

The duty to promote race equality

**A GUIDE FOR PUBLIC
AUTHORITIES IN
SCOTLAND**

(Non-statutory)

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1

Introduction

The Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000 (and referred to in this guide as ‘the Act’) gives you a statutory general duty to promote race equality. Set out in section 71(1) of the Act, the duty applies to all the public authorities listed in schedule 1A to the Act. Appendix 1 to our statutory *Code of Practice on the Duty to Promote Race Equality in Scotland* (the code) gives the final list. The code came into effect on 30 November 2002, after it had been approved by the Secretary of State and laid before parliament for forty days. Many of the listed authorities provide major public services, such as health, education, local government, and policing. Some (for example, broadcasting authorities, or professional organisations such as the Law Society of Scotland) are bound by the general duty only so far as their public functions are concerned.

Under the Act and the code, the term ‘functions’ means the full range of your duties and powers. When carrying out your functions under the general duty, you must aim to:

- eliminate unlawful racial discrimination;
- promote equal opportunities; and
- promote good relations between people from different racial groups.

The general duty’s aim is to make race equality a central part of the way you work, by putting it at the centre of policy-making, service delivery, regulation and enforcement, and employment practice.

Promoting race equality will improve public services for everyone. You can meet the duty in your own way, taking account of your functions, the areas you cover, and the size and variety of the communities you serve. Many authorities will use, and build on, arrangements and administrative and information systems they already have – such as those for developing and monitoring policy – to avoid unnecessary work and expense. You should not see the duty as a burden.

To help you to meet the general duty to promote race equality, Scottish ministers have made an order under the Act. This gives you specific duties in the areas of policy-making, service delivery, and employment. These duties apply only to the authorities listed in appendices 2 and 3 to the code. The duties’ aim is to improve performance of the general duty. They are not ends in themselves, but the basic steps you must take to meet the general duty.

Under the specific duties covering policy and service delivery, certain listed public authorities (see appendix 2 to the code) must publish a race equality scheme. If you are one of these authorities, your scheme must include the following.

- It must list the functions and policies (including proposed policies) that you have assessed as being relevant to the general duty to promote race equality.
- It must set out your arrangements to:
 - monitor your policies for any adverse impact (see p 41) on promoting race equality;
 - assess, and consult on, the impact that policies you are proposing to introduce are likely to have on promoting race equality;
 - publish the results of your assessments, consultation, and monitoring;
 - make sure that the public have access to information and services; and
 - train your staff on the general duty and the specific duties.

Under the specific duty for employers, if you are one of the public authorities listed in appendix 3 of the code, you must monitor staff in post and applicants for jobs, promotion, and training, by their racial group. If you have more than 150 full-time staff, you must also monitor, by racial group, the number of staff who:

- receive training;
- benefit or suffer as a result of performance assessment procedures;
- are involved in grievances;
- have disciplinary action taken against them; and
- end their service with your authority (for whatever reason).

If you are bound by the employment duty, you must publish your ethnic monitoring results every year.

Education authorities and further and higher education institutions also have specific duties. We cover these in separate guides: *Guide for Education Authorities and Schools in Scotland*, *Guide for Further and Higher Education Institutes in Scotland*, and *Ethnic Monitoring: A guide for public authorities in Scotland*.

Enforcing the duties

General duty

Under the Act, if you do not meet the general duty, your actions (or failure to act) can be challenged by a claim to the Court of Session for judicial review (asking the court to review the way you made a decision). The court will not decide on the merits of the

decision, only whether it is legal. The court can ask you to reconsider the way you have made a decision. For example, if you decided to close a local swimming pool without consulting local groups first, they may decide to lodge an application for a judicial review.

Specific duties

Under the Act, we have the power to enforce the specific duties. If we believe you are not meeting these duties, we can issue a 'compliance notice'. This is a legal document that orders you to meet the specific duties within a certain timescale. You will also have to tell us how you plan to meet the duties and observe the conditions of the notice. If you do not observe any part of the notice, we can apply to the courts for an order to make you do so. If the court issues the order and you still do not observe the notice, you can face legal action for contempt of court.

Status of this guide

Unlike the code, which can be used in evidence in any legal proceedings under the Act, this guide does not have any legal standing. Although it may be referred to in legal proceedings, the courts do not have to take it into account.

Even so, this guide is an important document, as it is based on the professional judgement of public authorities with wide-ranging practical experience of tackling discrimination and promoting race equality. We recommend that you read this guide together with the code.

This guide contains six chapters. Following this introduction, chapter 2 goes on to explain the general duty. Chapter 3 explains in detail the several parts that make up the specific duty to produce and publish a race equality scheme. Chapter 4 covers the specific duty for employers. Chapters 5 and 6 explain how the duty covers public services and functions that you have contracted out, and work that you do with others, for example through partnerships.

We plan to revise and update this guide regularly, so that it always has the most up-to-date experience and information.

We deal with the important subject of ethnic monitoring in a separate guide.

2

The general duty

The general duty, as set out in section 71(1) of the Act, says you must have ‘due regard to the need’ to:

- eliminate unlawful racial discrimination; and
- to promote equality of opportunity and good relations between persons of different racial groups.

In practice, this will mean making sure that the duty is central to the way you carry out any function where race equality is ‘relevant’ (see below, pp 7–8, and 24-29).

The four main principles of the duty

Obligatory

The duty’s aim is to make race equality a central part of any policy or service that is relevant to the duty. Promoting race equality is not something you can choose to do or not do. This means you cannot claim that you do not have the resources to meet your responsibilities. And you cannot claim that the community is too small to be significant. The Act does not refer to how big a community is. The best approach is to build these responsibilities into the work you already do, and to adapt your plans and priorities.

Relevant

You need to consider all your functions and decide whether they are relevant to race equality. ‘Relevant’ means ‘having implications for’ (or affecting) race equality. While some purely technical functions (such as managing property) may not be relevant, race equality will always be relevant when delivering services, and in employment.

Proportionate

The weight you give a function should be in proportion to its relevance to promoting race equality. In practice, you will find that you give the highest priority to those of your functions and policies that have the greatest potential to affect different racial groups in different ways.

Complementary

The three parts of the general duty – eliminating unlawful racial discrimination, promoting equal opportunities, and promoting good relations between people from different racial groups – complement each other. Sometimes they may overlap, but they are three separate and distinct parts of the duty. You should try to find ways of meeting them all.

The three parts of the general duty – eliminating unlawful racial discrimination, promoting equal opportunities, and promoting good relations between people from different racial groups – support each other, and could overlap. However, it is important to remember that the three parts are separate and distinct, and that achieving one of them may not mean you have achieved the others. For example, you may succeed in improving equal opportunities when you introduce a new equal opportunities policy. However, you could also create resentment and damage race relations if you do not make sure your staff understand how the policy benefits everyone (whatever their racial group). It is equally important not to avoid taking action to meet one part of the duty (for example, to promote equal opportunities), because you are concerned about possible negative effects on another (say good relations). You should consider, and find ways of dealing with, all three parts of the general duty.

Terminology

Under the Act and the code:

- ‘functions’ means the full range of your duties and powers; and
- ‘policies’ refers to your formal and informal decisions on how you carry out your duties and use your powers.

Throughout the guide, the terms ‘the general duty’ or ‘the duty’ are used to mean the statutory general duty to promote race equality.

What do you need to do?

Policy and service delivery

To satisfy yourself that you are meeting all three parts of the general duty, we suggest you follow the four stages described below.

1. Identify your functions and decide which of them are relevant to race equality.

You can do this by making a list of all your statutory powers and duties or, if you prefer, a list of all the functions covered by your authority, and related policies. You will find that functions that involve, or affect, the public, as well as functions that you carry out as an employer, are most likely to be relevant to race equality. You should ask which functions could result in unlawful racial discrimination, unequal opportunities, or poor race relations.

2. Prioritise these functions.

The priority you give to each function will depend on how relevant it is to promoting race equality. It will also depend on how much you have already done to promote race equality in carrying out a function. The best way to approach this is by collecting ethnic

The general duty

data about the people affected by each relevant function, or the policies you have introduced to carry it out. This would involve the following steps.

- Identify, by racial group, those who use, or might use, the services or facilities you provide, and ask whether any of them have particular needs or priorities.
- Consider whether the function or policy affects (or could affect) relations between people from different racial groups.
- List your functions in order of their importance, or likely importance, for promoting race equality.

3. Assess all relevant functions and policies for their effects on race equality.

- Starting with the most important functions for promoting race equality, draw up a statement of your aims and objectives for each function, and for the policies you have developed to carry it out.
- Make a list of the groups who are meant to benefit from each function – for example under fives, unemployed people, homeless people, or carers – together with any information you already have about their racial group.
- Check whether the policies you have adopted to carry out a function affect all racial groups equally. Look for any significant differences between the information available on the different racial groups in the population you serve and the information you hold on the people served by each function and its various policies. For example, changes in a GP surgery's open clinic times may suit most people, but make it very difficult for people from a particular racial group because they mainly work in the evening.
- Ask whether the policies you use to carry out a function, or people's views on those policies, affect relations between people from different racial groups. For example, if you decide to encourage people of Chinese origin, who currently have poor access to your housing stock, to apply for tenancies, but you do not let everyone in the area know about your plans and purposes, this could lead to resentment among other communities and damage relations between them.
- Explain your policies to everyone who might be affected by them, even indirectly. Just as important, make sure people know you are working in the best interests of everyone in the community.
- Examine your functions and policies thoroughly and check that your assessments are correct. For example, you could do this by:
 - going through recent surveys or research which you (or other authorities) might have carried out;
 - checking past complaints and cases; or
 - consulting people directly, through local meetings, focus groups, or interviews.

- Draw up a list of the possible reasons for any differences you find in the way your functions and policies affect different groups. These could range from not having enough information about a service in certain languages to discriminatory treatment (whether this was intended or not).
- Set up ethnic monitoring systems – if you don't have these already – so that you can carry out regular checks on the effects your policies, and any changes you make to them, have on different racial groups.

4. Consider and make changes to your policies, if necessary, to meet the general duty.

- If your assessment shows that a policy is having an adverse impact on some racial groups (see p 41), you should ask if this could amount to unlawful racial discrimination (see the appendix). If it could, you should consider and make changes to the policy as soon as possible.
- If you find differences in impact between racial groups, but no immediate evidence of unlawful racial discrimination, you should ask if the policy is acting as a barrier to opportunities for some racial groups, or if it is harming relations between different racial groups.
- Ask if you can avoid any adverse impact. If not, can you justify it in terms of the policy's wider aims? If not, you should consider other policies that could be just as effective, but without having an adverse impact on some racial groups, and without risking damage to race relations.
- If you can justify the policy, you should ask whether you could limit its adverse impact on some racial groups, and any potential it might have for damaging race relations, by taking certain steps, such as positive action (see the appendix). You should also consider explaining, clearly and fully, how the policy will benefit everyone in the community.
- Make sure you prepare well for any changes you are planning to make to your policies or procedures. For example, you could do this by informing and consulting everyone who might be affected by them, and by taking account of their concerns.
- Introduce the changes you have planned, backed by training, if necessary. Make sure that everyone involved in the policy knows and understands what you have done, and is able to put the policy into practice.

Employment

Employment will be a relevant function for all the public authorities bound by the general duty. If you are one of the public authorities listed in appendix 3 to the code, you also have a specific duty as an employer. The steps we list below will help you to meet both the general duty and the specific duty, if it applies to you.

The general duty

- Carry out an audit of all your employees, by racial group. If you employ more than 150 people, your audit should include employees who receive training, benefit or suffer detriment from performance appraisals, are involved in grievances, have disciplinary action taken against them, and end employment with your authority (whether as a result of dismissal or some other reason). You have a specific duty to carry out these audits. We suggest that you use this opportunity also to collect other information – for example on grade, type of contract, pay and other benefits, length of service, sex, age, and disability. You can then carry out closer examinations of your policies, when necessary.
- Compare the information on racial group with information on the population from which you normally recruit. For example, you might cast your net more widely to recruit a highly specialised computer programmer than for a data entry clerk. Check if there are any significant differences between racial groups.
- Check if there are any differences in applicants' success rates, depending on their racial group. We advise you to monitor all stages of the recruitment process, and applicants from inside your authority as well as outside.
- If there are differences in applicants' success rates, you should ask whether your policies and procedures for recruitment and selection – and the way you use them – improve or reduce some people's chances, depending on their racial group. If you find any barriers to equal opportunities, you need to find ways of removing them as soon as possible.
- Consider changes to any policy or practice that puts employees or job applicants from some racial groups at a disadvantage, and take action, as needed, to tackle this disadvantage.
- Consider using positive action (see the appendix) if people from some racial groups are under-represented in a particular area of work.

TACKLING THE LANGUAGE BARRIER

An urban Scottish local authority was worried that very few people from ethnic minorities, compared to their numbers in the population, were being referred to its social work department. The authority consulted ethnic minority voluntary organisations and community groups about the problem. It appeared that, while people knew about the council's services, they did not feel confident about using them because they were not fluent in English. Also, very few of the council's outreach staff could understand their languages, although there were a number of staff from ethnic minorities in other positions in the department.

The social work department approached a local college to design and deliver a positive action course for its staff. The course was advertised and proved very popular. Eighteen months later, 20 newly-trained social care outreach workers from ethnic minorities graduated. Fourteen of them then went on to get jobs within the department's outreach teams. Over the next two years, referrals from families from ethnic minorities went up by 25 per cent each year.

BUILDING BRIDGES FOR NEW ASYLUM SEEKERS

A rural Scottish local authority was preparing for a small number of asylum seekers to arrive in the area as part of the government's national dispersal scheme. The local authority organised a series of meetings with local health organisations, the police, further education colleges, and voluntary organisations to coordinate their activities.

The group produced booklets for the asylum seekers, welcoming them to the area and telling them what services were available and how to use them. The booklets were translated into the asylum seekers' languages. The group also prepared information for local people about the asylum-seekers' background and culture, why the asylum seekers were coming to their area, and how their applications for asylum were being dealt with. The group worked closely with local schools and community organisations and set up training courses for housing, health, social work, and education staff in the area.

The group's efforts were appreciated and local people turned out to formally welcome the asylum seekers when they arrived.

Despite the group's efforts, racist incidents did go up at first. However, having worked together, the agencies found it easier to tackle the incidents jointly, and to draw on resources and ideas from all sections of the community.

- Review your personnel policies and procedures regularly – especially your policies on training, appraisal, grievance, and discipline. Then use the information from your monitoring to make sure the policies do not have an adverse impact on employees from some racial groups. Make sure everyone knows the policies, and why you have introduced them, so that no misunderstandings arise that could damage relations between staff from different racial groups.
- Make sure all your staff know about, and understand, any changes you make to your employment policies and procedures. Make sure, too, that they have the skills and knowledge they need to put these into practice.

What does 'good race relations' mean?

Relations between people from different racial groups can be complex. They vary from one situation to another and from one region or area to another. However, sensitively approached, people from all racial groups can come together to form a strong, mutually supportive community. 'Good race relations' is shorthand for communities that respect their differences and, secure in the knowledge that they have equal rights and opportunities, pool their talents and energies to achieve common goals. Public authorities are key players and their leadership, combined with respect for the people they serve, is vital to encourage racial and social harmony.

How can you help to achieve good race relations?

Public authorities have different roles and responsibilities and they work in different ways to promote good race relations. The general duty and the specific duties provide the basis for a consistent approach to a common goal.

The key elements of this approach are:

- commitment to tackle unlawful racial discrimination, and to promote equal opportunities and good race relations;
- planning;
- assessment of the effects your functions and policies have on race equality;
- regular dialogue with people from all the communities you serve – and up-to-date information – to explain your plans and policies, and to listen to people’s views and concerns; and
- regular monitoring of the effects of your policies and operations on race equality.

Depending on your functions and responsibilities as a public authority, you should be able to promote good race relations by:

- creating opportunities for people from different communities to meet and openly and honestly discuss issues and concerns;
- addressing equally all the needs in your community, either through projects specifically designed for particular groups or through wider initiatives that benefit the whole community; and
- making sure that you address your specific duties with the ultimate aim of meeting all three parts of the general duty.

If you put all your plans into practice, you can be confident that you are working within the law and contributing to good race relations in your community.

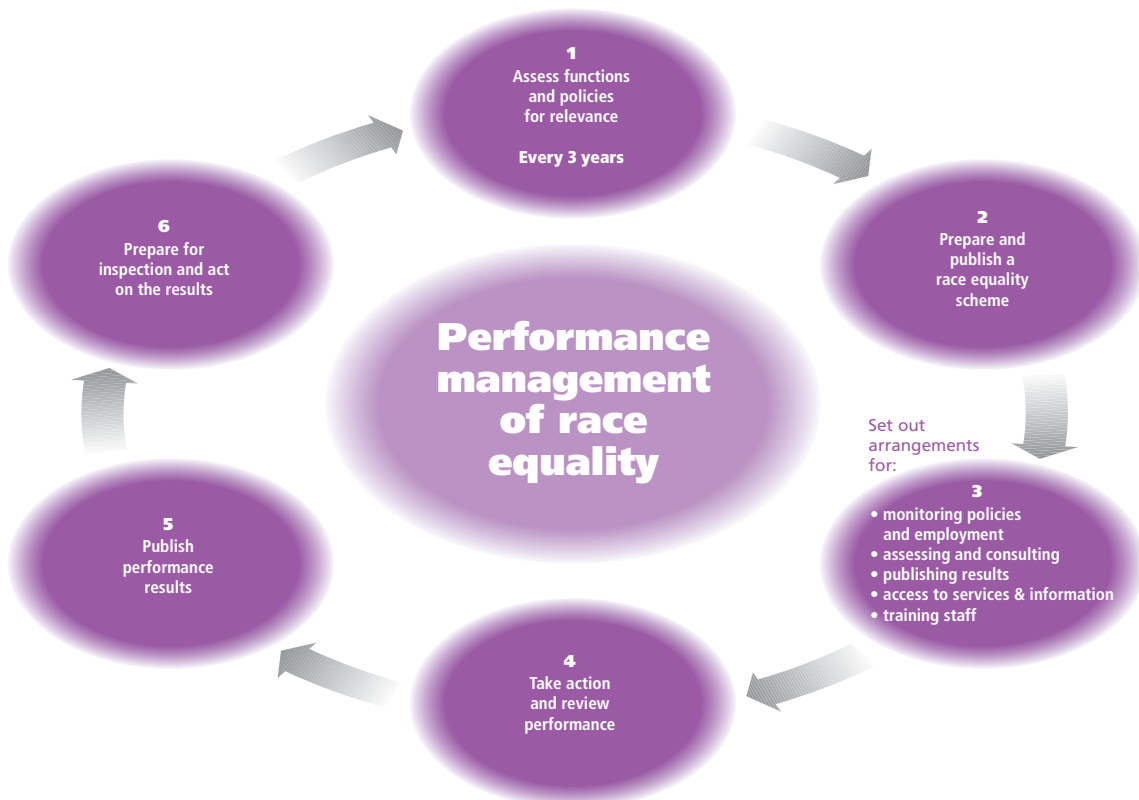
What role do auditing and inspection agencies have?

Agencies that carry out statutory inspections and audits of public authorities are bound by the general duty. They are responsible for making sure, in their inspections and monitoring, that you take account of the general duty and any specific duties. In practice, this means that agencies such as HMI Education and Audit Scotland will inspect, and report on, whether you are meeting the general duty and the specific duties.

How does the general duty relate to the specific duties?

It is important to remember that the specific duties have been introduced to help you to meet the general duty. The specific duties are a means to an end – steps, methods, and arrangements – not ends in themselves. Your ultimate aim must be to meet the general duty.

In practice, this means that each time you tackle a specific duty, you should ask if you are meeting the general duty, and what you should be doing to help you to meet it. For example, one of the specific duties is to make arrangements to monitor your policies for any adverse impact they might have on race equality. Unless you put those arrangements fully into practice, and deal with any adverse impact your policies might be having on some racial groups – if only to reduce it – you may not be meeting the general duty. So, the question to ask yourself when you have completed the monitoring exercise is: 'What should we be doing to eliminate unlawful racial discrimination, to promote equal opportunities, and to promote good race relations?'



3

Specific duties

Race equality scheme

The duty

Under this specific duty, set out in the Race Relations Act 1976 (Statutory Duties) (Scotland) Order 2002, the public authorities listed in appendix 2 to the code have to prepare and publish a race equality scheme by 30 November 2002. If you are one of these authorities (referred to in the order as 'a body or person'), your scheme should say how you plan to meet the general duty and specific duties. The order setting out this specific duty says:

2. (3) *A Race Equality Scheme shall state, in particular –*
 - (a) *those of its functions and policies, or proposed policies, which that body or person has assessed as relevant to its performance of the duty imposed by section 71(1) of the Race Relations Act; and*
 - (b) *that body or person's arrangements for –*
 - (i) *assessing and consulting on the likely impact of its proposed policies on the promotion of race equality;*
 - (ii) *monitoring its policies for any adverse impact on the promotion of race equality;*
 - (iii) *publishing the results of such assessments and consultation as are mentioned in sub-paragraph (i) and of such monitoring as is mentioned in sub-paragraph (ii);*
 - (iv) *ensuring public access to information and services which it provides; and*
 - (v) *training staff in connection with the duties imposed by section 71(1) of the Race Relations Act and this Order.*
- (4) *Such a body or person shall, by no later than 30th November 2005 and at three yearly intervals thereafter, review the assessment referred to in paragraph (3)(a).*

What does this mean?

A race equality scheme is effectively a strategy and a timetabled and realistic action plan. It should summarise your approach to race equality, and your corporate aims. It should also say how you plan to carry out the individual parts of the specific duty – in other words, your arrangements for assessing, consulting, monitoring, informing, publishing, and training. Make sure your race equality scheme says what your arrangements are and how you plan to put them in place over the life of the scheme.

GOVERNMENT DEPARTMENT CONSULTS WIDELY ON ITS SCHEME

A central government department with key responsibilities in criminal justice across 42 areas in England and Wales decided to produce one race equality scheme (RES) for the department as a whole. Local areas will adapt the scheme to suit their circumstances.

The department set up an RES project team, which was made up of policy and personnel staff and led by a chief officer. The team began by asking all the directorates to list their functions and their policies. It then spent a day with representatives from each directorate to assess whether their functions and policies were relevant to race equality and, if so, how relevant they were. The team used this information to draft a race equality scheme.

The next step was to consult people about the scheme. The team sent the draft scheme to the trade unions, staff networks, and agencies that the department works with. But the views it was most interested in were those of people at the receiving end of the department's policies – victims, witnesses, and defendants. The team held a small workshop to discuss issues in some depth. Among those who attended were staff, ethnic minority groups working on behalf of victims, NACRO (which represents defendants), a representative from the Society of Black Lawyers, and, most importantly, people who had criticised the department's work on race.

The specific aims of the workshop were to:

- prioritise policies;
- get a view on the best way of carrying out impact assessments;
- let people know the results; and
- discuss publishing the RES.

The first draft of the RES did not go down at all well and the team completely rewrote it. The department is confident that it now has a scheme that is more in tune with what the public want.

Your race equality scheme should cover all your relevant functions, whether you carry them out inside or outside the authority, and bring them together within a single framework.

If you already have a race equality strategy, it should not be too difficult to produce a race equality scheme. However, you will need to thoroughly review your strategy to make sure it covers all parts of the specific duty, and can meet the general duty to promote race equality.

The race equality scheme can be part of your general equality strategy and, in most cases, it will make sense to do this. You may decide to take a similar approach to other equality concerns, such as sex and disability. However, you need to make sure that the race equality sections are distinct and specific.

RACE EQUALITY SCHEME INSPIRED BY PATIENTS

An NHS trust in the north of Scotland decided that its race equality scheme should focus on patient services. As a result, the trust grouped its functions and policies under headings that emphasised patients' relationships with its services. The headings included referrals, assessment, treatment, discharge, and follow-up. The trust also added 'employment' and 'support services', to cover its other main functions. It also listed a series of service departments, including accident and emergency, diabetes services, and health promotion, which they knew would cause problems for patients from ethnic minorities.

In consulting on its draft scheme, the trust found that patients from ethnic minorities also raised concerns about maternity services, podiatry services for older people, rehabilitation after strokes, and oral health. The trust then included these in the list of functions with high relevance to race equality.

The trust felt that its approach was both practical and thorough, and that it made sense to service users.

GOVERNMENT DEPARTMENT WANTS EXEMPLARY SCHEME

A central government department which covers a wide range of functions and areas has decided to develop a general scheme setting out its principles and practices, and associate schemes for each of its parts. Each associate scheme will be consistent with the general scheme, and will feed into a yearly review process.

The general scheme aims to:

- reflect closely the requirements of the Race Relations Act and our codes of practice;
- be flexible, so that it can meet the needs and priorities of the department and each of its parts;
- build on work already under way to promote race equality, using, as far as possible, systems and processes that are already in place;
- provide a framework for other similar duties that might be introduced in the future;
- serve as a model for other parts of government; and
- recognise that the specific duties introduce only minimum standards, which the department wants to improve on.

Two working groups, which include representatives from the trade unions and the department's consultative network for ethnic minority issues, have been set up to take this work forward.

Because the department wants the scheme to be exemplary, and to go beyond the minimum demands of the law, it encourages monitoring by sex as well as ethnic background. It also includes monitoring complaints, which is not covered by the specific duties. The scheme is very much a 'living' document, and the department welcomes comments.

COUNCIL COMBINES STRATEGIES AND PLANS

A Scottish city council has been using action plans in its work on race equality since 1998. In 2000, the council linked its results to the performance levels of our standard for local government, *Racial Equality Means Quality*.

The council's priority has been to make equality central to its business activities, and its initiatives in promoting race equality have played a leading part. As well as an action plan, the council is using its strategic planning framework, including its budget, its service planning process, and its best value service reviews, to promote race equality.

Following a performance management and planning audit in 2000–2001, the council agreed a number of measures to make race equality a high priority. For example, it included race equality as a measure in its best value reviews. It is also producing guidance to help 'mainstream' race equality in budgeting, service planning, and best value reviews to improve the way it sets race equality targets and reports on progress. The council is planning to bring in specialists on equality issues in 2003–2004. It wants to identify clear objectives and outcomes for its services, so that they reflect its priorities and those of the people it serves.

The race equality sections should make clear how you plan to meet the duties under the Act. Your commitment to promoting race equality will need to be plain to your staff, to audit or inspection teams (who will need to assess the way you are meeting your duties), and to the general public.

The race equality scheme is a public document that explains how you plan to meet the general duty. However, to meet the duty, you must put the scheme into practice. You will have to answer to the public for delivering the programme you set out in your scheme. The aim of this and other specific duties is to help you to eliminate unlawful racial discrimination, and to promote equal opportunities and good race relations.

What is the reason for the scheme?

The reason for introducing a specific duty to prepare a race equality scheme is to make sure you carry out the general duty to promote race equality in a systematic way. Producing a race equality scheme will help you to consider the effects of all your activities and operations in terms of race equality, and to make the necessary changes to deliver your services effectively in a multi-ethnic society. You will only be able to deal with the problem of institutional racism (as defined in the Stephen Lawrence Inquiry Report) if you put race equality at the centre of your policy-making and service delivery.

Why is this important?

Under the Act, an organisation which is promoting race equality will be recognised by the following.

- It monitors its workforce, and makes sure that people from ethnic minorities are treated fairly.
- It assesses how its policies and programmes could affect ethnic minorities, and deals with any possible adverse impact.
- It monitors the way its policies and programmes are put into practice, to make sure they meet the needs of people from ethnic minorities.
- It has a publicly-stated policy on race equality.

What should the scheme include?

Your race equality scheme should set out how you plan to meet all your duties: the general duty and the specific duties on policy and service delivery (see p 14). If you also have to meet the specific duties for employers (see p 58), we would advise you to include your arrangements for this in your race equality scheme.

Elements of a race equality scheme

- ▶ **Your race equality values, principles, and standards**
- ▶ **Your race equality strategic aims**
- ▶ **How you will meet the general duty**
- ▶ **How you will meet the specific duties**
- ▶ **Your action plan and timetable**
- ▶ **How you will review your plan and timetable**
- ▶ **Your race equality targets**
- ▶ **Your race equality performance indicators**
- ▶ **How you will deal with complaints**
- ▶ **How you will consult your staff and the public, including ethnic minority communities, at different stages of the action plan**
- ▶ **How you will tell your staff about your plans and activities**
- ▶ **How you will tell the public about your race equality progress**

GOVERNMENT DEPARTMENT SETS LEVELS OF RELEVANCE

A central government department with a wide variety of customers has found that only some of its functions and policies – those that apply to people as consumers or employees, and those that apply to small firms – are relevant to race equality. To meet its duty, it has classified its work areas into three broad categories – high, moderate, and low or nil – according to their actual or possible effects on race equality. Each category carries a different set of obligations. The department has included support functions, such as internal auditing and providing statistics, as relevant functions because they help it to meet the duty. The department has confirmed its classifications by consulting various groups, including people from ethnic minorities, and ministers.

A senior manager in each work area is responsible for the duty, and for reporting, once a year, to the departmental board. In areas classified as 'high', the officer has to make sure that every policy, scheme, or service has been checked and is meeting the duty.

The department believes this 'devolved' arrangement will allow it to take a strategic approach to meeting the new duties. The managers responsible for the duty in each area can make sure that the weight they give to race equality is in proportion to its relevance to their area. The central unit can then take overall responsibility, and give help where it is needed most.

The department is confident that the arrangement will encourage people in each work area to get involved, and will help to make sure that race equality is genuinely 'mainstreamed'. In other words, the people responsible for policy-making and service delivery will take account of race issues as they make policy and deliver their services.

We suggest you make the scheme as comprehensive as possible. You will find it more practical to have a single framework, which brings together as far as possible all aspects of your duty to promote race equality. You should consider including:

- the values, principles, and standards that guide your approach to race equality;
- the overall strategic aims you have adopted to promote race equality;
- an action plan and clear timescales;
- your arrangements for meeting the general duty and the specific duties;
- how often you plan to review each part of the scheme, and the scheme as a whole (under the duty you must review the whole scheme at least every three years, and we would advise you to report achievements at least once a year);
- how you plan to deal with complaints about the way you are meeting the duties, or other complaints about race equality;

FROM STRATEGY TO SCHEME

Following discussions with patients, staff, and other groups, an NHS trust drew up a race equality strategy and action plan for 2000–2004. The strategy has six sections. Four of them deal with service delivery, one with partnership work, and one with employment. Each section begins by describing the current situation in each area. The strategy then goes on to list current and planned activities, together with a series of targets. Patients – including those from ethnic minorities – and their representatives, and others will be involved in monitoring and reviewing progress.

The trust has reviewed and revised its race equality strategy and action plan, and packaged them to meet the terms of a race equality scheme.

- what else you have done, such as the targets you might have set, say, to reduce under-representation of people from some racial groups among your employees, or to raise satisfaction rates among residents from particular racial groups;
- other standards or measures that apply to your authority, such as the performance measures on race equality under statutory performance systems such as ‘best value’, or your own performance measures on race equality (for example, in employment, service delivery, and policy development), and how those measures relate to the scheme;
- how the scheme relates to your other policies and strategies, such as community or structural planning;
- how you will consult the general public and, particularly, what you will do to make sure that people from ethnic minorities are involved at all stages; and
- how you plan to make sure that all your staff know about the scheme and understand what it means and involves.

Should the scheme include outcomes?

In drawing up your race equality scheme, you will certainly find it useful to think about, and include, what you want to achieve through the scheme. It is important to remember that the race equality scheme is not just a plan for setting up processes. The aim of ethnic monitoring is not to collect ethnic data for its own sake, any more than the aim of consultation is to collect people’s views. The race equality scheme is about making race equality a reality, and using monitoring, assessment, and consultation to achieve this. The general outcomes of putting your race equality scheme into practice are likely to include:

- a more representative workforce at all levels in your authority;
- no significant differences in satisfaction among your staff, based on their racial group;
- no significant differences in public confidence in your authority, based on people’s racial groups;

COUNCIL BUILDS DUTY INTO ONGOING RACE EQUALITY WORK

Following the Stephen Lawrence Inquiry Report, an urban local authority with a small ethnic minority population carried out a thorough review of its work on race equality. This led to a new equal opportunities policy and a three-year action plan (which is reviewed every year). Both the policy and the action plan have separate sections dealing with race issues. The authority's plan includes:

- ethnic monitoring of service delivery, and satisfaction surveys;
- ethnic monitoring of public complaints;
- race equality performance targets for senior managers;
- greater cooperation with ethnic minority voluntary organisations, and various consultation exercises;
- targets for increasing the number of staff from certain racial groups;
- positive action, as part of a management development programme;
- ethnic monitoring of reasons for staff leaving the authority (based partly on what they say during 'exit' interviews with managers); and
- race-equality training for staff.

The local authority did not have to do very much to develop a race equality scheme, besides:

- reviewing its functions and policies to decide which were relevant to the duty;
- making arrangements to assess and consult on the effects of its services and policies on race equality (see pp 34–48); and
- training staff on the duty (see pp 55–57).

FIRE AUTHORITY BUILDS SCHEME INTO REVISED STRATEGY

A fire authority recently completed a full-scale review of its three-year-old equal opportunities strategy and action plan. The review looked at the authority's achievements against its original aims and yearly targets. It also took into account more recent developments, including:

- the Stephen Lawrence Inquiry Report;
- the Race Relations (Amendment) Act 2000;
- feedback from a staff survey;
- an audit of staff's ethnic backgrounds; and
- an analysis of tribunal findings.

The authority has drafted a new, three-year strategy and an action plan, which includes its race equality scheme. As the authority wanted as much agreement as possible for the strategy, particularly for its targets, it consulted staff and others on all its proposals.

COUNCIL MAKES RACE EQUALITY PART OF EQUALITY STRATEGY

A local council carried out a thorough review of its approach to race equality, based on wide-ranging consultation with local communities, politicians, management, and staff. The council accepted the review's recommendations in full.

During the two years since the review, the council has:

- developed an equal opportunities strategy and an annual action plan, with a separate section on race equality that meets the general duty and the specific duty to produce a race equality scheme;
- reviewed and extended the range of its monitoring systems;
- set performance measures on equality for its main services, and reports regularly on progress towards meeting them;
- set new targets for its workforce, and added new areas for monitoring (such as staff appraisals, complaints, training, and disciplinary action);
- set up a new ethnic minorities committee; and
- encouraged people from ethnic minorities to get involved in groups such as the community safety partnership.

- no significant differences in service outcomes between racial groups; and
- no significant differences in people's satisfaction with services, based on their racial groups.

You should see your race equality scheme as a framework for steady improvement in race equality. You are unlikely to fully achieve all the outcomes you set for yourself in your first scheme. However, you should be able to see improvements in race equality over time, as long as you make every effort to put your schemes into practice.

Does the scheme need special procedures?

You could use the systems and procedures you already have to draw up and monitor your race equality scheme. The scheme's success will depend more on your commitment to making it work, than on how you set it up.

However, you may want to give overall responsibility for the day-to-day management of the scheme to an experienced, senior member of staff, reporting directly to senior management. If you do this, make sure the officer has the time and resources to take on this role.

It may also be useful to set up a properly-equipped 'steering group', to oversee the process and to help coordinate different activities. Ideally, the group would be made up of the managers responsible for the areas covered by the specific duties. The group would need to meet regularly, and could be chaired by the senior officer responsible for the scheme.

You should make every effort to draw members of the steering group from employees from different racial groups, and to build their ideas into the way you develop and monitor the scheme. If you have any ethnic minority staff associations, their involvement will also be useful.

If you work with another authority (whether or not you have to by law), your race equality scheme could have clear links to the other authority's scheme. You could consult each other regularly, to make sure your schemes are compatible and coordinated properly (see chapter 6).

How should you publish the scheme?

Your race equality scheme is a public document and needs to be available to anyone who wants to see it.

We suggest you think carefully about the ways in which some people might be prevented from seeing it (for example, if you do not provide it in large print, in languages other than English, or on audio tape), and deal with these.

We recommend that you report on progress at least once a year (for example, through your annual report or newsletters, or on your website). You must review and update the whole race equality scheme at least every three years.

HOW A COUNCIL KEEPS ITS CUSTOMERS INFORMED

A local council recently reviewed and published a new equalities policy and action plan. The documents had separate sections on race equality and were available to anyone who asked for them. As well as these documents, the council published a series of handbooks for management and staff. One of these – *Race Equality: your rights and responsibilities* – explained what the council expected staff to do and how they could expect to be treated. At the same time, the council published a leaflet for the public, which explained:

- the aims of its race equality policy;
- what it had already achieved; and
- what it was planning to do.

The leaflet was available in different languages. The council followed this up with a feature on its achievements during the year in a local council magazine (sent to all households in the area).

FUNCTIONS AND POLICIES

The duty

The public authorities listed in appendix 2 to the code must set out, in their race equality scheme, which of their functions and current and proposed policies are relevant to the general duty to promote race equality. They must also review these functions and policies at least every three years, from 30 November 2002. (See p 14.)

What is meant by ‘functions’ and ‘policies’?

In the context of the Act – and the general duty it gives public authorities to promote race equality – the term ‘functions’ means your duties and powers. It covers internal and external functions, including service delivery.

Similarly, the term ‘policies’ has a wide meaning. Ideally, your policies should be clearly and plainly written. However, in reality, some policies are built into everyday procedures and customs. For example, for several years you may have been letting space in community centres to long-running groups, but this may exclude newer ethnic minority community groups from using the facilities. As a result, not all policy has been open to inspection and review.

SCOTTISH POLICE USE AUDIT ‘MATRIX’

Following the publication of the Stephen Lawrence Inquiry Report, the Association of Chief Police Officers in Scotland (ACPOS) published an audit ‘matrix’ – or checklist – to help Scottish forces assess whether their policies (present and future) were ‘race inclusive’. The matrix is based on one that had been used to examine policies under the Human Rights Act 1998.

Before developing the matrix, ACPOS’ racial diversity strategic review team consulted police forces about the policies they thought were likely to affect race equality. The matrix includes systems for regularly checking procedures, to make sure they reflect needs inside and outside the force, and do not have a negative effect on ethnic minority groups.

The matrix covers all the main policing areas, including registering ‘aliens’, community safety, complaints, custody, criminal investigations, and emergency planning. It rates each activity according to whether it has a high, medium, or low priority for race equality. For example, criminal investigation is rated as having a high priority, and closed-circuit TV as medium.

For each policing area, the matrix identifies the risk factors for race equality, notes action that has already been taken nationally, and recommends further steps to make sure Scottish forces meet the general duty.

The matrix has been adopted by Scottish forces and is currently being used to take account of race equality when they are developing policy.

PRIMARY CARE TRUST ASSESSES DISEASE, DEATH, AND ETHNICITY

A primary care trust analysed data on disease and death for all illnesses and all racial groups in the local population. The trust used the analysis to pick out certain functions and services for special attention, including health education work with certain communities, including the Pakistani and Chinese ones.

Based on this assessment, the trust has given high priority to coronary care, chest and lung conditions, and mental health (particularly depression, schizophrenia, and alcohol-related problems). The trust is confident that it now has enough information to decide what priority to give to particular health problems, depending on how they affect people from ethnic minorities.

You should take ‘policies’ to mean the full range of formal and informal decisions you make in carrying out your duties, and all the ways in which you use your powers – or decide not to. You should therefore include in any assessment of a policy an examination of long-standing ‘custom and practice’ and management decisions, as well as your formal written policy.

It is important to remember that, in this context, service delivery means the full range of external functions, including regulation and enforcement.

What does ‘relevant’ mean?

In terms of the Act, ‘relevant’ means ‘having implications for’ (or affecting) the general duty. A function or a policy will be relevant if it has, or could have, implications of any kind for promoting race equality.

What is the reason for this duty?

Section 71(1) of the Act says that public authorities must have ‘due regard’ to their duty to promote race equality. As explained in chapter 2, this means you are expected to give appropriate weight to promoting race equality when carrying out your functions. In other words, the weight you give to race equality should be in proportion to how relevant that function is to the general duty. To meet this duty, you need to decide whether your functions and policies are relevant to race equality, and, if so, how relevant they are.

Why is this important?

In the past, organisations that did consider race issues usually kept these to one side and dealt with them through specific race equality policies. Meanwhile, the organisation's work continued in what was really a 'culture- and colour-blind' way. Since the Stephen Lawrence Inquiry Report drew attention to routine discrimination in many institutions (such as the police), organisations have recognised the importance of making race equality part of their everyday work.

The aim of this duty is to tackle 'institutional racism' in public services by 'mainstreaming' race equality, in other words making it part of your general structures and operations. In particular, the duty asks you to recognise how your functions and policies might affect the way you promote race equality.

What do you need to do?

To meet this duty, you will need to:

- list all your functions and policies;
- decide how you will assess whether a function or policy is relevant to the general duty;
- set up a procedure for regularly (at least every three years) assessing your functions and policies for their relevance to promoting race equality, and putting them in order according to this assessment; and
- set out these arrangements in your race equality scheme, and put them into practice.

As suggested earlier, you should consider reviewing your race equality scheme every year. This would allow you to consider any new functions or policies you introduce during the year. Whatever approach you take, it should be flexible enough to take account of changing priorities.

HEALTH BOARD ADDS RACE EQUALITY QUESTIONS TO POLICY REPORTS

A health board has created a standard computerised format for all policy reports. This format includes questions under a series of headings, such as finance, human resources, environment, Human Rights Act, and race equality. Under race equality, report writers must answer the following questions.

- Is there any evidence that some racial groups could be adversely affected?
- Is there any public concern, especially from ethnic minorities, about possible discrimination?

The answers to these questions form a written race equality statement, which is included in the final report.

This part of the race equality scheme is a vital stage towards meeting the general duty. It gives focus to the task of recognising that policies and functions are not ‘culture- or colour-blind’, and that the reasoning behind rules and decisions can unintentionally affect people from some racial groups. The question you must ask once you have made all the lists and set up the procedures is: ‘What should we be doing to eliminate unlawful racial discrimination, and to promote equal opportunities and good race relations?’

How will you know if a function or policy is relevant to the general duty?

The basic question to ask is: ‘How does this function or policy affect different racial groups in the community we serve?’

For each function or policy you could also ask the following questions.

- Which parts of the general duty – eliminating unlawful racial discrimination, promoting equal opportunities, and promoting good race relations – are relevant to this function or policy?
- Is there any reason to believe that people from some racial groups are being, or could be, adversely affected by this function or policy? Which racial groups does this function or policy affect?

How should you decide how relevant a function or policy is?

You may find that many of your functions and policies are relevant to race equality and that it is not possible to deal with them all at once. We suggest you consider each function or policy in turn, to decide how significant it is in terms of promoting race equality. For example, a police force may want to give more attention to its policy on preventing small-business crime than its policy on responding to road-traffic accidents, in terms of each policy’s likely effect on promoting race equality.

To decide how relevant particular functions and policies are, you could ask two questions.

- How much evidence do we have – none, a little, some, or a lot (for example, from research, consultation, complaints, or ethnic monitoring)?
- Are the public (especially ethnic minority communities) worried that certain functions or policies are discriminatory or racist?

To meet this part of the specific duty, you may need to review all the functions and policies you see as being relevant to race equality. Your overall strategy, as set out in your race equality scheme, should allow for this.

The assessment grid

The assessment grid on page 29 has been developed to assess how relevant a primary care trust's functions and policies are to the general duty. You can easily adapt the grid for your organisation, if you find it useful.

How to use the grid

For each function or policy, answer all four sets of questions. The questions in the first two columns will help you to decide whether the function or policy has any relevance to the general duty. The questions in the second two columns will help you to decide how relevant the function or policy is.

Evaluating your answers

We set out below a rough guide to evaluating your answers.

● High relevance (Year 1)

- The function or policy is relevant to all or most parts of the general duty.
- There is substantial evidence that some racial groups are (or could be) differently affected by the function or policy.
- There is substantial public concern about the function or policy.

● Medium relevance (Year 2)

- The function or policy is relevant to most parts of the general duty.
- There is some evidence that some racial groups are (or could be) differently affected.
- There is some public concern about the function or policy.

● Low relevance (Year 3)

- You should schedule all other functions and policies for race equality work in the third year. Some functions and policies (for example, property services or highways maintenance in local government) may have very little relevance to the general duty – except in your role as an employer, which will be relevant to all functions. However, you should still reconsider these functions and policies every three years.

ASSESSING FUNCTIONS AND POLICIES

How relevant are they to the general duty?

Example of a grid for assessing the functions and policies of a primary care trust

Questions to ask when assessing a function or policy			
Is it relevant to the general duty?		How relevant is it?	
Which of the three parts of the duty is it relevant to (if any)?	Is there evidence or reason to believe that some racial groups could be differently affected? (For example, higher or lower uptake of services.)	How much evidence do you have from, for example, consultation research, complaints and monitoring?	Is there any public concern about the function or policy in relation to race equality?
1 Eliminating discrimination 2 Promoting equal opportunities 3 Promoting good race relations	0 No 1 Yes	0 None 1 A little 2 Some 3 A lot	0 None 1 A little 2 Some 3 A lot

Services provided through local structures

Primary and intermediate care				
Community				
Prescribing				
Nursing				
Therapies				
Community dental				
Family planning				
Children's services				
Rehabilitation				

Commissioning services

Older people's				
Drug and alcohol				
Mental health				
Learning disability				
Primary care practitioners				
NHS Trusts.				

Nursing services

Clinical governance				
Complaints				
Control assurance				

Health improvement

Primary care centres				
Electronic patient records				
Public health				
Screening services				
Community development				
Smoking				
CVD prevention				
Diabetes				
Accident prevention				
Health promotion				

Miscellaneous

Contracts with care providers				
Managing finance				
Human resources				
Corporate services				
Supporting information technology				
Communication and PR				

MONITORING POLICIES

The duty

The public authorities listed in appendix 2 to the code must set out, in their race equality scheme, their arrangements for monitoring any adverse impact their policies have on promoting race equality (see p 14).

Monitoring is an active process, the results of which must be fed into the planning process if it is to be meaningful. You must regularly analyse ethnic monitoring data and use the results to influence future policy design and delivery.

What does this mean?

This duty relates specifically to the policies you have decided are relevant to the general duty. These include the full range of policies on delivering services, and your policies on employment. As well as being covered by the specific duties for employers (which many of you will have to meet), employment will always be a relevant function in terms of meeting the general duty.

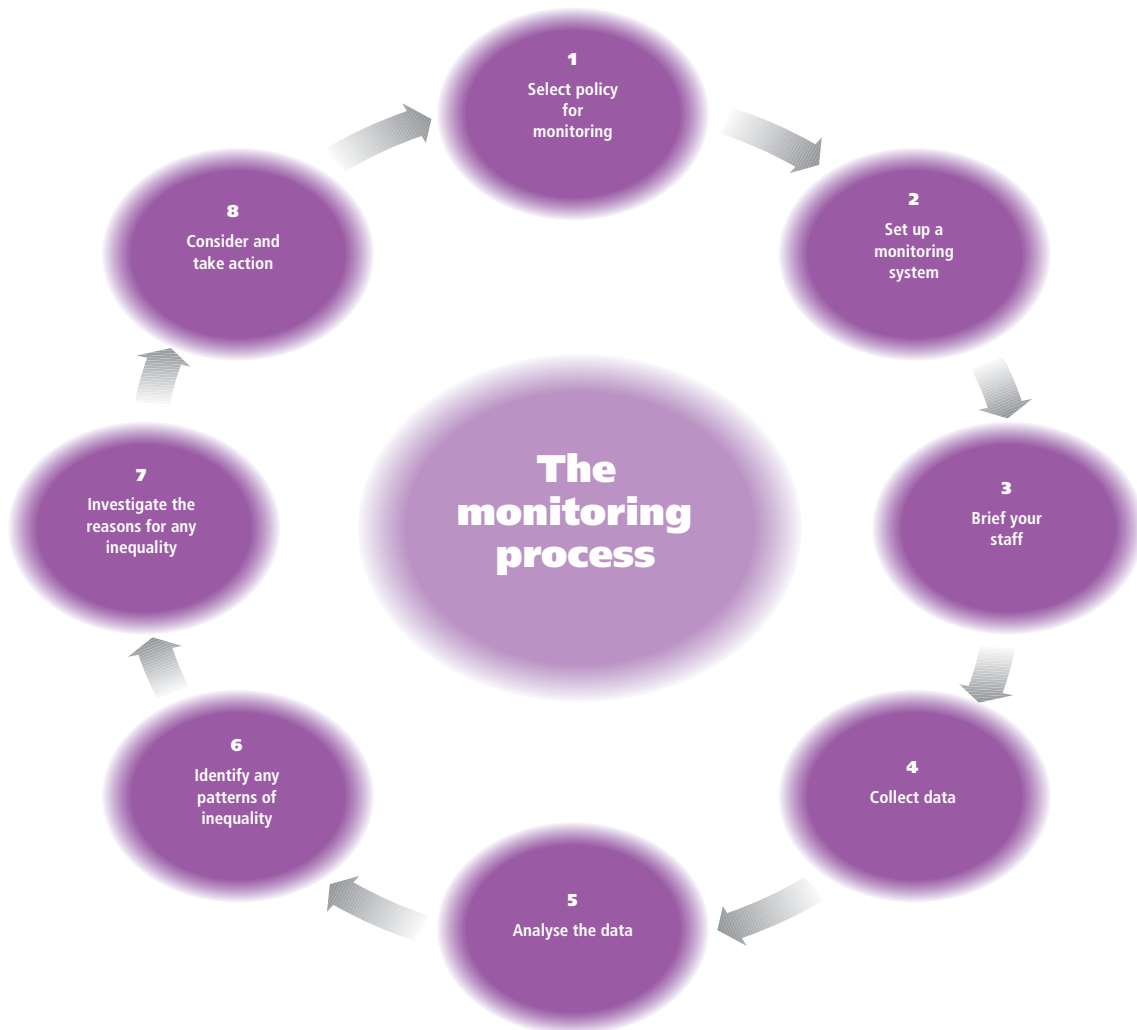
Under the duty, you must set out your arrangements for monitoring the impact of all your relevant policies on race equality. However, to meet the three parts of the general duty – eliminating unlawful racial discrimination, promoting equal opportunities, and promoting good race relations – you will need to put those arrangements into practice, and deal with any adverse impact your policies might be having on some racial groups.

What is the reason for monitoring?

Monitoring can tell you how your policies are affecting different racial groups, and whether they are having an adverse impact on some groups.

Monitoring by racial group can test:

- the under- or over-representation of different racial groups (for example, in reporting problems, using services, or facing enforcement action);
- satisfaction with a service, whatever a person's racial group;
- how effectively a service is delivered to different communities; and
- how services are provided (for example, whether they take account of language or cultural needs, or the effects of past discrimination).



Why is this important?

First, monitoring is an important way of measuring the effects of policies in practice. It can tell you if you are operating within the law – the Act makes racial discrimination in most areas unlawful (see the appendix) – and within your own policies on equality.

Second, monitoring is a vital part of any strategy to promote race equality in an organisation. As the Stephen Lawrence Inquiry Report warned, long-standing ways of doing things can discriminate against people from ethnic minorities, despite an organisation's efforts to promote race equality. The actions that discriminate against ethnic minorities are often the result of an organisation's 'collective failure' to work in ways that do not discriminate.

Monitoring will help you to check whether your policies, operations, and organisational culture are discriminating against some racial groups. Without ethnic monitoring data, there is no reliable way of knowing whether or not different racial groups are being treated differently, or whether your policies to prevent or tackle discrimination are working. Monitoring can also help you to find out why and how discrimination takes place. The diagram on page 31 will help you to understand the role that monitoring can play in tackling discrimination.

What do you need to do?

If you do not already monitor your policies to see how they affect different racial groups, this could be one of your first tasks. You will also need to monitor any relevant new policies you introduce.

For each policy, you will need to:

- monitor its effects on different racial groups;
- check whether there are any differences in its impact on different racial groups; and
- assess whether these differences have an adverse impact on some racial groups (see p 41).

If you do find any adverse impact, you will need to investigate the reasons for this and consider whether you should revise your policies and procedures. One of the questions you might ask when you are looking for reasons is whether the policy or procedure has been strictly followed, or whether management has used its discretion to vary it.

It cannot be emphasised too strongly that monitoring is more than just collecting information. Unless you follow up the findings of your monitoring, investigate any adverse impact, and tackle any barriers or failures you find, you may not be meeting the general duty. As we have explained (see p 13) the specific duties are a means to the ultimate aim of meeting the general duty. So, the question you should ask in addressing your specific duties is: 'What should we be doing to eliminate unlawful racial discrimination, to promote equal opportunities, and to promote good race relations?'

We have produced a separate guide to the monitoring duties under the Act – *Ethnic Monitoring: A guide for public authorities* – which explains in more detail what you can do.

What should you monitor?

Many public authorities already monitor certain aspects of their services, and their employment activities. However, under the Act, most authorities now have a specific duty to make arrangements for monitoring the effects of their policies on promoting race equality. This means you may have to adapt your current monitoring systems to include race as a factor.

What ethnic data should you collect and analyse?

You will need ethnic data for all the policies you have decided are relevant to promoting race equality. 'Ethnic data' means information about the way policies affect people, depending on their racial group.

Monitoring people's views and experiences

The third part of the general duty relates to promoting good race relations. As well as monitoring policies, you may therefore also want to consider monitoring what people from different racial groups think of your policies and services.

This will help to raise your profile and reputation among the communities you serve. It will also increase your understanding of needs and concerns that you might have overlooked or ignored.

How should you monitor impact?

Public authorities have developed various ways of testing the impact of their policies, to make sure they are achieving their aims. Ways you could monitor the impact of your policies and services include:

- keeping records, by racial group, of how and when your services or law-enforcement powers are used (for example, breast-screening services, or breaches of trading standards);
- satisfaction surveys and perception surveys, with people's replies analysed according to their racial group;
- random or targeted personal interviews;
- data on complaints, analysed by the racial groups of those complaining, and the nature of the complaint; and
- public consultation meetings and structured focus groups.

The methods and resources you use will depend on the size of your authority, and the importance of the policy and its likely effect on the public, including people from ethnic minorities. Most importantly, whatever method you use, you should try to make sure that you reach people who have first-hand experience of your functions and policies. For example, police forces should try to contact the victims of racist attacks, and maternity services should try to speak to pregnant women or new mothers.

FUNDING BODY TACKLES UNDER-REPRESENTATION

A national funding body realised that one of its major grant programmes had only made awards to a handful of people from ethnic minorities. Just as worrying was the discovery that there were very few applications from ethnic minority projects. The funding body did two things. Firstly, they re-examined the conditions for applying to make sure that they were not unintentionally discriminating against ethnic minority projects. Secondly, they employed someone with a lot of experience of fundraising in the ethnic minority voluntary sector to contact and advise people who may want to apply. As a result, the funding body saw a sharp rise in applicants from, and awards to, people from ethnic minorities.

ASSESSING AND CONSULTING ON PROPOSED POLICIES

The duty

The public authorities listed in appendix 2 to the code must set out, in their race equality scheme, their arrangements for assessing, and consulting on, the likely impact of their proposed policies on promoting race equality (see p 14).

What does this mean?

This means you must set out the arrangements you have made to assess the likely impact of policies you are proposing to introduce before you adopt them. You may need to look at how decisions are made in your authority, and make sure that the policies you finally introduce promote equal opportunities and good race relations, and do not lead to unlawful direct or indirect racial discrimination (see the appendix). Under the duty, you also need to arrange to consult people who are likely to be affected by your policy proposals and their implications for promoting race equality. In tackling this specific duty, you should remember the principles of relevance and proportionality (see p 6). Not all the policies you are considering will be relevant to race equality, and some will be much more relevant than others.

What is the reason for this duty?

Policies are always being adapted or replaced because of new laws and changing environments. This part of your race equality scheme should help you to take account of this in your efforts to meet the general duty. The aim is to build race equality into the policy-making process, and to make that process clear, open, and inclusive.

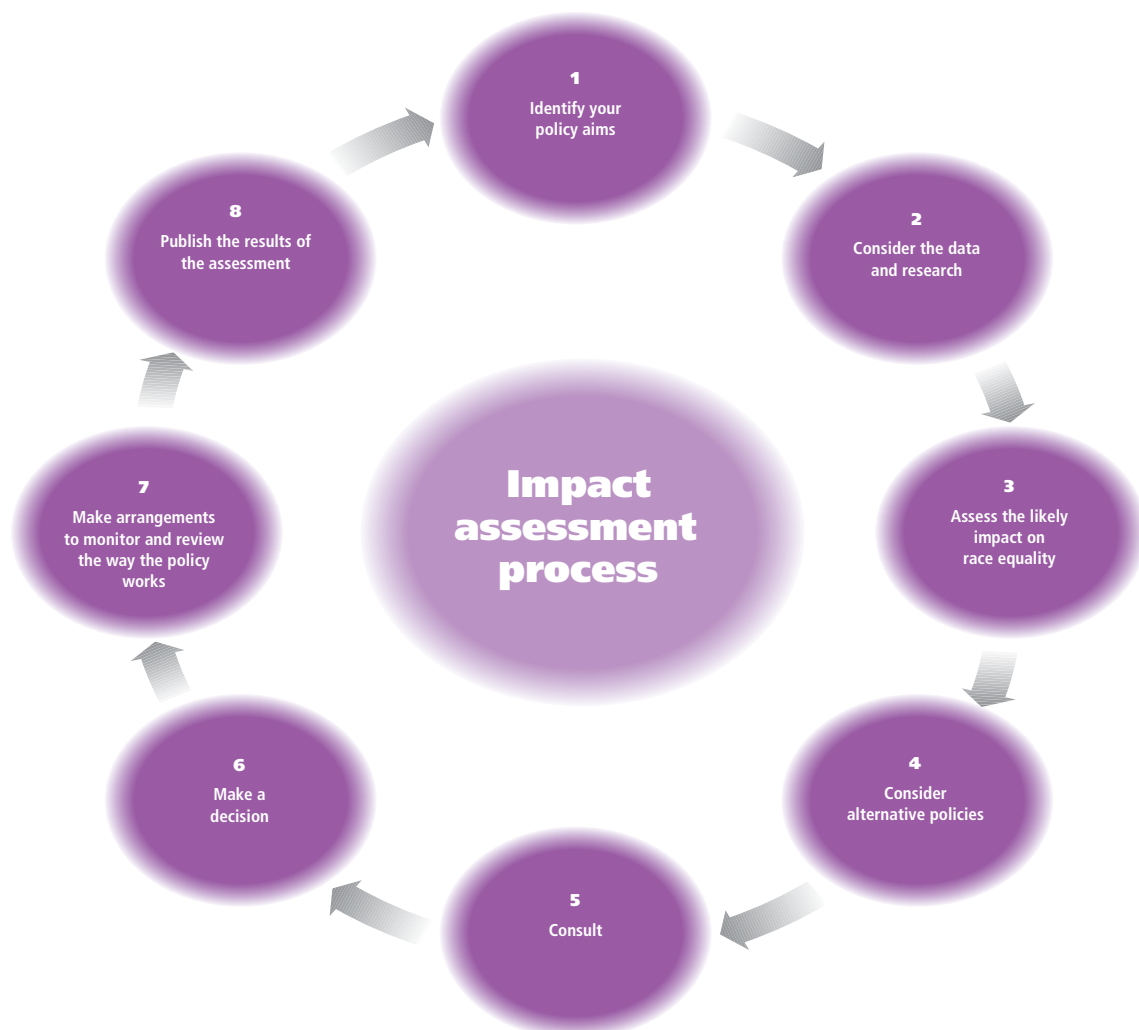
Why is this important?

The general duty and the specific duty to draw up and introduce race equality schemes are forward-looking steps, designed to tackle the long-term challenge of removing 'institutional racism' from public services. The tasks facing public authorities are always changing. You need to question your policies and, sometimes, the cultural assumptions behind them. Also, policies need to be relevant and to reflect changes in the legal, social, and political environment. Finally, to turn policies into effective and fair public services, constant monitoring and assessment of your policies and services is the best way of meeting your aims and improving performance and quality.

What do you need to do?

Your first step might be to consider methods and procedures for:

- assessing how your proposed policies are likely to affect people from different racial groups (this could include collecting and analysing relevant ethnic data);



GUIDES TO IMPACT ASSESSMENT

The NHS Executive for London has produced *A Short Guide to Health Impact Assessment*. The guide covers race equality as an essential part of the assessment process. It offers a good example of how to mainstream race equality. The Greater London Authority has also produced a health impact assessment 'screening tool'. This offers a series of questions, to identify the possible effects of health policies on ethnic and other groups.

- consulting people who are likely to be affected by your proposed policies; and
- reviewing and revising your proposed policies in the light of your assessment and consultation, if they show adverse impact on some racial groups.

The aim of including arrangements for assessment and consultation in race equality schemes is to equip you to meet the three parts of the general duty. If your assessments and consultation show that any of your proposed policies are likely to have an adverse impact on some of the communities you serve, and you cannot justify this, you must deal with it, either by considering other policies, or by finding ways of reducing the adverse impact of the policies you have proposed.

How does assessment help?

- It challenges the assumption that policies affect everyone in the same way, by detecting and assessing any adverse impact on a particular group before the policies are introduced.
- It allows you to make sure that different groups are equally served by the policy.

What is the best way of doing this?

One way of approaching this is by carrying out an 'impact assessment'. An impact assessment is a systematic way of finding out whether a policy (or a proposed policy) affects different racial groups differently. Its merits are that it enables you to:

- take account of the needs, circumstances, and experiences of those who are affected by your policies;
- identify actual and potential inequalities in outcomes;
- consider other ways of achieving the aims of your policy;
- increase public confidence in the fairness of your policies; and
- develop better policies generally.

When should you assess impact?

You could begin as soon as you decide to develop a new policy that is relevant to the general duty. Assessing the impact of a policy on promoting race equality should be part of your normal policy-making process.

How fully do you need to assess impact?

There are three types of impact assessment.

- An *initial assessment or screening* is normally based on data you already have. It may only produce estimates or signs of unequal impact, but it is useful for developing new policies, or considering changes to existing policies.
- A *partial impact assessment* builds on an initial assessment, outlines risks and benefits, and includes advice from experts and interested groups.
- A *full impact assessment* would include the results of external consultation, a final recommendation, and arrangements for monitoring and evaluating the policy and its impact in practice.

You may not need to carry out a full impact assessment in every case.

IMPROVING ACCESS TO SERVICES FOR VISUALLY IMPAIRED OLDER PEOPLE

The visual-impairment department of an NHS trust analysed its list of clients by their racial groups and compared the information with the latest census figures. This showed that, while three per cent of people over 60 were from ethnic minorities, less than one per cent of its clients were from this group. Further research also showed that most of its older patients from ethnic minorities approached the service themselves rather than being referred by the social work department or voluntary organisations.

In partnership with the social work department, the trust held a series of focus groups with people from ethnic minorities, including patients, to explore the kinds of barriers they might face. The findings showed that most of the people who did not use the service were either not aware of it or did not know how to use it. Few had any contact with the social work department, but many of them used local ethnic minority lunch clubs or day centres for older people.

The trust and the council developed a joint strategy which included:

- making sure that information about the service was made available locally in the main languages used in the community;
- employing someone to make links with the community, and to identify needs and refer patients to the services; and
- providing basic assessments of the service in community venues.

FROM SCREENING TO FULL ASSESSMENT

A devolved government department decided to proof all its policies for race equality. It began by screening its policies against the evidence available. The results quickly persuaded the department that it needed full race equality impact assessments of a range of policies. It decided to spread these out over three years and to combine them with assessments of the policies' effects on people's daily lives.

The assessments involve closely analysing available data, new research, and a programme of wide-ranging consultations with the public, and with groups inside and outside the department. The department is also strengthening its baseline data and reviewing its monitoring processes, to make sure it can produce the data it will need to measure the effects of its policies and any changes it makes to them.

How should you assess impact?

If you decide to carry out a full impact assessment, you should approach it systematically, for example by following the eight steps listed below.

1. Identifying the aims of your policy and how it will work.
2. Examining the data and research available.
3. Assessing the likely impact on race equality.
4. Considering other ways of achieving the same policy goals.
5. Consulting people who are likely to be affected by your policy.
6. Deciding whether to introduce your policy.
7. Making arrangements to monitor and review your policy and its impact.
8. Publishing the results of the assessment.

1. Identifying the aims of your policy and how it will work

Good policies have clear, achievable aims, and they are workable. You can ask the following questions of any new policy proposal.

- What is the purpose of the policy?
- Who is affected by it?
- Who is the policy intended to benefit, and how?
- How will we put policy into practice, and who will be responsible for it?
- How does the policy fit into our wider aims?
- Have other, similar, authorities found other ways of tackling the same problem?

2. Examining the data and research available

The next step is to ask what kind of information you will need to estimate the impact your policy is likely to have on different racial groups, and where you should look for the information. This should also tell you whether you should commission fresh research.

The most likely source of the information you are looking for is other authorities and you might consider working with them at this stage. There is little point in duplicating work others have already done and you may find that they are only too willing to cooperate in projects that will strengthen their databases. Local authorities usually have ethnic data on their populations and may be happy to share the information with other authorities in their area. Health, social work services, and education authorities will probably welcome the opportunity to work together to develop new data, because their fields of responsibility overlap. You might consider sharing information that is already in the public domain with the people who are likely to be affected by your policy. They will then be able to understand better the basis for your decisions.

What sort of data will you need?

You may need both quantitative and qualitative data. You can get this from existing databases and research, or collect fresh data. What is important is that the data is relevant and reliable. You could consider the following steps to get the data you need.

- Collect and analyse as much relevant ethnic data as you can find from existing databases and analyse it. You can use this data as a benchmark for assessing policies and services.
- Build on this data with information from research studies or surveys. This should give you a better understanding of how your policy proposals are likely to affect different racial groups.

NHS TRUST TACKLES ADVERSE IMPACT

An NHS trust decided that its approach to assessing how relevant its functions and services were to race equality would be to assume that any function or service that involved caring for patients would be relevant. Two areas in particular – outpatient services and accident and emergency services – had lower levels of uptake and lower levels of satisfaction among some racial groups. The trust also found that staff from ethnic minorities were less likely to be promoted. To tackle these findings, the trust decided to:

- send information about its outpatient and accident and emergency services to everyone in the community, in various languages and formats (such as large print);
- train staff who had contact with the public on how to treat patients from different cultural backgrounds;
- set targets to tackle under-representation of people from ethnic minorities at senior management levels in the trust; and
- introduce a management development programme.

- Identify any gaps in the information.
- Identify other sources of information, or partners who might work with you to develop new data.
- Commission fresh data.

What ethnic categories should you use?

We recommend that you use the same ethnic categories as were used in the 2001 census, or categories that are compatible with the census categories. See our guide, *Ethnic Monitoring: A guide for public authorities in Scotland*, for more information.

You might also consider collecting information about other factors such as age, religious belief, and sex. This can be invaluable when you want to look at the effects of your policies in greater detail. For example, a policy that does not have an adverse impact on a racial group as a whole may have a significant adverse impact on older women or young people from some racial groups, or on people who follow certain religious customs.

How can you collect the data?

You can use a wide range of methods to collect the information you need. However, your choice is likely to be decided by your circumstances and by the nature of the subject. Clearly, the quality and reliability of the information you gather will increase according to the number and range of methods you can use.

These include:

- existing ethnic monitoring databases in related policy areas;
- surveys (face-to-face, telephone, and postal);
- population data held by other authorities and agencies, and other statistics (including census data);
- consultation exercises;
- observations;
- focus-group discussions;
- in-depth interviews;
- available research findings; and
- analysis of similar policies in your own or other public authorities.

Each method has its advantages and disadvantages, depending on your aims and circumstances. You might consider getting professional advice from an experienced social researcher, if you do not have this expertise in-house.

It will be especially important to include methods that have proved successful in reaching ethnic minority communities, including women and young people from these communities. It may also help to involve people from these communities as advisers when you are deciding which methods to use to collect the data.

3. Assessing the likely impact on race equality

You can now use the information you have gathered and analysed to decide whether your policy proposal could affect different racial groups differently, and whether any differences amount to adverse impact or unlawful racial discrimination. Adverse impact means significant differences in patterns of representation or outcomes between racial groups. Adverse impact may not in itself be proof of racial discrimination, one way or the other. What it means is that you need to investigate the processes that have resulted in adverse impact and tackle any barriers or failings you find.

A quick rule of thumb to check whether differences amount to adverse impact is the four-fifths rule. It says that if the rate for any group is less than four-fifths (or 80 per cent) of the rate of the group with the highest rate, this will be an indication of bias. This check is very rough and ready and is not a statistical test. You should also remember that it only deals with the question of adverse impact and does not resolve the ultimate question of unlawful racial discrimination.

Our guide to ethnic monitoring, *Ethnic Monitoring: A guide for public authorities in Scotland*, gives more detail about adverse impact. It also includes several examples of how public authorities have tackled adverse impact shown up by their monitoring.

SATISFACTION SURVEY PICKS UP WORRIES AMONG OLDER CHINESE PEOPLE

For some years, a local council has been surveying residents' opinions and analysing their replies by racial group. The survey included questions about their satisfaction with the council's services. It showed that people of Chinese origin thought that their needs, and particularly those of older people, were not understood by the social work department. As a result, the council:

- held discussions with well-known members of the community;
- produced and distributed information leaflets about people's rights to services;
- invited older people from the Chinese community, their carers, and voluntary organisations to visit some of the council's projects; and
- provided extra training on equal treatment for front-line social care staff.

They repeated these and other initiatives over the next three years. The surveys carried out over that period showed that Chinese residents' opinions of the council had improved.

The following questions may help you to assess the impact of your policy.

- Does the quantitative data show differences between racial groups?
- Does the qualitative data show differences between racial groups?
- Do the differences between racial groups amount to adverse impact, and for which groups?
- Could the policy be directly or indirectly discriminatory (see the appendix)?
- If the policy could be indirectly discriminatory, could it still be justifiable under the Act?

4. Considering other ways of achieving the same policy goals

This is a crucial stage in assessing impact. If your assessment shows that your policy is likely to have an adverse impact on some racial groups, you need to consider ways of dealing with this. You could make changes to the policy, or the way you plan to operate it, to remove or reduce adverse impact. You could also consider a different policy altogether, which still achieves the aims of your original policy, but avoids any adverse impact on race equality.

You may find the following questions useful in considering different policy options.

- How far do each of your policy options advance or restrict race equality?
- In what way does each option advance or restrict race equality?
- If you do not adopt the option that is better for race equality, what are the consequences for the racial groups affected by each option, and what are the consequences for you?

Before making a decision, you should also check that by adopting an option that reduces adverse impact on one racial group you do not create adverse impact on another group. If this is unavoidable, you may need to satisfy yourself that you can justify this legally.

5. Consulting people who are likely to be affected by the policy

As part of your race equality scheme, you must set out your arrangements for consulting the people who are likely to be affected by your policy proposals. Consultation is a key stage in carrying out a race equality impact assessment and you should consider building it into your development and planning processes. Your aim should be to:

- consult people from all racial groups, and take their views into account when developing various policy options;

- tailor the consultation methods you use to the groups you want to reach;
- not use consultation too often, and not always consult the same groups;
- manage the consultation exercise well, timetable it properly, make sure its aims are clear, and explain the exercise to the people involved;
- monitor and assess the consultation methods and, if necessary, adapt them; and
- publish the results of these consultations, and feed them back into your planning and decision-making processes in an open and responsible way.

Who should you consult?

If public services are to reflect public needs and wishes, it is important to aim to involve everyone who is affected by your policy – both inside and outside your authority – in the consultation, and to give them the opportunity to express their opinions, concerns, and suggestions. You could also try to involve anyone in your area who is interested in promoting race equality – from individuals to community groups, associations, and corporate teams.

Inside your authority, you will find it very useful to work closely with recognised trade unions and staff associations, including ethnic minority staff associations or networks where they exist. You could consult them at all stages, but especially when you plan to consult staff in general about your proposals.

Bearing in mind that good race relations and, in particular, the success of your race equality scheme, will depend on support from your whole community, you should consult as widely as possible outside your authority. However, because people from ethnic minorities experience high levels of racial prejudice and harassment, and often lack confidence in the authorities, it is particularly important to make sure you reach them in your consultations.

WOMEN-ONLY SWIM SESSIONS ATTRACT MORE ETHNIC MINORITY WOMEN

Every year the Department of Leisure and Recreation carries out customer satisfaction surveys with people using its facilities. One facility, a large swim centre, is in an area with a large ethnic minority population. Surprisingly the survey found that almost nobody from ethnic minority backgrounds was using the centre.

Following consultations with local community groups, the Department proposed holding women-only sessions.

The department publicised the sessions through local ethnic minority projects and through mosques and temples, encouraging women to attend. The sessions have been a great success among ethnic minority women. The department is now considering a similar approach to encourage take-up of its gym facilities, as part of a 'healthy living' project.

CONSULTATIVE FORUM INCLUDES GYPSY AND TRAVELLER REPRESENTATIVES

A local council and police force in the Highlands received a large number of complaints about Gypsies and Travellers 'pulling to' in local lay-bys. Both agencies recognised that they spent a lot of time enforcing planning regulations and that their relationship with the Gypsy and Traveller communities had become tense and antagonistic.

The council and police agreed to involve Gypsies and Travellers in decision-making, and set up a joint consultative forum to sort out any problems. Following discussions, everyone agreed that many of the problems could be sorted out easily. Other agencies, from education, housing, economic development, and health, also joined the forum.

As a result of this work, eight new transit sites, waste disposal and washing facilities, have been set up. The sites offer health and education services and youth development workers have been hired. The community is consulted regularly and complaints have dropped substantially.

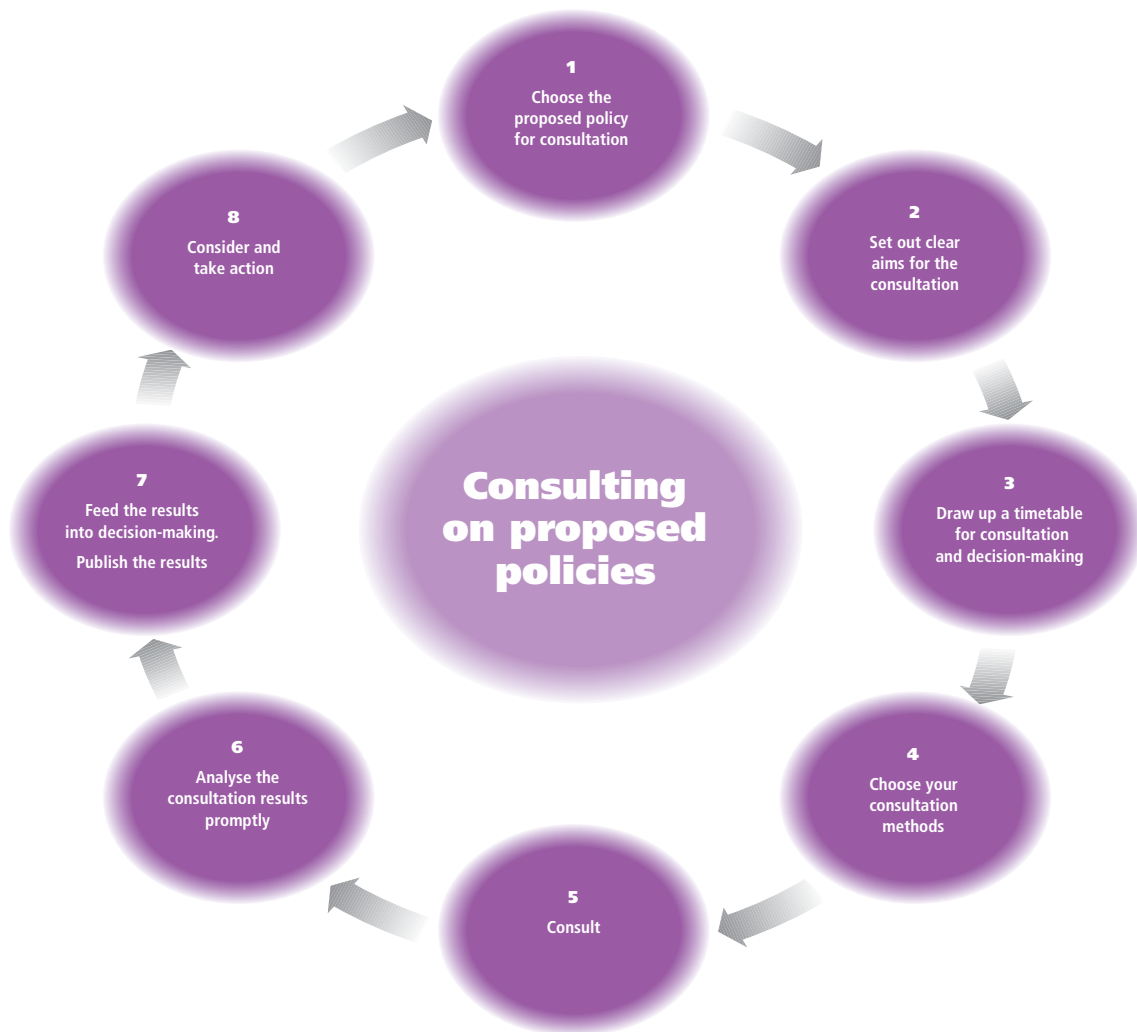
You may need to take special care not to restrict your consultations to official ethnic minority associations and community leaders. However, they will be important in giving you information and helping you to reach their communities. Your local racial equality council should also be able to advise you.

Groups that could be overlooked in consultations include:

- groups that are new to this country, such as refugees and asylum seekers;
- groups that have often been excluded by public authorities, such as Gypsies and Travellers;
- women from ethnic minorities;
- young or older people from ethnic minorities;
- people from ethnic minorities with disabilities, and their carers;
- businesses owned or run by people from ethnic minorities;
- relatively isolated families or individuals in rural areas, including shopkeepers and restaurant owners from ethnic minorities; and
- people who live in one area and work in another, so have needs in both.

What consultation methods can you use?

Consultation is often most effective when it uses a variety of methods, such as surveys, focus groups, and public meetings. Many public authorities have a lot of experience in this area and, if you are one of these, you should be able to draw on this.



However, to help you to meet the duty, it may be preferable to use consultation methods that allow and encourage people from all racial groups to play a full part. The situation should make them feel confident enough to talk about their needs and their experiences of your policies and services. Make sure the method you choose gives the people who are likely to be affected by the policy the chance to consider it and respond. You will also find it helpful to match the consultation methods you use to the subject of the policy and to the kind of information you are hoping to get.

In areas with smaller ethnic minority populations, you might want to join forces with other public authorities to make sure these communities are not over-consulted. This has the advantage of allowing you to 'slim down' your approach and create better – more efficient and more joined up – services.

The consultation methods that public authorities have used have not always succeeded in persuading people from ethnic minorities to take part.

COUNCIL CONSULTS ON RELEVANT POLICIES

To prepare for drawing up its race equality scheme (RES), the corporate services department of a Scottish local authority ran a basic test race equality audit of services and functions in two council departments – housing, and leisure and recreation. Corporate services asked the departments to say:

- how they would assess their policy proposals for adverse impact on race equality; and
- how they would assess whether they needed to consult on their policies, current and proposed.

Each department drew up a list of all of their main policies and a matrix – or checklist – for deciding whether their policies had any implications for the three parts of the general duty: eliminating unlawful racial discrimination, promoting equal opportunities, and good race relations. They also drew up a forward plan to jointly consult local ethnic minority communities.

At a one-day workshop, the council invited local community groups to discuss its list of policies and functions that were most relevant to race equality – some 30 of over 70 current policies. It became clear that the council's priorities were not entirely shared by the consultation group and the suggested list of 30 priority policies was amended to 35. The council agreed to consult the groups regularly on these policies before it drew up its RES. It has also planned a series of public meetings, visits, focus-group sessions, and community conferences.

You might want to consider some or all of the following suggestions.

- Hold meetings in community venues, because this is the level at which most people have concerns, for example about policing.
- Keep the meetings informal, as people can feel uncomfortable and shy in formal situations.
- Offer to hold separate meetings for particular ethnic minority communities, and also for groups within those communities, such as young people, older people, women, people with disabilities, and Gypsies and Travellers.
- Ask local ethnic minority community associations and racial equality councils to help you to organise consultation meetings, possibly jointly. (Remember that most community and voluntary organisations have very restricted resources – you will need to pay any of the consultation costs.)
- Check that dates, times, and venues (for example, licensed premises) do not clash with religious customs or festivals.
- Use focus groups, reference groups, and citizens' juries, so that you can explore issues in greater detail with a few individuals.
- Use written questionnaires or interview surveys to reach a wider audience, or a particular cross-section of your local community.

- Translate consultation material, and publicity material for the consultation exercise, as required, and arrange for interpreters at meetings.
- Set up lay advisory groups for regular discussion and consultation, and choose members for their special skills or experience.
- Make sure all groups get any help they need to take part in and respond to your consultation exercise.

6. Deciding whether to introduce the policy

You should now be ready to decide whether to adopt your policy, based on four important factors:

- the aims of the policy;
- the results of your race equality impact assessment;
- the relative merits of other policies; and
- the results of your consultation.

If you decide to adopt the policy, you must satisfy yourself that it is not likely to have an adverse impact on any racial groups.

If your race equality impact assessment shows that the policy could be directly discriminatory in any of the areas covered by the Act, the policy would be unlawful and should be rejected. A policy which directly discriminates cannot be justified and you should find other ways of achieving your goals.

If your race equality impact assessment shows that the policy could be indirectly discriminatory, you may also need to reject it, unless you are satisfied that you can justify the policy under the Act. This means you would probably have to show successfully in court that:

- the policy was necessary to allow you to carry out your functions; and
- you were unable to find another way of achieving the policy's aims that had a less discriminatory effect.

Your decision is likely to be a complicated one, drawing on several different types of data. You will need to adopt a flexible approach. However, you should try to be as systematic as possible, and adopt clear procedures for each stage. We would also advise you to record your conclusions at each stage, so that your decision is open to scrutiny and can be justified. You could also consider writing up the process in an impact assessment report, together with recommendations on whether and how the policy might be reviewed.

Everyone involved in the decision-making process should ideally have the necessary skills and experience, and the authority to make sure that the decision is put into practice.

You should make sure you include training on assessment, and your assessment procedures, in the arrangements you make to train staff to meet the duties (see p 59).

7. Making arrangements to monitor and review the policy and its impact

To meet the duty, you will need to make arrangements to monitor the policy regularly. You could probably do this as part of your normal arrangements for monitoring all policies.

You should not therefore consider the impact assessment as a one-off exercise. As you will only know the actual impact of your proposed policy when you have put it into practice, we would advise you to plan a follow-up assessment as soon as possible afterwards. If you think there is any danger of the policy having an adverse impact on some racial groups, or if there is public concern about it, you could consider testing it out in one or two areas first. You could then carry out a full assessment of its impact on race equality.

Once the new policy is fully operational, you should include race equality impact assessments as part of your regular arrangements for monitoring and reviewing your policies.

8. Publishing the results of the assessment

Under the duty, you must publish the results of the assessments, consultations, and monitoring you carry out to meet the duty, and make these available.

The next section gives practical advice on this part of the duty.

PUBLISHING RESULTS

The duty

The public authorities listed in appendix 2 to the code must set out, in their race equality scheme, their arrangements for publishing the results of their assessments, consultations, and monitoring (see p 14).

What does this mean?

This means you must set out your arrangements for publishing (in some form) the results of the monitoring of your policies. In the case of policies you are proposing to introduce, you must set out your arrangements for publishing the results of your assessment and consultation in terms of the impact the policies are likely to have on promoting race equality.

A COUNCIL'S PLANS FOR PUBLISHING

A local council is planning to publish reports on the race equality duty:

- in its magazine, which it sends to all households each month;
- in its community newsletter, which it sends to all households once a year, and which is available in different languages for anyone who asks;
- in its staff newsletter;
- in its yearly report on its race equality scheme; and
- on its website.

What is the reason for this duty?

This part of the duty is about accountability. It aims to make sure that your monitoring, assessment, and consultation activities, and their results, are clear and plain to the public.

Why is this important?

If you are to win and keep public confidence, you need not only to promote race equality, but to be seen to be doing so. By publishing the results of your activities, you will show that you are carrying out the specific duties of:

- monitoring; and
- assessing and consulting on the effects of your policies.

Publishing your results will also show your commitment to promoting race equality. Your staff will be better informed about your policies and more aware of the standards of good practice. Also, public confidence in your authority will increase, particularly among the ethnic minority communities you serve.

What information should you publish?

You may want to consider whether to produce written reports on every assessment, consultation, and monitoring exercise. As the reports are likely to be detailed and technical, you could make them available only to anyone who asks for them. However, we would recommend that you publish summaries more regularly and distribute them more widely.

Assessment

You should consider publishing the following.

- A description and explanation of the proposed policy and a brief account of how you assessed its possible effects.
- A summary of the results of your assessment, including the likely impact of the proposed policy on promoting race equality.
- Any available technical reports, and how to get them.
- A review of your proposed policy (or policy options) in the light of your assessment.
- A statement of what you plan to do next.

Consultation

You should consider publishing the following.

- Why you carried out the consultation.
- Details of how you went about it.
- A summary of the replies you received from people you consulted.
- A review of your proposed policy (or policy options) in the light of the responses you received, particularly concerning any adverse impact on promoting race equality.
- A statement of what you plan to do next.

Monitoring

You should consider publishing the following.

- An explanation of monitoring.
- The monitoring systems and methods you used.
- A summary and assessment of the results of your monitoring, making clear whether you found any evidence of adverse impact on race equality.
- How you will use these results to develop future policy and practice.

What publishing methods should you use?

You can use whatever methods you normally use (for example, newsletters, your annual report, or your website) to publish the information. If you are thinking about introducing social or environmental reports, you could also include a summary of the information here.

However, sometimes you may prefer to publish the results separately, as part of the assessment, consultation, and monitoring processes. For example, if you have carried

out a full race equality impact assessment of a proposed policy, you may find it useful to publish the results as a basis for formal consultation.

Whatever communication methods you use, you may need to make sure that the information is reaching people from different racial groups. You may need to translate the information into languages other than English, and in formats that people with disabilities can use (such as in Braille, in large print, or on audio tape).

Posting the information on your website is a cost-effective way of reaching a very wide audience. However, not everyone has access to the internet and you might not reach important groups.

You may find it useful to use the local, national, or specialist press, or other media – both mainstream and ethnic minority – to place a notice, telling people where they can find more detailed information.

ACCESS TO INFORMATION AND SERVICES

The duty

The public authorities listed in appendix 2 to the code must set out, in their race equality scheme, their arrangements for making sure that people have access to the information and services they provide (see p 14).

What does this mean?

This means you need to make sure that everyone, whatever their racial group, can get information about your authority and its services. In practice, you may have to identify and focus on people who do not appear to know about your work or your services, or who face barriers in accessing it (such as language barriers).

Here, we use ‘information’ in its widest sense. It includes information about your functions, powers, duties, policies, services, and complaints procedures, as well as information about people’s rights under your functions, procedures, and services. You may also want to include information about the right to receive fair treatment, and what people can do if they experience discrimination.

What is the reason for this duty?

The reason for making this part of the race equality scheme is to make sure that public services work for everyone. You will be failing in your duty to make your services available to everyone if people from ethnic minorities:

- do not know about particular services;
- are not confident about using them; or
- meet barriers when they try to use them.

Why is this important?

Lack of information can be a disadvantage, and people from ethnic minorities can be particularly affected. Research in Scotland regularly mentions lack of information as one of the main reasons for not using a service. For some, this may be partly because their expectations are based on their experience of very different systems elsewhere. This is especially the case for people who have arrived in Britain fairly recently. However, for many others, it is because public authorities have not produced information about their responsibilities and powers, and about people's rights under these powers in user-friendly formats, or distributed them evenly across all communities. If you are to meet the general duty to promote race equality, you must make sure that everyone has access to information about public services, whatever their racial group.

What do you need to do?

To meet the duty, you could do the following.

- Find out what information and services people in your area, including people from ethnic minorities, need.

PRIMARY CARE TRUST TAKES POSITIVE ACTION TO REACH PAKISTANI AND BANGLADESHI WOMEN

A primary care trust was worried that not enough Pakistani and Bangladeshi women were using the trust's sexual-health services, although men from these communities did use the services. The trust employed a Pakistani woman social worker as part of a specialist 'outreach' project. She consulted the local community and faith groups, and won their support for a campaign to raise awareness. The trust used community networks to hold events, including two health conferences that attracted a total of 200 women. The trust:

- produced information leaflets;
- ran a sexual-health education programme at a community venue; and
- set up a sexual-health clinic for women in the area, which holds a surgery every month.

At the same time, the trust began encouraging people from ethnic minorities to apply for jobs in its sexual health service. It also ran a programme on cultural awareness and sexual health for its staff.

INTERPRETERS ACCOMPANY BEAT OFFICERS ON PATROL

Racist attacks against asylum seekers had risen recently and a police force decided that its officers would make their evening foot patrols with interpreters. Between them, the interpreters speak over 20 languages. The officers also carry information cards to help them recognise the languages spoken by asylum seekers.

- Monitor how people, including people from ethnic minorities, use your services and information.
- Identify and remove any barriers that people from some racial groups might face when they try to get information or use your services.
- Change the way you make information and services available, if necessary, so that no one is excluded.

How can you identify possible barriers?

There are various ways in which you can identify possible barriers, including:

- monitoring requests for information, by racial group;
- monitoring use of the information, by racial group;
- monitoring how your services are used, by racial group;
- getting feedback from people who use your services and information, including people from ethnic minorities;
- analysing complaints about services or information, by racial group; and
- consulting people (including people from ethnic minorities) who do not use your services about the difficulties they face – for example, ask older people and their carers why they do not use meals on wheels, day care, or residential services.

Possible barriers that people from ethnic minorities might face include:

- not knowing about your services;
- your authority not providing the services that people from ethnic minorities in your area want;
- feeling alienated because of the way you provide your services;
- not having English as a first language;
- not feeling confident enough to use the services; and
- having had a bad experience of one of your services in the past.

RURAL FORCE APPOINTS DIVERSITY OFFICER

A rural police force has created a new post for a diversity officer to improve its contact with people from small, isolated, ethnic minority communities, and to consult them. The officer has lead responsibility for regular consultation, and has the task of helping the force on various race relations issues, as most of the current uniformed and civilian staff have little experience of this area of work.

How can you provide access to information?

You can:

- make sure that any information you publish in English can also be made available in other languages used by local people from ethnic minorities;
- arrange for staff to communicate directly with community groups;
- make sure that interpreters are available when they are needed;
- keep community representatives well informed;
- make sure that news and information particularly reaches groups such as women, young people, and older people from ethnic minorities;
- arrange open days, visits, and work-shadowing schemes, where you invite people from ethnic minorities to accompany and watch someone from your authority as they go about their day-to-day job;
- encourage people from ethnic minorities to get involved in consultation exercises;
- arrange for your staff to get some work experience in a local ethnic minority organisation; and
- support programmes for teaching English to people from ethnic minorities whose first language is not English.

How can you provide access to services?

You can:

- hold sessions in local venues used by people from ethnic minorities;
- ask people from ethnic minority communities what services they want, or what changes they would like to see in services you already provide;
- take information about the service, or the service itself, directly to ethnic minority communities;

- appoint community-liaison workers;
- train your staff – especially staff who deal with the public – on discrimination law, and on the cultural backgrounds of various racial groups;
- set clear standards for staff behaviour, backed by appropriate sanctions;
- consider using mediators from ethnic minorities;
- make sure that schemes meant for particular communities actually reach them;
- work with local community organisations;
- arrange for interpreters, when necessary;
- make sure you have staff members from the different racial groups in the population you serve; and
- use positive action (as allowed under section 35 of the Act), including outreach work (see the appendix).

TRAINING STAFF

The duty

The public authorities listed in appendix 2 to the code must set out, in their race equality scheme, their arrangements for training their staff on issues that are relevant to the general duty (see p 14).

What does this mean?

Many public authorities have a long history of training staff on race issues. Continuing this training, and making sure it is effective, will be an important part of any race equality scheme.

The duty focuses on training to meet the general duty. This means your staff should have the skills and knowledge to help you to eliminate unlawful racial discrimination, and promote equal opportunities and good race relations. You may also want to consider the training needs of staff who have special responsibilities for managing and introducing your race equality scheme. Clearly, in the widest sense, all staff should do their jobs without discriminating unlawfully and, to this end, may need training on race issues.

What is the reason for this duty?

This duty aims to make sure that staff working on this area have the skills they need to make sure that public authorities meet both the general duty and the specific duties.

Why is this important?

The three parts of the general duty to promote race equality are complex. You must apply each one individually to those of your functions and policies that are relevant to race equality. The staff you choose for this area of work will need a thorough understanding of race issues, and of your roles and responsibilities. They will also need excellent organisational, planning, and coordinating skills to help you to meet the general duty and all aspects of the specific duties, including your race equality scheme.

What could the training cover?

The staff you appoint to work on the general duty to promote race equality (and any specific duties) should already have a good general understanding of race issues. They should also be able to develop complex strategies for large organisations and apply them effectively. Your training could first make sure that your staff have these general skills, before going on to the specific knowledge they will need.

The training you provide could cover:

- a general understanding of race equality issues as they affect public authorities, including the idea of ‘institutional racism’;
- how to introduce policy in large organisations;
- the general duty and the specific duties, and why they are important;
- the concept of a race equality scheme, and how to develop it and put it into practice;
- how to carry out assessments, consultation, and monitoring; and
- how to produce and publish reports on assessments, consultations, and monitoring, and publicise them widely.

What will you need to do?

To train staff, you may need to:

- draw up a list of tasks that staff will need to carry out if you are to meet your general and specific duties under the Act;
- select the staff who will carry out the tasks;
- decide what knowledge and skills they will need to carry out these tasks effectively;
- design a training programme to meet these needs;

COMPUTER-BASED RACE EQUALITY TRAINING MANUAL

A community education department of a local authority has adopted a policy to 'mainstream' race equality in all its policies, procedures, and day-to-day practices. To support this strategy, the authority has produced a computer-based manual on 'mainstreaming', and a computer-based training programme for all staff. The manual focuses on issues such as:

- building race equality into business planning;
- building race equality into consultation;
- setting race equality performance measures; and
- giving all staff race equality targets.

The department offers a complete staff training programme and has a small team of specialist equality advisers.

- choose trainers (inside or outside the authority) who are qualified to deliver this training;
- set up the training programme; and
- monitor and assess the training, making changes where necessary.

Some large public authorities will already have training departments that are experienced in delivering training on race equality strategies to senior managers and policy makers. These authorities should be able to design and deliver the necessary training in-house, with some adjustment and updating to satisfy the duty. Other authorities may need to bring in specialists from the training departments of professional and other associations.

Whether you provide the training in-house or through outside consultants, you should try to consult and involve people from ethnic minorities in developing and delivering the training.

4

Specific duties **Employment**

The duty

The specific duty for employers applies to most public authorities bound by the general duty (see appendix 3 to the code). A few authorities – mainly advisory agencies, schools, and further and higher education institutions – are not bound by this specific employment duty. However, employment will be a relevant function for all of them and they will need to meet the general duty in relation to it. We have produced separate guides for education authorities and schools, and for further and higher education institutions. You should remember that it is unlawful under the Act for any employer, public or private, (unless specifically exempted) to discriminate on racial grounds (see the appendix).

Article 5 of the Race Relations Act 1976 (Statutory Duties) (Scotland) Order 2002 says:

5. (1) *A body or person to which this article applies shall,*
 - (a) *before 30th November 2002, have in place arrangements for fulfilling, as soon as is reasonably practicable, its duties under paragraph (2); and*
 - (b) *fulfil those duties in accordance with such arrangements.*
- (2) *It shall be the duty of such a body or person to monitor, by reference to the racial groups to which they belong,*
 - (a) *the numbers of –*
 - (i) *staff in post, and*
 - (ii) *applicants for employment, training and promotion, from each such group, and*
 - (b) *where that body or person has 150 or more full-time staff, the numbers of staff from each such group who –*
 - (i) *receive training;*
 - (ii) *benefit or suffer detriment as a result of its performance assessment procedures;*
 - (iii) *are involved in grievance procedures;*
 - (iv) *are the subject of disciplinary procedures; or*
 - (v) *cease employment with that person.*
- (3) *Such a body or person shall publish annually the results of its monitoring under paragraph (2).*

What does this mean?

Ethnic monitoring is the process which organisations use to collect, store, and analyse data about people's racial groups. Under this duty, you will need to collect information about the ethnic backgrounds of your workforce, and of everyone applying for jobs, training, and promotion in your authority.

If you have more than 150 full-time staff, you will also need to monitor, by racial group, the number of staff who:

- receive training;
- benefit or suffer from performance appraisals;
- are involved in grievances;
- have disciplinary action taken against them; and
- end their service with your authority (for whatever reason).

To meet your general duty to promote race equality – that is, to eliminate unlawful racial discrimination, and promote equal opportunities and good race relations – you will need to use the information:

- to see if there are differences between different racial groups;
- to investigate the reasons behind the differences; and
- to deal with any unfairness, disadvantage, or possible discrimination, for example by setting employment targets, training staff, revising policies and procedures, and using positive action (see the appendix), when necessary.

NHS TRUST ACTS TO RECRUIT MORE ETHNIC MINORITY STAFF

An NHS trust found from its monitoring that one per cent of its workforce were from ethnic minorities, compared to a local ethnic minority population of four per cent. The trust set a target to achieve a more representative workforce within the next five years. To do this, the trust revised its code of practice for recruitment, its interview processes, and its advertising strategies in line with statutory CRE guidance. The trust achieved its targets on time but, at the end of the five-year period, its monitoring showed a significant under-representation of staff from ethnic minorities in middle and senior management. The authority took the following steps to tackle this.

- It set specific targets to tackle underrepresentation at senior management levels.
- It encouraged current staff to consider additional on-the-job training and work experience to give them the skills and experience needed to compete for more senior posts.

Further evaluation showed a marked increase in successful applications from ethnic minority staff who took part in the programme.

What is the reason for this duty?

The government's commitment following the Stephen Lawrence Inquiry Report was to make public services a 'beacon of good practice'. The original 1976 Act outlawed racial discrimination in employment, but it did not make ethnic monitoring compulsory. The employment duty changes this. For the first time, public authorities must monitor their employment processes by racial group and publish the results each year. The duty attempts to make sure there is openness and fairness in the employment process. It also gives greater support to the government's goal of developing public services that reflect Britain's multi-ethnic society and that are better able to meet its needs.

Why is this important?

Discrimination takes place in employment when people from some racial groups are treated less favourably than others (see the appendix). Discrimination is not necessarily deliberate. In fact, barriers to employment or promotion for particular racial groups can often be hard to see. Research shows that, on average, ethnic minorities tend to be over-represented among the unemployed and under-represented at middle and senior management levels in employment, compared with the population as a whole.

Ethnic monitoring gives you a clearer picture of what is happening in your workforce. It allows you to see whether your equal opportunities policies are working, and to measure their progress. It gives you the basis on which to:

- make sure that you use people's talents to the full;
- make sure that staff-selection decisions are based on objective criteria that strictly match the job that has to be done;
- avoid unlawful racial discrimination in employment;
- make sure that you achieve your employment targets; and
- make the workforce more representative of the community you serve.

The amended Act calls for a more active, strategic approach to tackling racial discrimination and promoting race equality. The introduction of a specific duty to carry out ethnic monitoring recognises that regular monitoring is vital to meet the general duty.

What do you need to do?

To meet the specific duty for employers, you will need to:

- collect and monitor information about ethnic background; and
- publish the monitoring results each year.

NHS TRUST ENCOURAGES JOB APPLICATIONS FROM ETHNIC MINORITIES

Worried that its workforce did not represent the population it served, an NHS trust asked its local ethnic minority communities what was going wrong. They explained that they did not see any job advertisements or hear about vacancies. The trust asked us for advice, as well as local racial equality councils and community centres. It then produced a series of leaflets and held information days about careers in the NHS. These information days were widely advertised, in the ethnic minority media and elsewhere. They were well attended and have been repeated regularly. The trust recently reported that it now gets more applications from some of the communities targeted at the information days.

However, to meet the general duty, which expects you to aim to eliminate unlawful racial discrimination and promote equal opportunities and good race relations, you will need to know more and, if necessary, to do more. We strongly advise you to:

- analyse the information you have collected to see whether there are differences between racial groups; and
- investigate the processes that have resulted in these differences and take any necessary action to remove barriers or failings and promote equal opportunities.

We have produced a separate guide to the monitoring duties under the Act, *Ethnic Monitoring: A guide for public authorities*. This gives detailed advice on how to monitor all the stages in the employment cycle, from appointment and experience in employment (including appraisal, training, promotion, grievances, and disciplinary action) through to employees leaving (including dismissal and other reasons for leaving). The guide also covers monitoring in the areas of policy development and service delivery.

How do you collect the information?

You could ask your staff and job applicants how they would describe their racial group, choosing from a number of possible categories. Job applicants could answer this question on a form that you separate from the application before drawing up a shortlist. For existing staff, you could carry out a survey (if you have not already done so) and then keep your records up to date as new recruits join, and staff move within the organisation or leave.

You may need to explain clearly, to both existing staff and job applicants, why you are monitoring their ethnic background. You should assure them that, under the Data Protection Act 1998, the information will be confidential. Good rates of reply will depend on whether staff and applicants understand the purpose of ethnic monitoring, and share your commitment to promote race equality.

ADVERSE IMPACT OF WORKING CONDITIONS

A prison learned from its monitoring that ethnic minority staff were more likely to be involved in grievance and disciplinary actions than their white colleagues. The prison's human resources manager commissioned research to find the reasons for this. The findings showed that ethnic minority staff were more dissatisfied with their conditions than white staff, and many of them felt that their concerns were ignored. A recent employment tribunal case ruled against the prison service for failing to respond to an ethnic minority officer's training needs. With help from the unions, the prison introduced a three-point action plan to tackle the problems. The plan aims to:

- make sure that staff supervision and appraisal is more accurate and regularly monitored, and action taken as a result of the findings;
- make sure that all supervisory staff are properly trained in good equal opportunities practice; and
- develop a mentoring scheme with a local ethnic minority employment project to support staff from ethnic minorities.

Since the scheme was introduced, grievances and disciplinary action involving ethnic minority staff have dropped to the same rate as for white staff.

What ethnic categories should you use?

We recommend that you use the same ethnic categories as were used in the 2001 census for Scotland, or categories that are compatible with the census categories. This lets you compare your authority with the wider population. If your particular circumstances mean that you need more detailed information, you should make sure that any extra categories you introduce can fit in with those used in the census. See our guide, *Ethnic Monitoring: A guide for public authorities*, for more information.

How do you use the data?

To meet the general duty to promote race equality, you will need to analyse the information you collect to see if there are patterns of inequality that need investigation. Over time, you should be able to tell whether or not your equal opportunities policies are effective.

- In the case of job applicants and recruits, you could consider comparing the application rates from different racial groups with their representation in the population you are recruiting from. You could do the same for their success rates, both at the short-listing and selection stages.

POLICE FORCE ADAPTS UNIFORM FOR MUSLIM WOMEN

A police force has had an active equal opportunities policy for several years. However, Muslim women are seriously under-represented in the force. To tackle this, the force introduced a new version of its uniform for Muslim women, which allows them to wear a headscarf under their caps. The force is monitoring the change.

- In the case of existing staff, you may need to break the information down by grade, so that you can see whether some racial groups are concentrated at certain levels in your authority. You could also check whether staff from ethnic minorities have lower success rates than others in getting promotions, specialist posts, and opportunities for training, or whether they have higher rates of complaints, grievances, or disciplinary action.

By analysing the data over time, you will be better able to tell whether you are reducing or removing any inequalities you have found. You can also assess whether what you have done to promote race equality in employment is working. You will need to review these measures regularly, and their effectiveness, against the results of your ethnic monitoring. In the light of this review, you may need to adjust your strategy. For example, if the findings show that ethnic minority groups are equally represented among job applicants, but under-represented among recruits, this could mean that discrimination is taking place. You would need to investigate the reasons for this under-representation, including possible ways in which direct or indirect racial discrimination (see the appendix) could arise during the selection process.

How should you publish the results?

Under the duty, you must publish the results of your monitoring every year. You do not need to publish these as a separate document. The information will often fit within your existing publications, such as staff and public newsletters, or on your website. You could also include a summary of the results from your monitoring in your annual report. If you have very few employees from ethnic minorities, and they can be identified from the data, you may decide not to publish it. You should explain your reasons. However, you will still have to act on your findings.

5

PROCUREMENT

Procurement is a function of most public authorities and may be relevant to the general duty to promote race equality. However, the general duty does not override other laws or regulations on public procurement.

Procurement is relevant to the duty to promote race equality in three main areas.

- Services provided under contract or agreement.
- Contractors' equal opportunities policies and practices.
- Contract opportunities for businesses owned or run by people from ethnic minorities.

Services provided under contract or agreement

You are still responsible for meeting the general duty and any specific duties when:

- any of your functions or services are carried out by a private company or voluntary organisation under a contract or some other arrangement; and
- the duty to promote race equality applies to those functions or services.

If the duties are relevant to a function or service you are contracting out, it may be appropriate to include those duties in the contract as performance standards for delivering the service. For example, if you have a duty to monitor a service you are contracting out, you could consider writing this into the contract. You could also make it clear in the contract that the contracting firm must always provide the service without racial discrimination. If you include these terms in the contract, you could also add a clause that allows you to monitor and enforce the contract.

If you have already contracted out a function or service that is relevant to the duty, you will need to consider whether the existing contract or arrangement lets you meet the general duty and any specific duties. If not, unless the contract or agreement is due to end soon, you will need to make changes to the contract and its terms. Normally, you should not have to draw up a new contract.

If you plan to include race equality clauses in contracts for functions or services that are relevant to the general duty, you may need to make it clear to potential contractors that you are adding the clauses because you need to make sure you are operating within the Act and other relevant legislation.

A STANDARD FOR PROSPECTIVE CONTRACTORS

A group of local authorities have set up a forum to develop and operate a common standard for local government to assess whether potential contractors are operating within the Race Relations Act and our statutory code of practice in employment. The forum's aims are to:

- help potential contractors meet their legal obligations;
- help authorities take steps to improve equal opportunities in employment;
- acknowledge and encourage good firms that work for the authorities; and
- negotiate contracts that provide quality, value for money, and equal opportunities for all local communities.

The Secretary of State approved certain questions in 1988 for local authorities to use to gather information on equal opportunities from prospective commercial partners in the private or voluntary sectors. The forum assesses this information against the requirements of its common standard.

The standard is organised around three levels, depending on the number of employees in the company or organisation. The conditions for each level are based on the recommendations of our statutory code of practice in employment, and on suggestions by staff in the authorities involved who are trained to apply them. The forum gives firms that do not meet the performance levels of the standard advice and the opportunity to take part in training sessions before applying again. Information on the results of assessments is stored on a database shared by the local authorities involved. A key benefit of the scheme is that companies approved by one authority are accepted by all, saving valuable time for everyone concerned.

Contractors' equal opportunities policies

As well as writing performance standards for delivering a service into a contract, you may be able to use your procurement function to promote race equality by encouraging your contractors to draw up policies that will help them to avoid unlawful racial discrimination, and promote equal opportunities. This should only be on a voluntary basis and you should only discuss the question of a contractor adopting an equal opportunities policy (if they do not have one already) when the contract has been awarded.

Opportunities for ethnic minority organisations

When you assess your procurement function against the three parts of the general duty, you should consider whether the way you carry out the function has (or is likely to have) an adverse impact on organisations or firms owned or run by people from ethnic minorities. These generally tend to be small or medium-sized firms. Within existing legislation, you can make sure that barriers are removed, so that ethnic minority and small and medium-sized businesses have equal opportunities to tender for public contracts.

ENCOURAGING ETHNIC MINORITY ORGANISATIONS TO TENDER

An urban Scottish local authority routinely monitors the services it buys from the voluntary sector. The aim is to make sure that the services are accessible to all sections of the community. The authority noticed from the data that voluntary organisations led by people from ethnic minorities were less likely to provide services than others. Consultations with the ethnic minority voluntary sector revealed that the main reason that applications from ethnic minority voluntary organisations were turned down was poor financial planning. They had no paid staff and their committee members did not have much experience of financial planning.

The authority decided to take positive action to level the playing field. It chose officers to encourage ethnic minority organisations and help them with their applications. It also used staff from its community and economic development team to develop management skills more widely in the sector. The next funding round saw a 10 per cent increase in successful bids from ethnic minority voluntary organisations over the previous year.

6

PARTNERSHIP

If you work jointly with other public, private, or voluntary organisations, you are still responsible for meeting the general duty to promote race equality – and any specific duties. You may therefore need to take account of the duties in any work you do with other organisations, and reflect this in your race equality scheme. There is no similar obligation on private or voluntary-sector partners.

If the work you do through a partnership is based on a contract with a private or voluntary organisation, you should follow the advice on procurement in chapter 6.

If you are involved in a partnership that includes other public authorities that are bound by the general duty (for example, a community safety or social inclusion partnership), each of you, individually, will be responsible for meeting the general duty to promote race equality as well as any specific duties. This applies whatever the legal status of the partnership. In some cases, you may find that you can work with your public authority partners to meet the specific duties, for example, to monitor policies for their impact on race equality, or to publish the results of your monitoring. However, this is only possible in relation to functions or policies that you are carrying out through the partnership. In practice, this may mean that when you are working within a mixed partnership, you

RACE EQUALITY IN PARTNERSHIP

Seven public authorities in southern Scotland set up a partnership to look at how they could work together to meet the needs of local ethnic minority communities. The partnership included representatives from the four local authorities, the police, the health authorities, the enterprise company, and the local racial equality council.

The partnership covered a large area, with a mixture of rural, semi-rural, and urban parts. Only three per cent of the population of the area as a whole were from ethnic minority groups, but there was a significant concentration of people from ethnic minorities in the main city.

One of the partnership's aims was to help partners who were bound by the statutory general duty to promote race equality to meet their legal responsibilities. Recognising that the duty was relevant to the partnership's work, the partners discussed the issue at length and agreed to build specific race equality aims into the partnership's strategy. This led to joint procedures for the partnership's work on consultation, providing information, and reporting. The partners who were bound by the duty built these into their individual race equality schemes.

will need to get agreement from your partners to arrangements for planning, funding, and managing joint work that will allow you to meet your statutory race equality duties.

Best of all would be if you could persuade all your partners to work within the Act and to build the duties into their own structures and activities.

We recommend the following good-practice steps for any work you do with other organisations.

- Make every effort to see that race equality is central to any statement of values and aims that the partnership draws up, and that, as far as possible, all groups in the community are represented on the board of the partnership.
- Make sure the partnership has the resources and necessary skills to achieve its race equality aims.
- Build race equality into the partnership's planning processes, and assess and consult on the likely impact of the partnership's policy proposals on promoting race equality.
- Develop measures to assess your performance on race equality, and set targets for improvements in services, and for employment.
- Make arrangements to monitor all targets.
- Train staff working for the partnership in race equality work.

Appendix

Race Relations Act 1976

What is unlawful racial discrimination?

The Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000 (the Act) makes it unlawful to discriminate – directly or indirectly – against someone on racial grounds. Under the Act, ‘racial grounds’ means reasons of race, colour, nationality (including citizenship), or ethnic or national origins. Racial groups are defined accordingly. For example, African Caribbeans, Gypsies, Indians, Irish, Pakistanis, Bangladeshis, Irish Travellers, Jews, and Sikhs are among the groups recognised as racial groups under the Act. The Scottish Parliament’s inquiry into Gypsies and Travellers and public-sector policies recommended that all legislation and policies should be framed on the understanding that Gypsies and Travellers have distinct ethnic characteristics and so should be treated as ethnic groups (until there is a court ruling recognising them as racial groups under the Act).

Direct racial discrimination means treating a person less favourably than another on racial grounds. An example of direct discrimination would be applying harsher discipline to prisoners from ethnic minorities because they are from ethnic minorities.

Indirect racial discrimination means that a requirement or condition which is applied equally to everyone:

- can only be met by a considerably smaller proportion of people from a particular racial group;
- is to their detriment; and
- cannot be justified on non-racial grounds.

All three parts must apply. An example of unlawful indirect discrimination might be where a hospital’s uniform rules do not allow for a particular racial group’s customs and cannot be justified in terms of the hospital’s needs.

Victimisation. The Act also makes it unlawful to treat someone less favourably because they are known to have, or are suspected of having:

- made a complaint of racial discrimination;
- planned to make a complaint; or
- supported someone else who has made a complaint of racial discrimination, or is planning to do so.

An example of victimisation is where an employee is refused leave because they backed up a colleague's complaint of racial discrimination.

In what areas is racial discrimination unlawful?

The original Race Relations Act 1976 makes it unlawful for most public, private, and voluntary organisations to discriminate on racial grounds in:

- employment;
- education;
- housing; and
- providing goods, facilities, and services.

The Race Relations (Amendment) Act 2000 extended the scope of the original law to cover the way public authorities carry out all their functions. The Act defines a public authority widely, as a person or organisation carrying out functions of a public nature. This includes enforcement and regulation functions, such as policing and child protection. It also includes functions or services that are carried out by private or voluntary organisations under a contract or a service-level agreement, such as charities providing local authorities with emergency housing.

What is positive action?

In specific circumstances, the Act allows positive action as a way of overcoming racial inequality.

Positive action allows you to:

- provide facilities or services (in training, education, or welfare) to meet the particular needs of people from different racial groups (for example English language classes – see section 35 of the Act);
- target job training at those racial groups that are under-represented in particular areas of work (see sections 37 and 38); and
- encourage applications from racial groups that are under-represented in particular areas of work (see section 38).

Positive action plans are only meant to be a temporary solution and you may need to review them regularly. You should not use them if the under-representation, or the particular need, no longer exists.

General duty and specific duties

Section 71(1) of the Act places a statutory general duty on most public authorities (see appendix 1 to the code). Under the duty, when carrying out all their functions, authorities must have 'due regard' to the need to:

- tackle unlawful racial discrimination; and
- promote equality of opportunity and good relations between persons of different racial groups.

Under section 71(2) and (3) of the Act, Scottish ministers have the power to place specific duties on all or some of the public authorities bound by the general duty (see appendix 2 to the code).

Under section 71(C) of the Act, we can issue codes of practice that will help public authorities to meet their general and specific duties. The statutory *Code of Practice on the Duty to Promote Race Equality in Scotland* came into effect on 30 November 2002.

Under section 71(D) of the Act, we have the power to enforce the specific duties. If we are satisfied that a person has failed to, or is failing to, meet a specific duty, we can issue a compliance notice ordering them to do so. The person concerned has to observe the terms of the notice and tell us, within 28 days, what they have done or will do to meet the duty.

Under section 71(E) of the Act, we have the power to apply to a designated sheriff court for an order, if the person concerned has not supplied the relevant information after being served with a compliance notice, or if we have reason to believe they will not do so.



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