



RACE EQUALITY IMPACT ASSESSMENT

**EUROPEAN AND INTERNATIONAL LEGAL STRATEGY
2006-7**

12 MAY 2006

1. Introduction

- 1.1 The Commission for Racial Equality (CRE) is a non-departmental Public Body established by the Race Relations Act 1976 (as amended) – the 'Act'.
- 1.2 The key aims of the CRE are to work towards: -
 - the elimination of racial discrimination;
 - the promotion of equality of opportunity and good race relations; and
 - to keep under review the workings of the Act.
- 1.3 Section 71(1) of the Act places a general duty on listed public authorities, including the CRE to have due regard to the need to eliminate unlawful racial discrimination, and promote equal opportunities and good race relations.
- 1.4 The general duty is supported by a number of specific duties. The specific duties set out the steps, methods and arrangements public authorities should follow to help them to meet the general duty. One of the specific duties is to set out our arrangements for assessing and consulting on the likely impact of proposed policies.
- 1.5 The duty to carry out a Race Equality Impact Assessment (REIA), is based upon four guiding principles. The REIA should be carried out on all relevant proposed or new policies, it is obligatory, the approach should be proportionate to the impact of the policy, and it should address each aspect of the general duty.
- 1.6 To do this the CRE will: -
 - Identify relevant proposed or new policies;
 - Assess the impact of the policy on all racial groups;
 - Consult relevant groups on the impact of the policy; and
 - Take appropriate steps to remove discrimination or adverse impact upon any particular racial group(s).
- 1.7 The impact our policies may have on any particular racial group(s) will be assessed using the following criteria: -
 - a) does the quantitative or qualitative data show differences between racial groups?
 - b) does the difference between racial groups amount to adverse impact, and for which group(s)?
 - c) could the policy be directly or indirectly discriminatory? and,
 - d) If the policy could be indirectly discriminatory, could it still be justified under the Race Relations Act 1976 (as amended)?

2. Background and rationale of proposed strategy

- 2.1 In 2004 the CRE developed a corporate European and International Strategy for 2004-2006 which identified the rationale for European and International work, main objectives and how those objectives would be achieved. This included a range of legally related objectives.
- 2.2. The strategic priorities for the CRE from 2006 to 2009 as contained in the draft Corporate Plan are:
- to work towards leaving the best possible legacy for race equality, for the CRE, its staff and its stakeholders as it moves towards its new life as the Commission for Equality and Human Rights;
 - to develop, promote and deliver against a framework for an integrated society using our three tenets of equality, participation and interaction as our guiding principles.
- 2.3. This proposed legal strategy is in furtherance of the CRE's duties, current corporate strategic priorities, the corporate European and International Strategy and the Legal Directorate's strategy. It is intended to identify strategic aims for 2006-07 specific to the European and international work of Legal Directorate.
- 2.4 It is important that the Legal Directorate has a legal strategy linked to European and international developments in law and policy for a number of reasons:

EU legislation on discrimination or affecting race relations

- 2.5 The European Union now has legislative powers under article 13 of the Treaty of the European Union in relation to issues surrounding discrimination, including racial discrimination. Pursuant to those powers in 2000 the EU enacted the Race Directive 2000/43/EC which provided minimum requirements that all Member States had to implement regarding protection from racial discrimination. The EU also enacted at the same time Employment Directive 2000/78/EC which provided for protection from discrimination on grounds of religion or belief, disability, age or sexual orientation, but only in areas of employment.
- 2.6 The UK government implemented the Race Directive by the Race Relations Act 1976 (Amendment) Regulations 2003 which amended the Race Relations Act. EU legislation therefore now has a direct effect on UK race relations law and CRE has a role to play in monitoring the implementation of the Race Directive and considering the need for further legislative enactments.
- 2.7 In addition a number of other areas of EU legislation or decisions have a direct impact on issues relating to race relations in the UK. An example of this under the first pillar of the EU (European Communities) are directives and decisions relevant to social policy such as EU procurement directives, or immigration and asylum policy. Under the third pillar (police and Judicial co-operation in criminal matters) examples

of this are decisions and policies relating to terrorism and trafficking in human beings.

The relevance of discrimination under the Human Rights Act 1998 and international instruments

- 2.8 Under the European Convention on Human Rights (ECHR), which the UK government has signed and ratified, article 14 provides that any right under the Convention shall be enjoyed without discrimination, including on grounds of race. The UK government implemented the ECHR by the enactment of the Human Rights Act 1998. Issues of racial discrimination may therefore be relevant in a claim of a breach of the Human Rights Act which often requires reference to decisions of the European Court of Human Rights which upholds the ECHR.
- 2.9 The UK has also signed and ratified a number of other international instruments which contain provisions relating to discrimination: for example the UN International Convention on the Elimination of all Racial Discrimination and several ILO Conventions on protecting migrant workers rights.
- 2.10 The CRE has a role to play in monitoring the manner in which the UK government is fulfilling its obligations under such international instruments in respect of race relations and racial discrimination in the UK.

The relevance of judicial decisions in other jurisdictions

- 2.11 Judicial decisions relating to discrimination in other jurisdictions (such as the European Court of Human Rights or the European Court of Justice) can assist the CRE in developing understanding of various concepts associated with racial discrimination and promoting equality of opportunity under the Race Relations Act, such as the use of positive action. Those forums also provide us with an opportunity to present the CRE's position on provisions in directives and conventions, for example by applying to intervene.

Global issues relating to integration, migration, asylum, anti-terrorism measures and Islamophobia

- 2.12 The fact of increasing globalisation has resulted in the mass movement of people between countries for economic and social reasons. This in turn has led the UK government to adopt a series of legislative measures and policies relating to immigration and asylum seekers. Other global issues of anti-terrorism measures and Islamophobia have also resulted in the UK government enacting specific legislative measures, for example in the case of incitement to religious hatred the government recently enacted the Racial and Religious Hatred Act 2006.
- 2.13 As has been observed in a report this year by the UN Special Rapporteur on Racism¹, new forms of racism have been emerging against immigrants, refugees,

¹ Report to the UN Commission on Human Rights, 62nd session 18 January 2006, submitted by Mr Doudou Diene, Special Rapporteur on contemporary forms of racism, racial discrimination xenophobia and related intolerance.

asylum seekers and religious groups such as Muslims. It is therefore important to develop legal policy strategies and work on these issues that not only affect race relations but also raise possible issues of racial discrimination.

3. Purpose and benefits of proposed strategy

3.1 The proposed strategy is intended to maximise the CRE's capacity to promote race equality across Great Britain. Its purpose is to define the specific legal areas of work, which will be focused on in the next year in furtherance of the CRE's duties and two strategic priorities for 2006-09.

3.2 The benefits of the proposed strategy are that:

- it will strengthen protection from racial discrimination for persons in Great Britain
- it will enable the CRE to contribute and be an authoritative voice on legal policy issues associated with race across the EU
- it will enable the CRE to contribute to an effective and informed monitoring and reporting in relation to the race aspect of the UK government's human rights obligations
- it will enable the CRE to develop its work on global issues of concern which are affecting race relations in the UK such as integration of different communities, the effect of migration on race relations, anti-terrorism measures and Islamophobia.

3.3 The policy is intended to affect and benefit all persons in Great Britain in terms of eliminating unlawful discrimination, promoting equality of opportunity and good race relations. It may also affect and benefit EU citizens in terms of the work on improving legislation and policies in areas such as anti-discrimination and integration at EU level.

4. Race Equality Impact Assessment Process

4.1 The Commission is required under the Race Relations Act 1976, as amended to assess each proposed policy for relevance to the general duty under Section 71 of the Act.

4.2 A policy is defined as:

"any practice or written document, which sets out a course of action, guiding principles or procedure, which is adopted and implemented by the Authority."

4.3 The Commission's assessment process consists of three stages:

- Stage 1: Initial screening
- Stage 2: Full impact assessment

Stage 3: Summary of the Race Equality Impact Assessment (REIA)

5. Initial Screening Process of the proposed strategy

- 5.1 The initial screening, carried out in April 2006, revealed that the proposed policy was relevant to the duty to promote race equality and a full impact assessment, including consultation was carried out. Details of the initial screening process of the proposed policy are attached at **Appendix 1**.

6. Data and research used in REIA

- 6.1 In conducting the REIA the Commission examined the following data:
- the Corporate European and International strategy consultation feedback;
 - the Legal Directorate strategy consultation feedback from 2003. The Legal Directorate strategy contains a section on Legal Policy work which refers to the work of the CRE at European level. No feedback identified any evidence to indicate that the European and International legal policy work would or could have an adverse effect on any racial groups in Great Britain.

7. Consultation Process

- 7.1 A consultation process was undertaken in 2004 in relation to the Corporate European and International strategy which includes the legal aspects of European and International work. This process involved:
- internal consultation with CRE staff and commissioners at a number of stages
 - external consultation with a large number of stakeholders.

A summary of the key themes and issue raised by the consultations, and the CRE's responses is attached at **Appendix 2**.

8. Impact Assessment & Justifiability

- 8.1 The CRE recognises that where there is discrimination or adverse impact identified in the REIA process, steps must be taken to remove, reduce or mitigate the level of impact.
- 8.2 There is currently no qualitative or quantitative evidence arising from the REIA that indicates that the proposed strategy will have an adverse or differential impact on stakeholders and customers on the grounds of their ethnicity. In fact, there is every reason to believe that the proposed strategy will help to strengthen protection from racial discrimination in Great Britain and promote equality of opportunity and good race relations.

9. Policy Application and Monitoring for Adverse Impact

9.1 The strategy will be monitored for adverse impact in the following manner:

- an annual review by the Head of European and International Legal Policy;
- the review will involve considering whether there have been any relevant external developments in law, policy or internal developments in the CRE which relate to European and International work that would or could result in adverse impact to racial groups;
- specific internal developments that will be considered will include consulting with colleagues working on European and International issues in the Communications Directorate and the Corporate and Government Relations Directorate;
- a questionnaire to be sent to primary domestic and international stakeholders to determine whether they are aware of any developments that would create an adverse impact on racial groups;
- any evidence of adverse or differential impact identified during the review will be fully investigated and action taken to mitigate or eliminate the impact;
- following the annual review the strategy will then be presented to the Legal Affairs Committee for approval.

10. Race Equality Impact Assessment Recommendations

10.1 No further assessment of this proposed policy is required. However, this REIA will be signed off by the Legal Directorate before publication.

11. Conclusion

11.1 The primary focus of the REIA is to assess if there is any evidence of adverse impact on particular racial groups and whether it amounts to discrimination racial grounds.

11.2 No evidence of adverse impact has been identified through the REIA.

12. Publication of Race Equality Impact Assessment

14.1 The Commission will publish this REIA report and associated documents as set out in its publication policy.

Appendix 1: Initial Screening

Initial Screening Process for the draft European and International Legal Strategy

Address each question in turn. They will help to identify whether the policy has implications for equality of opportunity. In each case, use your best judgment and, if you think there are equality implications, provide some brief information on why you think so.

1. What is the purpose of the proposed policy and who is it intended to affect?

Please give details

- (i) The policy is the legal strategy on the CRE's European and International work. The proposed strategy is intended to maximise the CRE's capacity to promote race equality across Great Britain. Its purpose is to define the specific legal areas of work, which will be focused on in the next year in furtherance of the CRE's duties and two strategic priorities for 2006-09.
- (ii) The benefits of the proposed strategy are that:
- it will strengthen protection from racial discrimination for persons in Great Britain
 - it will enable the CRE to contribute and be an authoritative voice on legal policy issues associated with race across the EU
 - it will enable the CRE to contribute to an effective and informed monitoring and reporting in relation to the race aspect of the UK government's human rights obligations
 - it will enable the CRE to develop its work on global issues of concern which are affecting race relations in the UK such as integration of different communities, the effect of migration on race relations, anti-terrorism measures and Islamophobia.
- (iii) The policy is intended to affect and benefit all persons in Great Britain in terms of eliminating unlawful discrimination, promoting equality of opportunity and good race relations. It may also affect and benefit EU citizens in terms of the work on improving legislation and policies on anti-discrimination and integration at EU level.

2. Is there any evidence, or other reason to believe, that different groups have different needs, experiences, issues and priorities in relation to this particular policy?

× No Please give details

(iv) Please see the attached summary (**Appendix 2**) of responses to the consultation with stakeholders on the Corporate European and International Strategy 2004-06 (the “European and International Consultation”). The responses did not indicate that different racial groups had different needs and issues in relation to the CRE’s European and International work. Various issues were raised but they were not concerning differences in racial groups.

3. Is there any evidence, or other reason to believe that different groups could be affected differently by the proposed policy?

× No Please give details

(v) Some responses to the Consultation raised concerns that an increased European and International focus should not result in any reduction of work with communities in Great Britain. The CRE response was the European and International work would actually enhance protection for communities in Great Britain.

4. Is there any evidence to suggest that any part of the proposed policy could discriminate unlawfully, directly or indirectly, against people from some racial groups?

× No Please give details

(vi) This was not raised in the European and International Consultation responses moreover; the strategy is aimed at ensuring equal protection from racial discrimination for all racial groups

5. Is there an opportunity to promote racial equality more effectively by altering this policy or considering working with others in the wider community?

✗ Yes Please give details

(vii) One of the aims of the proposed strategy is strengthening relationships and exchange of information with stakeholders working on international issues such as Equinet, NGOs and monitoring bodies of international organisations.

6. Have previous policies, research, monitoring data, consultations etc, with relevant groups, organisations or individuals indicated that this particular policy may create problems, which are specific to them?

✗ No Please give details of data (name of policies, research report, etc)

(viii) Several of the European and International Consultation responses indicated that the proposed strategy created problems specific to them as a group, organisation or individual, but these were not related to racial issues but issues of recognition, access to influence EU developments and creating a database of contacts of Black and minority groups across Europe (see section 12 of Appendix 2.

7. Additional evidence/information (which does not fall into the above categories)

Please give details

(ix) The Legal Directorate also did a detailed internal and external consultation in 2003 concerning its Legal Strategy. The strategy specifically refers to the European aspect of the legal policy work (in section 5.3.5). No adverse impact on particular racial groups was identified in the results of the consultation with respect to the European and International aspects of the legal policy work.

CRE European and international strategy 2004-6

Summary of consultation views and CRE responses

1. Responses received

The strategy benefited from the input of CRE staff and commissioners at a number of stages. The formal external consultation on the strategy received responses from the following (most were written comments with a few provided verbally):

- Inter Faith Network for the UK
- Equality Commission for Northern Ireland (ECNI)
- Foreign and Commonwealth Office (FCO)
- European Commission against Racism and Intolerance (ECRI)
- 1990 Trust
- UKREN (UK Race and Europe Network) – written comments and discussion at management committee meeting
- European Network against Racism (ENAR)
- Transport for London
- GELD (*French government body responsible for setting up the French specialised body – comments concerned the aspects related to cooperation between EU specialised bodies*)
- Department for Trade and Industry (Women and Equality Unit)
- London's European Office
- European Multicultural Foundation
- European Structural Fund Programme, Scotland
- Scottish Enterprise

- Trades Union Congress (TUC)

Input was provided at an earlier stage by:

- UK Secretariat of the EUMC (Runnymede Trust)
- Home Office (Race Equality Unit)
- Migration Policy Group (MPG)

2. General points

Responses to the strategy were generally very positive and supported the CRE's aims and proposed activity. Several reinforced the importance of CRE involvement in European and international work given increased international attention to migration/integration, closer EU integration, and growing EU competence in the anti-discrimination field.

The planned activity was seen as being an ambitious programme of work and several organisations expressed an interest in working with the CRE on some aspects of the work – we will respond individually to these suggestions.

Some responses raised concerns that an increased European and international focus should not result in any reduction of work with communities in GB.

It is precisely because the CRE recognises the impact that European and international issues have on communities that this programme of work has been developed, and we expect delivery of the strategy to result in improvements for GB populations rather than any lack of attention.

A few points were raised about specific wording, presentation style, accuracy and further information. These have mostly been incorporated and have not been discussed further below where there they resulted in no significant change in the content of the strategy.

3. External advisory group

It was suggested that an external advisory group be established for this work. The CRE will set up such a group, which will probably meet 2-3 times a year. The size of the group will be limited to ensure effectiveness.

4. Resources

None of the responses suggested omitting any of the activities in the draft strategy, but many suggested further activities that should be included. Many of these further activities have now been included but this means that the CRE is unlikely to be able to carry out all the activities within the strategy. The CRE will seek to prioritise the most important areas on an ongoing basis, taking into account the views of the advisory group.

5. Beyond the EU level: Council of Europe and the UN

Several responses commented that the strategy focused heavily at the EU level and some felt that there was insufficient attention to Council of Europe and UN level activities. Greater attention was requested to: Council of Europe and the activities of ECRI (European Commission against Racism and Intolerance); OSCE (Organisation for Security and Co-operation in Europe) given its significant activity on racism currently; ILO (International Labour Organisation) given a current strong migration focus; UN Year of Slavery 2005; promotion of the UN Global Compact with the private sector (the Compact encourages alignment of corporate practice with international principles of human rights, labour standards and environment).

This has now been incorporated into the strategy, subject to the point on resources above. It is expected that the majority of the CRE's work will remain at EU level.

6. World Conference against Racism

Several responses wanted the CRE to become involved in pressing the government to take action on producing an action plan, as agreed in Durban, and for the CRE to make comparisons with other States. The CRE agrees that this should be addressed more strongly, and our approach to this is now incorporated in the strategy.

7. European Structural Funds

Responses suggested that there should be a greater explicit recognition of the importance of the funds and that the CRE should do more to signpost communities to opportunities, and to support organisations with the application process.

The CRE recognises the importance of European structural funds but does not have the resources to provide this level of support, nor is this an appropriate role for the CRE to take on. The CRE will not make detailed information available on our website, as this is likely to stimulate requests for advice that we are unable to meet, but will seek to provide information about organisations that can help with such information and advice.

Responses also asked that the CRE should seek to influence discussion at an EU level on the form of structural funds post-2006 to ensure that equality considerations are given due attention.

This falls within areas of work already identified in the strategy, but has now been addressed more specifically.

8. Framework decision on combating racism and xenophobia

The CRE was asked to take a more active role in pushing for work to take forward this attempt to harmonise criminal law throughout the EU.

For the time being the CRE will maintain a watching brief in this area, re-assessing any further action on an ongoing basis.

Race and employment equality directives

The CRE was asked to push for discrimination on the grounds of religion or belief to be extended beyond employment to goods and services.

The CRE will ensure that it informs our work to build a 'vision' for EU anti-discrimination work as a longer term goal.

9. Best practice in other states

The CRE has been asked to do more on sharing good practice by having examples of good practice in other Member States on the CRE website.

We will not be able to provide examples themselves as it would be too resource intensive, however we will try to provide links and suggestions for where such examples may be found.

10. Joint operational activities with other specialised bodies

The CRE is asked to consider developing joint action (enforcement and/or promotional) with other specialised bodies, for example towards large private sector employers with EU-wide HR policies.

Any joint action that takes place along these lines would be likely to develop out of the next phase of the specialised bodies project, which is in the planning stage at the time of writing.

11. Influencing public attitudes

The CRE was asked to look at developing a European/international aspect to this work. One suggestion is for a project under the UK presidency that provides campaign and education materials which describe existing European diversity and the contributions of various cultures – a project that perhaps might resemble a 'Roots of the Future' for Europe.

This is in part already underway through the CRE's involvement in the European Commission's anti-discrimination campaign. Other activities may develop through the CRE's involvement with UKREN or the specialised bodies project. The CRE would assess what level of input it can provide (if any) on a case by case basis.

12. NGOs/Civil society/community organisations

Some responses asked for greater explicit recognition of engagement with communities in determining the CRE's European and international work

The CRE's work in this area will be informed through consultation on this strategy, through the CRE's involvement in UKREN, and through the proposed advisory group. However work will also be informed by all of the community involvement that takes place for other GB-based parts of the CRE's work, for example work under the CRE's Safe Communities Initiative, or the CRE's work with Gypsy and Traveller communities, or work on policing. The CRE will seek to ensure that European/international dimensions are more fully reflected in strategies across the CRE.

The CRE was asked to do more to facilitate greater access for grass roots community organisations to influence EU developments.

The CRE contributes to this process through involvement in UKREN and will consider other opportunities on a case by case basis. The CRE does not have the resources to provide ongoing capacity building or training in European or international lobbying.

One response drew attention to a need to develop a database of contacts of Black and Minority groups across Europe.

The CRE is in favour of building what was described as a 'constituency base', but does not think that the CRE is in a position to develop or maintain such a database.

13. Promoting GB approaches

The CRE was asked to do more to promote some of the positive aspects of the GB approach, specifically: recognition of institutional racism and the need for effective anti-discrimination to acknowledge and tackle it; the role of ethnic monitoring in proving and tackling discrimination; a pluralist approach that recognises and respects differences rather than an approach which in reality equates integration with assimilation.

The CRE believes that these are all important aspects of the GB approach and that they can make a valuable contribution at a European level, and this is already reflected in the strategy. The CRE also believes that we should be learning from approaches elsewhere and that the balance in the strategy is about right. (Institutional racism was covered in much greater detail in some of the responses and is also covered below.)

14. Race equality in other States

Some asked for CRE to give attention to race equality and implementation of anti-discrimination measures in other countries, particularly in the EU.

The CRE's remit, as set out in the RRA 1976, is limited to GB. The CRE is involved in European and international work in recognition of the impact that it can have on race equality and good race relations in GB. Some of this work may best be achieved by working in partnership with organisations from other countries, especially other specialised bodies, but developments within other countries are outside the CRE's remit.

15. Anti-terrorism legislation

Concern was raised regarding anti-terrorism legislation and the potential for abuse of human rights.

The CRE has already raised concerns regarding implications for race equality, and will continue to give attention to these areas. However as the work concerns national legislation it has not been detailed in this strategy.

16. The far right

There were comments about the need for work with mainstream political parties.

The CRE recognises this and already has a comprehensive programme of work in this area. As this work takes place within GB it has not been detailed in the strategy.

17. Outstanding issues

The consultation responses raised a great many issues, most of which have been addressed above. Some proved particularly complex and require further discussion and/or further information in order to establish the CRE's best approach, and therefore a half day internal review day is being arranged to allow further discussion. These issues include the following.

The CRE was asked to undertake an active programme of work to encourage the UK government to ratify Protocol 12 of the European Convention on Human Rights.

The CRE was asked to lobby for the recognition of Muslims as a national minority in relation to the Framework Convention on the Protection of National Minorities.

The CRE was asked to undertake an active programme of work to establish institutional racism as an accepted concept at European level, and to press for specific legislation/initiatives to address it.