

Analytical Report on Legislation

RAXEN National Focal Point UNITED KINGDOM

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1. Executive Summary

- This report is intended to outline and analyse significant legislative developments relevant to issues of racism, xenophobia and anti-Semitism that have occurred in the UK since the end of the RAXEN 3 period in January 2003. The aim of this study is to give those not intimately familiar with the UK legal and political system a comprehensive description that sets out the context for these developments, data on the relevant legislation, an assessment of recent research on the legal and political impact of UK anti-discrimination law, examples of anti-racist initiatives and best practice, and makes recommendations for future action. This analysis will supplement the accompanying data collection and reports prepared for the RAXEN 2 and 3 stages, and provide necessary context.
- The theoretical approach taken in this report analyses legislation both in terms of its legal impact and its social impact, neither being viewed as autonomous, self-contained spheres of activity. In examining the impact of legislation in both spheres, the legislation in question will be critically assessed by reference to the substantive concept of equality. This approach regards the role of legislation in combating racism, xenophobia and anti-Semitism as contributing towards the transformation of attitudes and practices that impact unequally and unfairly on disadvantaged groups and individuals, rather than just as a tool for establishing formal equality of treatment.
- The UK has always been a country of migration, and the increase in the size and variety of different ethnic groups since the late 1940s, added to the constant influx of migrant labour from EU and other states, has made the UK a multicultural state. Recent data that has been issued from the 2001 National Census showed that there were 4.6 million people from ethnic minorities in the UK in 2001, making up 7.9 per cent of the total population. This diversity has led to frequent acknowledgements by the media, politicians and by public officials that the UK is a multi-faith and multi-ethnic society, and the UK is committed to a formal policy of integration without assimilation.
- Nevertheless, racism, xenophobia and anti-Semitism remain considerable problems within the UK, which still possesses a significant proportion of people who express intolerant attitudes to ethnic minorities, in particular towards asylum seekers. Ethnic minorities continue to suffer from high rates of unemployment, social exclusion and poverty, which have been exacerbated by other factors, including the impact of racism and xenophobia. A recent rise in xenophobic and racist attitudes has found expression in a vitriolic newspaper campaign against asylum-seekers and by the rise in support for the previously marginalised British National Party.
- The current UK government has introduced new and innovative legislation and action plans to combat institutional racism and enhance integration. Many of these developments have been progressive, innovative and groundbreaking. However, this has been accompanied in a dual legislative and policy approach by an increasingly tough focus on deterring potential asylum-seekers and the restriction of their procedural rights and entitlement to certain types of welfare support, as part of a shift towards a “streamlined” asylum claim determination process.

- “Community cohesion” remains at present the main integration strategy for the UK, in the wake of the Cantle Report in December 2001, which identified the problem of communities being segregated on race or religious lines. The Report also recommended a public debate on developing clear values on the meaning of being a citizen in a multi-racial Britain. In response, the Government has committed itself to reviewing the UK citizenship laws and to engaging in a new debate on citizenship in the broader sense, as well as starting a debate on opening up ‘managed’ migration. This renewed emphasis on citizenship has developed in tandem with the constitutional reform initiatives that have incorporated the European Convention on Human Rights into UK law and established devolved parliaments in Scotland, Wales and Northern Ireland.
- The UK already largely complies with the requirements of the EU Race Directive, due to the provisions of the Race Relations Act in Great Britain and equivalent legislation in Northern Ireland. However, the standards of protection in some respects are higher than the UK legislation. The UK government has therefore now introduced the Race Regulations 2003 to further improve the 1976 Act and to ensure full and complete incorporation of the Directive. While the changes introduced by the regulations are very welcome, the incorporation of the Directive in this way has contributed to the patchwork and confusing state of UK anti-discrimination law.
- The Employment Equality (Religion or Belief) Regulations in implementing the EU Framework Equality Directive’s provisions in respect of religious discrimination will ensure for the first time that religious discrimination in employment and employment-related activities will be prohibited in Great Britain. This is again very welcome, and will fill a significant gap in UK law. However, the UK Government by again legislating by means of regulations rather than primary legislation is not extending the prohibition on religious discrimination to the provision of goods and services, the performance of public functions, housing or education. This will therefore maintain the artificial distinction between religious and race discrimination in these areas, again contributing to the patchwork nature of UK equality legislation. Serious concern does exist about the lack of clarity and scope of the exception provided for employers with a religious ethos in the regulations.
- The UK government in autumn 2003 is intending to issue a policy announcement on whether to merge the existing equality commissions within a single equality body. Opinion on the merits of a single commission remains divided, with concern being expressed that a single commission could dilute focus on specific issues and provide a justification for reducing funding for equality institutions. Other research has identified clear advantages in a single commission. Its powers, structure and functions will be the subject of considerable debate.
- The Race Relations Act 1976 as the principal statute in Great Britain concerned with race discrimination has been in force for some twenty-six years and as a consequence judicial interpretation of its scope and provisions is by now relatively clear and consistent. However, a recent significant decision by the House of Lords, the UK’s highest court, has limited some of the scope of protection previously assumed to exist under the Act. A recent legal challenge to the operation of pre-entry clearance controls at Prague airport was unsuccessful. The Human Rights Act, the legislation incorporating the European Convention on Human Rights into UK law, has recently been applied to strike down decisions

denying welfare support to particular asylum seekers. Nevertheless, the ability of individuals in general to enforce the race relations' legislation in tribunals and courts continues to give rise to some concern.

- The introduction in the Race Relations (Amendment) Act 2000 of the positive duty on public authorities to give regard to the elimination of racial discrimination, to promote equality of opportunity and good race relations is a major step and represents a sophisticated response to the limitations of existing anti-discrimination law. Research into the initial year of operation of the duty has demonstrated that it is generating positive effects, while emphasising that implementing the duty will need to be orientated towards outcomes rather than process. Similar positive results have been identified as arising from the operation of the wider equality duty in Northern Ireland. Other research has identified gaps in the available data as to the actual effects of policies designed to deter asylum-seekers, and has questioned the utility of many of these measures.
- Violence triggered by racial and religious hatred remains a considerable problem. Research by both a Select Committee of the UK Parliament and a Working Group established by the Scottish Parliament have identified considerable gaps in both empirical and analytical data on this matter, and a pressing need exists for more co-ordinated initiatives to be undertaken by public authorities to combat this problem. Serious consideration needs also to be given to the introduction of incitement to hatred legislation covering all the groups subject to targeted hatred, preferably in line with the draft EU Council Framework Decision on Racism and Xenophobia, the adoption of which should be accorded greater priority at both EU and UK levels.
- Many examples of anti-racist strategies and good practice exist in the UK. Among these are the guidance produced by the Commission for Racial Equality on promoting race equality in the context of public procurement, and the same body's investigation into the murder of Zahid Mubarek in a young offender's institute and failures by the UK Prison Service to promote equality. In implementing the positive race duty, many public authorities have developed examples of good practice, in particular race equality schemes and consultative mechanisms. Mainstreaming initiatives have also been developed in the work of the Scottish Parliament and Welsh Assembly.
- Examples of NGO strategies and good practice include the lobbying work of the Traveller Law Reform Coalition¹, the support structures and lobbying of the Refugee Council² and the Joint Council for the Welfare of Immigrants³ and the news network and research database maintained by the Institute for Race Relations⁴.
- The positive race duty and other recent new initiatives that have been developed in the UK have been groundbreaking and appear to be yielding good results. Significant gaps and inconsistencies remain however in UK anti-discrimination law, as well as in the data available. Consideration has to be given to filling those data gaps and building a cohesive, clear, consistent and unified framework for

¹ NFPUK0190

² NFPUK0091

³ NFPUK0186

⁴ NFPUK0148

anti-discrimination law. Asylum policy also needs to be founded on firmer data and a more reasoned approach that prioritises human rights.

- The welcome emphasis on diversity contained in the 2002 Government White Paper on immigration policy⁵ should become a central feature of the future development of UK legislation, linked to an emphasis on substantive equality and community cohesion as guiding principles for integration. These principles with greater rigour in data collection and application should shape and frame the development and review of the UK's anti-discrimination legislation, immigration policy and integration strategies.

⁵ Home Office (2002c) *Secure Borders, Safe Haven: Integration With Diversity in Modern Britain*, Cm 5387, London: HMSO. PUBUK0335

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2.1. INTRODUCTION

2.2. AIM AND MOTIVATION

This report is intended to outline and analyse significant legislative developments relevant to issues of racism, xenophobia and anti-Semitism that have occurred in the UK since January 2003, the completion point of RAXEN 3. The aim of this study is to give those not intimately familiar with the UK legal and political system a comprehensive description that sets out the context for these developments, data on the relevant legislation, an assessment of recent research on the legal and political impact of UK anti-discrimination law, examples of anti-racist initiatives and best practice, and suggestions for recommendations. This analysis will supplement the accompanying data collection and reports prepared for the RAXEN 2 and 3 stages, and provide necessary context.

2.3. ORGANISATION

The structure of this paper is as follows:

- I Introduction: this section will set out the aims and motivations of this paper, its organisation, and the theoretical approach used in compiling and assessing the legislative data.
- II Background: this section will set out the political, social and cultural context that underlies recent legislative developments in this area in the UK, including recent developments in migration and integration policy.
- III Legislation: this section provides data on the major recent legislative developments.
- IV Impact of Anti-Discrimination Legislation: this section analyses these recent legislative and case-law developments, as well as critically assesses the strengths and weaknesses of UK anti-discrimination and related law as evidenced by recent developments in the RAXEN 4 period and recently completed research projects.
- V Strategies, Initiatives and Good Practices
- VI Summary and Conclusions
- VI Suggested Recommendations: this section sets out key recommendations for future action and data research.

2.4. THEORETICAL APPROACH

The theoretical approach taken in this report analyses legislation both in terms of its legal impact and its social impact, neither being viewed as autonomous, self-contained spheres of activity but rather as overlapping areas in which legal discourse takes effect. In examining the impact of legislation in both spheres, the legislation in question will be critically assessed by reference to the substantive concept of equality and diversity developed by the Commission on a Multi-Ethnic Britain (the 'Parekh Report').⁶ This

⁶ Commission on the Future of a Multi-Ethnic Britain (2000) *The Future of Multi-Ethnic Britain (The Parekh Report)*, London: Runnymede Trust. PUBUK0053

theoretical concept of equality recognises initially that in the words of the recently deceased former leading UK politician and President of the European Commission, Roy Jenkins

“integration is not a flattening process of uniformity, but cultural diversity, coupled with equal opportunity, in an atmosphere of mutual tolerance”.⁷

This approach emphasises equal opportunity, the achievement of real and substantive outcomes and socio-economic justice for all individuals within society, irrespective of their ethnic origin. This approach also rejects as insufficient the approach characterised by Prof. Sandra Fredman of Oxford University as “formal equality” or “equality as consistency”, which requires that “fairness requires consistent treatment” of all individuals equally.⁸ This concept of equality, while superficially attractive, ignores the specific contexts in which real individuals are situated. A substantive equality approach requires that the role of individuals within a group as well as their individual position must be recognised, while at the same time recognising that group identity changes and shifts.⁹ This approach regards the role of legislation in combating racism, xenophobia and anti-Semitism as contributing towards the transformation of attitudes and practices that impact unequally and unfairly on disadvantaged groups and individuals, rather than just as a tool for establishing formal equality of treatment that may not yield substantive results.

2.5. DATA COLLECTION AND PRESENTATION

The external data sources to be used to provide the basic data include government information websites and publications, parliamentary records, court reports, law journals, other academic journals and publications, governmental and independent research reports, and NGO papers. The external sources selected will include reference to Scotland, Wales and Northern Ireland. The relevant data on legal responses to racism, xenophobia and anti-Semitism taken from these data sources will include detail on new legislation; legislative initiatives such as the government proposals to implement the Framework and Race Equality Directives; consultations such as that on the possible establishment of a single equality body; case-law; relevant codes of practice and statutory guidance; government sponsored reports and assessments; relevant devolved legislation and initiatives; non-government reports and legislative proposals.

This data will then be categorized and analysed by applying the theoretical framework outlined above, with an emphasis on identifying unifying themes, approaches, and underlying goals. This both makes the data accessible and draws out the key information necessary to allow a thorough analysis of the legal developments. This analysis will focus on the impact of legislative development on promoting equality of opportunity, and will examine both how particular legal initiatives can contribute to achieving this desired objective, but also how they may have had a negative or limited impact.

⁷ Jenkins, R. (1970) *Essays and Speeches*, London: Collins, p. 267. PUBUK0447

⁸ Fredman, S. (2002) *Discrimination Law*, Oxford: Clarendon Press, pp. 7 – 11. PUBUK0439

⁹ Fredman, S. (2002) *Discrimination Law*, Oxford: Clarendon Press, p. 158. PUBUK0439

3. BACKGROUND: MIGRATION, INTEGRATION AND DIVERSITY POLICIES

3.1. SIZE AND COMPOSITION OF THE ETHNIC MINORITY POPULATION OF THE UK

Great Britain has always benefited from being a country of migration, experiencing considerable influxes of emigrant groups over the last four hundred years, in particular French Huguenots, Irish, and Jewish migrants, who have added their skills and cultural identities to the diverse cultural mix of Great Britain. Both the Irish and the Jewish remain distinct communities within Great Britain to this day. 1.5 per cent of the population in Great Britain were born in Northern Ireland or the Republic of Ireland.¹⁰ The Jewish community of the United Kingdom numbers 280,000, and is clustered in certain urban areas, with two-thirds of the community living in Greater London.¹¹

Smaller groups of other ethnic minorities have also been present in the UK for several centuries, frequently as a result of British imperial expansion, including Arab, Chinese, South Asian and African-Caribbean communities.¹² The major wave of migration to the UK has been the arrival of African, Caribbean and South Asian groups in large numbers from the early-mid 1950s. The imposition of strong immigration controls in the 1960s and early 1970s considerably reduced the influx of new migrants, although 'secondary' immigration via routes such as family reunion and work permit schemes has continued. The influx of large numbers of asylum seekers in the 1990s has seen the establishment of new ethnic groups within the UK, including Somali, Iranian, Afghani, Bosnian and other Eastern European communities.

The supply of data on the size and composition of the UK ethnic minority community is good, as ethnicity is measured both in national censuses as well as in other public authority surveys. The collection of data by public authorities upon the impact of policies upon ethnic minorities forms part of the positive duty imposed by the Race Relations (Amendment) Act 2000.¹³ Recent data that has been issued from the 2001 National Census showed that there were 4.6 million people from ethnic minorities in the UK in 2001, making up 7.9 per cent of the total population. In Great Britain, the ethnic minority population grew by 53 per cent between 1991 and 2001, from 3.0 million in 1991 to 4.6

¹⁰ Recent research by the Commission for Racial Equality suggests that those born in Ireland, along with their children, account for 4.6 per cent of the population of Great Britain, and as much as 11.5 per cent of that of Greater London. See Performance and Innovation Unit (2002) *Ethnic Minorities and the Labour Market: Interim Report*, London: Cabinet Office, Box 2.1, Chapter 2, p. 33, available at: <http://www.piu.gov.uk/2001/ethnicity/attachments/interim.pdf> (02. 01.2003). PUBUK0050

¹¹ See The Stephen Roth Institute (2002) *Antisemitism Worldwide 2001/02: The United Kingdom*, Tel Aviv: The Stephen Roth Institute. PUBUK0458

¹² See Open Society Institute (2002) *Monitoring Minority Protection in the EU: The Situation of Muslims in the UK*, London: OSI, p. 75 for an account of Muslim communities in the UK prior to the Second World War. PUBUK0454

¹³ Office of National Statistics (2003) *Census 2001: Ethnicity*, available at: <http://www.statistics.gov.uk/> (25.08.2003). PUBUK0452

million in 2001.¹⁴ The ethnic minority population of England (the most ethnically diverse region in the UK) rose from 6 per cent in 1991 to 9 per cent in 2001. The Black and South Asian population of the UK in general is continually growing, largely due to the disproportionately youthful age structure of most of its constituent groups; it is projected to account for more than half of the growth in the working age population over the next ten years.¹⁵

Half of the total ethnic minority population were Asians of Indian, Pakistani, Bangladeshi or other Asian origin. A quarter of ethnic minority people described themselves as Black that is Black Caribbean, Black African or Other Black.¹⁶ For the first time, the 2001 Census allowed people to describe themselves as of mixed ethnicity and fifteen per cent of the total ethnic minority population described their ethnic group as mixed. About a third of this group were from White and Black Caribbean backgrounds.

See Annex A, Table 1 for the size and composition of the UK ethnic minority community

The ethnic minority populations are concentrated in the large urban centres. Nearly half (45 per cent) of the total ethnic minority population lived in London where they comprised 29 per cent of all residents. After London, the second largest proportion of the ethnic minority population lived in the West Midlands (with 13 per cent of the ethnic minority population), followed by the South East (8 per cent), the North West (8 per cent), and Yorkshire and the Humber (7 per cent). In 1999, 1.6 per cent of the Scottish population were from an ethnic minority.¹⁷

See Annex A, Table 2 for the regional distribution of the UK ethnic minority population, April 2001

Looking at country of birth, over half of those in the Black Caribbean ethnic group (57.8 per cent) and the Pakistani ethnic group (54.5 per cent) were born in England and Wales. The relatively small Other Black group (those whose ethnic origins lie outside the Caribbean) is the only other group with more than half its population born in England and Wales (78.9 per cent). Less than half of the Bangladeshi (46.2 per cent) and Indian (45.6 per cent) ethnic groups were born in England and Wales, indicating the more recent migration history of these groups. In the Chinese ethnic group, only 27.7 per cent were born in England or Wales while 67.6 per cent were born in East Asia. In Scotland, 46 per cent of ethnic minorities were born in the United Kingdom, with 24 per cent born in

¹⁴ No data on ethnic origin had been collected in Northern Ireland in the previous 1991 census, so the rate of increase can only be determined for Great Britain, i.e. England, Wales and Scotland.

¹⁵ See Performance and Innovation Unit (2002) *Ethnic Minorities and the Labour Market: Interim Report*, para. 2.1, p. 20. PUBUK0050

¹⁶ The largest single group in this category consists of people of Indian origin (approximately one million individuals). There are around half a million people in each of the second (Black Caribbean) and third (Pakistani) largest groups. Other significant groups include the Bangladeshi, Nigerian and other West African communities. See Performance and Innovation Unit (2002) *Ethnic Minorities and the Labour Market: Interim Report*, para. 2.1, p. 20. PUBUK0050

¹⁷ The geographical distribution of the different major ethnic minority groups varies considerably. Seventy eight per cent of Black Africans and 61 percent of Black Caribbeans lived in London. More than half of the Bangladeshi group (54 per cent) also lived in London. Other ethnic minority groups were more dispersed. Only 19 per cent of Pakistanis resided in London, 21 per cent lived in the West Midlands, 20 per cent in Yorkshire and the Humber, and 16 per cent in the North West.

Pakistan or India, reflecting the high percentage of the Scottish ethnic minority population having Pakistani or Indian ethnic origin.

Currently, 3.6 million people of working age are foreign-born, representing about ten per cent of the working age population (or 4.8 million people of all ages – about 8 per cent of the total population).¹⁸ New work schemes set out in the 2002 Government White Paper *Secure Borders, Safe Haven: Integration With Diversity in Modern Britain*¹⁹ combined with the gradual extension of the EU free movement regime to the accession countries will add considerably to these numbers.

The statistical analysis of the numbers of asylum seekers applying for asylum in the UK, and the extent to which these numbers indicate that the UK is a ‘soft touch’ for economic migrants seeking refugee status continues to generate considerable press and political controversy. Recent Home Office research has indicated that excluding dependants, the number of asylum applications received by the UK in 2002 was 85,865, 14,500 more than in 2001. 10 per cent were granted full asylum status, 24 per cent granted exceptional leave to remain. Numbers of applicants seeking asylum have risen from 2,352 (with 1,385 granted asylum or leave to remain) in 1980 to the 85,865 total in 2002. The UK received the most applications of any one EU country in 2002 with 28 per cent of the number of total applicants to EU states. However, when the relative size of domestic populations is taken into account, the UK only ranks 8th amongst European countries in terms of asylum seekers per head of population.

Considerable backlogs continue to exist in the system, despite considerable improvements: as of March 2003, an estimated 35,800 asylum applications were awaiting an initial decision. The rate of removal of rejected asylum seekers is also a source of controversy: approximately, 9,285 principal asylum applicants in 2001 were removed from the United Kingdom, or departed voluntarily, an increase of 3 per cent on 2000. A sizeable if unqualified number of unsuccessful asylum seekers remain in the UK. The absence of accurate data on this is a deficiency: however, various estimates of this number have been used by certain elements of the UK press to call for increased border controls and a reduction in the numbers of asylum seekers.

The Gypsy and Traveller communities in the UK, a population composed of members of the Irish Traveller community, Gypsies and other groups, are said to number 90 to 120,000 nomadic Travellers. The exact figure is difficult to estimate as their numbers are not recorded accurately in census records, which again is a deficiency in data collection and indicative of the low profile given to Gypsy and Traveller issues.²⁰

The increase in the size and variety of ethnic groups, added to the constant influx of migrant labour from EU and other states, has made the UK a multicultural state. The diversity of ethnic groups has also ensured a diversity of religious affiliation. In particular, recent estimates indicate a British Muslim population of between 1.4 and 1.8

¹⁸ Home Office (2002b) *Migrants in the UK: Their Characteristics and Labour Market Outcomes and Impacts*, Occasional Paper 82, London: HMSO. PUBUK0392

¹⁹ Home Office (2002c) *Secure Borders, Safe Haven: Integration With Diversity in Modern Britain*, Cm 5387, London: HMSO. PUBUK0335

²⁰ See Traveller Law Reform Coalition at: <http://www.travellerslaw.org.uk/issues.htm> (25.08.2003). NFPUK0190

million (3 per cent of the total population)²¹ and sizeable Hindu and Sikh communities also exist. This diversity has led to frequent acknowledgements by the media, politicians and by public officials that the UK is a multi-faith and multi-ethnic society.²²

3.2. CURRENT LEGISLATION AND POLICY ON INTEGRATION, EQUAL TREATMENT AND DIVERSITY

3.2.1. Integration and Patterns of Racism

Racism, xenophobia and anti-Semitism remain considerable problems within the UK, which despite high levels of acceptance and welcome for diversity still possesses a significant proportion of people who express intolerant attitudes to ethnic minorities, in particular towards asylum seekers.²³ Poll findings suggest that people are significantly more likely to be hostile to ethnic minority groups if they are older, poorer, less educated or living in areas of significant racial tension.²⁴ Increases in anti-immigrant sentiment continue to be linked to public events involving racial or religious conflict.

Ethnic minorities continue to suffer from high rates of unemployment, social exclusion and poverty among these communities, which has been exacerbated by other factors, including the considerable impact of racism and xenophobia.²⁵ Some groups have experienced greater degrees of economic integration than others.²⁶ However, all ethnic minorities remain disadvantaged in terms of employment, housing, health and educational attainment.²⁷ Perceptions that discriminatory police practices unfairly target Black and South Asian groups remain strong,²⁸ and ethnic minorities remain subject to high levels

²¹ Open Society Institute (2002) *Monitoring Minority Protection in the EU: The Situation of Muslims in the UK*, p. 76. PUBUK0454

²² See for example Queen Elizabeth's Golden Jubilee speech to the UK parliament where she paid tribute to "the consolidation of our rich multicultural and multi-faith society", available at: http://news.bbc.co.uk/1/low/uk_politics/1959753.stm (20.10.2003). PUBUK0545

²³ See Performance and Innovation Unit (2002) *Ethnic Minorities and the Labour Market: Interim Report* paras. 4.60-4.68, pp. 123-126. PUBUK0050

²⁴ Education has a strong effect on attitudes toward ethnic minorities, immigrants and asylum seekers. Cf. PUBUK0050, paras. 4.62.1 - 4.62.2, p. 124.

²⁵ PUBUK0050, paras. 4.48.6 – 4.71.3, pp. 111-128.

²⁶ Indian men are consistently the least disadvantaged of all Black and South Asian groups, while Pakistani, Bangladeshi and Black men and women are consistently the most disadvantaged. See PUBUK0050, para. 4.48.1, p. 110.

²⁷ PUBUK0050. This has been confirmed by the initial findings of the 2001 Census. Looking at ethnicity by economic, the Pakistani and Bangladeshi groups have much lower employment rates and higher unemployment. The rates of poor health among Pakistani, Bangladeshi and Other Asian people are all well above average when analysed by age group. The Irish, Black Caribbean and Other Black groups also report poorer health than the average. Bangladeshi groups have much lower employment rates and higher unemployment. The rates of poor health among Pakistani, Bangladeshi and Other Asian people are all well above average when analysed by age group. The Irish, Black Caribbean and Other Black groups also report poorer health than the average.

²⁸ Home Office (2001) *Crime, Policing and Justice: The Experience of Ethnic Minorities – Findings from the 2000 British Crime Survey*, London: HMSO, pp. 55-71. PUBUK0393

of racially motivated assaults²⁹ as well as being disproportionately represented in UK prisons.³⁰

Racism and xenophobia is also frequently directed at groups defined by religious affiliation. Over a four-year period, reported anti-Semitic incidents show an upward trend, and a tendency toward more violent attacks on the Jewish community, reflecting a global pattern linked to violence in the Middle East.³¹ In the first quarter of 2003, during the Iraq war, 89 malicious acts aimed at the Jewish community or Jewish individuals were recorded, a 75 per cent increase on the previous year.³² While there is little statistical data on the disadvantages suffered specifically by the UK's Muslim population, the data for ethnic groups that are largely Muslim combined with substantial anecdotal evidence of anti-Muslim discrimination (in particular in the wake of the events of 11 September 2001) indicates that Islamophobia is a considerable problem in the UK.³³

The Gypsy and Traveller communities in the UK also suffer from patterns of disadvantage. It is now estimated that over 30 per cent of the Traveller community live on unauthorised housing sites, and these poor living conditions have a negative impact on the health of the Gypsy and Traveller communities. The British Medical Association has reported that the Gypsy and Traveller community is the most at risk health group in the UK, and that they have the lowest life expectancy and the highest child mortality rates in the UK. A lack of stopping places also has a disruptive impact on Gypsy and Traveller children's education.³⁴

3.2.2. UK Legislative Policy

Since the late 1960s, successive UK governments have adopted an approach that favoured the integration of immigrants and ethnic minorities but rejected assimilation within the dominant British culture.³⁵ Roy Jenkins MP, then the UK Home Secretary, expressed this new shift in a speech in 1967:

²⁹ PUBUK0393, pp. 21-41.

³⁰ Ethnic minorities accounted for 18 per cent of the male population and 25 per cent of the female population. These proportions significantly exceed ethnic minority representation in the population as a whole and have remained relatively constant in recent years. See Home Office (2000) Statistics on Race and the Criminal Justice System: A Home Office Publication Under Section 95 of the Criminal Justice Act 1991, London: HMSO. PUBUK0445

³¹ Home Office (2000) Statistics on Race and the Criminal Justice System: A Home Office Publication Under Section 95 of the Criminal Justice Act 1991, London: HMSO. PUBUK0445, p. 7.

³² See Wintour, P. (2003) Racist attacks fell during Iraq war, in: The Guardian (02.05.2003). PUBUK0546

³³ Open Society Institute (2002) Monitoring Minority Protection in the EU: The Situation of Muslims in the UK, p. 82. PUBUK0454. See also Weller, P., Feldman, A., Purdam, K., (2001) Religious Discrimination in England and Wales - Home Office Research Study 220, London: Home Office, available at: <http://www.homeoffice.gov.uk/rds/pdfs/hors220.pdf> (13.01.2002). PUBUK0463

³⁴ See Traveller Law Reform Coalition at <http://www.travellerslaw.org.uk/issues.htm> (25.08.2003).

³⁵ See Performance and Innovation Unit (2002) Ethnic Minorities and the Labour Market: Interim Report, London: Cabinet Office, para. 4.49.2, p. 112. PUBUK0050

“Integration is perhaps a rather loose word. I do not regard it as meaning the loss, by immigrants, of their own national characteristics and culture. I do not think we need in this country a melting pot, which will turn everybody out in a common mould, as one of a series of someone’s misplaced vision of the stereotyped Englishman.(...) I define integration, therefore, not as a flattening process of assimilation but as equal opportunity, coupled with cultural diversity, in an atmosphere of mutual tolerance.”³⁶

A similar approach has been adopted across the mainstream political spectrum, with party leaders and spokespersons for all the major UK political parties, including the dominant Labour and Conservative parties, expressing support for a policy of integration based upon the acceptance of cultural pluralism from the 1970s to the present day.³⁷ In pursuing this integration policy, the UK government adopted a dual legislative approach to race relations, combating racism by legislative and institutional routes while introducing strong immigration controls to check new immigration, justified as necessary to enhance integration.³⁸

3.2.3. Anti-Racism Legislation

Racism has been combated by successive Race Relations Acts in 1965, 1968, and 1976, with the 1976 Act making it unlawful in Great Britain to discriminate directly or indirectly on the grounds of “colour, race, nationality or ethnic or national origins” in employment, training and education, housing allocation, the provision of goods, facilities and services and certain other specified activities. It also established the Commission for Racial Equality (CRE)³⁹ to promote and enforce the legislation. The Race Relations (Amendment) Act 2000 extended the prohibition on race discrimination to public bodies exercising their public functions. Incitement to racial hatred legislation has also been introduced, as well as special categories of aggravated offences where racist elements or religiously based hatred is involved.

In March 1997, legislation against racial discrimination along the lines of the 1976 Act was introduced in Northern Ireland in the Race Relations (Northern Ireland) Order, supplementing the Fair Employment legislation already in place in Northern Ireland, which prohibits discrimination in employment and the provision of goods and services on the grounds of religious belief. The Equality Commission for Northern Ireland⁴⁰ enforces all anti-discrimination legislation in Northern Ireland. Religious discrimination has not been made unlawful as yet in Britain, although the Human Rights Act 1998 prohibits discrimination on the grounds of religion or belief in any of the rights covered in the Act. The position will also be rectified to an extent by the Employment Equality (Religion or Belief) Regulations 2003 and the Employment Equality (Sexual Orientation) Regulations 2003 which will on coming into effect incorporate the EU Race Directive and the EU Equal Treatment in Employment Directive.

³⁶ Jenkins, R. (1970) *Essays and Speeches*, London: Collins, p. 267. PUBUK0447

³⁷ See the detailed account of official party views on the integration issue in Poulter, S. (1998) *Ethnicity, Law and Human Rights: The English Experience*, Oxford: Clarendon Press, pp. 12-22. PUBUK0455

³⁸ Poulter, S. (1998) *Ethnicity, Law and Human Rights: The English Experience*, Oxford: Clarendon Press. PUBUK0455

³⁹ NFPUK0106a

⁴⁰ NFPUK0109

It has also been established through case law that certain religious groups are also ethnic groups for the purposes of the Race Relations Act and are therefore entitled to protection from discrimination, for example Jews and Sikhs. They can bring complaints of racial discrimination if they can show that the less favourable treatment they received was either directly or indirectly discriminatory on account of their being (or presumed to be) Jewish or Sikh. Other religious groups such as Muslims, which do not constitute ethnic groups, cannot claim unlawful discrimination on the grounds of their religion, though they may be able to make a case of unlawful indirect racial discrimination.

3.2.4. Institutional Racism, Mainstreaming Policy, and “Community Cohesion”

The publication of the Inquiry Report into the death of the young black man Stephen Lawrence identified a culture of ‘institutional racism’ in the London Metropolitan Police and recommended major changes to legislation and police practices.⁴¹ The current UK government has adopted many of these proposals, and has introduced new and innovative legislation and action plans to combat institutional racism, in particular imposing a positive duty to promote race equality upon most (or listed) public authorities in the Race Relations (Amendment) Act 2000. This duty in effect requires public authorities to mainstream effectively the promotion of equality of opportunity and the elimination of racial discrimination in both the development of their policies and in the performance of their functions. This duty has reinforced and extended many equality-mainstreaming initiatives that were in place in the majority of UK public authorities, and its introduction has been accompanied by a gradual extension of diversity training initiatives across much of the public sector. The specific positive duty is subject to exclusive enforcement by the CRE. In Northern Ireland, s.5 of the Northern Ireland Act 1998 has introduced a similar duty but extending across all the equality strands of gender, race, religion, sexual orientation and age, and subject to enforcement (which includes the approval of the equality schemes required from public authorities) by the Northern Irish Equality Commission.

The violent confrontations between Asian and White youths in certain socio-economically deprived towns in the North of England in 2000 have also led to a new focus on ‘community cohesion’, as a result of a series of reports commissioned to investigate the causes of the violent disturbances. The Independent Review Team chaired by Ted Cantle published its report in December 2001 and identified a number of recurring elements contributing to the existence of ethnically segregated communities. These included ignorance about each other’s communities, frustration borne out of poverty and deprivation, failure to communicate between segregated communities, a lack of clear and consistent messages from local and political leaders, and no attempt to develop clear values on the meaning of being a citizen in a multi-racial UK.⁴²

⁴¹ Home Office (1999a) *The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William Macpherson of Cluny* (Cm 4262-I), London: The Stationary Office; available at: <http://www.archive.official-documents.co.uk> (18.06.2004). PUBUK0368

⁴² Home Office (2002a) *Community Cohesion. A Report of the Independent Review Team chaired by Ted Cantle*, London: Home Office. PUBUK0243

In response to the Cantle Report, the Government in its White Paper *Secure Borders, Safe Haven: Integration With Diversity in Modern Britain* acknowledged the multi-ethnic nature of Britain: “our society is based on cultural difference, rather than assimilation to a prevailing monoculture. This diversity is a source of pride...”⁴³. It also committed itself to engaging in a new debate on citizenship in the broader sense. A series of community cohesion initiatives have been introduced, including extensive guidance for local authorities on how to bring local communities together as well as the establishment of consultative panels and a Home Office Community Cohesion Unit to guide the development of anti-segregation policies.⁴⁴

This new emphasis on community cohesion and citizenship continues to frame government policy. The constitutional reforms introduced by the current Labour Government since 1997 have in addition incorporated the European Convention on Human Rights (ECHR) into UK law by the Human Rights Act 1998 and established devolved parliaments in Scotland, Wales and Northern Ireland. Both steps have had a considerable impact on race discrimination issues. The ability of the UK courts to apply the ECHR to strike down human rights abuses has ensured a higher level of protection for human rights, while the powers of the devolved administration in Northern Ireland to address issues of discrimination and equality and the powers of the devolved administrations in Scotland and Wales in key policy areas mean that different integration, equality and legislative strategies have developed to an extent in each of the home countries. International law continues to play a role: the UK has signed and ratified the International Convention on the Elimination of All Forms of Racial Discrimination, completing the process in 1969. It has also signed and ratified the International Covenant for the Protection of Civil and Political Rights, completing the process in 1976. However, it can be argued that the principle of equality central to both has as yet not been used to frame and shape UK legislation in a comprehensive manner and there is no individual recourse for UK individuals.

3.3. IMMIGRATION LEGISLATION AND POLICY

The UK government has taken an approach of restricting immigration and now increasingly introducing considerable procedural restrictions on the rights of asylum-seekers over the last decade in order to enhance ‘immigration control’ and community integration.. The original *laissez-faire* policy of the UK government to immigration in the wake of the Second World War and the need to reconstruct the war-damaged UK was altered from the mid 1960s with the introduction of a series of Immigration Acts, in particular the Immigration Act 1971, which effectively closed off many channels of immigration to the UK, with the exception of political asylum, family reunion rights and limited work permit programmes.

⁴³ Home Office (2002c) *Secure Borders, Safe Haven: Integration With Diversity in Modern Britain*, Cm 5387, London: Home Office, p. 10. PUBUK0335

⁴⁴ Local Government Association (2002) *Guidance on Community Cohesion*. London: LGA. PUBUK0491. See also the website of the Home Office Community Cohesion Unit at: www.homeoffice.gov.uk/comrace/cohesion/index.html (24.08.2003). NFPUK0202

In the recent White Paper *Secure Borders, Safe Haven: Integration with Diversity*⁴⁵, the UK government indicated its intention of expanding the possibilities of migration to the UK by gradually extending the scale and flexibility of work permit schemes, in so doing emphasising the economic and cultural benefits of managed and limited inflows of required immigrants to the UK. The Nationality, Immigration and Asylum Act 2002 (NIA) made certain legislative provisions designed to begin to implement this new immigration policy, but so far progress has been relatively slow and gradual in giving effect to new initiatives.⁴⁶

The NIA Act is also the fourth piece of legislation affecting the UK asylum system in a decade. Asylum seekers represent a major inflow of new migrants to the UK and the UK government is committed to a policy of speeding-up decision-making and controlling this flow, in the process attempting to balance the legitimate rights of asylum-seekers under the Geneva Convention with the desire to enhance immigration control. The UK is moving from an *ad hoc* system of handling asylum claims prevalent in the early 1990s (i.e. handling asylum applications on an individual case-by-case basis where the applications are actually made, generally meaning ports) to a process-driven system (i.e. where applications are determined prior to arrival, or on a group basis) with an emphasis on deterring any potential “economic migrants”, increasing the pace of decision-making, ‘controlling’ numbers and ensuring asylum-seekers in the UK remain within the processing system.

This has resulted in the increased use of detention, the deprivation of benefits, the use of programmes which disperse asylum seekers around the country to frequently unsuitable locations which can be far from support networks, the curtailment of legal rights and fast-tracking of applicants from “safe” third countries or origin states.⁴⁷ In general, asylum-seekers have become the focus of strong media hostility, with very xenophobic overtones. This has led to intense criticism of the immigration control focus of the UK government, and its unwillingness to support the rights of asylum seekers both in legislation and in public debate, from some organisations and individuals.⁴⁸

The NIA Act continues the process of amending the existing asylum application process with the aim of ensuring a “firm yet fair” system of determining eligibility for refugee status under the Geneva Convention. The new reforms introduced in the Act in the main continue to be shaped by process-driven requirements of efficiency and immigration control. There is concern that the rights of asylum-seekers may be eroded while their ongoing segregation and media demonisation remain largely non-addressed, and that the emphasis will continue to be on replacing *ad hoc* individual adjudication with an approach that treats applicants as part of particular groups and thus increasingly limits the scope for individual assessments.

⁴⁵ UK Home Office (2002c) *Secure Borders, Safe Haven: Integration With Diversity in Modern Britain*, Cm 5387, London: Home Office. PUBUK0335

⁴⁶ See UK RAXEN 3 legislation report. There has been no substantive progress since completion of the RAXEN 3 stage in January 2003. PUBUK0566

⁴⁷ See Joint Council for the Welfare of Immigrants (2001) *Manifesto for the Reform of British Immigration Policy*, London: JCWI, pp. 15-22. PUBUK0448

⁴⁸ See Commission on the Future of Multi-Ethnic Britain (2002) *The Future of Multi-Ethnic Britain (The Parekh Report)*, London: RunnymedeTrust. PUBUK0264

Prejudicial attitudes directed towards asylum-seekers have unsurprisingly remained strong. In late January 2003, following the arrest of several terrorist suspects alleged to be asylum-seekers, a sustained and intense campaign against asylum-seekers was launched by several newspapers⁴⁹, with the Conservative party leader claiming that the “vast majority” of asylum applications in the UK were unjustified.⁵⁰ Several leading Labour and Conservative politicians have also called for the imposition of new immigration controls, greater restraints upon asylum seekers, the restriction of health care to illegal immigrants and even for the renegotiation of the Geneva Convention,⁵¹ with the Conservative party health spokesman calling for compulsory health screening for asylum seekers and denial of entry to those with infectious diseases.⁵²

The dispersal programme for asylum seekers has been blamed for recent fighting in the Welsh town of Wrexham between local people and asylum-seekers.⁵³ The head of the CRE, Trevor Phillips has claimed “the dispersal policy has turned out to be the principal factor in destroying community cohesion in towns and cities in this country.”⁵⁴ Government policy towards asylum-seekers has remained orientated towards controlling migration and speeding-up the decision-making process, and remains controversial. Recent government attempts to change criteria to provide welfare support only to certain categories of asylum-seekers have attracted considerable NGO criticism, and have met with some resistance in the courts. (See below.) Particular concern has also recently been expressed by the Commission for Racial Equality, NGOs and the Inspector of Prisons about the detention of the children of asylum seekers.⁵⁵

3.3.1. The Far-right and Immigration

The largest extreme right organisation, the British National Party (BNP), has switched the focus of its activities in recent years to attacking the Muslim community and asylum-seekers. Thirty-three BNP candidates only received an average of 1,430 votes, or 3.92 percent, in the May 2001 general election, in the constituencies in which they stood.⁵⁶ However, its activities may have played a part in increasing racial tension and triggering the violent confrontations between White and Asian youths that took place in northern

⁴⁹ See Travis, A. (2003) “Blunkett rails at ‘wild myths’ over asylum seekers”, in: *The Guardian* (22.01.2003). PUBUK0547

⁵⁰ See Wintour, P. (2002) “Blair warning on rights treaty”, in: *The Guardian* (27.01.2002), p. 2. PUBUK0464

⁵¹ See Byers, S. (2003) Immigration and Asylum. Speech to the Social Market Foundation (30.07.2003). PUBUK0433

⁵² See Tempest, M. (2003) Tories defend health tests for immigrants, in: *The Guardian* (04.08.2003). PUBUK0459

⁵³ Press Association (2003) Police officers injured in new Wrexham violence, in: *The Guardian* (24.06.2003). PUBUK0457

⁵⁴ Weaver, M. (2003) CRE head blames asylum dispersal for riots, in: *The Guardian* (01.07.2003). PUBUK0462

⁵⁵ See CRE (2003d) CRE Calls for Government Review of the Detention of Children, Press Release (15.08.2003). PUBUK036

⁵⁶ A total of 42 extreme right-wing candidates ran in the election compared with 87 in the 1997 general election. They achieved an average of 1,216 votes, compared with 572 in 1997 – 3.3 per cent of the vote compared with 1.2 per cent in 1997.

English cities in 2001⁵⁷, and in subsequent local council elections, seventeen BNP candidates have been elected to municipal bodies in the north of England.⁵⁸

3.4. RELATED RESEARCH

The volume of research in the UK on integration and immigration issues is extensive and voluminous, with many books and journals being specifically devoted to these topics. Recent research published during the RAXEN 4 period includes the following:

The final report of the UK government on the performance of ethnic minorities within the UK labour market, published in early 2003 following an initial consultation paper, analysed in detail the extent to which different ethnic minorities were performing in the labour market, the factors that contributed to the relative levels of performance and the necessary targeted action and initiatives that were necessary to enhance the prospects of ethnic minorities.⁵⁹

Other major research projects include the initial CRE commissioned research into the impact of the public duty to promote racial equality, and the report into the death of Zahid Mubarek, both of which are discussed below. The Institute for Race Relations' news archive remains one of the best sites for accessing developments in UK race relations and immigration policy.⁶⁰

3.5. DATA DEFICIENCIES

As noted, there is reasonably comprehensive data available on the UK's ethnic minorities, though a considerable lack of data on the Gypsy and Traveller community and, as noted in the RAXEN 3 report, on the impact of policies upon the UK's Muslim community and other groups in particular remains a serious problem.⁶¹ There is also a lack of data on the treatment of refugees, and whether and to what extent "new" immigrants from a particular racial group face different problems from "old" and settled immigrants. There is also a lack of clear and accurate data as to the exact number of migrants arriving and leaving from the UK.

⁵⁷ See Oldham Independent Review (2001) Oldham Independent Review: One Oldham, One Future: Interim Report, Oldham, para. 3.17. PUBUK0453

⁵⁸ See Wainwright, M., Overton, T. (2003) "BNP win brings council tally to 17", in: *The Guardian* (16.08.2003). PUBUK0461

⁵⁹ Strategy Unit (2003) Ethnic Minorities and the Labour Market. Final Report, London: Cabinet Office; available at: <http://www.emlm.gov.uk> (11.06.2004). PUBUK0346

⁶⁰ NFPUK0069; ACTUK0038

⁶¹ Cf. Open Society Institute (2002) Monitoring Minority Protection in the EU: The Situation of Muslims in the UK, p. 82. PUBUK0454

4. RECENT LEGISLATION

Following the major legislative developments contained in the Race Relations (Amendment) Act 2000, the Anti-terrorism, Crime and Security Act 2001 and the Nationality, Immigration and Asylum Act 2001 (analysed in the RAXEN 3 legislative report), government policy has concentrated upon implementing these provisions. As a result, the major developments in UK legislation, which are relevant to anti-discrimination, migration and integration issues, centre round the implementation of the EU Race Directive and EU Equal Treatment in Employment Directive.

4.1. ARTICLE 13: IMPLEMENTING THE EU RACE DIRECTIVE AND FRAMEWORK EQUALITY DIRECTIVES

4.1.1. The Race Relations Act 1976 (Amendment) Regulations 2003⁶²

The UK already largely complies with the requirements of the EU Race Directive,⁶³ due to the provisions of the Race Relations Act 1976 and similar legislation in Northern Ireland that prohibit direct or indirect discrimination on the grounds of “colour, race, nationality or ethnic or national origins” in employment, training and education, housing allocation, public functions, the provision of goods, facilities and services and certain other specified activities.

However, the standards of the Directive are in certain respects better than the UK legislation as well as providing for a different definition of indirect discrimination. The UK government has therefore now introduced the Race Regulations 2003 in Great Britain to further improve the 1976 Act and to ensure full and complete incorporation of the Directive. A separate regulation, the Race Relations Order (Amendment) Regulations (Northern Ireland) 2003, has been introduced for Northern Ireland. While the changes introduced by the regulations are welcome, the incorporation of the Directive by secondary legislation has contributed to some inconsistencies in the law on racial discrimination.

4.1.1.1. Indirect Discrimination

The minor adjustments to the UK’s race relations’ legislation that were introduced to ensure full compliance with the Race Directive certainly strengthened the law. In particular, the new definition of indirect discrimination contained in the Directive and incorporated into UK law by the regulations will remove the existing requirement established in UK case-law that indirect discrimination can only be found to be unlawful

⁶² PUBUK0386

⁶³ European Council (2000a) Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, in: *Official Journal of the European Communities*, L 180 (19.07.2000). PUBUK0548

when a person applied a ‘condition or requirement’ which was apparently neutral but which did, or could, in fact put people of a particular racial or ethnic origin at a disadvantage, and which could not be justified on other grounds. This meant that the “condition or requirement” had to constitute a full barrier or pre-condition before a finding of indirect discrimination could be made by a court or employment tribunal. The new definition replaces "condition or requirement" with the phrase "provision, criterion or practice". The new definition will therefore cover formal and informal requirements, conditions, provisions and practices. It will thus widen the circumstances where indirect discrimination could occur and cover practices that might constitute a substantial barrier to full equality of treatment without being a full pre-condition.

Also, the 1976 Act had required the complainant or claimant to show that a considerably smaller proportion of a particular racial group could comply with a requirement or condition before a finding of indirect discrimination could be made. Demonstrating that usually involved a reliance on the use of statistical evidence, although it was not strictly necessary. The new definition of indirect discrimination makes it easier to use non-statistical evidence, e.g. expert opinion, to establish a case. The Directive enables Member States to allow indirect discrimination to be established without the need to produce statistical evidence.

4.1.1.2. Racial Harassment

The Regulations also introduce a formal definition of racial harassment. Previously racial harassment had not been expressly defined in UK legislation. However, case law in Great Britain had interpreted the 1976 Act as meaning that racial harassment could be considered to be a form of unlawful direct discrimination. The regulations now insert an explicit definition taken from the EU Directive with additional stronger elements from the existing case law in Great Britain, to ensure that existing protection is not watered down by the incorporation process, as required by the Directive. Therefore, the regulations provide an explicit and clear definition of harassment as occurring when unwanted conduct, based on the relevant grounds, has the purpose or effect of violating someone’s dignity *or* creating an environment that is intimidating, hostile, degrading, humiliating or offensive to someone.

4.1.1.3. Exemptions and Genuine Occupational Requirements

The Regulations will also remove certain minor exemptions from the scope of the 1976 Act. It will now be unlawful to discriminate on grounds of race, ethnic or national origin in:

- Selection for training of persons not ordinarily resident in the UK
- Partnerships of less than 6
- Lets of small dwellings
- Work in a private household
- Charities in their role as employers
- Seafarers recruited overseas (strictly not removed by Race Regulations 2003, but by Race Relations Act 1976 (Seamen Recruited Abroad) Order 2003

Section 5 of the 1976 Act had listed specific jobs where being of a particular racial group can be a genuine occupational qualification for one of those jobs, and therefore only picking someone from this group would not constitute race discrimination. In order to comply with Article 4 of the Race Directive, which introduces a general genuine occupational requirement exception, section 5 of the 1976 Act is now repealed and in its place the regulations introduce an exception based on genuine occupational requirements. Employers will still be able to recruit staff on the basis of a genuine occupational requirement if it can be shown that it is a genuine and determining requirement of the job to be of a particular race or of particular ethnic or national origins, like requiring a black man to play Othello.

4.1.1.4. Post-employment discrimination and the burden of proof

In addition, the 1976 Act was considered by tribunals to apply only to acts of discrimination occurring during the relevant relationship.⁶⁴ The new provisions allow a complaint or claim to be brought in respect of an act of discrimination or harassment, which occurs after such a relationship has ended. It will be unlawful for employers to discriminate or harass (for example, in the giving of references,) merely because employment has ended. Crucially, the Regulations also reverse the burden of proof in race discrimination claims. Previously, under the 1976 Act, it has been the responsibility of the complainant or claimant to establish that he or she has been discriminated against or harassed. A tribunal or a court could only draw inferences from a respondent's failure to answer or put forward a defence. Now, once the complainant or claimant has established a prima facie case, the onus is on the person alleged to have committed the act of unlawful discrimination or harassment to prove that he/she did not commit such an act. If the respondent fails to provide a legitimate or adequate explanation then the court or tribunal shall uphold the complaint. In addition, acts done under statutory authority will now also be subject to the Race Relations Acts. Previously, specific statutory authority could permit actions contrary to the 1976 Act but as the Directive now applies, no UK legislation can override its terms and the terms of the Race Regulations.

4.1.1.5. The Confusion of Existing Anti-Discrimination Legislation

While extending and improving UK anti-discrimination law, the new Regulations unfortunately however also contribute to a “patchwork like” and uneven structure of UK equality legislation. In UK public law, EU Directives can be given effect through statutory instruments in the form of regulations, which means that their implementation does not require the more onerous and time-consuming procedure of legislating by means of the introduction of an Act of Parliament. However, in choosing only to legislate using the regulation mechanism, the UK government is confined to implementing the actual scope of the Directive, and cannot alter existing law by this method if the Directive does not apply.

The Directive prohibits discrimination on the grounds of race, ethnic origin or national origin, while the Race Relations Act 1976 also prohibits discrimination on the grounds of nationality or colour. The Regulations therefore do not apply to discrimination claims

⁶⁴ The House of Lords, the UK’s highest court, has recently however stated that the UK’s anti-discrimination legislation can apply post-employment; see House of Lords (2003) **Relaxion Group plc v Rhys Harper and five other cases, in: Times Law Reports (23.06.03).** PUBUK00395

based on nationality or skin colour alone, which are outside the scope of the Directive. Therefore, even in cases of alleged employment discrimination, those bringing claims on the basis of nationality discrimination (e.g. a South African citizen legally resident in the UK alleges discrimination on the basis of his nationality) will be subject to the old, outdated definition of indirect discrimination and will not benefit from the shift in the burden of proof. The exceptions such as employment by a charity removed by the Regulations will still apply to nationality discrimination, apparently for no obvious reason. According to the CRE analysis the UK government's decision not to legislate by an Act of Parliament, or to introduce a comprehensive Equality Act, will therefore actually further contribute to the confusing and non-transparent nature of UK anti-discrimination law.⁶⁵ Also, the Regulations do not apply to some public functions such as law enforcement.

4.1.2. Implementing the Framework Equality Directive – the Employment Equality Regulations

The UK government has also chosen to implement the Framework Equality Directive⁶⁶ by two sets of regulations: the Employment Equality (Sexual Orientation) Regulations 2003 and the Employment Equality (Religion or Belief) Regulations 2003. (Further regulations will follow for disability, which will modify the Disability Discrimination Act 1995, and for age, which is currently not covered in UK law.) These two regulations prohibit direct and indirect discrimination, harassment or victimisation in employment and vocational training on the grounds of sexual orientation and religion or belief respectively. The Regulations apply throughout the employment relationship - during the recruitment process, in the workplace, on dismissal and, in certain circumstances, after the employment has finished. The Regulations will apply across Great Britain (England, Scotland and Wales), and will come into force on 1 December 2003. Separate Regulations are being introduced in Northern Ireland.⁶⁷

The Religion or Belief Regulations apply to discrimination on grounds of religion, religious belief or similar philosophical belief, and are the most important from the perspective of combating race discrimination, xenophobia and anti-Semitism insofar as the behaviour is discriminatory. As noted in the UK RAXEN 3 legislative report, at present discrimination directed against ethnic groups is prohibited by the race relations legislation, and this can include religious groups who constitute a distinct ethnic group in line with the case-law test developed by the UK's highest court, the House of Lords in *Mandla v Dowell Lee*.⁶⁸ This has been held to include Sikhs⁶⁹ and Jews⁷⁰ but not

⁶⁵ See CRE (2002c), Equality and Diversity – The Way Ahead: The Race Relations Act 1976 (Amendment) Regulations 2003 - Response by the Commission for Racial Equality, London: CRE. PUBUK0370; and CRE (2002b) Which Way Equality? The Government's Proposals for Implementing the EU Directives, London: CRE. PUBUK372

⁶⁶ European Council (2000b) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, in: *Official Journal of the European Communities*, L303 (02.12.2000), pp. 16- 22. PUBUK0554

⁶⁷ See Equality Commission for Northern Ireland (2003b) Response to the OFMDFM Consultation Paper on the Implementation of EU Equality Obligations, Belfast: Equality Commission for Northern Ireland. PUBUK0377

⁶⁸ House of Lords (1983) *Mandla v Dowell Lee* [1983] 2 AC 548, in: *Industrial Relations Law Reports*, No. 209. PUBUK381

Muslims, Rastafarians and Jehovah's Witnesses.⁷¹ Discrimination which is however directed not against an ethnic group but against a religious group may only be prohibited under the race relations legislation in certain circumstances, as the Race Relations Act 1976 only applies to discrimination on the grounds of "colour, race, nationality or ethnic or national origins".

If discrimination on the grounds of an individual's religion or belief (or presumed religion or belief) also constitute indirect racial discrimination on the grounds of their ethnic or national origin (or presumed ethnic or national origin) then the race relations legislation will apply: if not, then prior to the coming into force of the new regulations there was no remedy for religious discrimination. Actions taken by an employer causing detriment to Muslims as a class, such as refusal to allow time off work for religious holidays, will be held to constitute indirect racial discrimination if disproportionately affecting those from an ethnic or national origin that is predominantly Muslim, such as Pakistani and Bangladeshi Muslims.⁷² However, a European, Afro-Caribbean or Chinese Muslim cannot bring such claims as they come from ethnic communities where Muslims are a minority.⁷³

This distinction between racial and religious discrimination stems from the way in which UK anti-discrimination legislation has developed over time in an incremental fashion. Northern Ireland is the only region to have anti-discrimination laws that prohibits discrimination on the grounds of religious belief in fields other than employment, due to the particular sectarian issues within Northern Ireland.⁷⁴ The development of the law in this way has created a hierarchy of protection outside of Northern Ireland based on this artificial distinction made in legislation in Great Britain between 'racial' discrimination and 'religious' discrimination, and this hierarchy can be seen in the non-applicability of the Race Relations Acts to forms of religious discrimination, the lack of a positive duty to promote equality on the grounds of religious belief or the absence of any such belief, and the absence of incitement to religious hatred legislation. In the analysis section of the UK RAXEN 3 legislation report, the absence of a coherent and comprehensive framework of combined anti-discrimination legislation applying to both religious and racial discrimination, as well as other forms of discrimination, was cited as a serious problem in the UK, and that report recommended the introduction of a single equality act to remedy this fault.

The Employment Equality (Religion or Belief) Regulations in implementing the EU Framework Equality Directive will ensure that religious discrimination in employment

⁶⁹ House of Lords (1983) *Mandla v Dowell Lee [1983]*, in: Industrial Relations Law Reports No. 209. PUBUK381

⁷⁰ *Seide v Gillette Industries Ltd [1980]* Industrial Relations Law Reports No.427.

⁷¹ *Tariq v Young*, Case 247738/88, Equal Opportunities Review Discrimination Case Law Digest No.2.

⁷² Employment Appeals Tribunal. (1996) *J H Walker Ltd v Hussain [1996]*, in: Industrial Relations Law Reports No. 11. PUBUK264

⁷³ See Open Society Institute (2002) *Monitoring Minority Protection in the EU: The Situation of Muslims in the UK*, p. 95. PUBUK454

⁷⁴ This is demonstrated, for example, by the definition of "affirmative action" in Article 4 of the Fair Employment and Treatment Order 1998 solely as "action designed to secure fair participation in employment by members of the Protestant, or members of the Roman Catholic community, in Northern Ireland."

and employment-related activities will be prohibited, placing the UK's race and religious discrimination laws on the same level and applying the same definitions of harassment, indirect discrimination and burden of proof. This is very welcome, and will fill a significant gap in UK law. However, the UK Government by again legislating by means of regulations rather than primary legislation cannot go beyond the scope of the Directive extending the prohibition on religious discrimination to the provision of goods and services, the performance of public functions, housing or education.⁷⁵ This will therefore maintain the "artificial" distinction between religious and race discrimination in these areas.

4.1.2.1. The "Religious Ethos" Exemption

Considerable controversy⁷⁶ has arisen in respect of Regulation 7 of both the Religious and Belief and Sexual Orientation Regulations. Both sets of regulations permit discrimination on the grounds of religion and sexual orientation where by reason of the nature and context of the employment in question, or by reason of the particular religious ethos of the employer, being of a particular religion or sexual orientation is a genuine occupational requirement. This was introduced to permit religious schools and other employers with a strong religious ethos to continue to discriminate on the basis of religious belief, and Article 4 of the Framework Equality Directive does permit this. However, it seems that the wording of the exceptions in both Regulations has caused concern that their scope is excessive, goes beyond the Directive in permitting religious and sexual orientation discrimination, and even limits existing anti-discrimination protection in UK law.

Regulation 7(2) in both sets provides that discrimination on the grounds of religion or sexual orientation is justified where the nature of employment or the context in which it is carried out makes being of a particular religion or sexual orientation a genuine occupational requirement. In our view the wording of this regulation lacks any specific requirement that the need for the exception is objectively justifiable.

Regulation 7(3) in both sets causes even more concern⁷⁷: introduced without formal consultation on this specific wording, it provides that when employment is for the purposes of an organised religion, the employer can discriminate on the basis of religion or sexual orientation (i) so as to comply with the doctrines of the religion, or (ii) because of the nature of the employment and the context in which it is carried out, to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers. This allows an employer having a particular religious ethos to discriminate not only to comply with religious doctrine but also to avoid conflict with the strongly held beliefs of a significant number of that religion's followers. This could permit religious or sexual orientation discrimination based upon extreme views held by a minority of followers of a religion that is not part of mainstreaming teaching within that

⁷⁵ See Women and Equality Unit (2003) *Equality and Diversity: The Way Ahead*, London: Department of Trade and Industry. PUBUK0339

⁷⁶ See House of Lords Debates (2003) *Employment Equality Regulations*, columns 752-793 (17.06.2003); available at: www.parliament.uk (26.08.2003). PUBUK0446

⁷⁷ See National Secular Society (2003) *Parliament slams religious exemptions to employment directive that leave gay employees without protection*, Press Release (13. 06.2003), available at: <http://www.secularism.org.uk/newspress/release13june03t.htm> (25.08.2003). PUBUK0451

faith, or even where a sizeable proportion of those who interact with the employer in question hold prejudiced views against those of other religions or sexual orientation. In effect, it could exempt all employers with a particular religious ethos or linked to a religious denomination from having to comply with the prohibition on religious or sexual orientation discrimination.

The regulations also contain no requirement that discriminating on this ground be shown to be a genuine occupational requirement which can be objectively justified by nature of the job in question: it could therefore legitimate discrimination even where being of a particular religion or sexual orientation is not actually necessary to maintain the ethos of the establishment in question. The Religion and Belief Regulation 7(3) appears to permit exceptions based upon an employer's religious ethos rather than on the ethos of a religion. In addition, there is uncertainty as to what kind of employers can benefit from the religious ethos exception: could a supermarket whose owners have a particular belief benefit? The uncertainty of the wording raises the possibility that they may actually reduce existing protection in employment law against unjustified dismissal. The UK Parliament's Joint Select Committee on Statutory Instruments expressed serious concern that these provisions of the Regulations may also be contrary to the Directive, or at least go beyond its terms, and as such should not be introduced by regulation and could be vulnerable in the courts.⁷⁸

Critics of the regulations include trade unions, NGOs, lawyers and parliamentarians. The UK government in the parliamentary debate on the regulations justified their wording as necessary to allow certain religious bodies to maintain their ethos, and have argued that Regulations 7(2) and 7(3) will not be as widely applied as critics fear.⁷⁹ However, a leading trade union has announced its intention of challenging the compatibility of the regulations with the Directive in court; the lack of clarity of the provisions may mean that their legal interpretation would probably require extensive litigation both in the UK courts and in the European Court of Justice.⁸⁰ This lack of legal certainty and the potentially discriminatory scope of the regulations are to be regretted.

4.2. A SINGLE EQUALITY COMMISSION?

The other significant area of legislative reform at present is the UK government's proposal to merge the three existing equality commissions in Great Britain, the Commission for Racial Equality (CRE), Equal Opportunities Commission (EOC – concerned with gender discrimination) and the Disability Rights Commission (DRC) into a single equality commission, which also would have responsibility for age, sexual orientation and religion or belief. If implemented, this would replace the current specialist CRE with its focus on race discrimination with a body with wide-ranging equality functions, similar to the Equality Commission for Northern Ireland. The government

⁷⁸ See the Joint Select Committee on Statutory Instruments (2003) Twenty First Report, 13 June 2003, HC 96-xxi, House of Commons: Hansard. PUBUK0449

⁷⁹ See House of Lords (2003a) Employment Equality Regulations, columns 752-793 (17.06.2003); available at: www.parliament.uk (26.08.2003). PUBUK0446

⁸⁰ See UNISON News (2003) Lesbian and gay employees left out in the cold, Press Release (16.05.2003); available at: http://www.unison.org.uk/out/news_view.asp?did=800 (26.08.2003). PUBUK0460

consultation paper *Equality and Diversity: Making it Happen*, issued in December 2002, invited responses from end-users, businesses, service providers and equality experts on this proposal.⁸¹ The consultation phase ended in February 2003 and an announcement is expected in autumn 2003, when the results of this consultation will be published and further issues concerning the future role, powers and functions of our equality institutions will be set out. No institutional changes are expected to be in place until 2006.

As noted in the RAXEN 3 legislation report, all three of the existing equality commissions play high profile and significant roles in combating discrimination in Great Britain. All are state sponsored bodies with a significant degree of independence that promote equality of opportunity via research, policy development, educational initiatives and high-profile media and lobbying campaigns. They also play a significant role in enforcing anti-discrimination legislation, supporting individual cases with financial and legal assistance, as well as having the power to make formal investigations and inquiries into patterns of discrimination in particular sectors of society or into the discriminatory practices of particular public or private bodies, if appropriate evidence exists. The Commission for Racial Equality is the largest of these three bodies, having been established by the 1976 Act and it acts as the major promotional and enforcement body for race equality in Great Britain.

Opinion on the merits of a single commission remains divided, with concern being expressed that a single commission could dilute focus on specific issues and provide a justification for reducing funding for equality institutions.⁸² Other research has identified clear advantages in a single commission.⁸³ Its powers, structure and functions will be the subject of considerable debate. Of particular interest also will be whether the CRE takes over responsibility for the promotion and enforcement of the religious discrimination regulations until the single equality body is put into place.

4.3. RELATED RESEARCH

Two pieces of analytical research relevant to these legislative developments have been completed recently:

Hannett, S. (2003) *Equality at the Intersections: The Legislative and Judicial Failure to Tackle Multiple Discrimination*, Oxford Journal of Legal Studies.⁸⁴ This article examines how claimants alleging discrimination on the basis of two or more grounds, fare under existing antidiscrimination law, and argues that the current statutory regime, both conceptually and practically, hinders multiple discrimination claims. The author suggests

⁸¹ Women and Equality Unit (2002) *Equality and Diversity: Making it Happen – Consultation on Future Structures for Equality Institutions*, London: Cabinet Office. PUBUK0465

⁸² See for example the response of the Disability Rights Commission to the Government consultation, available at: <http://www.drc-gb.org/drc/InformationAndLegislation/Page38z15.asp> (27.01.2003).

⁸³ See Hepple, R., Coussey, M., Choudhury, T. (2000) *Report of the Independent Review of the Enforcement of UK Anti-Discrimination Legislation. Equality: A New Framework*, Oxford: Hart Publishing, paras. 2.85-2.94, pp. 51-55. PUBUK0441; see also Commission for Racial Equality (2003f) *Equality and Diversity: Making it Happen. Response by the Commission for Racial Equality*, London: CRE. PUBUK0371

⁸⁴ PUBUK0398

that the forthcoming reforms to anti-discrimination law, in particular the new Race and Employment equality Regulations, promise merely to make the problem worse.

O’Cinneide, C. (2002) *A Single Equality Body: Lessons From Aboard*, Manchester: Equal Opportunities Commission.⁸⁵ This research examines the comparative experience of single equality bodies in Canada, Australia, New Zealand, the Republic of Ireland and Northern Ireland, and uses this experience to identify the key issues and concerns relevant to the possible establishment of a single equality body for Great Britain. The author identifies the potential advantages of a single equality body and makes suggestions as to the necessary enforcement tools that such a body needs to have to be effective.

4.4. DATA DEFICIENCIES

The impact and complexities of recent legislative developments in the UK have been well analysed and the data is easily available. More research is needed however to identify the impact of the Employment Equality Regulations, in particular the scope and meaning of the religious ethos exceptions. Additional research is also needed on the future shape and composition of a single equality body.

⁸⁵ PUBUK0397

5. THE IMPACT OF ANTI-DISCRIMINATION AND LEGISLATION

The major recent impact of anti-discrimination legislation has been the rolling-out of the positive duties in Great Britain and in Northern Ireland, developments in immigration and asylum policy and the expansion of the case law under the UK Human Rights Act and other provisions. The general impact of the race relations legislation with its enforcement mechanisms remains as indicated in the RAXEN 3 legislative report. Therefore, this report will concentrate upon the major new developments. No new specialised anti-racist bodies or institutions have been put into place, pending the potential establishment of a single equality body.

5.1. DESCRIPTIVE AND QUANTITATIVE DATA ON COMPLAINTS/DEVELOPMENTS

Under the Race Relations Act, the majority of race discrimination cases arise in the employment context and are heard by employment tribunals, which are judicial bodies generally, composed of three members. Employment tribunals consist of a legally qualified chairman and two lay members who usually are representatives of employers and trade unions. As noted in the UK RAXEN 3 legislative report, the applicant success rate in Employment Tribunal cases involving race discrimination issues is 'notably low'⁸⁶, with only 3 per cent of complaints resulting in positive findings of race discrimination in 2003. However, many cases result in successful settlements or are withdrawn. Of the cases brought in 2002-2003, the tribunals received 3638 cases, and disposed of 3,390 cases, of which 1,287 (38 per cent) were settled through mediation and other routes, 1,202 (35 per cent) were withdrawn, 115 (3 per cent) were successful and 610 (18 per cent) were dismissed.⁸⁷ The abolition of previous upper limit on the compensation that tribunals could award in the Race Relations (Remedies) Act 1994 has however significantly increased the average compensation award in race discrimination cases by over 60 per cent, and awards have continued to rise.⁸⁸ The average award in 2002-03 in a race discrimination case was £27,047, with 25.4 per cent of cases seeing awards of £20,000 or more.⁸⁹ The average awards for race discrimination in cases supported by unions are estimated at more than double those in Tribunals in general, indicating how important union support and representation can be.⁹⁰

Increasingly more cases are being brought before employment tribunals, and the discriminatory experiences of more employees are being recognised and compensated

⁸⁶ See PUBUK0050 at para. 4.56.1, p. 119.

⁸⁷ Employment Tribunals Service (2003) Annual Report 2002-2003, p. 23-24; available at: <http://www.ets.gov.uk/annualreport2003.pdf> (26.08.2003). PUBUK0399

⁸⁸ See BBC News (2002) "Employment Tribunal Compensation Rises" (12.08.2002); available at: <http://news.bbc.co.uk/1/hi/business/2187928.stm> (26.08.2003). PUBUK0431

⁸⁹ Employment Tribunals Service (2003) Annual Report 2002-2003, p. 26. PUBUK0399

⁹⁰ HRM Guide Network (2003) "Tribunal changes could cause a 'barrage' of union-backed claims" (06.05.2003); available at: http://www.hrmguidance.co.uk/relations/employment_tribunal_tuc.htm (25.08.2003). PUBUK0435

for.⁹¹ On the other hand, there are still too many deterrents to bringing a complaint to the tribunals. In our view, internal procedures are often difficult and lengthy, legal aid is not available, the fear of increased harassment as a result of attempting to proceed with a formal complaint is considerable and the likelihood of losing a job or damaging future employment prospects is significant. It is possible therefore that the cases that are submitted to tribunals are only a 'token measure' of the scale of the discrimination problem.⁹² It is also worth noting that racial discrimination cases are difficult, in that the long-term impact of the race relations legislation has been to considerably reduce the levels of manifest racism: in many cases, the central question is whether an employer is liable for racist acts and remarks by other employees, and often employers feel genuinely aggrieved to be accused of racism. Inferences of racist behaviour can also be difficult to make.

In recent years, the Advisory, Conciliation and Arbitration Service (ACAS)⁹³ which offers mediation services in employment disputes has seen a slight decline in race discrimination cases, with 3,825 race complaints referred to ACAS in 2001-2002 compared to 4,153 in 2000/01.⁹⁴

There exists less definite recent data about the implementation of the race relations' legislation in areas outside of employment such as goods and services, housing and education. Such cases are dealt with by county courts (full judicial bodies) and similar obstacles exist to bringing cases to the courts as apply to employment tribunals. The emphasis on employment cases has frequently led to a lack of statistical analysis of the work of the lower courts in applying the race relations' legislation.

In this context, it is worth outlining the circumstances in which the CRE will offer legal support to those bringing race discrimination complaints. The CRE does not rule on whether or not discrimination has occurred; this is for the employment tribunal or a court to decide.⁹⁵ The CRE only considers an application for assistance if a complaint is covered by the Race Relations Act. It does not have the resources to support every case. Every applicant for legal support does get some preliminary advice but only a small proportion receive legal representation. The CRE has a duty to consider every application for assistance. However, it is obliged only to support cases, which it thinks are suitable. Decisions are usually made on the basis of the strength of the case but other factors also come into play, such as whether or not the case meets the CRE's priorities; whether the applicant already has, or could have, access to alternative representation; and if the CRE believes it is reasonable to expect an applicant to pursue their case without its help. The CRE expects trade unions to advise their members on discrimination claims and will refer applicants who are trade union members to their union, in the first instance. The Race Relations Act sets out three criteria for use by the CRE in deciding which cases to support. However, it also gives the CRE discretion over the final decision. The criteria are:

⁹¹ PUBUK0050, para. 4.58, p. 123.

⁹² PUBUK0050, para. 4.59, p. 123.

⁹³ NFPUK0192

⁹⁴ Advisory, Conciliation and Arbitration Service (2003) Annual Report 2001-2002, London, p. 26. PUBUK0549

⁹⁵ See <http://www.cre.gov.uk/legaladv/legaladv.html> (26.08.2003).

- cases that test a point of law;
- cases that are too complex for an individual to deal with on their own;
- cases that deserve any other special consideration.

If the CRE is unable to offer assistance or legal representation, complainants are given reasons and can proceed to take their own cases to the tribunal or court without the CRE's help.

5.2. JURISPRUDENCE AND CASE LAW

As noted in the UK RAXEN 3 legislation report, the Race Relations Act 1976 as the principal statute in Great Britain concerned with race discrimination has been in force for some twenty-six years and as a consequence judicial interpretation of its scope and provisions is by now relatively clear and consistent. There have therefore been few significant court decisions in recent years that have altered or influenced the application of the law in this area or which have added in any way to the already considerable body of jurisprudence governing race discrimination in Great Britain. The new legislation intended to implement the provisions of the EU Directives will of course give rise to interesting issues of interpretation and application over the next few years, as will the Race Relations (Amendment) Act 2000 and the Human Rights 1998 (see below). The development of this new jurisprudence will be the cause of much interest: UK law in this area is undergoing a significant evolution.

The major development in interpreting existing anti-discrimination law in 2003 has been the decision of the House of Lords in the joined cases of *McDonald v Advocate-General for Scotland* and *Pearce v Governing Body of Mayfield School*.⁹⁶ Both cases involved the interpretation of the sex discrimination legislation, but as that legislation is very similar to the race relations legislation, the judgments in *McDonald* have also had a considerable impact. In particular, the Law Lords emphasised that the UK discrimination legislation was based upon the requirement to show a comparator, i.e. to show that a complainant was treated worse than someone else on account of their race or ethnic origin. As a result, previous decisions by employment tribunals where harassment had occurred that was specifically sexist or racist in form, there was no need to show that a person of the opposite sex or of another race would be treated differently were disapproved of, and the court emphasised that a complainant had to show that the harassment was based on their sex, race or ethnic origin, which usually would require at least reference to a hypothetical comparator. The impact of this restriction will be mitigated to a degree by the new definition of harassment in the Race Regulations, in which creating a hostile environment can constitute racial harassment, but nevertheless *McDonald* is a step back in this respect.

⁹⁶ House of Lords (2003c) *McDonald v Advocate-General for Scotland and Pearce v Governing Body of Mayfield School* [2003] HL 34, 19 June 2003, available at: <http://www.publications.parliament.uk/pa/ld200203/ldjudgmt/jd030619/macdon-1.htm> (26.08.2003) PUBUK0382

The Law Lords also disagreed with the Employment Appeals Tribunal (EAT) decision in the race discrimination case of *Burton v De Vere Hotels Ltd.*⁹⁷ In *Burton*, two black waitresses, clearing tables in the banqueting hall of a hotel, were the butt of racist and sexist jibes made by a guest speaker entertaining the assembled all-male company at a private dinner party. The Employment Appeal Tribunal held that the employer of the waitresses had racially discriminated against the waitresses, on the basis that had the assistant managers in charge for the evening been properly instructed, the two young women would not have suffered embarrassment. In *McDonald*, this decision was criticised: as the employers had not subjected the complainants to race discrimination, then they could not be found to have acted contrary to the legislation. Again, this represents a step back, as employers who have not taken appropriate steps to create an appropriate environment will not be subject to a penalty. The interpretation of the legislation in *McDonald* shows the need for a revision of the race legislation in general.

In *Essa v Laing*,⁹⁸ the legal issue concerned the circumstances under which liability for personal injury in race discrimination cases can be established. The general rule in the English law of negligence is that if an employer through their negligence causes an injury to an employee at work, then the employer will only be liable for any injury which could have been reasonably foreseen as a consequence of the employer's negligent action. In *Essa*, in contrast, the EAT has decided that the ordinary test of reasonable foreseeability does not apply in race discrimination cases and that compensation for unlawful discrimination is not limited to cases of reasonably foreseeable harm. The applicant was an amateur boxer, earning a living as a labourer on a construction site. He suffered acts of humiliation and insult for being black, culminating in racial abuse from the foreman in front of colleagues. He became depressed and his boxing suffered. The Tribunal upheld his claim of racial discrimination and awarded compensation, but not for psychological damage because, on the facts, it considered that it had not been reasonably foreseeable. On appeal the Employment Appeal Tribunal held that the common law test of reasonably foreseeable harm should not be applied, and that an applicant who has been the victim of unlawful race discrimination is entitled to compensation where they can show a direct causal link between the act of discrimination and their loss. Compensation is not limited to cases of reasonably foreseeable harm.

In *European Roma Rights Centre v Secretary of State for the Home Department*⁹⁹, the operation of pre-entry clearance immigration controls at Prague airport, aimed at limiting the flow of possible asylum-seekers (mainly Roma) from the Czech Republic to the UK, was challenged as contrary to the Geneva Convention and also as breaching the Race Relations Act. The Court of Appeal found that operating pre-entry controls, even though their aim was to deter asylum claims, was not contrary to the Geneva Convention. The court also found that the race relations' legislation had not been breached. Allegations of racial discrimination have been repeatedly made in respect of UK immigration practice, with the most recent incident being the alleged exposure by undercover Czech TV reporters of anti-Roma discrimination by UK immigration control at Prague airport, based

⁹⁷ Employment Appeal Tribunal (1997) *Burton v De Vere Hotels Ltd* [1997], in: Industrial Cases Reports No. 1. PUBUK550

⁹⁸ Employment Appeal Tribunal (2003) *Essa v Lang* [2003], in: Industrial Relations Law Reports No. 346. PUBUK0396

⁹⁹ [2003] England and Wales Court of Appeal Civil Division (EWCA) 666, 20 May 2003.

on skin colour.¹⁰⁰ The court ruled that a clear inference of racist behaviour could not be established, and that the fact that the controls were operated so as to often subject Roma travellers to a higher level of scrutiny did not in itself constitute racial discrimination, as all travellers were being subject to an identical requirement to satisfy immigration officers that they were not going to overstay in the UK, even though it can be argued that Roma would often find this more difficult to prove than other Czechs due to their socio-economic status. A dissenting judge was prepared to find that the treatment of the Roma constituted racial discrimination under the legislation.

In *R v Radcliffe*¹⁰¹, a 21-year-old football fan that was part of a group who were chanting the words “you’re just a town full of pakis” was charged under the football hooligan control legislation for “racialist chanting”. He pleaded not guilty and at his original trial the District Judge ruled that the word paki was no more insulting than the words ‘Brit’ ‘Yank’ or ‘Aussie’. However, in the High Court Lord Justice Auld ruled in favour of the Crown Prosecution Service in a landmark decision and stated that the word ‘Paki’ is derogatory and often used as a prelude to violence.¹⁰²

THE HUMAN RIGHTS ACT - R (ON THE APPLICATION OF Q AND OTHERS) V. SECRETARY OF STATE FOR THE HOME DEPARTMENT¹⁰³

The Human Rights Act 1998 came into effect in the UK in October 2000. The Act is of major constitutional importance, as it incorporates the ECHR into domestic law. All legislation must under the HRA be interpreted to comply with the ECHR “as far as possible, and all public authorities under s. 6 of the Act are obliged to adhere to the ECHR standards with the exception of Parliament. If an Act of Parliament cannot be interpreted to comply with the ECHR without excessive straining of meaning, the court cannot disapply the Act but must instead grant a declaration of incompatibility, stating that in its opinion the Act violates the ECHR. The HRA has made a considerable impact on UK public law, despite the impact of the HRA in the context of racism, xenophobia and anti-Semitism being limited by the restricted impact of Article 14 of the ECHR, that only guarantees the right to equal treatment in the enjoyment of rights protected in the ECHR. The UK has not yet signed or ratified Protocol 12 to the ECHR, which recognises a freestanding right to equal treatment.

The impact of the HRA to asylum issues can be seen in the recent successful legal challenge launched against the application of sections 55 and 57 of the Nationality, Immigration and Asylum Act 2002 (NIA). As discussed in the RAXEN 3 report, Section 55 provides that asylum applicants without dependant children will only be eligible to apply for welfare support if they apply for asylum ‘as soon as reasonably practicable’ after arrival in the UK. The NIA Act does provide for an exception to this denial of

¹⁰⁰ See Younge, G. (2003) “Shame of a Continent”, in: *The Guardian G2 Supplement* (08.01.2003), p. 4. PUBUK0466; see also Dummett, A. (2001) *The Immigration Exception in the Race Relations (Amendment) Act 2000*, London: Immigration Law Practitioners Association. PUBUK0438

¹⁰¹ *R v Radcliffe* 16 June 2003, High Court Criminal Division, unreported as yet.

¹⁰² See Crown Prosecution Service (2003) *Football Fan Banned for Racist Chanting*, Press Release (18.07.2003). PUBUK0437

¹⁰³ *The Human Rights Act - R (On the Application of Q and Others) v. Secretary of State for the Home Department* [2003] England and Wales Court of Appeal Civ 364, 18 March 2003. PUBUK0551

support where Article 3 of the ECHR would be violated, a provision inserted to avoid a clash with the provisions of the ECHR. These provisions in the NIA Act, which came into force on 8th January 2003, have attracted strong criticism from NGOs and trade unions. Withdrawal of support will mean that asylum-seekers will be deprived of state support for housing and living costs, and if unable to rely on their ethnic community support structures will face destitution.¹⁰⁴

A challenge was launched in the High Court by the Refugee Council, the Joint Council for the Welfare of Immigrants and other NGOs against the first deprivation of benefits decisions. The case was argued on the grounds that deprivation of benefits constitutes “inhumane and degrading treatment” as defined in Article 3 of the ECHR and the legislation should therefore be interpreted under the HRA in accordance with the ECHR to require the provision of support. The Court of Appeal in *R (Q and Others) v. Secretary of State for the Home Department* agreed that deprivation of benefits could in certain circumstances constitute “inhumane and degrading treatment” and that support could not be denied to asylum seekers in such circumstances. In the subsequent case of *R (S) v Secretary of State for the Home Department*,¹⁰⁵ the refusal of support to asylum seekers who were rendered destitute as a consequence was held to again violate Article 3 of the ECHR, thereby ensuring that the Human Rights Act can ensure a basic level of support.

5.3. MAJOR RESEARCH FINDINGS 2003

“TOWARDS RACIAL EQUALITY” - CRE/SCHNEIDER ROSS RESEARCH INTO THE PUBLIC DUTY IN THE RACE RELATIONS (AMENDMENT) ACT 2000¹⁰⁶

As discussed in the UK RAXEN 3 legislative report, section 2 of the Race Relations (Amendment) Act 2000 places a general duty on specified public authorities to pay due regard to the elimination of unlawful discrimination and promote equality of opportunity and good relations between persons of different racial groups. The duty extends across all public authority functions, including policy formation, the procurement of services from private employers, the promotion of community relations and employment policies. Specific duties are imposed upon specified public sector employers to ensure the promotion of equality in their recruitment, promotion and training decisions, and upon specified educational authorities to ensure that race equality is promoted in their educational practices.

The public duty is, in effect, legislation, which is designed to ensure the “mainstreaming” of racial equality. This is about ensuring that racial equality is not a separate ‘add on’, but an integral part of how an organisation goes about all its activities.¹⁰⁷ The introduction of

¹⁰⁴ See Prasad, R. (2003) “Minister Defend Switch in Asylum Policy”, in: *The Guardian Society Supplement* (08.10.2003), p. 2. PUBUK0456

¹⁰⁵ *R (S) v Secretary of State for the Home Department* [2003] England and Wales High Court 1941 (Admin), 31 July 2003. PUBUK0552

¹⁰⁶ Commission for Racial Equality (2003e) *Towards Racial Equality. An Evaluation into the Public Duty to Promote Race Equality and Good Race Relations in England and Wales*, London: CRE. PUBUK0375

¹⁰⁷ Commission for Racial Equality (2002a) *Code of Practice on the Duty to Promote Race Equality*, London: CRE. PUBUK0538

these positive duties has been warmly welcomed. They make possible a proactive, participatory equality strategy that focuses on the elimination of disadvantage and the identification and alteration of patterns of behaviour that may amount to institutional racism. Initial compliance with the duties has been impressive: the CRE has only had to bring non-compliance proceedings at present against one local authority, which was suspended when the authority rapidly worked to comply.

Recent research carried out by the consultancy Schneider Ross on behalf of the CRE has assessed the implementation and impact of the duty over its first year of application.¹⁰⁸ The main aim of this important research was to provide a profile of the nature, extent and quality of responses at the outset of the public duty, when public authorities were putting the building blocks of their approach to the duty into place, and also to provide a baseline against which future progress can be measured and the effectiveness of the legislation reviewed.

The research was based upon a questionnaire based survey of 3,338 public authorities and educational institutions, receiving a very encouraging response rate of 47 per cent was achieved from all authorities and institutions, as well as an analysis of a random sample of 143 race equality schemes and policies which were assessed against the recommendations of the Code of Practice and CRE guidance materials to provide an independent view on the quality of the work to date. The findings of the research indicated that there appear to be three sorts of responses by authorities and institutions to the public duty. A leading group responding well to both the spirit and letter of the law; a second group who have put good foundations in place, but have some way to go; a third group where the response is weak, and in some cases does not yet comply with the legislation.

The positive indicators identified by the research included the finding that just under 70 per cent of respondents felt that their work to date on the public duty had produced positive benefits, which is very promising. Compliance with the legislation must not be an end in itself if the duty is to succeed, but rather should be a route to gaining real improvements and substantial outcomes: the early evidence suggests that those who are taking the systematic approach advanced by the legislation are finding that it is helping them think more widely about policy making and service delivery, and thus helping produce solid outcomes. The positive result most often cited was increased awareness of race equality in policymaking and service delivery.

In addition, just over a third of the respondents were responding very well to both the spirit and letter of the law: encouragingly, while this leading group included many large organisations with a high representation of ethnic minorities in their local populations, it also included both smaller organisations and those in rural areas. There is a further significant group who have put the building blocks in place and therefore wide scale implementation is clearly under way.¹⁰⁹ Those that are addressing the legislation effectively are starting to create a bank of good practice which with there was a clear desire for more guidance and support particularly on some elements of the duty. But some

¹⁰⁸ PUBUK0375

¹⁰⁹ Eighty-four per cent of respondents said that they had undertaken the first step of fully or partially assessing their functions for relevance, while between 83 per cent and 99 per cent had produced a race equality scheme or policy at the time of the survey – and the rest were preparing one.

eighty-eight per cent of survey respondents said the CRE's guidance was fully, or mainly, easy to understand. Strong management and adequate specialist training and resources are also identified as important to successful implementation of the statutory duty.

The research did also find that there was clearly a need for organisations to identify with greater precision what they are aiming to achieve in applying the duty, within a concrete timetable. Progress in implementing the employment duty varied considerably, and in many cases there was little attention in schemes or policies to employment measures. Relatively few schemes and policies appeared to cover partnership and procurement strategies, which given the potential importance of such strategies is unfortunate. In general, getting race equality seen as a mainstream responsibility or activity, and therefore a priority, is still the main challenge.

The research identified four key broad conclusions:

- The logic of the analysis-led approach to the public duty is sound.
- While there are good examples across all sectors, implementation of the duty is quite patchy, and those who are lagging behind need to move into compliance quickly.
- Some elements of the duty may benefit from clarification.
- The emphasis now needs to move on from preparing the 'infrastructure' to a focus on outcomes, action plans and public accountability.

This research demonstrates the potential and initial progress of the duty. The structure of the positive duty does have clear limitations:

- It does not provide for other factors that might lead to discrimination such as age, gender, religion or belief, and sexual orientation; this may encourage a concentration upon race at the expense of the other grounds.
- It does not apply to the private sector;
- The emphasis is on *process*, ensuring that monitoring, consultation and assessment of the impact of policies is carried out, rather than on *outcomes*. There is a danger, identified by the Schneider-Ross research, that too much emphasis will be placed on "the production of policies and protocols rather than service outcomes"; and
- Enforcement is largely confined to the CRE, and a failure to take substantive, outcome-orientated steps (as distinct from the procedural requirements imposed by the duty) can only be challenged by the expensive and risky approach of judicial review.

Nevertheless, *Towards Racial Equality* demonstrates the usefulness of the duty and these limitations, rather than calling the effectiveness of positive duties into question, point the way towards an extension of similar duty to other equality grounds and possibly to the private sector, a strong emphasis on outcomes and enhanced enforcement.

NORTHERN IRELAND – THE PROGRESS OF THE SECTION 75 EQUALITY DUTY

The single most extensive positive duty imposed in the UK is that provided for by Section 75 of the Northern Ireland Act 1998. Section 75 imposes a duty on specified Northern Irish public authorities to have “due regard to the need to promote equality of opportunity” persons of different religious belief, political opinion or racial, national or ethnic group in carrying out their public functions.¹¹⁰ Schedule 9 of the Act specifies the measures that are required from public authorities to comply with the duty, including the preparation and publication of an “Equality Scheme” setting out how they propose to fulfil the positive duty and the impact assessment, monitoring and consultation procedures that are necessary to fulfil the duty. All Equality Schemes are required under Schedule 9 to be submitted to the Equality Commission for Northern Ireland (ECNI) for approval and to conform to the guidelines.

The ECNI has recently prepared a progress report on the implementation of the duty up to March 2002.¹¹¹ As with the research into the impact of the positive race duty, its conclusions were generally positive, finding good levels of procedural compliance with the requirements set out in Schedule 9 despite extensive slippages in timetables. Public authorities are integrating the requirements of the Section 75 duty into corporate and business planning processes, but lack of resources were preventing authorities delivering many of the requirements of equality schemes.¹¹² In particular, the process of undertaking assessments into the impact of public policies upon equality issues and developing monitoring systems has proved challenging for public authorities.

There was evidence of good practice in consultation, particularly in using joined-up approaches to consult across the different strands, but there was also evidence that the practice of some authorities of using mass mailing of consultation documents was producing consultation fatigue.¹¹³ Some smaller authorities cited the lack of clarity and guidance on good relations as a major impediment to the strategic implementation of this duty.

The progress report also identified examples of good practice and outcomes. Compliance with the duty had resulted in general in the provision of extensive training for public authority employees in equality issues, new complaint procedures, the collection of hitherto unavailable data on the groups affected by policy decisions, the creation of special units within public authority structures, greater public accessibility to information and public services, especially for ethnic minorities and the disabled, and enhanced use of outreach initiatives. Examples among many include the following:

- The Northern Irish Housing Executive in fulfilling its requirements under the duty identified provision for disabled persons as a problem, resulting in the provision of a phone-based interpretation service, staff training in sign language, hearing loops and portable systems in all outlets, and a centrally based text phone. The

¹¹⁰ See McCrudden, C. (1999) The Equal Opportunity Duty in the Northern Ireland Act 1998: An Analysis, in: Committee for the Administration of Justice Equal Rights and Human Rights – Their Role in Peace Building, Belfast: Committee on the Administration of Justice, pp. 11-23.

PUBUK04

¹¹¹ Equality Commission of Northern Ireland (2003a) Report on the Implementation of the Section 75 Equality and Good Relations Duties by public authorities 1 January 2000 - 31 March 2002, Belfast: ECNI. PUBUK0376

¹¹² PUBUK0376, pp. 19-20.

¹¹³ PUBUK0376, p. 20.

Housing Executive also established consultative forums across the strands, and reviewed accessibility requirements in general.¹¹⁴

- Proposed tariffs under the Criminal Injuries Compensation Scheme would pay dependants £10,000 to spouse and £5,000 to each other dependent up to a maximum of £50,000. Screening showed this would adversely impact on larger families and these were more likely to be from the Roman Catholic community. In light of this impact the maximum was removed.¹¹⁵
- The Northern Ireland Prison Service provided qualifying prisoners over 25 year of age with a grant of £50.05 per week and £43.00 to prisoners less than 25 years of age. As a result of screening an adverse impact on persons of different ages was identified and the weekly allowance was harmonised.¹¹⁶

The ECNI has had political support in making sure the Section 75 duty is well implemented, and thus far the duty has begun to generate real shifts in consultation, monitoring and policy assessment procedures, again showing the potential of positive duties.

IMMIGRATION AND ASYLUM - AN ASSESSMENT OF THE IMPACT OF ASYLUM POLICIES IN EUROPE 1990–2000

Recent research by academics in Oxford Brookes University assessing the impact of asylum policies on the numbers and pattern of applications to European Union states for the period 1990–2000 has been commissioned by the UK Home Office, for the purpose of assisting in the development of future asylum policies.¹¹⁷ The research found that it was difficult to establish direct causal links between asylum policy initiatives and asylum applications for a number of reasons:

- a range of policy instruments tended to be introduced simultaneously, making it difficult to pinpoint the impact of specific changes in asylum policy and practice;
- there was a time lag between implementation of new policies and any impact; the difficulty of assessing whether adopted measures stemmed or reinforced prevailing trends;
- a lack of rigorous evaluation studies.

Where the impact of specific policies could be seen, direct pre-entry measures appear, in the short term at least, to have been the most effective in stemming asylum flows. Indirect measures (such as reception facilities, detention and the withdrawal of benefits) appear to have had a much more limited impact. Changes in asylum policy and practice often had unpredictable or limited effects on asylum flows and application rates for a number of reasons:

- the timing, staging and chronology of the asylum policy regime – countries which adopted sustained policy programmes earlier in the current phase of asylum

¹¹⁴ PUBUK0376, p. 113.

¹¹⁵ PUBUK0376, p. 108.

¹¹⁶ PUBUK0376

¹¹⁷ Zetter, R. et. al. (2003) An assessment of the impact of asylum policies in Europe 1999–2000, Home Office Research Study No. 259 London: Home Office. PUBUK0400

policy-making appear to have been more effective in containing or limiting application rates;

- contextual factors (e.g., the existence of settled communities of co-ethnics or co-nationals);
- asylum networks;
- linguistic and cultural affinity with the receiving state;
- geographical location.

Unintended consequences of changes in asylum policy were also possible, with strong circumstantial evidence (but little authoritative research) to show that more restrictive measures have actually led to growth in trafficking and illegal entry of both asylum seekers and economic migrants. The need for further research on a number of factors was identified, including the relationship between restrictive measures and the growth of people smuggling, and the motivations and strategies of asylum seekers.

INCITEMENT TO RELIGIOUS HATRED

Despite the persistence of attacks fuelled by religious hatred,¹¹⁸ there has been no progress in England and Wales in introducing incitement to religious hatred legislation following Parliament's refusal to approve such a provision in the Anti-terrorism, Crime and Security Bill in 2001. A specially appointed Select Committee on Religious Offences was established in 2002 by the UK parliament to consider the reform of existing religious offences (including the old common law of blasphemy) and to consider whether incitement to religious hatred legislation and other new forms of legislative protection for religious belief were necessary. The Committee in its report in April 2003 reached no clear conclusion: however, it did consider that "we believe there should be a degree of protection of faith, but there is no consensus among us on the precise form that it might take. We also agree that in any further legislation the protection should be equally available to all faiths, through both the civil and the criminal law."¹¹⁹ The Committee did recommend that

"the starting point for legislation may be the requirement on Government to enact legislation to implement the draft Council Framework Decision on Racism and Xenophobia, which would not be confined to incitement to hatred in the two areas so far selected: race and religion. It is impossible to forecast how this might be transplanted into UK law, but the occasion might be ripe to include incitement to hatred across the range of targets of hate crime, even beyond the list currently under debate in connection with the Decision, for example the gay community, asylum seekers or whoever incurs the opprobrium of some branches of public opinion."¹²⁰

The Committee noted the lack of adequate data on the volume and nature of assaults motivated by religious as opposed to racial hatred. There is also a discernible and serious lack of data in respect of the potential effects of general incitement to hatred legislation

¹¹⁸ See Casciani, D. (2003) "This place is just not ready for different people", BBC News (10.07.2003); available at: <http://news.bbc.co.uk/1/hi/magazine/3055051.stm> (11.06.2004). PUBUK0553

¹¹⁹ Religious Offences Committee (2003) First Report, Religious Offences in England and Wales HL Paper 95-I (10.04.2003), para. 133. PUBUK0401

¹²⁰ PUBUK0401, para. 135.

that would as suggested by the Committee extend beyond religion to all the potential targets of hate crime.

In Scotland, where criminal justice is a devolved function and therefore within the remit of the Scottish Parliament, a working group of members of the Scottish Parliament, police officers and experts on racial equality was formed, in order to research the issue more fully. The result of the group's research was the consultation paper *Tackling Religious Hatred*, published by the Scottish Executive, which set out the initial conclusions of the working group and sought views upon those conclusions.¹²¹

The working group identified four key issues:

- the need to acknowledge that manifestations of religious intolerance or hatred in Scottish society are not acceptable;
- the need for contemporary research to define the extent of the problem, to track changes in attitudes and to evaluate projects and programmes seeking to effect a longer-term change;
- safeguarding freedom of speech;
- dealing with cultural sectarianism and violence in the particular context of football matches (a particular problem in Scotland).

The group concluded that there were many good arguments in favour of legislation to permit religious hatred to constitute an aggravating factor, which had been introduced in England and Wales in the Anti-terrorism Act 2001 (see UK RAXEN 3 legislation report) but which was not yet in place in Scotland. The current state of the law was widely seen as inadequate, and introducing legislation would have clear advantages:

- it would send out a clear signal that Scotland will not tolerate religious or sectarian hatred;
- it would be a way for the Scottish Parliament to take a meaningful role in fighting religious hatred;
- it would focus attention on the issue and might therefore strengthen the effect of educational and administrative measures;
- it would bring the law on offences motivated by religious or sectarian hatred more into line with racially-motivated offences and more into line with the law in England and Wales - the lack of such a law could be seen as condoning religious or sectarian hatred;
- it would strengthen the arm of the police and football clubs in dealing firmly with any trouble arising from sectarian marches or football matches;
- it would trigger the keeping of statistics on the subject;
- it would oblige judges to show greater consistency in sentencing;
- it is advocated by some religious groups from both Christian and non-Christian faiths; and
- it is advocated by a number of organisations with experience in this field including the CRE as a member of the group.

¹²¹ Scottish Executive (2003) *Tackling Religious Hatred: Report of Cross-Party Working Group on Religious Hatred*, Edinburgh: Scottish Executive. PUBUK0402

On balance, the Scottish working group also agreed that the current legal framework needed adjustment in order to ensure that any element of religious or sectarian hatred in any particular crime is always recorded, so that offences are prosecuted in a consistent manner. It also considered it is essential that detailed statistics of cases involving religious or sectarian hatred are properly kept and made available, as the inadequacy of data on this at present was a serious problem. Legislation would provide much needed clarity about the seriousness with which the law views offences motivated by religious hatred and would also facilitate the keeping of the records and statistics required to monitor the effectiveness of the law.

However, the working group felt that a law against incitement to religious hatred similar to that initially proposed in England and Wales in 2001 (see the UK RAXEN 3 legislation report) could conceivably be used to prevent public preaching that the adherents of other faiths were in error, and might prevent open discussion about particular religious practices. The working group also made detailed recommendations about improving police and prosecution practice in cases involving religious hatred, improving data collection and for co-ordinating measures to reduce public expressions of hatred between local authorities, the police, football clubs and other bodies. Responses to the consultation are currently being considered.

The working group's identification of the need for considerably enhanced record keeping and co-ordination to help prevent religiously motivated violence is important, and should be applied across the UK. However, notwithstanding the working group's reservations about incitement to religious hatred legislation, the need for incitement to religious hatred legislation of some form is pressing. The Select Committee's reference to general incitement legislation based upon the European Commission's draft Council Framework Decision on combating racism and xenophobia appears to indicate the correct approach, covering as it will not alone religious hatred but also other forms of incitement of hatred. The adoption of this Framework Decision needs to be made a priority at both European and UK levels.

6. STRATEGIES; INITIATIVES AND GOOD PRACTICE

6.1. COMMISSION FOR RACIAL EQUALITY INITIATIVES

6.1.1. Public Procurement Guides¹²²

As the major body charged with promoting and enforcing the race relations legislation, the CRE has recently published two guides for local and other public authorities and private contractors which expand and develop the guidance in the code of practice on the positive race duty on how the duty applies to the process of public procurement, in particular to the purchase of goods and services by authorities and the formation of public-private contracts. This guidance sets out in more detail what public authorities can do to meet their responsibilities under the duty, and the key outcomes public authorities should seek to achieve within the limits of UK race relations legislation and EU public procurement rules. It also sets out examples of good practice and provides appropriate guidance.

An example of good practice relating to the guidance that all the potential race equality elements of a contract should be considered in awarding contracts was the approach by a Scottish health board which was proposing to tender for community health services, including ante-natal classes and classes on infant health and nutrition. The board was aware of high rates of infant and child ill health within the local Gypsy/Traveller community, as well as very low levels of participation in community health initiatives, including antenatal classes. The contract therefore specifies reduced rates of ill health of Gypsy / Traveller children as an outcome, and to achieve this, the contract requires the provider to do positive outreach work and to consult Gypsy/Traveller families, with the expectation that this will also indicate how the community health services could do more to meet the health needs of Gypsy/Traveller children and families.

6.1.2. Report into the Death of Zahid Mubarek¹²³

The CRE has recently concluded a formal investigation under its powers in the Race Relations Act 1976 into the circumstances of the murder of Zahid Mubarek in Feltham Young Offenders Institute in March 2000, when he was beaten to death having been put into a cell with a white racist. The report identified a systemic failure on the part of the prison authorities to secure equality of treatment on the grounds of race, and contained detailed evidence of 20 areas of failure in the management systems in Feltham. The extent of the failings identified in the report would have allowed the CRE to serve a Non-Discrimination Notice on the UK Prison Service under its powers under the Race

¹²² Commission for Racial Equality (2003a) Race Equality and Public Procurement, London: CRE. PUBUK0374. Commission for Racial Equality (2003b) Race Equality and Procurement in Local Government, London: CRE. PUBUK0434

¹²³ Commission for Racial Equality (2003c) The Murder of Zahid Mubarek, London: CRE. PUBUK0373

Relations Act, which could require the Service to take appropriate steps to end discriminatory treatment. However, the Commission has decided that it will not immediately issue such a Notice but instead that it will first enter into a dialogue with the Prison Service to try to develop an agreed nationwide Action Programme to overcome the major problems and institutional weaknesses revealed by the investigation. The second part of the report, due to be launched in the autumn, will address the wider issues of the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between people of different racial groups in the work of the Prison Service.

6.1.3. Race Equality Schemes

As highlighted by the Schneider Ross research into the first year of the race duty, *Towards Equality*, numerous examples of public authority good practice in implementing the duty exist. A few are mentioned here, for illustrative purposes: the Schneider Ross report contains more. These are race equality schemes designed to begin to implement the obligations imposed by the duty and are recognised as being good clear schemes which cover the necessary areas. Any scheme, however, only provides a base for action and the real final test is with the actual implementation of the scheme as the duty settles down.

Liverpool City Council has developed a good paper scheme to implement the duty, and have linked this with an advanced Positive Action programme for ethnic minorities: it has also linked this to the effective provision of services to its Somali community.¹²⁴ Leicester City Council, with its high ethnic minority population, is a “Beacon council” on race equality, meaning that it is in the forefront of the development of best practice: the Council has also used the Improvement and Development Agency initiative (a knowledge-sharing initiative designed to spread best practice) to look at community relations, and have developed extensive consultation initiatives with local groups on this issue.¹²⁵ Neath Port Borough Council has seen a high level commitment to race equality, and has linked the council personal action plan to the implementation of the Racial Equality Scheme. This is all the more interesting, given that the Council’s area has a relatively small ethnic minority community.¹²⁶ The Crown Prosecution Service has used community involvement to feed into how its public services are delivered and into the framing of its prosecution policies.¹²⁷

¹²⁴ See www.liverpool.gov.uk for further information.

¹²⁵ See the Leicester Community Plan, available at: <http://www.leicester.gov.uk/departments/page.asp?pgid=974> (27.08.2003). ACTUK0071

¹²⁶ For further information see <http://www.neath-porttalbot.gov.uk/>

¹²⁷ For further information see <http://www.cps.gov.uk>

6.2. OTHER ORGANISATIONS

6.2.1. Operation Black Vote (OBV)¹²⁸

Operation Black Vote's main objectives are: to urge Black and Asian people to register to vote; to enable the Black and Asian community to claim its place in British democracy; to demonstrate a collective community potential that could significantly influence the outcome in many seats in the General Election; to confront politicians with the reality of what it means to be Black and Asian in Britain; to force them to address the inequality of opportunity faced by Black and Asian people; to encourage them to recognise the unique perspective of Black and Asian people and positively promote the cultural diversity of British society in the best interests of society as a whole.¹²⁹ In its high-profile campaigning work, OBV uses voter education, media and parliamentary pressure and community activism to encourage both higher black and Asian participation in the political process and also greater selection of black and Asian candidates by political parties, to enhance minority representation in the UK representative bodies. OBV also runs a highly praised mentoring scheme whereby ethnic minority students "shadow" a Member of Parliament and observe the function and tasks of a MP.¹³⁰ A similar scheme has been established for magistrates (lay judges in local courts) and OBV also maintains an extensive archive and on-line database of materials relevant to its activities.

6.2.2. The Institute of Race Relations¹³¹

The Institute of Race Relations (IRR) was established as an independent educational charity in 1958 to carry out research, publish and collect resources on race relations throughout the world, and is a prime example of an effective NGO acting to provide an effective research base and up-to-date commentary. Since 1972, the IRR has concentrated on responding to the needs of black people and making direct analyses of institutionalised racism in Britain and the rest of Europe, including the making of rigorous analyses of racism and the press, police racism, deaths in custody, the plight of asylum seekers and exclusions from school. The IRR also conducts research on racism in other European countries, examining the rise of racial violence and fascist parties, asylum and immigration policies, human rights violations, policing and security policies. The journal *Race & Class* is published quarterly by the Institute of Race Relations, as is the *European Race Bulletin*. As part of its educational work, the IRR has developed a number of educational resources, including a CD-Rom set of publications and an archive of relevant publications.¹³² The IRR is a registered charity, supported from publication sales and by individual donations, charitable trusts and the Community Fund.

One of its main activities is maintaining the IRR news network, which aims to provide professionals in the voluntary sector, activists, students and interested individuals with a news and information resource on race and refugee issues in the UK and the rest of

¹²⁸ NFPUK0087

¹²⁹ ACTUK0041; for further information, see <http://www.obv.org.uk/>

¹³⁰ For details, see <http://www.obv.org.uk/mpshadow/2002/index.html> (27.08.2003). ACTUK0072

¹³¹ NFPUK0069

¹³² ACTUK0038

Europe. It also aims to act as a gateway, providing easy access to related organisations through an online database, and covering Government policy, policing and criminal justice system, violence and harassment, asylum seekers and refugees, education, media, employment, extreme-right politics, housing and health.

6.2.3. The Refugee Council¹³³

The Refugee Council is another independent NGO, financed by a variety of sources including government departments, the European Commission, trusts and members. In 1981, two refugee organisations set up in the wake of the signing of the 1951 Geneva Convention merged to form the British Refugee Council. The Council adopted a mission statement, the aims of which remain largely unchanged to this day. The commitment was made to provide two main services:

- to act as a focal point for the sharing of information and for the development of policies relating to refugees and displaced people in the UK and elsewhere;
- to provide advice and welfare services for refugees in the UK.

Throughout the 1980s and early 1990s, new refugee councils were established around the UK, for example in Scotland, the Midlands and Wales. To reflect this change the British Refugee Council changed name to become the Refugee Council. The Council has been active in receiving and support various waves of refugees, including Kurds in 1991, Albanians in 1999 and asylum-seekers at present.

The Council's work includes:

- giving advice and support to asylum seekers and refugees to help them rebuild their lives;
- working with refugee community organisations, helping them grow and serve their communities;
- caring for unaccompanied refugee children to help them feel safe and supported in the UK;
- offering training and employment courses to enable asylum seekers and refugees to use their skills and qualifications;
- managing a residential home for young refugees;
- campaigning and lobbying for refugees' voices to be heard in the UK and abroad; keeping them high on the political agenda and discussed in the media;
- producing authoritative information on refugee issues worldwide, including reports, statistics and analysis.

The Council's One Stop Service offers full advice sessions for newly arrived asylum seekers, ex-detainees and clients who are considered to be exceptionally vulnerable.¹³⁴ Advice sessions normally cover issues such as welfare benefits, asylum matters, general immigration, health care, housing and children's education. The Council also provides

¹³³ NFPUK0091

¹³⁴ ACTUK0073

food, clothing, medical facilities and other advice sessions, and the Council provides links to health and legal services, as well as a telephone advice centre.

6.2.4. The Joint Council for the Welfare of Immigrants¹³⁵

The Joint Council for the Welfare of Immigrants (JCWI) was formed in the 1960s at a time of new Commonwealth immigration to assist families coming to the UK. As a result of expertise gained in this way, JCWI began to publish and campaign for changes to the increasingly restrictive UK immigration legislation. Since then JCWI has helped many thousands of migrant families and plays a substantial role in immigration and asylum in the UK and increasingly the European Union. It aims to provide quality immigration advice and expert training and publications, as well as performing a campaigning, lobbying and research function.¹³⁶ Its manifesto for the reform of immigration policy has been influential in public debate.¹³⁷

6.2.5. Campaign Against the Abolition of Welfare Support for Certain Categories of Asylum Seeker¹³⁸

The Refugee Council with the JCWI and other NGOs such as the legal human rights NGOs Liberty¹³⁹ and Justice¹⁴⁰ have been key players in the political, media and legal campaign against the UK government's attempts to deprive certain categories of asylum-seekers of welfare support, which in the wake of the decision *in R (Q) v Secretary of State for the Home Department*¹⁴¹ has proved very successful.

6.2.6. The Odysseus Trust and Parliamentary Work¹⁴²

The Odysseus Trust is a small research and policy unit that seeks to “promote good governance in the interests of the governed, based upon plural democratic values, public accountability and the effective protection of human rights and fundamental freedoms.”¹⁴³ The Trust supports the activities of Lord Lester of Herne Hill QC in his parliamentary work as a member of the House of Lords. Anthony Lester is a human rights advocate who has campaigned for a Bill of Rights and for equality legislation in the United Kingdom for some 30 years, and was also the leading architect of the Race Relations Act 1976.

¹³⁵ NFPUK0186

¹³⁶ For further information see <http://www.jcwi.org.uk> (25.08.2003).

¹³⁷ Joint Council for the Welfare of Immigrants (2001) *Manifesto for the Reform of British Immigration Policy*, London: JCWI. PUBUK0448

¹³⁸ ACTUK0040

¹³⁹ NFPUK0187

¹⁴⁰ NFPUK0188

¹⁴¹ PUBUK0551

¹⁴² NFPUK0194 ; ACTUK0039

¹⁴³ <http://www.odysseustrust.org/> (20.10.2003)

The Trust acts as a research and policy centre that provides support and expert advice to parliamentary initiatives supported by Lord Lester. At present, it is heavily involved in promoting the draft Equality Bill introduced by Lord Lester into the UK Parliament in 2002.¹⁴⁴ The Bill gives effect to the main recommendations of the Cambridge Centre for Public Law's Report *Equality: a New Framework, The Report of the Independent Review of the Enforcement of UK Anti-Discrimination Legislation*.¹⁴⁵ The Bill seeks to address the shortcomings of current equality legislation by setting out a single framework for eliminating discrimination and promoting equality between different people, regardless of their racial or ethnic origin, religion or belief, sex, marital or family status, sexual+ orientation, gender reassignment, age or disability.¹⁴⁶ It has been drafted in response to the Government's continuing failure to conduct a review of the present fragmented system of anti-discrimination law and to give effect to the recommendations made by the equality agencies and independent experts for the reform of the law. It tackles all grounds of unfair discrimination in all spheres of activity, including employment, education, the provision of goods, facilities and services, the disposal or management of premises and the management of private members' clubs. It extends the positive duty requirements of the Race Relations (Amendment) Act 2000 beyond race to sex and disability. The basic aim is to ensure the equal protection of the dignity and worth of every individual through a single coherent legal code. The Bill also establishes a single body, the Equality Commission for Great Britain, with a range of statutory powers to oversee the implementation of the Bill and to encourage and enforce observation of the Bill's requirements.

The Bill has now successfully completed its passage through the House of Lords and has moved to the House of Commons where it is being sponsored by Angela Eagle MP (former Minister for Race Relations) with the support of Vera Baird QC MP and Norman Lamb MP. The Bill has already received a warm welcome in the Commons with over 230 MPs signing an Early Day Motion in support. The Bill, and the work of the Trust in drafting and promoting the Bill, is a model of NGO good practice in providing expert parliamentary support and research skills.

6.2.7. The Traveller Law Reform Coalition¹⁴⁷

The Traveller Law Reform Coalition consists of all the national Traveller groups, and involves discussion and collaboration by Gypsies and Travellers and their organisations with the statutory and voluntary sectors (including representatives from the police, local authorities, education and health providers, churches, equality organisations, lawyers and planners).¹⁴⁸ The Coalition has organised numerous initiatives and conferences, and has also played a very prominent and active role in parliamentary lobbying. The Joseph Rowntree Charitable Trust has funded the technical drafting of a Traveller Law Reform

¹⁴⁴ See <http://www.odysseustrust.org/equality.html> (20.10.2003)

¹⁴⁵ Hepple, R., Coussey, M., Choudhury, T. (2000) Report of the Independent Review of the Enforcement of UK Anti-Discrimination Legislation, Equality: A New Framework, Oxford: Hart Publishing. PUBUK0441

¹⁴⁶ The full text of the Bill is available at:

<http://www.publications.parliament.uk/pa/ld200203/ldbills/056/2003056.htm> (27.08.2003); for explanatory notes see <http://www.odysseustrust.org/equality/EBExNotes.pdf> (27.08.2003)

¹⁴⁷ NFPUK0190

¹⁴⁸ See www.travellerslaw.org.uk for full information (26.08.2003)

Bill which was undertaken by the Traveller Law Research Unit at Cardiff Law School,¹⁴⁹ part of Cardiff University, while the Traveller community was widely consulted in the drafting process and the Coalition acted as sponsors and promoters of the Bill.¹⁵⁰ The Bill was launched on 31 January 2002, and a revised version of the Bill was adopted and read in the House of Commons by David Atkinson MP on 10 July, followed by a parliamentary debate in May 2003. The Bill calls for:

- Every local authority to provide or facilitate the provision of suitable accommodation (temporary and permanent) for Gypsies and Travellers via specific accommodation programmes.
- Protection against discrimination under an amended Race Relations Act for all Travellers that explicitly recognises discrimination against Travellers as racism.
- Enhanced Housing Corporation Funding and new housing association powers for caravan site construction.
- Security of tenure on Gypsy caravan sites
- Greater educational opportunities for Travellers
- A code of conduct (Health, Community and Safety Code) to assist in ensuring that possible disturbances to the settled community as a result of poorly managed unauthorised encampments are kept to a minimum.
- The creation of a new body known as the Gypsy and Traveller Accommodation Commission (GTAC).

The Coalition has had considerable success in pushing the law reform agenda, and is an example of a successful and effective NGO coalition that both links different groups and pursues an effective agenda of parliamentary lobbying.

6.2.8. Scottish Parliament Mainstreaming Initiative

The Scottish Parliament's Equal Opportunities Committee¹⁵¹ has recommended in a recent report that the Scottish Parliament adopts the following definition of mainstreaming:

“‘Mainstreaming’ equality is essentially concerned with the integration of equal opportunities principles, strategies and practices into the every day work of Government and other public bodies from the outset, involving every day policy actors in addition to equality specialists.”¹⁵²

The Committee recommended in addition that specified Equality Guidelines be adopted by all parliamentary committees in their work; training in mainstreaming be provided; that the Scottish Parliament as a whole develop a database of Equal Opportunities

¹⁴⁹ NFPUK0250

¹⁵⁰ The text of the Bill is available at:

<http://www.publications.parliament.uk/pa/cm200203/cmbills/102/2003102.htm> (26.08.2003).

¹⁵¹ UKNFP0248

¹⁵² Equal Opportunities Committee (2003) 1st Report, Mainstreaming Equality in the Work of Committees of the Scottish Parliament, SP Paper 817, Session 1, Edinburgh: Scottish Parliament. PUBUK0379

contacts and consultees; that the Scottish Executive includes an overarching equality statement in all Bills; and that the Committee continue to monitor and scrutinise the work of the Scottish executive in equality proofing the budget process. This mainstreaming is gradually being introduced across all the work of the Scottish Parliament, just as similar initiatives have been introduced in the Welsh Assembly.

7. SUMMARY AND CONCLUSIONS

Many recent legislative developments in the UK have been progressive, innovative and groundbreaking, as evidenced by the initial research findings into the impact of the public duty to promote racial equality in Great Britain and the Northern Ireland equality duty. They have been accompanied by the development of effective strategies, initiatives and good practice by NGOs and public authorities, which emphasise substantive equality and proactive responses to the challenges of racism and xenophobia. However, we consider that this approach has not been applied consistently in legislation, with anti-discrimination legislation remaining confusing in its design and applying differently to different strands, and the UK Government continues to respond to xenophobic pressures by eroding the rights and entitlements of asylum seekers. Legislative developments since 2000 in the UK therefore represent a mixed bag of positive and negative approaches. What is in our view lacking is a consistency of vision and approach.

The introduction in the Race Relations (Amendment) Act 2000 of the positive duty on public authorities to eliminate racial discrimination, to promote equality of opportunity and good race relations is a major step in moving effective integration strategies forward. By requiring public authorities to take proactive steps to eliminate racism, to consult with affected groups, and to monitor both their workforce and the impact of their policies, the positive duty represents a sophisticated response to the limitations of existing anti-discrimination law. As the recent research into the first year of the duty has shown, however, implementation of the duty needs to be orientated ultimately towards outcomes rather than process, and public authorities and the CRE as the enforcing body need to direct their attention to achieving this.

Significant gaps and inconsistencies remain in existing anti-discrimination law, which should be remedied. The Race and Employment Equality Regulations, while welcome as improving and extending existing legislation, will also however add to the confusing structure of race discrimination law. The lack of clarity and potentially very wide scope of the religious ethos exception in the Employment Equality Regulations is also worrying. The UK government should consider a comprehensive review of anti-discrimination law, both to eliminate inconsistencies and to enhance its effectiveness and clarity. Positive duties should play a central role. The implementation and enforcement of existing legislation also needs to be reinforced, and adequate measures should be taken to improve access to justice and the power of courts and tribunals to enforce anti-discrimination law. There is therefore a pressing need for the UK Government in reviewing its equality legislation to consider how the various protected grounds interact with each other, and how to eliminate these “artificial” distinctions. In considering whether a single equality commission is now necessary, the UK Government should also be considering the introduction of single equality legislation.

Violence triggered by racial and religious hatred remains a considerable problem. Research by both a Select Committee of the UK Parliament and a working group established by the Scottish Parliament have identified considerable gaps in both empirical and analytical data on this matter, and a pressing need exists for more co-ordinated initiatives to be undertaken by public authorities to combat this problem. Serious consideration needs also to be given to the introduction of incitement to hatred legislation covering all the groups subject to targeted hatred, preferably in line with the draft EU

Council Framework Decision on Racism and Xenophobia which should be given due priority by the EU institutions and member states.

Developing a comprehensive and coherent response to combating xenophobia and racism will also require a re-assessment of asylum, nationality and immigration policy. Permitting discriminatory distinctions and the denial of rights in nationality, immigration and asylum policy sends negative signals as to the ‘worth’ and ‘acceptability’ of particular ethnic groups, and serves to legitimatise discrimination against ethnic groups within the UK, especially those that have largely arrived through the asylum process. Research has identified a lack of data and clear analysis of the impact and consequences of much of UK and European asylum policy in general. This demonstrates the need for asylum policy to be founded on firmer data and a more reasoned approach that prioritises human rights.

The welcome emphasis on diversity contained in the recent Government White Paper on integration and immigration policy¹⁵³ should become a central feature of the future development of UK legislation, linked to an emphasis on substantive equality and community cohesion as guiding principles for integration. These principles with greater rigour in data collection and application should shape and frame the development and review of the UK’s anti-discrimination legislation, immigration policy and integration strategies. These should in turn be linked with good practice developed by public authorities and NGOs in particular.

¹⁵³ Home Office (2002c) *Secure Borders, Safe Haven: Integration With Diversity in Modern Britain*, Cm 5387, London: HMSO. PUBUK0335

ANNEX A – STATISTICAL TABLES

TABLE 1 - UK POPULATION SIZE AND COMPOSITION

	Total population		Minority ethnic population	
	Count	%	Count	%
White	54153898	92.1		n/a
Mixed	677117	1.2	14.6	
Asian or Asian British				
Indian	1053411	1.8	22.7	
Pakistani	747285	1.3	16.1	
Bangladeshi	283063	0.5	6.1	
Other Asian	247664	0.4	5.3	
Black or Black British				
Black Caribbean	565876	1.0	12.2	
Black African	485277	0.8	10.5	
Black Other	97585	0.2	2.1	
Chinese	247403	0.4	5.3	
Other	230615	0.4	5.0	
<i>All minority ethnic population</i>	<i>4635296</i>	<i>7.9</i>	<i>100</i>	
All population	58789194	100		n/a

Source: Office for National Statistics (2003) *Census 2001: Ethnicity*, London: HMSO. PUBUK0452

TABLE 2 - REGIONAL DISTRIBUTION OF THE UK MINORITY ETHNIC POPULATION, APRIL 2001



Source: Office for National Statistics (2003) Census 2001: Ethnicity, London: HMSO. PUBUK0452

ANNEX B – DATA COLLECTION COMMENTARY

The impact and complexities of recent legislative developments in the UK have been well analysed and the data is easily available. Gaps in the data exist however in the following areas:

The size and membership of the UK Traveller and Gypsy community, and patterns of discrimination to which they are subject.

The impact of public authority policies and of discrimination specifically upon the UK's Muslim community.

The treatment of refugees, and whether and to what extent "new" immigrants from a particular racial group face different problems from "old" and settled immigrants.

The exact number of migrants arriving and leaving from the UK (in consideration of the difficulties involved in recording clandestine migration).

Research will later be needed to identify the impact of the Employment Equality Regulations, in particular the scope and meaning of the religious ethos exceptions.

Additional research is needed on the future shape and composition of a single equality body.

Crucially, the conclusions of the Scottish Working Group and the Select Committee clearly demonstrate that there is a considerable lack of quantitative data on crimes motivated by religious hatred.

There is a lack of analysis of the potential impact of introducing incitement to hatred legislation extending to all targeted groups. This appears to constitute currently the single biggest gap in data collection.

The need for further research on a number of factors relating to the impact of immigration and asylum policies intended to deter asylum seekers, including the relationship between restrictive measures and the growth of people-smuggling, and the motivations and strategies of asylum seekers.

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GLOSSARY

The following definitions are devised for this report only, although they are based upon patterns of common usage in academic writing, legislation, government documents and statistics. For a useful discussion of terminology see the note on terminology in the Parekh Report.¹⁵⁴

“Asian and black”: The word ‘black’ in this report refers to people with ethnic origins in Africa or the Caribbean. The word ‘Asian’ refers to all Asian countries and regions; the term South Asian is used in preference to Asian if the reference is to Bangladesh, India and Pakistan.

“Asylum seeker” refers to those who apply to the UK for refugee status under the Geneva Convention and the residence rights that arise accordingly.

“Great Britain” is used in this report to refer to Great Britain, i.e. to England, Scotland and Wales, excluding Northern Ireland. Scotland and England/Wales have separate legal systems, and the Scotland Act and the Government of Wales Act have introduced additional constitutional differences of major importance.

“Discrimination” is used to refer to the unequal treatment of persons on the basis of the prohibited grounds of age, disability, religion, sexual orientation, gender and race, as recognised in the EU Equality Directives.

“Ethnic minorities” in common UK usage refers to distinct ethnic communities within the UK who are not White, and in particular Black and Asian communities.

“Integration” is used to refer to the social inclusion of ethnic minorities within UK society in terms of ensuring full and equal access to goods and services, employment, participation and education. Integration is not seen as involving a process of cultural assimilation but rather as creating a common shared UK citizenship that embraces multiple forms of cultural identity.

“Migrant” is used here to refer to individuals who have left their country of origin to live and work in the UK.

“Race discrimination” includes discrimination on the grounds of ethnic origin, national origin, and racial group. The term ‘race’ is of essential importance, since it alludes to racism. The words ‘race’ and ‘racial’ are not used in the report in ways that might imply the view that the human species consists of separate races.

“Race relations legislation” refers to the UK legislation and the body of case law derived from it (the phrase derives from the title of the major piece of legislation in Great Britain, the Race Relations Act 1976).

¹⁵⁴ “Note on terminology”, in: Commission on the Future of Multi-Ethnic Britain (2000) *The Future of Multi-Ethnic Britain (The Parekh Report)*, London: RunnymedeTrust, pp. xxiii-xxiv. PUBUK0053

“Refugees” are those that have been granted refugee status under the Geneva Convention.

“UK” is used here to refer to the entire United Kingdom, including Northern Ireland:

NB: UK public authorities see no difficulty in consulting or developing policy initiatives specifically with for example the “UK Muslim community” or the “UK Bangladeshi community”. Separate ‘English’, ‘Welsh’, ‘Scottish’ and ‘Irish’ identities have historically been recognised within the UK, and the ‘new’ ethnic minorities are similarly seen as retaining separate if often overlapping cultural identities in the context of a shared UK citizenship.