

EC ARTICLE 13 RACE DIRECTIVE REGULATORY IMPACT ASSESSMENT

1. Purpose and intended effect

1.1 The EC Article 13 Race Directive harmonises the level of protection from race discrimination across the European Union. It guarantees a minimum standard of legal protection for individuals from discrimination or harassment on the grounds of racial or ethnic origins and ensures a right of redress for all individuals who have been the victims of such discrimination. It covers the fields of employment and training, social protection and social security, social advantage, education, access to goods and services and membership of a workers' or employers' organisation.

1.2 The UK already has extensive legislation prohibiting discrimination on racial grounds; therefore compliance in the UK is more about fine-tuning the existing legislation rather than introducing new provisions.

2. Identifying the options

2.1 There are 2 options. These are:

(a) do nothing

(b) amend the Race Relations Act 1976 (RRA) to incorporate the provisions of the Race Directive and remove any exceptions that are contrary to the principle of equal treatment.

2.2 Option (a) would go against the Government's obligation to implement EU Directives and its commitment to race equality and would lay it open to the prospect of claims for infraction damages. This paper sets out the estimated cost implications related to Option (b). The UK will be taking a light-touch approach to the implementation of the Directive. Amendment of the RRA will be in relation to discrimination on grounds of race or ethnic or national origins only. Discrimination on grounds of colour and nationality will not be covered by the revised legislation. This is because the Directive is limited in its scope in comparison with the grounds of discrimination set out in the RRA.

3. General cost assumptions

3.1 The cost of implementing the Race Directive has to be considered in conjunction with the cost of implementing the EC Article 13 Employment Directive. There are a number of cross cutting issues that affect both, and common sources and assumptions have been used. In order to identify the costs attributable to each of the equality areas, separate Regulatory Impact Assessments have been prepared but it would be advisable to take them both into account when considering the implications. The costs set out in this paper

relate solely to the implementation of the Race Directive. A competition assessment has been conducted on the implications of the Race Directive and a negative competitive impact is unlikely to occur as a result of its implementation.

3.2 General compliance costs to employers linked to the implementation of the Race Directive should be minimal. Many employers will already have in place policies and systems that are in line with the Directive's requirements. Large organisations are more likely to have formal employment policies. It is assumed that these policies will cover race and will not have to be amended greatly in order to achieve compliance.

3.3 The impact on small businesses is assumed to be minimal, as the general principles of the RRA apply to both large and small businesses. Discussions were held with representatives of small businesses who, in general, agreed with this assertion.

3.4 The Race Directive will also cover non-employment areas including access to goods and services. There may be some impact in terms of the revised definition of indirect discrimination (see section 7) and the shift in the burden of proof (see section 9). The compliance costs related to access to goods and services are assumed to be negligible, as service providers and retailers have been operating under the provisions of the Race Relations Act 1976 for over 25 years

3.5 The Directive covers discrimination on the grounds of racial or ethnic origins so everyone is affected, regardless of his or her ethnic background. This means that all employers and service providers will have to take account of the provisions of the Directive. It will not apply solely to organisations that currently employ minority ethnic staff.

3.6 The Directive also covers areas that are currently exempt from the RRA such as partnerships of fewer than 6 individuals, charities as employers, and the disposal and management of small dwellings. Estimated costs in these areas are set out in this paper.

4. Compliance costs for employers

4.1 The majority of race discrimination cases are employment related and are dealt with by employment tribunals. They make up only 3.6 % of claims to the Employment Tribunals Service. 3,429 cases in which race was the main element were registered in the period 2000/01.¹ There were 14 non-employment cases brought with the assistance of the CRE during 2000.²

4.2 Employees of minority ethnic origin currently bring the majority of cases of race discrimination. Only 9% of judgements made at Employment Tribunal

¹ Employment Tribunal Service Annual Report 2000/2001.

² CRE Annual Report 2000. Some non-employment cases would have been brought without the help of the CRE but the figures are not available.

during the period 2000/01 related to claimants who specified their ethnic origin as White.³ This category includes Irish and Scottish. 4.9% of employees in the UK are of minority ethnic origin.⁴

4.3 Costs to employers would include the defence of a case and any changes that would need to be made to practices as a result of a ruling. The average cost to an employer of defending a case at tribunal is £2,000. The average cost to the Employment Tribunal Service is £540.⁵

4.4 A key stage in the implementation of the Directive will be to communicate to employers the nature and extent of the changes being introduced, and employers will need to consider, and possibly seek advice on, any changes required by their organisation. Business already operates in line with the principles of the Race Relations Act 1976 and it is proposed that changes will be made to the RRA in order to implement the Directive. The impact on employers is expected to be minimal, as the minor changes involved should not lead to a significant increase in costs.

4.5 All businesses will have to spend some time considering the new guidance. It is envisaged that each employer will have access to guidance that will include information on the changes to UK law arising from the Article 13 regulations. It is estimated that it will take 15 minutes to read the race element at a cost of **£6.9million**⁶.

4.6 Large organisations are likely to have formal employment policies.⁷ Most of these already include chapters on race so minimal amendment would be required. Even small employers or employers that don't employ minority ethnic staff are likely to be aware of the fact that race discrimination is not permitted in the workplace. The Directive makes minor changes to the current provisions of the RRA in this regard so organisations will not have to spend too much time familiarising themselves with the new provisions. There is estimated to be a small additional cost to employers.

5. Costs to charities and voluntary organisations

5.1 Charities and voluntary organisations will bear new costs in terms of employment services. These are set out at section 11.

5.2 As well as the new costs, charities will, in line with other businesses, bear implementation costs. The costs and benefits set out at section 4 include the cost to charities as businesses. More details are set out at section 11.

³ CRE Litigation Department

⁴ LFS, Spring 2001

⁵ Employment Tribunal Service management figures. Survey of Employment Tribunal Applicants 1998.

⁶ 1,140, 000 employers. Based on a manager costing £23 per hour, NES 2001.

⁷ A 1998 WERS survey showed that 37% of firms with 50 or more employees had equal opportunities policies that covered all of the Article 13 equality areas.

6. Costs to others

6.1 The proposal to remove certain exemptions from the RRA means that some areas will be newly covered. There will be an impact on landlords and individuals who work in private households who will have to familiarise themselves with the changes to legislation.

7. Indirect discrimination

7.1 The definition of indirect discrimination in the Directive is slightly different from the definition in the RRA and so amendment to the Act is necessary. The main difference relates to the sort of rules and practices that can be challenged as indirectly discriminatory. The Directive allows informal practices that are indirectly discriminatory to be challenged, in addition to those requirements that are formally and explicitly stated.

7.2 The definition in the Directive differs in a second respect from the one in current legislation. Domestic legislation requires a complainant to show that a considerably smaller proportion of a particular racial group is able to comply. Demonstrating that usually involves a reliance on the use of statistical evidence. In some EU countries, however, the collection of data on ethnicity is not permitted. The Directive requires Member States to set rules of evidence that makes it possible to demonstrate indirect discrimination without the need to produce statistical evidence.

7.3 As data on ethnicity is available in the UK, the government believes that the majority of cases will continue to be determined using statistical evidence. However, it is inevitable that some cases will be brought, and defended, by using other methods that do not rely on the use of statistical evidence but would represent an equivalent test (e.g. expert witnesses). In other respects the current definition of indirect discrimination in our legislation is consistent with the one in the Directive.

Costs

7.4 Out of 3,429 cases registered during 2001, only 5 related to indirect discrimination⁸. Whilst the proposed change to the definition of indirect discrimination may lead to an increase in the amount of cases brought, there is no reason to assume the number will grow significantly.

⁸ CRE Litigation Department

7.5 Businesses may incur one-off costs of testing practices and amending existing procedures; though not all of these "test cases" will have to be put before an Employment Tribunal.

Benefits

7.6 The change would be of benefit to individuals as they would be able to bring a case on grounds not currently open to them.

8. Claims brought in respect of acts of discrimination occurring after the relationship between complainant and respondent has ended

8.1 The Directive allows claims to be brought when an act of discrimination that has occurred after a relationship (e.g. employment) has ended. The RRA does not currently allow for this and will have to be amended. For the purpose of this assessment, we have considered current circumstances that are broadly analogous with this new provision. Some cases are currently brought within time-scales after the relationship has ended. If an incident happened during employment, little impact is envisaged as 257 of the tribunal judgements made during the year 1999 related to cases brought post-dismissal⁹. These cases involved acts of discrimination that occurred whilst employed, or the act of dismissal was itself regarded to be discriminatory. Proposed changes to the RRA may apply to acts that occurred after the relationship had ended. There is no reason to believe that a large number of cases will be brought as a result of the change.

Costs

8.2 On the basis of the number of cases currently brought post-dismissal, if 5% of this figure were to be brought in relation to the new provision, it would lead to an additional cost to employers of **£30,000**.¹⁰ The cost to Government would be **£7,000**¹¹.

Benefits

8.3 Individuals and businesses will benefit from changes that will ensure that potential employees, tenants etc are not prevented from taking up goods, services or employment on the basis of a discriminatory act that occurred once a relationship had ended, such as the refusal to provide a reference.

⁹ CRE Litigation Department

¹⁰ Average cost to employer of defending a case is £2000: 257 cases x 0.05x £2,000 = £25,700.

¹¹ Average cost to the Employment Tribunal Service is £540 per case: 257x 0.05 x £540 = £6,939.

9. Burden of Proof

9.1 The Directive requires Member States to have provisions in place to ensure that, where a complainant establishes before a court or tribunal facts from which it may be presumed that discrimination has occurred, it will be for the respondent to prove that discrimination has not occurred. Compliance with this requirement will involve amending the RRA.

9.2 Employers are likely to hold records on staff and these ought to show why a particular act was carried out and demonstrate why the act was not discriminatory (if indeed, it was not). Costs to an employer currently operating in this way should be minimal, although there will be compliance costs for employers who will need to introduce practices that will ensure their compliance.

9.3 Organisations may need to adjust their practices in order to demonstrate that their systems for the recruitment and treatment of staff are fair and transparent. They may wish to review their practices in light of the shift in the burden of proof. It is difficult to determine how many organisations are in the position where changes will have to be made. However, given the fact that business has been adhering to the basic principles of race equality for over 25 years, it is assumed that the majority of organisations already operate in such a way as to be able to present evidence of non-discriminatory or justifiably discriminatory practices.

10. Partnerships

10.1 Partnerships of fewer than 6 people are currently exempt from the provisions of the RRA in relation to the employment of partners or potential partners. Such partnerships will be newly covered by the RRA. This will impact on all activities relating to partners, including their appointment and terms and conditions. Extending coverage will mean that all partnerships not currently covered by the provisions of the RRA (approximately 90% of existing partnerships) will be affected.¹² Partnerships regardless of size will continue to be subject to the provisions of the RRA in the treatment of their employees. The general cost implications for partnerships as employers is a subset of the compliance costs to business set out at section 4.

Costs

10.2 The cost to newly covered partnerships will apply in the treatment of partners, as partnerships of any size would still be required to abide by the general employment provisions of the RRA in relation to all other staff to the organisation. It is difficult to assess the impact the removal of this exemption will have. If 0.29% of newly covered partnerships have to defend a case at

¹² Figures from the Small Business Service show that of 670,905 partnerships, approximately 599,191 have 5 or fewer employees. We have deemed these to be small partnerships that would currently fall outside the provisions of the Race Relations Act 1976.

employment tribunal, this will cost **£3.5million**.¹³ The cost to Government would be **£0.9 million**¹⁴.

10.3 There will be compliance costs, as the procedures for recruiting partners may have to change with more rigorous methods being introduced. The cost is estimated to be **£3.5 million**.¹⁵

Benefits

10.4 The principles of fair employment procedures should already be apparent and it is assumed that a number of partnerships of fewer than 6 people already take equality issues into account when appointing partners, as many will already do so when employing staff.

11. Charities as employers

11.1 There are at least 5,500¹⁶ voluntary organisations, which are either minority ethnic community led or focus on minority ethnic communities. It is proposed that the exemption of charities from the employment provisions of the RRA be removed. In effect, this will prevent charities that target support to particular disadvantaged racial groups from being able to recruit staff from a particular racial group, unless they can demonstrate that there is a genuine occupational requirements for the staff to be of that racial group.

11.2 In 2001, 311¹⁷ enquiries were made to the CRE about advertisements that were placed by employers relying on the genuine occupational requirements exemption from the RRA and charities relying on the charity exemption. The majority of the advertisements that were investigated were deemed to be lawful, and the complaints were, on the whole, due to a lack of awareness. There will be an impact on the number of voluntary organisations that have to defend cases of "discrimination" in employment when they employ someone on the basis of a genuine occupational requirement.

11.3 Additionally, approximately 6% of businesses are charities. Charities as employers of staff (regardless of whether the charity's specific remit is to target minority ethnic communities) will have to comply with the wider provisions of the Directive.

¹³ Figure of 0.29% based upon the percentage of employers who had to defend cases of race discrimination in 2000. 0.29% of 599,191 is 1738 x £2000 = £3,436,000

¹⁴ Average cost to the Employment Tribunal Service is £540 per case: 1738 x £540 = £938,520.

¹⁵ General compliance cost is estimated to be £6.9 million based on 1,140,000 employers. Approximately 50% of these are partnerships of 5 or fewer partners (599, 191). 50% of £6,900,000 is £3,450,000. Partnerships without staff have been included in these figures as partners have been regarded as employees for the purposes of this calculation. This is because they have to be recruited and afforded terms and conditions.

¹⁶ Joseph Rowntree Foundation 2001

¹⁷ CRE Litigation Department

Costs

11.4 Based on the current number of queries made in relation to discriminatory advertisements, the average total cost to charities of defending cases of discriminatory employment would be **£0.2 million**¹⁸ per year. The cost to Government would be **£42,000**¹⁹.

11.5 The compliance costs to charities as employers generally is estimated to be **£414, 000**.²⁰

Benefits

11.6 Charities must be allowed to continue their crucial work and it is envisaged that whilst no extra benefit will be gained from the changes, individuals will continue to be assisted by charities in line with existing support.

12. Disposal and management of small dwellings

12.1 Landlords who dispose of and manage small dwellings are currently exempt from the provisions of the RRA. The RRA will be amended to remove this exemption on the grounds of race or ethnic or national origins. We estimate that an additional 139,000²¹ households will come within the scope of the RRA.

Costs

12.2 There may be some costs to landlords if they have to defend claims of discrimination, although this cost is estimated to be negligible as very few queries in relation to this type of letting are received by the CRE each year.

Benefits

12.3 Protection from discrimination will be extended to circumstances not previously covered by the RRA.

¹⁸ The cost to defend a case is £2000. 311 enquiries received by the CRE in relation to discriminatory advertisements. Not all complaints would go through the CRE and not all CRE enquiries would lead to cases. The figure shown relates to a quarter of queries leading to court cases. It is assumed that the majority of complaints of this nature would go to the CRE and that as a result of the Race Directive, more cases would come before a court for clarification.

¹⁹ Average cost to the Employment Tribunal Service is £540 per case: $311 \times 0.25 \times £540 = £41,985$.

²⁰ General compliance cost is estimated to be £6.9 million based on 1,140,000 employers. Approximately 6% of businesses are charities and we have assumed that they all employ staff.

²¹ Survey of English Housing 1999-2000

13. Summary of costs

EC ARTICLE 13 RACE DIRECTIVE COSTS	ONE-OFF COSTS	ANNUAL COSTS
Defending cases of claims brought once a relationship has ended		£0.03million
Defending cases brought against partnerships		£3.5million
Defending cases brought against charities		£0.2million
Amending Equal Opportunities policies	Small additional cost	
General costs for businesses	£3.0million	
General costs to partnerships	£3.5million	
General costs to charities	£0.4million	
Cost to Government		£1million
SUB TOTAL	£6.9million	£4.7million
TOTAL	£11.6million	