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RACE EQUALITY DIGEST

Occasional briefing paper produced by Race Equality West Midlands for race equality councils and partnerships on issues of race relations.

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THE DRAFT STATUTORY CODE OF PRACTICE ON THE DUTY TO PROMOTE RACE EQUALITY

The Commission for Racial Equality's Brown Folder: content and consultation

The Race Relations (Amendment) Act 2000 requires public authorities to promote race equality in relation to their policy service delivery and employment practices. The public authorities (listed in a schedule to the Act) are expected to fulfil both general and specific duties. The general duty is to eliminate unlawful discrimination and to promote equality of opportunity and good relations between people of different racial groups. Specific duties are also placed on many authorities to make special arrangements to help them meet their general duty.

The CRE has produced a draft code of practice which, when approved by Parliament, will have statutory force. This means that it could be accepted as evidence in legal action and taken into account in courts and tribunals, although on its own, it does not impose legal obligations.

Accompanying the code are four non-statutory guides to the code. On the 3 December 2001, the documents were issued simultaneously in a brown folder, together with a consultation exercise to be returned by 25 February 2002.

The five consultation draft documents contained in the brown folder, are listed below:

1. ***Statutory Code of Practice on the Duty to Promote Race Equality***
(brown cover, A4, 76 pages)
2. ***Ethnic monitoring. A Guide for Public Authorities***
(olive green cover, A4, 73 pages)

3. ***A Guide for Public Authorities*** (on the Statutory Code of Practice on the Duty to Promote Race Equality) (purple cover, A4, 56 pages)
4. ***A Guide for Schools*** (on the statutory Code of Practice on the Duty to Promote Race Equality) (sea green cover, A4, 26 pages)
5. **A Guide for Institutions of Further and Higher Education** (on the Statutory Code of Practice on the Duty to Promote Race Equality) (sea-green cover, A4, 26 pages)

In total, there are 255 pages, making the consultation exercise, in itself, a laborious and somewhat repetitive read. Should the documents be approved in their present form, the persons making use of them to grasp the scope of their organisation's statutory duties will be expected to familiarise themselves with the content of between 173 and 205 pages.

On the consideration alone, Race Equality West Midlands thinks there is a strong case for greater precision and concision in the presentation of what, after all, are documents that must be seen as crucial to the future success of both race relations and the public services. In addition, a distinction should be maintained throughout the texts between statutory requirements and recommended practices.

This edition of the Race Equality Digest (RED) consists of a summary of the draft *Statutory Code*, the *Ethnic Minority Guide*, and the *Guide for Public Authorities*, in the knowledge that a full reading of the Brown Pack is a taxing and time-consuming exercise. It is noticeable that no provision has been made on the consultation questionnaire for a response by voluntary bodies concerned with the promotion of racial equality. The consultation is directed only at public authorities.

Title

1.1 ***Statutory Code of Practice on the Duty to Promote Race Equality***

Context

- 1.2 This is the draft of the code of practice, produced by the CRE, that will acquire statutory force when laid before and appointed by parliament. It is intended to assist public authorities to fulfil the duties acquired by them under the Race Relations (Amendment) Act 2000. Gurbux Singh, Chair of the CRE, in his foreword to the code, envisages that the new measures will help public authorities remove discrimination and the possibility of discrimination and eliminate the kind of institutionalised racism identified in the Stephen Lawrence Inquiry Report.

Content

- 1.3 The code of practice is aimed at giving public authorities *practical guidance* on the steps they need to take to eliminate racial discrimination and promote equal opportunities and good race relations. It is presented in seven chapters with six appendices.
- 1.4 Chapter one is entitled *Promoting race equality, introduction*. The requirement of the Race Relations Act is for public authorities to pay due regard in everything they do, to the need to promote race equality, is explained and a distinction drawn between duties in relation to policy and service delivery and duties in employment. Some of the benefits to the organisation of performing duties are listed as bullet points. The chapter concludes by explaining the purpose and nature of the code of practice and how it might be used.
- 1.5 Chapter two spells out the general and specific duty to promote race equality within *the context of the legal framework*, explaining the extent of legal liability in relation both to partnerships and to private or voluntary organisations carrying out a public authority's functions.

Relevant functions

- 1.6 Chapter three focuses on public authorities' *general duty* to promote race equality, pointing out that it is obligatory (obligation), it must be undertaken for all relevant functions (relevance), weight should be given to it in proportion to relevance (proportionality), and that the three elements of the duty (anti-discrimination, equal opportunity, good relations) are all necessary to meet the whole duty (complementarily).
- 1.7 Various practical steps need to be taken to meet the general duty. Race equality will be more relevant to the performance of some public functions (eg, raising educational standards) than to others (eg, highway maintenance). Public authorities need to identify which functions are relevant to the duty, set priorities based on the relevance to race equality of the functions, assess how the relevant functions affect race equality and consider how policies might be

charged, where necessary, to meet the general duty. To assess the effect of a policy of performance of a function, a checklist of questions is provided.

The Race Equality Scheme in relation to policy and service delivery

1.8 Chapter four deals with the *specific duties* of policy and service delivery, by explaining the requirement placed on public authorities under the Race Relations Act (statutory Duties) Order 2001 to produce a *Race Equality Scheme* (RES). As part of their RES, public authorities must set out:

- the functions, policies and proposals that are relevant to the performance of their general duty to promote race equality,
- their arrangements for assessing and consulting on the likely impact of their proposed policies,
- their arrangements for monitoring their policies for any adverse impact on race equality,
- their arrangements for publishing the results of any assessments, consultations and monitoring they do to identify any adverse impact on race equality,
- their arrangements for making sure that the public have access to information and services they provide,
- their arrangements for training their staff in connection with general and s
- specific duties.

Employment

1.9 Chapter five deals with specific duties in relation to employment, which apply to most public authorities, although education institutions have their own separate employment responsibilities. Public authorities must monitor by racial group, the number of staff in post and applications for employment training and promotion. Where more than 150 full-time staff are employed, training, performance assessment procedures, cases of grievance, discipline and of staff leaving employment must also be monitored. Monitoring outcomes should be published on an annual basis.

1.10 The chapter stresses the importance of ethnic monitoring providing a clear picture of what is happening in an authority's employment cycle, that is from applying for a job to leaving it. There are paragraphs on the use of the recommended ethnic categories and on *positive action* (defined in the glossary).

Educational institutions

1.11 Chapter six relates to the specific duties of educational institutions which, as well as following specific advice, must also meet the general duty. The benefits of doing so are set out against a number of bullet points. Schools are expected to prepare a written policy statements and to put in place arrangements for implementing their duties before 31 May 2002. The duties include assessing and monitoring the impact of their policies on pupils, staff and parents of different racial groups. Further and high education institutions are expected to do the same for students and staff and, additionally, to publish their written statement., and monitor results on an annual basis.

Role of the Commission for Racial Equality

- 1.12 Chapter seven describes the statutory duties of the CRE in relation to the promotion and enforcement of racial equality, and in particular its new power under the amended Race Relations Act to enforce the general and specific duties (section 21D) to promote race equality. If the CRE is satisfied that a public authority has failed to meet any of its specific duties, the CRE can serve a compliance notice on the authority requiring it to meet those duties and to tell the CRE within 28 days what it has done, or is doing about the matter.
- 1.13 The CRE will work with public authorities to help them to meet their duties (by giving practical advice, working with the main parts of the public sector and monitoring practice) and to develop good practice (by sharing and promoting it, giving advice, publishing materials and supporting training).

Which public authorities?

- 1.14 Appendices to the report provide a full list of public authorities that are (i) bound by the general duty to promote race equality, (ii) required to publish a race equality scheme, (iii) bound by the employment duty, and (iv) bound by the duties for educational institutions. Appendix five lists Scottish public authorities, and appendix six the other statutory codes and guidance published by the CRE.

Comment

- 1.15 The draft statutory code of practice is aimed at giving public authorities practical guidance on the steps they need to take to eliminate discrimination, promote equal opportunities and good relations. Together with the CRE, racial equality council officers are likely to be involved in helping public authorities undertake their general and specific duties. The code should be judged from the point of view of the contribution it will make to public authority promotion of racial equality.
- 1.16 The main practical requirements that stand out from the mass of the code's text are those for drawing up a Race Equality Scheme (RES) for policy and service delivery (and the similar Race Equality Policy (REP) for educational institutions) and the Specific Employment Duties (SED) for specified public authorities to undertake ethnic monitoring. The text of the draft code in relation to all three of these requirements is based on and consists of an elaboration of citations of the Race Relations Act (Statutory Duties) Order 2001.
- 1.17 The content of the Race Relations Act (Statutory Duties) Order 2001 seems fairly transparent and does not require much clarification, but neither does the draft code provide a great deal. The impression is given that the code has been drawn up mainly by lawyers rather than by public authority officers, with the main aim of explaining the law to lay people rather than of developing a practical tool for promoting race equality in service delivery or employment.
- 1.18 While a Race Equality Scheme, a Race Equality Policy (in relation to educational institutions), the specific employment duty and the need for ethnic

monitoring of employment are all explained, the material of big importance to practitioners, is embedded in a long and somewhat repetitive text and is treated very generally and abstractly. This last criticism, of course, may be difficult to remedy in the context of the diversity and specificity of public authorities as a whole. The code of practice may explain and elaborate the legal framework, but it is unlikely to be of great use in itself as a guide to practitioners. This, it has to be assumed, is the purpose of the accompanying non-statutory guide books.

- 1.19 Yet the draft code contains other material that can scarcely qualify as 'statutory'. It describes the benefits to Authorities of performing the duties, and provides suggestions and lists of questions for them to ask themselves. Occasionally, examples are given (eg p 23). It is worth considering whether expressions such as, 'may consider', 'may find useful', 'could ask themselves', 'will want to know' and 'could consult', have a place in a statutory code, and if the view is taken that they do, then surely more user-friendly and persuasive material, and examples might be added to help authorities with their RES, REP and SED.
- 1.20 As a more specific criticism, it would be helpful if a clearer distinction could be made in the text between statutory requirements, permissive matters, recommendations in relation to good practice, persuasive and promotional material (see 'benefits of the duty', p 7) and factual information. At present, these are mixed in a most confusing manner.
- 1.21 The code could be greatly strengthened by focusing in turn on the Race Equality Scheme, Policy and Specific Employment Duty, and providing a practical framework or series of steps to assist authorities in putting something into place by 31 May 2002. Even at this late stage, these could be added as appendices. It has been pointed out, however, that this material is already contained in the (purple) *Guide for Public Authorities*, which provides various examples and spreadsheets, and also adopts a question-and-answer style.

Title

2.1 ***Ethnic Monitoring. A Guide for Public Authorities***

Context

- 2.2 This is one of four guides, issued with the draft *Code of Practice on the Duty to Promote Race Equality*, and aimed at assisting public authorities in fulfilling their general and specific duties to promote race equality, by providing them with advice on ethnic monitoring, which is required of them under the Race Relations Act and associated orders.

Content

- 2.3 The guide has nine chapters dealing with the general principles, practice and application of ethnic monitoring. Chapter one explains what ethnic monitoring is, what it is for, and why it is essential to the performance of public authorities' general and specific duties to promote race equality.
- 2.4 Chapter two sets out the general principles on which all ethnic monitoring is based. These are data protection, monitoring as more than data collection, monitoring as a constant cyclical process and successful monitoring, requiring commitment from the top of the organisation.
- 2.5 Chapter three deals with the need for careful planning and consultation, prior to the introduction of ethnic monitoring. Chapter four is about data collection. It explains the categories that should be used, the possibility of collecting other data at the same time, the importance of obtaining a complete data set, the people who should supply the data, and the need to link data to the individual.
- 2.6 Chapter five provides advice on data analysis, on how to deal with 'unknown' and 'other' ethnic origin, on the need to include ethnic data as part of the main data base and on how to combine or refine data to bring out their significance. Chapter six focuses on interpreting data by benchmarking it and attempting to decide on whether the differences between ethnic groups are significant.
- 2.7 Chapter seven goes into greater details on ethnic monitoring in employment, relating the monitoring exercise closely to the specific duty on employment and providing examples. Chapter eight deals with ethnic monitoring in service delivery, again relating it to the specific duties on policy and service delivery, and providing examples for schools, social services (foster care), primary care, environmental health, prisons, police and schools.
- 2.8 Chapter nine raises the question of what action should be taken when monitoring throws up inequalities. It deals in turn with removing unfair barriers, examining decision making, outreach and positive action, and setting targets. Two types of target are distinguished: outcome targets and parity targets.
- 2.9 Appendices deal with data protection, employment processes, service delivery, the Race Relations Act and perhaps, most importantly of all, from a

practitioner's point of view, the recommended ethnic categories for monitoring purposes (which are different for Scotland).

Comment

- 2.10 Of the guidance material provided, that on ethnic monitoring is probably the most systematically presented and its justification for monitoring is particularly concise and well written.
- 2.11 It is, nevertheless, open to criticism on a number of fronts. As with the draft code of practice, the guide is not sufficiently clear on the distinction between statutory requirement and recommended good practice, and is dangerous in presenting what are still controversial and debatable practices as taken-for-granted expectations.
- 2.12 For example, despite the fact that the CRE has never published a standard recommended recruitment and selection procedure, there is an assumption that the 'best way to get information about the applicant's ethnic background is to use a tear-off slip that is part of the application form'. This f???????? on the important debate as to whether shortlisting panels are to be trusted with the knowledge of applicants' ethnicity (which in all likelihood they can discern from applicants' names and other details anyway), and whether by tearing off 'ethnicity' at this stage, you remove the panel's ability to assume responsibility for the promotion of race equality. The alternative argument for making monitoring exercises an integral part of the application process is ruled out by omission. Is this CRE policy and how was it made?
- 2.13 The advice on the need for complete data and on the importance of separating 'unknown' from 'other' categories is sound, but needs to be put in the context of the authority's power relationship with those being monitored. It may be possible to achieve 100 per cent information on ethnic monitoring on employees, particularly if you build in the possibility of 'other classification', but different considerations apply in relation to the delivery of services and the willingness of service users, especially casual ones, to volunteer their ethnicity.
- 2.14 Again, the intense controversy over other-classification and the real dangers associated with it is skated over. Experience of babies of mixed race born to white mothers being automatically ethnically classified at birth as 'Afro-Caribbean' should serve to make us very wary of this practice. While other-classification is described as a last resort in the text, there are insufficient caveats about its use.
- 2.15 While public authorities now have the statutory duty to monitor the ethnicity of their employees, employees are not obliged in law to provide that information. There have been instances of organised resistance to it, and the high rate of 'unknown' reported by some authorities may not merely be instances of poor preparation, administration and follow-up, but of active opposition. Probably, for good reason, the guide does not enter this territory, but some authorities must already have been there and would have welcomed more realistic advice on how to deal with the problem (which the guide recognises as serious).

- 2.16 If the ethnic monitoring guide is intended to be practised, then there is a major gap between chapter four on data collection and chapter five on analysis; the data has to be processed. The guide's usefulness would be greatly improved by the inclusion of advice on the computer software available to human resource departments to enable them to undertake the sophisticated large-scale monitoring envisaged. Advice of any kind might have formed a useful additional appendix.
- 2.17 Associated issues are the likewise-neglected business of resourcing and the costs of labour force monitoring. Apart from software and hardware, skilled staff will be needed to interpret the data and act on reports.

Title

- 3.1 ***A Guide for Public Authorities*** (on the Statutory Code of Practice on the Duty to Promote Race Equality)

Context

- 3.2 This is one of the four guides issued with the draft ***Code of Practice on the Duty to Promote Race Equality*** and aimed at assisting public authorities in fulfilling their general and specific duties to promote race equality. It expands on the duties involved in producing and publishing a Race Equality Scheme (RES) and specific duties in relation to employment.

Content

- 3.3 The guide has four chapters, the first, the introduction, describing the purpose and nature of the guide.
- 3.4 The second explains the nature of the general duty in the form of general instructions:
- identify the functions relevant to race equality.
 - prioritise those functions.
 - assess all relevant functions for their impact on race equality.
 - consider and make changes to policy, if necessary.
 - carry out an audit of all employees (and other related tasks).
 - revise any policy or practice pulling employees or job applicants from some racial groups at a disadvantage.
- 3.5 Meeting the general duty is the ultimate objective: the specific duties are only a means for achieving it.
- 3.6 The third chapter begins by citing the RRA (Statutory Duties) Order 2001 relating to the production and publication of a Race Equality Scheme, going on to explain what the order means and more practically what a scheme of this kind should include.
- 3.7 The list on page 11 of the Guide is particularly useful:
- race equality values principles and standards
 - race equality strategic aims
 - how the general duty will be met
 - how the specific duties will be met
 - the action plan and timetable
 - equality targets
 - race equality performance indicators
 - how complaints are to be dealt with
 - how to consult staff, public, ethnic minority communities
 - how staff will be told about plans and activities
 - how the public will be told about race equality progress

- 3.8 The chapter also includes a definition of ‘functions’ (policies) and ‘relevance’ and a means of deciding on relevance using an assessment grid. It also explains the need for monitoring with a diagram on page 24 of the monitoring cycle. Apart from providing more information on monitoring, the chapter also contains material on assessing, consulting, publishing results, access to information and services, and training staff.
- 3.9 Chapter 4 is devoted to the specific duty on employment and begins by citing the RRA (Statutory Duties) Order 2001 relating to the ethnic monitoring of applicants and staff. The reasons for performing this duty and the method for doing it explained. To meet the duty:
- information about ethnic background needs to be collected and monitored.
 - the information needs to be analysed for differences between racial groups
 - action has to be taken to remove barriers and promote equality of opportunity
 - the results of monitoring must be published once a year
- 3.10 Page 52 has a diagram summarising the performance management of race equality. The Appendix explains the provision of the Race Relations Act, 1976. Interspersed throughout the text are 39 examples of action taken to promote race equality in public authority services and employment.

Comment

- 3.11 *The Guide for Public Authorities* is a concise account of what public authorities must put into place to comply with race relations legislation. It provides public authority practitioners with a simple and readily accessible account of what they are expected to deliver by 31 May 2002, namely a Race Equality Scheme (RES) and the Specific Employment Duties (SED), while senior managers might have to read the *Code of Practice* and the *Ethnic Monitoring* guide, race equality officers might well advise most public authority staff to focus on the Guide for Public Authorities, which is by far the most practitioner-oriented of the three booklets examined here.
- 3.11 It is not, however, without its weaknesses. There is, as in the *Ethnic Monitoring* guide, a presumption that information on the ethnicity of applicants was to be separated from their application forms, and an accompanying failure throughout the document to distinguish between statutory requirements and recommended practice.
- 3.12 The instruction on how to compile a Race Equality Scheme remains ominously general and abstract and there is little attempt to draw together or relate the specific duties in functions and policies in relation to service delivery and employment monitoring. The two specific duties need to complement one another to create the necessary synergies to deliver race equality.