief officer of police for that police force or, as the case may be, for the police area to which he is appointed, references in section 76A to the chief officer of police are references to the chief officer under whose direction and control he is.”