

# REGULATORY IMPACT ASSESSMENT (RIA) OF THE STATUTORY CODE OF PRACTICE ON RACIAL EQUALITY IN EMPLOYMENT

## 1. Purpose and intended effect of measure

### Background

The CRE is empowered to issue a code of practice in the promotion of equality of opportunity between different racial groups in employment under section 47 of the Race Relations Act 1976 (RRA). The current code of practice came into force in 1984. The RRA also allows the CRE to periodically update or revise the code to reflect changes to legislation or practice. The Prime Ministers Strategy Unit report: *Ethnic Minorities and the Labour Market*, published in 2003, recommended that the CRE update the current code of practice.

### The aims of the code

1.1 The *Code of Practice on Racial Equality in Employment* has four broad aims:

- a. To provide practical guidance on how to prevent unlawful racial discrimination, and achieve equality of opportunity in the field of employment;
- b. To help employers and others who have duties under the employment provisions of the RRA to understand their responsibilities and rights;
- c. To help lawyers and other advisers to advise their clients, and to assist courts and tribunals in interpreting legal concepts; and
- d. To make sure anyone contemplating bringing legal proceedings under the RRA, or attempting to negotiate within the workplace, has a clear understanding of both legislation and good practice in the field of employment.

1.2 The code applies in England, Scotland and Wales. Separate legislation applies to Northern Ireland.

## 2. Risk assessment.

2.1 Ethnic minorities continue to suffer discrimination in employment.<sup>1</sup> Evidence from surveys and research shows that people from ethnic minorities do not receive equal treatment in their dealings with employers when they apply for jobs or promotion.<sup>2</sup> The Cabinet Office Strategy Unit's report, *Ethnic Minorities and the Labour Market*, found that people from ethnic minorities earn less than their white counterparts even after taking into account factors

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<sup>1</sup> *Equality. Opportunity. Success*, Ethnic Minority Employment Task Force, Autumn 2004

<sup>2</sup> Home Office Citizenship Survey 2003

such as age, educational qualifications, and place of residence. The report concluded that part of this 'ethnic penalty' was caused by discrimination.<sup>3</sup>

- 2.2 The disparity between the national employment rate and the employment rate for ethnic minorities stands at 15.3%, the equivalent of 450,000 people from ethnic minorities not in work. People from ethnic minorities currently make up 8.6% of the working age population and between 1999 and 2009, they will account for half of its growth. Failure to tackle the problems of labour market underachievement will have increasingly serious economic consequences, as employers experience greater difficulty recruiting skilled employees.<sup>4</sup>
- 2.3 Employers also face the direct costs of defending themselves in employment tribunals against claims of unlawful racial discrimination (see section 5).
- 2.4 The Strategy Unit report on Ethnic Minorities in the labour market stated that "a significant number of employers still have limited understanding and awareness of the prevalence of racial discrimination and harassment in the workplace. They are also often unaware of legal requirements, what indirect discrimination actually looks like in practice, whether they are discriminating and how to re-formulate policies and practices in their workplace to ensure that they are offering equality of opportunity to all"
- 2.5 The report recommended a series of measures to improve access to advice and information, including publishing a revised code of practice on the elimination of discrimination in employment.

## Options

3.1 The Strategy Unit report identified the following options :

- a. Do nothing and wait for the proposed Commission for Equality and Human Rights (CEHR) to produce a code of practice in employment. This will avoid employers having to familiarise themselves with a document which may well be superseded in a few years time but will mean that the main piece of guidance on this issue for employers will remain out of date and potentially mislead or give false assurance to employers who are non compliant with the RRA and that the Government will not meet recommendation 19 of the SU EMLM report.
- b. Make ad hoc amendments to the code such as case law and updates on legislation. This would provide employers with updated information on the interpretation and revisions of the RRA but would risk confusing employers further by putting more pieces of guidance in the public realm and mean that users will have to navigate more than one document to find accurate information. These ad hoc updates would not be statutory and as with option a, we would have failed to meet recommendation 19 of the SU EMLM report. For these reasons we do not consider this option as practical.
- c. Publish a revised code of practice on employment. This has the advantage of creating a single, comprehensive and up to date guidance on the requirements of the amended Race Relations Act, which will be easy for employers to use and provide accurate information on what is required to comply with the law as well as take advantage of best practice. Employers would have to familiarise themselves with a new code of practice, which could be superseded in around 5-7 years.

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<sup>3</sup> Strategy Unit, Cabinet Office, (March 2003) *Ethnic Minorities and the Labour Market*.

<sup>4</sup> *ibid*

- d. Detailed cross sector guidance. The Strategy Unit decided that this would not represent a realistic substitute for an overarching code of practice, which employers, employment lawyers and equality advisers can use as an accepted standard. Producing such guidance along with a revised code would incur potentially greater costs and there is currently not sufficient budget at the CRE. Likely to be superseded by revised CEHR guidance. The CRE guidance for small businesses published in 2004, also partly addresses this. We have not considered this further due to cost issues and time needed to produce.

## 4 Benefits

### Economic.

- 4.1 Option a will mean that employers would only have to familiarise themselves with one new set of guidance (assuming that the CEHR publishes a code.
- 4.2 Option b will provide updates of the changes to the legal position due to case law and changes to the Act made by the Race Relations (Amendment) Act 2000 and the 2003 race directive and go some way to meeting the requests during consultation that the code help business to understand practical application of the act. It will be less accessible to those businesses who are not currently aware of or have not implemented the recommendations in the existing code of practice or are generally unaware of the law relating to race equality and how to comply with it.
- 4.3 Option c – publishing a revised code - will help employers to adjust policies to reflect modern practice and be aware of the impact of major tribunal decisions. It would help employers adjust their policies to avoid possible tribunals and raise the job satisfaction of ethnic minority employees. It would also engage employers who have not previously considered race equality issues by bringing together in a single document up-to-date and comprehensive guidance on good equal opportunities practice, based on case law built up since 1976 – , and prevent employers having to refer to supplementary guidance and individual tribunal decisions when considering race equality issues.
- 4.4 It will help employers to reap the generally recognised benefits of diversity (see para 4.9); for example, by using less restrictive recruitment strategies, retaining good staff through equal and fair employment practices and avoiding the costs and consequences of high staff turnover
- 4.5 Survey evidence shows that people from ethnic minorities are more likely to perceive unfairness in their treatment in applying for a promotion<sup>5</sup>. Analysis of the 1998 WERS showed that ethnic minority staff were less likely to be dissatisfied with the level of respect from managers were an EO policy was in place<sup>6</sup> The

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<sup>5</sup> Home Office Citizenship Survey (2003) pg 100 - 104

<sup>6</sup> DTI Employment Relations Research Series No 30. (2004) Equal opportunities policies and practices at the workplace: secondary analysis of WERS98 – Pages 46 - 48

- 4.6 The average cost of labour turnover in 2002 for the UK was £4,301 per leaver, rising to £5,864 for professionals and £6,807 for managers<sup>7</sup>; if a new code prevented 1,000 unnecessary resignations a year (on a relatively conservative estimate) this would save employers £4,301,000 each year.
- 4.7 It will help to reduce the considerable risks to reputation and purse of defending claims of unlawful racial discrimination. Analysis of the 1998 Workplace Employment Relations Survey<sup>8</sup> shows that the rate of employment tribunal cases per 1,000 workers is higher in employers without an EO policy (1.9 cases per 1,000) than those with (1.6) – a difference of over 15%. This does not take account of the quality of the policies – it could reasonably be assumed that the number of tribunal cases is even lower for companies with fully effective policies. In 2003/2004, race was the main element in 2,830 claims registered by employment tribunals.<sup>9</sup> At an average cost to an employer of £5,813 to defend a claim of racial discrimination or harassment, the total cost to employers each year is around £16,451,000. The exact impact is difficult to estimate given the number of unknowns (take-up of the code, extent to which it is followed, quality of existing policies). If a reduction of 5%-25% in the number of hearings at employment tribunals is assumed as range of potential benefit then this would save the economy between £800,000 and £4.1 million a year.
- 4.8 A CRE survey of employers in 1989 found that a third of employers had drawn up or made changes to their equality policies as a result of the code and 12% said that changes made to practices and policies had resulted in more ethnic minority staff being employed. This shows that although the take up of the old code was far from universal, where the recommendations were followed, there was often a noticeable impact on employment of ethnic minorities.<sup>10</sup> One of the intended outcomes of publishing a new code, with accompanying publicity as well as increased accessibility (see Small firms impact test) will be to enable more employers to benefit.

### **Wider benefits**

- 4.9 US research<sup>11</sup> indicates that racial discrimination laws have made a positive difference to earnings and employment for people from ethnic minorities. Commitment to equality of opportunity in employment also has advantages for employers, as a groundbreaking survey of 5,500 American workers, published in 2004<sup>12</sup> found. The survey showed that the collective productivity rate for companies designated as Effective Diversity Practices

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<sup>7</sup> Chartered Institute of Personnel Development, *Labour turnover 2003: A survey of Ireland and the UK, 2004*

<sup>8</sup> DTI Employment Relations Research Series No 30: Equal opportunities policies and practices at the workplace: secondary analysis of WERS98

<sup>9</sup> Employment Tribunal Service, *Annual Report 2003/04*

<sup>10</sup> CRE survey 1989, quoted in Wrench and Modood (2000) *The effectiveness of employment equality policies in relation to immigrants and ethnic minorities in the UK*: ILO

<sup>11</sup> Neumark and Stock 2001

<sup>12</sup> *National Urban League* (June 2004): 'Diversity Practices That Work: The American Worker Speaks'

companies (EDPs) was 18% percent higher than the rate for the US economy overall. Three-quarters of the EDP companies generated productivity rates that matched or were better than those of select competitors. The authors concluded that, 'at a minimum, diversity progress has no cost in productivity, but instead may enhance it, as effective diversity practices are simply good leadership and management practices.' This suggests that a revised code practice that encourages greater compliance with the RRA in the field of employment can be expected to have similar effects in Britain, both for employers and people from ethnic minorities.

4.10 There is growing recognition among employers in Britain that they will increasingly need to recruit and retain ethnic minority staff to be competitive, especially if the current low levels of unemployment continue.<sup>13</sup> Surveys of employers also show much greater awareness of the positive benefits of diversity, including:

- a. improved services to all customers, including ethnic minorities;
- b. the development of new markets and products;
- c. greater customer and job satisfaction;
- d. increased job satisfaction and staff morale, reduced turnover of staff and higher productivity; and
- e. better relations between different groups in the workforce.

4.11 The wider social benefits of tackling economic disadvantage are also likely be substantial; for example, children of parents of Pakistani and Bangladeshi origin are three times as likely to live in a household with less than 60% median income than their white counterparts. The gap in earnings for some ethnic minority groups has been estimated at up to £7,000 a year<sup>14</sup>. This adds up to an estimated £4 billion a year. Even a small reduction in this figure would make a significant difference to quality of life, especially for groups that have a particularly acute experience of discrimination and inequality.

## 5 Costs

### *Business sectors affected*

5.1 The CRE's code of practice applies to all employers, regardless of size or sector. It does not impose any legal duties on employers and is not an authoritative statement of the law. However, it does make recommendations to employers, based on the CRE's interpretation of the RRA as it applies to employment, on the steps they should take to prevent unlawful racial discrimination and promote equality of opportunity between people from different racial groups.

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<sup>13</sup> IPPR (2004) *Race Equality: the benefits for responsible business*

<sup>14</sup> See <http://www.dwp.gov.uk/publications/dwp/2004/etf-prog/report.pdf>

## *Private sector*

- 5.2 Of the 4 million businesses in the UK <sup>15</sup> only 1.16 million have employees. In general, we would expect many larger employers already to be following the recommendations of the current code, for example by monitoring equality of opportunity between job applicants from different racial groups. However, smaller businesses, which experience more rapid turnover, may be more likely to need to take action. The CRE recognises the different needs of this sector, and makes it clear that smaller businesses are not expected to follow the code's recommendations in detail. However, since the RRA applies equally to all employers, whatever their size, small businesses should make sure they are not discriminating on the grounds of race or ethnicity and take steps that are appropriate to their size and circumstances (see also para xxxxx and small firms impact test)
- 5.3 Option a – Leaving the current code unaltered until the new CEHR is in place will mean that the main statutory guidance on the RRA will remain out of date for a number of years. The costs of this are a continuation of the current levels of employer discrimination and employment tribunals on race discrimination, the potential costs of which are set out in the previous section.
- 5.4 There is also potentially a cost to employers who wish to improve their policies and practice on race equality who would have to have to look at a wide range of guidance on developments on the law or rely on an out of date code of practice.
- 5.5 The costs to employers of option c - a revised code of practice fall into two main categories: the costs of familiarising themselves with the contents of the code, and the costs of implementing its recommendations. Although the code is voluntary, many employers would look at the code to assure themselves that they were complying with the law or to improve their equality practices. Increased compliance with the law would also have an initial cost, but as laid out would derive longer term benefits.

## ***Familiarisation***

- 5.6 If all 1.16 million employers were to familiarise themselves with the revised code, the costs of reading the guidance would amount to £27,213,600. This is based on the assumption that it would take a Personnel and Industrial Relations Officer <sup>16</sup> (SOC 2000 classification 3562), on a median wage of £11.73 per hour, two hours to read through the code (1.16 million x £11.73 x 2 = £27,213,600)
- 5.7 However, although the code is a statutory code, there is no legal requirement to follow its recommendations, and it is unlikely that all employers will take the trouble to use it. Moreover, some employers, who

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<sup>15</sup> SME statistics 2003, Small Business Services Analytical Unit

<sup>16</sup> Standard Occupational Classification Personnel and industrial relations officers conduct research and advise on recruitment, training, staff appraisal and industrial relations policies and assist specialist managers with negotiations on behalf of a commercial enterprise, trades union or other organisation. Average male hourly earnings in 2002 for this occupation was £12.54 and for women £10.93

have acted on the recommendations of the 1984 code, will only need to skim through the revised code quickly, to see if they need to make any changes to their employment policies, procedures and practices to follow recommendations that have been modified.

5.8 The following costs of familiarisation are based on the assumption that half of all employers (580,000) obtain a copy of the code. If half of them (290,000) look through it quickly to make sure they are following its recommendations, and the other half spend two hours on a detailed examination, the costs (at £11.73 per hour) would be as shown below:

- i. 290,000 employers (25%) spend  
1/2 hour on a quick check: £1,700,850 (290,000 x £11.73 / 2)
- ii. 290,000 employers (25%) spend  
2 hours on a thorough read: £6,803,400 (290,000 x £11.73 x 2)
- iii. 580,000 employers (50%) spend  
15 minutes on it £1,700,850 (580,000 x £11.73/4)

**Total costs of familiarisation (i+ii+iii) £10,205,000<sup>17</sup>**

### ***Implementation***

5.9 As discussed earlier (see para 4.3), many employers, particularly larger ones, will already be meeting the recommendations of the 1984 code of practice, and will have an equal opportunities policy on employment, as well as the systems and procedures for putting it into practice. Organisations that have neither will need to dedicate staff and other resources to introducing a policy and the necessary procedures and systems for making it operational. For example, the code recommends that they:

- a. introduce and implement an equal opportunities policy on employment;
- b. provide training on equal opportunities;
- c. monitor job applicants and employees by racial group; and
- d. review their employment policies, procedures and practices on a regular basis and take steps to reduce any significant disparities between people from different racial groups.

5.10 The revised code does not make any new requirements of employers, but it does contain modified recommendations. The main recommendation of the code, that employers develop an equal opportunities plan is not new but a new code would be expected to increase the number of companies who have such a plan. The 1998 Workplace Employment Relations Survey (WERS) found that 64% of employers had an equal opportunities policy. This proportion is likely to be higher today, judging by the finding of a CRE

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<sup>17</sup> Total costs rounded to closest £1,000

survey that 82% of employers in Scotland had an equal opportunities policy in 2000.

- 5.11 Smaller businesses are much less likely to have an equal opportunities policy<sup>18</sup>, but the revised code makes it clear that, while they are expected to take steps to prevent unlawful discrimination, they may not need a detailed equal opportunities policy or sophisticated systems and procedures, for example to monitor applicants and employees by racial group. (See also: Small firms impact test)
- 5.12 Most employers are aware of the current code and over a third of employers questioned in WERS 1998 said they had drawn up or revised their equal opportunities policies because of it
- 5.13 It is difficult to predict accurately how employers will respond to the revised code. The cost estimates below are based on the following understanding, drawn from various surveys:
- a. most employers have equal opportunities policies (at least 80%; see para 5.8);
  - b. those that do not are predominantly small (para 5.9); and
  - c. Some equal opportunities policies are 'empty shells', that is, written policies that have not been put into practice and that some employers will adopt more effective policies as a result of the new code.<sup>19</sup>

Therefore if we assume that:

- i. 58,000 employers (5%) spend 10 hours, on average, at an hourly rate of £11.73 (see para 5.4) developing an equal opportunities policy from scratch or making major revisions to their policy, plus 2 hours for a personnel manager, at an hourly rate of £21.37. (small businesses would spend less time, on average, and medium to large businesses more) £9,282,000 (58,000 x £160.04)
- ii. 58,000 employers (5%) make only basic adjustments to their policies, spending, on average, 2 hours of officer time and half an hour of manager time each: £1,980,000 (58,000 x £34.14)

**Total costs of implementation (i + ii) £11,262,000**

- 5.14 Employers may decide to carry out reviews and monitor their equal opportunities policy. For very small employers (less than 10 employees),

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<sup>18</sup> DTI Employment Relations Research Series No 30. (2004) Equal opportunities policies and practices at the workplace: secondary analysis of WERS98

<sup>19</sup> Wrench and Modood (2000) *The effectiveness of employment equality policies in relation to immigrants and ethnic minorities in the UK*: ILO

who make up over 83% of employers in the private sector, this is likely to be a simple and informal process. For larger employers, it is likely to be more complex, but it should be remembered that they are more likely to be doing this already. Exact costs are difficult to estimate, but the extra costs of doing more to follow the recommendations of the code are unlikely to exceed £3 million each year. Furthermore, the benefits should be apparent in the likely improvements in: recruitment and retention, the working environment and staff morale, and staff health and welfare, and reductions in the time spent by senior managers dealing with claims of racial harassment or discrimination and, possibly, costly litigation.

### *Public sector*

- 5.15 The Race Relations Act (section 71) places a statutory general duty on most public authorities to have due regard to the need to eliminate unlawful racial discrimination, promote equality of opportunity and promote good relations between people of different racial groups. These authorities should therefore already be following most, if not all, of the recommendations of the current code. The main cost for them is likely to be familiarising themselves with the recommendations of the revised code, rather than drawing up policies. Any changes to their policies are likely to be minimal.

#### Estimated costs

- i 43,000 public authorities<sup>20</sup> spend 2 hours reading the guidance, at an hourly rate of £11.73 **£1,009,000** (43,000 x 2 x £11.73)

## **6. Equity and fairness**

- 6.1 The RRA gives protection from unlawful discrimination to everyone, regardless of their colour, ethnicity, race, nationality or national background. It is not for ethnic minorities alone or for any particular racial group. The recommendations of the code apply equally to employers from all racial groups and ethnic minority businesses will be affected in the same way as other businesses.

## **7. Distribution of effects**

### *Transfer of income*

- 7.1 As Britain's diverse labour market is valued and appreciated, income will inevitably be redistributed between the different racial groups.

### *Redistribution of opportunities*

- 7.2 Improvements to equality of opportunity in the labour market:

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<sup>20</sup> This figure includes all educational establishments, but no detailed analysis of the familiarisation requirement in this sector has been carried out.

- a. make people from ethnic minorities more eligible for opportunities, by improving their skills through any positive action training provided;
- b. promote equality of opportunity between people from different racial groups, by advising employers on good practice in key areas of employment;
- c. help ensure that people from ethnic minorities do not face barriers to employment and training opportunities; and
- d. increase employment rates among ethnic minorities, close the gap in earnings between some racial groups, improve career prospects for people from ethnic minorities, raise national economic performance and contribute to better relations in the workplace, and more widely.

## Sectors

- 7.3 The revised code will apply to all sectors equally in promoting racial equality and eliminating racial discrimination in the workplace.

## *Competition*

- 7.4 The code of practice applies equally to all organisations and changes to it should therefore have no effect on competition.

## *Small firms impact test.*

- 7.5 Section 5 (Costs) describes how small businesses are expected to comply with the RRA (this has been made clear by tribunals). Small businesses that do not have equality policies or plans would incur a cost in meeting recommendations in the current or revised codes of practice. The revised code acknowledges however that a different, more simplified approach to equality and monitoring may be appropriate for small firms, reducing the chance of a disproportionate burden. The revised version also contains sample policies and more practical guidance for employers that will be of particular use to small firms.
- 7.6 Separate, non-statutory guidance has been developed by the CRE, in partnership with HSBC and the SBS for the smaller business. Both the code and the non-statutory small business guide contain sample equal opportunities and anti-harassment policies.
- 7.7 In response to concerns expressed during the consultation, the CRE has reduced the length of the code, shortened and simplified the section on the law and made the distinction between recommendations and suggestions clearer.
- 7.8 Discussions have taken place with the Small Business Service to clarify how the code will be made accessible to Small and Medium Enterprises. The CRE will produce a short leaflet explaining the purpose and content of the code and explaining what it means for small organisations.

- 7.9 The CRE will carry out a full roll out of the code, including master-classes and seminars with a range of partners, including small business representatives and in all regions. The CRE will also make its SME guide available with the code for SMEs.
- 7.10 Efforts will be made to make a new code as accessible as possible to business, through:
- A leaflet explaining the purpose and main points of the code.
  - A series of master-classes and seminars across a range of sectors and regions in partnership with business representative bodies, including small businesses.
  - Not charging for the code
  - Making the code downloadable from the CRE site as well as through TSO.
  - Providing links to the code through other business sites, including the new one stop site currently being developed by ACAS
  - Providing links through to the different sections of the code to make specific information more easily accessible.

## **8. Enforcement**

- 8.1 Although this is a statutory code, it does not place any legal duties on employers. Nor is it an authoritative statement of the law. However, employers who do not follow the code's recommendations may find themselves facing legal proceedings for claims of discrimination or harassment under the RRA. The RRA makes them liable for acts of unlawful discrimination or harassment on racial grounds, unless they can show that they have taken reasonably practicable steps to prevent them.

## **9. Monitoring and evaluation**

- 9.1 The CRE will evaluate the effects of the revisions in the following ways.
- a. The code will be available in printed form as well as on the CRE website ([www.cre.gov.uk](http://www.cre.gov.uk)). The number of 'hits' to the site, free downloads of the code and sales of printed copies will all be monitored.
  - b. The CRE will invite organisations from the private, public and voluntary sectors to take part in a pilot project to monitor the effects of the code on racial equality.
  - c. The CRE will offer training seminars to explain the code and will monitor how participating organisations implement its recommendations.
  - d. The CRE will offer to make presentations on the code at trade union annual conferences and encourage unions to fill out questionnaires on the way the code is being taken up in different workplaces and put into effect.

- e. The CRE will approach professional organisations, such as the Chartered Institute of Personnel Development, the Law Society, the Bar Council, the Employers' Organisation for Local Government, the National Council for Citizens Advice Bureaux and others to advertise the code and help in promoting it.
- f. The CRE will carry out research into cases of racial discrimination where the code is cited in employment tribunal decisions.
- g. The Director of the Private Sector at the CRE will be responsible for conducting yearly reviews of the code. Details will be available on the CRE website.

