



May 2008

Equal Opportunities Commission's submission to
the Meeting of the Bills Committee on Race Discrimination Bill
on 14 May 2008

- 1 The Equal Opportunities Commission (EOC) has been invited to the Bills Committee's meeting to be held on 14 May 2008 to assist Members in a discussion on the concept of mainstreaming racial equality through equality plans.
- 2 To make racial equality a reality in people's everyday life experience, it is important that decisions are made after proper consideration of their impact on different racial groups, including the way the decisions are to be implemented. It is equally important to review and assess the effect on different racial groups after decisions have been made and to evaluate the implementation process. Disadvantage or neglect for certain racial groups often arises through information gap or administrative inflexibility. This should be avoided or corrected so far as practicable. Everything should be planned and done bearing in mind the impact on different racial groups, with a view to ensure equality. This is racial equality mainstreaming.
- 3 The importance of mainstreaming is twofold. Firstly, it can prevent and address discrimination. Secondly, by making equality one of the central considerations in decision-making and implementation, it is also proactive in promoting equality and good relations among different people.
- 4 The EOC has always recognized the importance of mainstreaming and has always encouraged decisions-makers to have proper regard to equality factors in their work. In this connection, the EOC has been observing developments in other countries.

UK

Overview

- 5 Developments in the UK provide a useful reference point on how mainstreaming

could be implemented.

- 6 The Race Relations Act 1976 (RRA) in the UK was amended in 2000 to impose a duty on specified public authorities when carrying out their functions to have due regard to the need to eliminate unlawful racial discrimination and to promote racial equality and good race relations (RRA s.71). This duty to have due regard to racial equality is in essence a duty to mainstream race equality. This is called the general duty¹.
- 7 For the purpose of ensuring that public authorities in the UK do discharge the general duty, the Race Relations Act 1976 (Statutory Duties) Order 2001 (2001 Order), which is a piece of subsidiary legislation under the RRA, requires public authorities specified in the 2001 Order to publish a Race Equality Scheme (2001 Order art.2(1)). This requirement is one of a number of specific duties imposed on different authorities to ensure they fulfill their general mainstreaming duty above. Other specific duties will be briefly mentioned below in paragraphs 32 to 34. The relevant extracts of the 2000 amendment to the RRA and the 2001 Order are attached for reference.
- 8 The Race Equality Scheme is a document that sets out what a public authority is doing in terms of racial equality mainstreaming. The Race Equality Scheme is required to have the following contents (Order art.2(2)):-
 - 8.1 A list of the authority's functions or policies (including proposed policies) assessed to be relevant to racial equality;
 - 8.2 Arrangements for assessing and consulting on likely impact of proposed policies on racial equality;
 - 8.3 Arrangements for monitoring its policies for any adverse impact on racial equality;
 - 8.4 Arrangements for publishing assessment and consultation and monitoring results;
 - 8.5 Arrangements for ensuring public access to information and services it

¹ This general duty is separate and independent from the obligation imposed under s.19B of the RRA for a public authority not to discriminate in carrying out its functions.

provides;

8.6 Arrangements for staff training on racial equality.

- 9 Public authorities required to publish a Race Equality Scheme were required to do so by 31 May 2002. Every 3 years a public authority has to review the assessment of its functions or policies for their relevance to racial equality.
- 10 By now, a number of years' experience has accumulated on how the law in UK is implemented. The EOC hopes to assist Members' discussion by drawing out the following features. In doing so, the EOC has made reference to materials published by the Commission for Racial Equality (CRE) (replaced in October 2007 by the Commission for Equality and Human Rights (CEHR)²) as well as Equality Schemes of a number of public authorities in the UK.

Authorities covered

- 11 There are a large number of public authorities who are subject to both the general mainstreaming duty and the specific duty of publishing a Race Equality Scheme. These range from all ministers and government departments, to various other public bodies including the Learning and Skills Council (LSC)³ and the health authorities (these are relevant as Members' present discussion came out of concerns over vocational training and hospital interpretation services).
- 12 Other public authorities having mainstreaming duties include agencies which have inspection and audit functions over other public bodies, like the National Audit Office or the Police Complaints Authority. This is important because these agencies are expected and are relied on to make racial equality an important element of their inspection and audit work over the authorities they have to inspect and audit.
- 13 In addition, the CEHR (previously the CRE) is given functions relating to compliance with the requirement to publish a Race Equality Scheme.

List of functions

² The CRE, together with the Equal Opportunity Commission in the UK (gender equality) and the Disability Rights Commission, was replaced by a single equality body, the CEHR, in October 2007

³ A body responsible for commissioning and funding post-16 education and training

- 14 In drawing up a Race Equality Scheme for publication, the CRE advised public authorities to make a list of all their functions and policies, and then to assess and prioritize this list in terms of relevance to racial equality. In making this assessment, public authorities are advised to look for evidence that the function or policy is affecting some racial groups differently, and to see whether there is any public concern that the function or policy is causing discrimination and or is damaging race relations.
- 15 Prioritizing functions and policies involves an assessment of how much a function or policy affects people in terms of race (both as members of the public or as employees of the authority). Internal administrative functions are probably less relevant than other functions in terms of racial equality. For example, in the Single Equality Scheme⁴ of the Learning and Skills Council (LSC), the resource management function relating to corporate property and facilities was rated as having a low relevance to racial equality, whereas functions such as learner support, or funding policy and strategy, were rated as having a high relevance to racial equality.
- 16 It is not acceptable to regard race equality as unimportant simply because the population of ethnic minorities is small. When functions and policies are rated as having a high relevance to racial equality, there should be sufficient resources devoted to these functions and policy areas to promote race equality. But it is legitimate for a public authority to adjust its arrangements for impact assessment, consultation, monitoring and publication as proportional to its size and resources.

Impact assessment and consultation

- 17 In respect of impact assessment, public authorities are advised to set out the information that is available for impact assessment. This may include reference to research findings, population data (including census findings), survey results, or comparisons with similar policies in other authorities.
- 18 Integral to impact assessment is consultation. Public authorities are required to set out their arrangements for consultation. Consultation may take various forms, including consultation meetings, focus groups, and survey questionnaires.

⁴ The Single Equality Scheme: Our Strategy for Equality and Diversity (April 2007 LSC) is intended to fulfill the duties for Race Equality Scheme, Disability Equality Scheme and Gender Equality Scheme in one document.

19 In terms of following up on the outcome of impact assessment, public authorities are advised to ask themselves the following questions:-

19.1 If the assessment or consultation in relation to a policy reveals that certain racial groups have different needs, can they be met, either within the policy or in some other way?

19.2 If a policy adversely affects people from certain racial groups, can another way be found to meet the same policy objective? Can the policy objective justify the adverse effects on these people? Can the policy be adjusted to compensate for any adverse effects?

Monitoring

20 Public authorities are expected to monitor the impact on race equality of their functions and policies as a matter of routine, and to set out their arrangements for so doing.

21 This may involve setting up internal systems for the collection of racial data of the people affected by their functions and policies. Care should be taken to ensure that data collection is in compliance with the law on information gathering and processing.

22 Other monitoring methods may include focus groups or satisfaction surveys analysed by racial groups.

Publishing assessment, consultation and monitoring reports

23 To increase openness so as to allow their work to be scrutinized, public authorities have to publish the results of any assessments, consultations and monitoring. They must also set out their arrangements for so doing in their Race Equality Scheme.

24 In publishing the results of assessments and consultations, public authorities are advised to include information on the reason for the assessment or consultation, how it was carried out, a summary of the responses, an assessment of policy options and the authority's proposed action.

Accessibility to information and services

- 25 Accessibility to information and services for all is clearly an important part of racial equality, and public authorities have to set out their arrangements for ensuring accessibility.
- 26 Public authorities are advised to consider accessibility when they assess and prioritize their functions. They should examine whether information is available at the right time and place.
- 27 Staff should be equipped with the right skills, information and understanding to deal with all clients.
- 28 Measures which public authorities could take may include arranging for interpreters, developing access to computers and internet services, consulting particular groups on what services they need and how they want them provided, and strengthening liaison and understanding with different communities.

Staff training

- 29 Public authorities must ensure that their staff at all levels are aware of the general and specific duties in relation to racial equality, and are aware of the Race Equality Scheme and the action plan linked to it. They should be trained so that they have the necessary skills and information to implement those parts of the Race Equality Scheme and the action plan that apply to them.

Action Plan

- 30 The Race Equality Scheme should include a timetabled and realistic action plan with clear targets and showing the steps the authority will take. Without such an action plan, the authority may be regarded by the Commission for Equality and Human Rights or other inspection or audit agencies as not having properly fulfilled the mainstreaming duties.

Designated high level lead

- 31 Mainstreaming is much more likely to be effective when there is a designated high level lead within a public authority. Take the Learning and Skills Council

(LSC), for instance, it has established a National Equality and Diversity Committee within its structure to monitor and assess its Single Equality Scheme and action plan, and to ensure that LSC programmes are appropriately focused among different racial groups. From 2007, LSC papers with a policy bearing would have to include an initial equality and diversity impact assessment for consideration by council members.

Other specific duties

- 32 In addition to the specific duty to publish a Race Equality Scheme, some authorities are subject to a separate duty of monitoring their employment procedures and practice in connection with race equality.
- 33 Not all public authorities are subject to the specific duty of publishing a Race Equality Scheme. Schools and further and higher educational institutions are not subject to the Race Equality Scheme duty, but they are subject to a specific duty of putting in place a Race Equality Policy, and to assess and monitor the impact of its policies on students, staff and parents, in particular, the attainment level of the students. They have to publish annually the results of its monitoring. For further and higher educational institutions, they have to monitor by racial groups the admission and progress of the students and the recruitment and career progress of staff.
- 34 The above indicates that when public authorities are required to mainstream race equality, the actual circumstances of the different types of public authorities have to inform the specific requirements to be imposed on them.

Enforcement

- 35 In respect of the general mainstreaming duty of having due regard to race equality, if a public authority does not meet this duty, it may be subject to judicial review.
- 36 In respect of the specific duty of publishing a Race Equality Scheme, if a public authority does not meet this duty, the CEHR may issue a compliance notice. According to the former CRE, in practice, a public authority will be warned with a “minded to issue” letter, and only if it stills fail to meet the duty will a compliance notice be issued.

- 37 If a compliance notice is not complied with, the CEHR may apply to the Courts for a court order requiring compliance.
- 38 Inspection and auditing agencies are also expected and relied on to use their processes to identify and address equality issues.

Initial compliance situation in the UK

- 39 In a report issued on 10 September 2007 by the CRE, shortly before it was replaced by the CEHR, the CRE commented that the overall compliance in the UK with the mainstreaming duties was disappointing. It found that while some small local authorities with relatively limited budgets were meeting or even exceeding their minimum responsibilities, some of the biggest spending government departments were failing to achieve even basic compliance.
- 40 The CRE ranked all public authorities by organizational type. Those authorities making good progress or have significantly improved performance were local governments, inspection and regulatory agencies and criminal justice agencies. Those authorities making poor progress included government departments, national health trusts and further educational institutions.
- 41 For government departments, 15 departmental Race Equality Schemes were found to be non-compliant by the CRE. 8 were later revised. CRE had to consider enforcement action against 6 departments. Compliance action was initiated even in relation to the Cabinet Office.
- 42 Amidst the disappointment in relation to government departments, the CRE was replaced by the CEHR, but it encouraged the CEHR to continue its work on mainstreaming. In addition, similar requirements to publish equality scheme for disability equality and gender equality have also been recently imposed on public authorities in the UK in 2006 and 2007 respectively. All these indicate that despite some initial disappointment, mainstreaming is still considered to be the correct approach.

Sweden

- 43 Apart from the UK experience, EOC's exchange of information with equality agencies in Sweden also shows that Swedish equality law and enforcement agencies expect and require organizations such as employers and schools or higher educational institutions to put in place annual equal treatment or equality plans in relation to certain aspects of their activities (such as employment or student matters).

Other observations

- 44 Mainstreaming, whether as a general concept or as a legal duty like it is in the UK, does not dictate the specific details of any substantive policy decision or implementation process. What it does require is that specific attention be properly given to equality issues in the decision-making and implementation process.
- 45 While proper attention should be given to equality issues, policy-making often involves balancing a host of different and sometimes conflicting considerations all calling for resources which are limited. The balance is best settled through appropriate political processes. This may mean that, even with the best of intention and the strongest of resolve, the immediate correction of some equality issues may not be attainable but may take time. Mainstreaming will help to maintain focus and make progress during this time.
- 46 Perhaps partly because of the recognition that time may be needed to correct certain equality issues, legislation may provide for a mechanism for responsible entities to apply for relief from immediate legal liability. An example of this can be found in Australia, where the Human Rights & Equal Opportunity Commission (HREOC) is empowered to grant temporary exemptions from specified parts of equality legislation⁵. Such exemptions may be granted subject to conditions, which may include an action plan or a requirement to take measures to correct an inequality during the term of the temporary exemption. Exemptions cannot last more than 5 years in the first instance.
- 47 Imposing a legal duty to have an equality plan is one way towards mainstreaming

⁵ Though this power is only given under gender, disability and age legislation, it could in principle apply to the present race context.

but it is not necessarily a guarantee for effective mainstreaming. As the initial disappointment with government departments in the UK has shown, the key to effective mainstreaming is the strength of resolve within a public authority itself to address equality issues. But it is clear that having an equality plan is in principle a useful tool, though by no means the only tool, for addressing equality issues.

Equal Opportunities Commission
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