

2002 No. 62

RACE RELATIONS

**The Race Relations Act 1976 (Statutory Duties) (Scotland)
Order 2002**

Made 14th February 2002

Laid before the Scottish Parliament 15th February 2002

Coming into force 13th March 2002

The Scottish Ministers, in exercise of the powers conferred by section 71(2) and (3) of the Race Relations Act 1976(a) and of all other powers enabling them in that behalf, after consultation with the Commission for Racial Equality in accordance with section 71(4) of that Act, hereby make the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Race Relations Act 1976 (Statutory Duties) (Scotland) Order 2001 and shall come into force on 13th March 2002.

(2) In this Order—

“cross-border public authority” and “Scottish public authority with mixed functions or no reserved functions” have the meaning given by the Scotland Act 1998(b);

“the Race Relations Act” means the Race Relations Act 1976;

“staff” includes any person treated as an employee for the purposes of Part II (Discrimination in the Employment Field) of the Race Relations Act;

references to “150 full-time staff” are references to such number of staff as would, if the hours they work were aggregated, amount to 150 staff working on a full-time basis;

“Scottish functions” has the meaning given by section L.2 of Part II of Schedule 5 to the Scotland Act 1998;

“education authority” has the meaning given by section 135 of the Education (Scotland) Act 1980(c); and

“school” has the meaning given by section 135 of the Education (Scotland) Act 1980 but excluding independent schools and in addition includes a place, other than a school, at which an education authority provides school education for pupils who are under school age, other than such a place at which school education is being provided by a person with whom that authority has, by virtue of section 35 of the Standards in Scotland's Schools etc Act 2000(d), entered into arrangements for the provision of that education; where “independent school”, “school education”, “pupil” and “school age” have the meanings given by section 135 of the Education (Scotland) Act 1980.

(a) 1976 c.74; section 71 was substituted by section 2 of the Race Relations (Amendment) Act 2000 (c.34) (“the 2000 Act”). Subsections (2) to (4) of section 71 are deemed by virtue of section 71B(1) of the 2000 Act to be pre-commencement enactments within the meaning of the Scotland Act 1998 (c.46). The functions conferred on the Secretary of State by those subsections are therefore transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act.

(b) 1998 c.46.

(c) 1980 c.44.

(d) 2000 asp 6.

Race Equality Schemes

2.—(1) This article applies to a body or person specified in Schedule 1 to this Order.

(2) A body or person to which this article applies shall, before 30th November 2002, publish a Race Equality Scheme, that is a scheme showing how it intends to fulfil its duties under section 71(1) of the Race Relations Act and this Order.

(3) A Race Equality Scheme shall state, in particular—

- (a) those of its functions and policies, or proposed policies, which that body or person has assessed as relevant to its performance of the duty imposed by section 71(1) of the Race Relations Act; and
- (b) that body or person's arrangements for—
 - (i) assessing and consulting on the likely impact of its proposed policies on the promotion of race equality;
 - (ii) monitoring its policies for any adverse impact on the promotion of race equality;
 - (iii) publishing the results of such assessments and consultation as are mentioned in paragraph (i) and of such monitoring as is mentioned in paragraph (ii);
 - (iv) ensuring public access to information and services which it provides; and
 - (v) training staff in connection with the duties imposed by section 71(1) of the Race Relations Act and this Order.

(4) Such a body or person shall, by no later than 30th November 2005 and at three yearly intervals thereafter, review the assessment referred to in paragraph (3)(a).

Educational Bodies or Persons

3.—(1) A body or person specified in Part I or II of Schedule 2 to this Order shall, before 30th November 2002—

- (a) prepare a written statement of its policy for promoting race equality (referred to in this article as its “race equality policy”); and
- (b) have in place arrangements for fulfilling, as soon as is reasonably practicable, its duties under paragraph (4) or (5), as the case may be.

(2) Such a body or person shall—

- (a) maintain a copy of its race equality policy and in the case of an education authority ensure that each school under its management maintains such a copy; and
- (b) fulfil those duties in accordance with such arrangements and in the case of an education authority ensure that each school under its management complies with the arrangements.

(3) A race equality policy prepared under paragraph (1)(a) and the arrangements put in place under paragraph (1)(b) by an education authority will apply to each school under its management.

(4) It shall be the duty of a body or person specified in Part I of Schedule 2 to this Order to make arrangements for each school under its management to—

- (a) assess the impact of its policies, including its race equality policy, on pupils, staff and parents of different racial groups including, in particular, the impact on attainment levels of such pupils; and
- (b) monitor, by reference to their impact on such pupils, staff and parents, the operation of such policies including, in particular, their impact on the attainment levels of such pupils.

(5) It shall be the duty of a body or person specified in Part II of Schedule 2 to this Order to—

- (a) assess the impact of its policies, including its race equality policy, on students and staff of different racial groups;
- (b) monitor, by reference to those racial groups, the admission and progress of students and the recruitment and career progress of staff; and
- (c) include in its written statement of its race equality policy an indication of its arrangements for publishing that statement and the results of its assessment and monitoring under sub-paragraphs (a) and (b).

(6) Such a body or person shall take such steps as are reasonably practicable to publish annually the results of its monitoring under this article.

4.—(1) A body or person specified in Part I, III or IV of Schedule 2 to this Order shall, before 30th November 2002, have in place arrangements for fulfilling, as soon as is reasonably practicable, its duties under paragraph (2), (3) or (4), as the case may be, and shall fulfil those duties in accordance with such arrangements.

(2) It shall be the duty of a body or person specified in Part I of Schedule 2 to this Order to monitor, by reference to the racial groups to which they belong—

- (a) the numbers at each school under its management of—
 - (i) staff in post; and
 - (ii) applicants for employment, training and promotion, from each such group; and
- (b) in the case of bodies or persons specified in Part I of Schedule 2 to this Order which have 150 or more full-time staff in total in all schools under their management, the numbers of staff from each school and each such group who—
 - (i) receive training;
 - (ii) benefit or suffer detriment as a result of its performance assessment procedures;
 - (iii) are involved in grievance procedures;
 - (iv) are the subject of disciplinary procedures; or
 - (v) cease employment with such schools.

(3) It shall be the duty of a body or person specified in Part III of Schedule 2 to this Order to—

- (a) monitor, by reference to the racial groups to which they belong, the numbers of teaching staff from each such group at all schools in respect of which it exercises its functions; and
- (b) take such steps as are reasonably practicable to use, for that purpose, data provided by education authorities and schools.

(4) It shall be the duty of a body or person specified in Part IV of Schedule 2 to this Order to monitor, by reference to the racial groups to which they belong, the numbers of teaching staff from each such group at all educational establishments in respect of which it exercises its functions.

(5) Such a body or person shall take such steps as are reasonably practicable to publish annually the results of its monitoring under this article.

Monitoring by Employers

5.—(1) A body or person to which this article applies shall—

- (a) before 30th November 2002, have in place arrangements for fulfilling, as soon as is reasonably practicable, its duties under paragraph (2); and
- (b) fulfil those duties in accordance with such arrangements.

(2) It shall be the duty of such a body or person to monitor, by reference to the racial groups to which they belong—

- (a) the numbers of—
 - (i) staff in post; and
 - (ii) applicants for employment, training and promotion, from each such group; and
- (b) where that body or person has 150 or more full-time staff, the numbers of staff from each such group who—
 - (i) receive training;
 - (ii) benefit or suffer detriment as a result of its performance assessment procedures;
 - (iii) are involved in grievance procedures;
 - (iv) are the subject of disciplinary procedures; or
 - (v) cease employment with that person or other body.

(3) Such a body or person shall publish annually the results of its monitoring under paragraph (2).

(4) Except as provided for in paragraph (5), this article applies to a body or person specified in Schedule 1A to the Race Relations Act which is—

- (a) a Scottish public authority with mixed functions or no reserved functions; or
- (b) a cross-border public authority in relation to the exercise of its Scottish functions.

- (5) This article does not apply to—
- (a) education authorities but only in respect of staff employed at schools under their management;
 - (b) any other body or person specified in Part I or II of Schedule 2 to this Order;
 - (c) a body or person specified in Schedule 3 to this Order to the extent, if any, so specified.

St Andrew's House,
Edinburgh
14th February 2002

IAIN GRAY
A member of the Scottish Executive

SCHEDULE 1

BODIES AND OTHER PERSONS REQUIRED TO PUBLISH RACE EQUALITY
SCHEMES

The Accounts Commission for Scotland

Audit Scotland

A Chief Constable of a police force maintained under s.1 of the Police (Scotland) Act 1967(a)

The Common Services Agency for the NHS in Scotland

A council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(b)

A Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978(c)

A joint board within the meaning of section 235(1) of the Local Government (Scotland) Act 1973(d)

The Keeper of the Records of Scotland

The Keeper of the Registers of Scotland

A licensing board constituted under section 1 of the Licensing (Scotland) Act 1976(e)

A National Health Service Trust established under section 12A of the National Health Service (Scotland) Act 1978

A police authority established under section 2 of the Police (Scotland) Act 1967

The Registrar General of Births, Deaths and Marriages for Scotland

Scottish Enterprise and Highlands and Islands Enterprise established under the Enterprise and New Towns (Scotland) Act 1990(f)

The Scottish Further Education Funding Council

The Scottish Higher Education Funding Council

The Scottish Legal Aid Board

The Scottish Ministers

The Service Authority for the National Criminal Intelligence Service in respect of its Scottish functions

A Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978

A water or sewerage authority constituted under section 62 of the Local Government etc. (Scotland) Act 1994

(a) 1967 c.77.

(b) 1994 c.39.

(c) 1978 c.29.

(d) 1973 c.65.

(e) 1976 c.66.

(f) 1990 c.35.

SCHEDULE 2

Educational Bodies or Persons

Part I

Education authorities

The managers of a grant-aided school (within the meaning of section 135 of the Education (Scotland) Act 1980^(a))

The board of management of a self-governing school (within the meaning of the Self-Governing Schools etc. (Scotland) Act 1989^(b))

Part II

The board of management of a college of further education (within the meaning of section 36(1) of the Further and Higher Education (Scotland) Act 1992^(c))

A college of further education maintained by an education authority in the exercise of its further education functions in providing courses of further education within the meaning of section 1(5)(b)(ii) of the Education (Scotland) Act 1980

Newbattle Abbey College

Sabhal Mòr Ostaig College

The governing body of an institution within the higher education sector (within the meaning of Part II of the Further and Higher Education (Scotland) Act 1992) other than any institution whose activities are principally carried on outwith Scotland including the Open University

The managers of a central institution (within the meaning of section 135 of the Education (Scotland) Act 1980)

Part III

The Scottish Ministers within the meaning of section 44(2) of the Scotland Act 1998^(d)

Part IV

The Scottish Further Education Funding Council

The Scottish Higher Education Funding Council

(a) 1980 c.44.
(b) 1989 c.39.
(c) 1992 c.37.
(d) 1998 c.46.

SCHEDULE 3

Bodies or persons excepted by article 5(5)(b) of this Order

The Accounts Commission for Scotland

The Administration of Radioactive Substances Advisory Committee in respect of its Scottish functions

The Advisory Committee on Sites of Special Scientific Interest

The Advisory Committee on Hazardous Substances in respect of its Scottish functions

The Advisory Committee on Pesticides in respect of its Scottish functions

The Advisory Committee on Releases to the Environment in respect of its Scottish functions

The Advisory Council on the Misuse of Drugs in respect of its Scottish functions

The Ancient Monuments Board for Scotland

The Building Standards Advisory Committee

A community council established under section 51 of the Local Government (Scotland) Act 1973(a)

The Council on Tribunals in respect of its Scottish functions

The Disabled Persons Transport Advisory Committee in respect of its Scottish functions

The Fisheries (Electricity) Committee

The Hill Farming Advisory Committee for Scotland

The Historic Buildings Council for Scotland

The Inland Waterways Amenity Advisory Council in respect of its Scottish functions

The Local Government Boundary Commission for Scotland

Members of the staff of the Scottish Administration within the meaning given by section 126(7)(b) of the Scotland Act 1998(b)

An Office-holder in the Scottish Administration within the meaning given by section 126(7)(a) of the Scotland Act 1998 other than those listed in Schedule 1 to this Order.

The Police Negotiating Board in respect of its Scottish functions

The Royal Fine Art Commission for Scotland

The Scottish Dental Practice Board

The Scottish Hospital Endowments Research Trust

The Scottish Hospital Trust

The Scottish Industrial Development Advisory Board

The Scottish Medical Practices Committee

The Scottish Records Advisory Council

The Theatres Trust in respect of its Scottish functions

The Unrelated Live Transplant Regulatory Authority in respect of its Scottish functions

(a) 1973 c.65.

(b) 1998 c.46.

EXPLANATORY NOTE

(This note is not part of the Order)

The Race Relations (Amendment) Act 2000 substituted a new section 71 into the Race Relations Act 1976. Section 71(1) imposes a general duty on persons specified in Schedule 1A to that Act in carrying out their functions to have due regard to (a) the need to eliminate unlawful discrimination and (b) to promote equality of opportunity and good relations between persons of different racial groups.

Section 71(2) of the 1976 Act empowers the Secretary of State to impose by order specific duties on persons falling within Schedule 1A for the purpose of ensuring the better performance of the general duty under section 71(1) of the Act.

Section 71B(1) of the 1976 Act declares that Section 71(2) to (4) are to be taken to be pre-commencement enactments for the purposes of the Scotland Act 1998. Accordingly the Order making power is exercisable by the Scottish Ministers within devolved competence in terms of section 53 of the Scotland Act.

An Order (S.I. 2001/3458) has already been made by the Secretary of State under section 71(2) imposing specific duties on bodies specified in Schedule 1A to the 1976 Act other than those where the imposition of the duties lies within the devolved competence of the Scottish Ministers i.e. Scottish public authorities with mixed functions or no reserved functions within the meaning of section L.2 of Part II of Schedule 5 to the Scotland Act 1998 and cross border public authorities in relation to the exercise of their Scottish functions. This order imposes specific duties which correspond to those in the English Order on such bodies.

Article 2 of the Order imposes on a person specified in Schedule 1 to the Order a duty to publish, by 30th November 2002, a Race Equality Scheme, that is a Scheme showing how it intends to fulfil the general duty and its duties under this Order.

Article 3 of the Order imposes on an educational body referred to in Part I or II of Schedule 2 duties to prepare, by 30th November 2002, a statement of its race equality policy, to have arrangements in place for fulfilling duties to assess and monitor the impact of its policies on different racial groups, and to fulfil those duties in accordance with such arrangements.

Article 4 of the Order imposes on a body referred to in Parts I, III and IV of that Schedule a duty to have in place arrangements for fulfilling duties to monitor, by reference to racial groups, various aspects of education and employment at educational establishments, and to fulfil those duties in accordance with such arrangements.

Article 5 of the Order imposes a duty on bodies or other persons specified in Schedule 1A to the 1976 Act which are Scottish public authorities with mixed functions or no reserved functions or cross border public authorities in relation to the exercise of their Scottish functions. The duty is to have in place, by 30th November 2002, arrangements for fulfilling duties to monitor, by reference to racial groups, various aspects of employment by those bodies, and to fulfil those duties in accordance with such arrangements. Article 5(5) excepts certain bodies in Schedule 1A to the 1976 Act from the duty. These bodies are education authorities but only in respect of staff employed in schools under their management and other bodies specified in Parts I and II of Schedule 2 to the Order. These bodies are subject to monitoring duties under Article 3 of the Order. In addition the bodies listed in Schedule 3 to the Order are excepted from the duty.

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