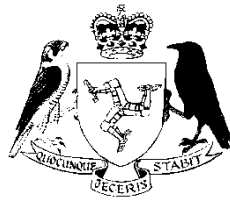




Department of Home Affairs

STATUTORY CODE OF PRACTICE ON THE DUTY OF PUBLIC AUTHORITIES TO PROMOTE GOOD RACE RELATIONS

Government Circular No. 052/10



RACE RELATIONS ACT 2004

**STATUTORY CODE OF PRACTICE ON THE DUTY
OF PUBLIC AUTHORITIES TO PROMOTE GOOD RACE
RELATIONS**

December 2010

PREFACE

The Race Relations Act 2004 is an important piece of legislation for the Island. We need to have a clear, shared understanding of basic minimum standards, not least in the provision of goods and services by the public sector for our people. Put simply, treating a person less favourably on the grounds of race (whether it be the colour of their skin or purely their national or citizenship origins) is wrong. Whilst I do not believe that discrimination is widespread or endemic on the Island, unfair treatment can have a huge impact on individuals and society. In addition, I believe public sector service providers are working hard to provide quality services to all people on the Island without fear or favour.

As an Island we have international obligations which complement those we owe one another and it is only right and proper that we meet those obligations without reservation. This Code of Practice is published with the aim of assisting those in the public sector and those who provide services on behalf of Government or the Local Authorities to meet the requirements of the Race Relations Act 2004 in the manner in which they provide goods and services to (or serve) the general public.

Hon. Adrian Earnshaw, MHK
Minister for Home Affairs
9th December 2010

PART 1
INTRODUCTION

Introduction

- 1.1 The purpose of the Race Relations Act 2004 (“the Act”) is to promote fair and equal treatment in the provision of goods and services to all of the Island’s people. It is not about giving more favourable treatment to any particular group of people.
- 1.2 The Act places a general duty on a wide range of Public Authorities to promote race equality in the performance of their functions, in addition to their obligation to comply with the other provisions of the Act. Throughout this Code “general duty” or “duty” means that Public Authorities must have due regard to the need, in the performance of their functions, to —
- a. eliminate unlawful racial discrimination;
 - b. promote equality of opportunity between people of different racial groups, and
 - c. promote good relations between people of different racial groups.
- 1.3 For the purposes of the Act “Public Authority” includes —
- Government Departments, Statutory Boards and Offices;
 - The Council of Ministers, and any Committees or Working Groups thereof;
 - The Police, Fire and Rescue Service and Ambulance Service;
 - Local Authorities;
 - The Civil Service;
 - Courts and Tribunals; and
 - any other person whose functions are of a public nature.

In the case of a person who partly performs functions of a public nature and partly of a private nature that person has a duty in the performance of his or her public functions only.

- 1.4 But “Public Authority” does **not** include —
- Tynwald;
 - the Legislative Council;
 - the House of Keys; or
 - a person exercising functions in connection with proceedings in Tynwald, the Legislative Council or the House of Keys.

- 1.5 It can be seen therefore that most public bodies are under a duty to promote race equality, and some of them provide major public services, such as education, health or public housing. Some of them are subject to the duty only so far as their public functions (see the glossary) are concerned.
- 1.6 Promoting race equality will ensure that public services are provided in a way that is fair to everyone, regardless of the colour of their skin or racial background. In most cases, Public Authorities should be able to use their existing arrangements – such as those for policy making – to meet the duty’s requirements. This should help to avoid any unnecessary or duplicated work.

Benefits of the duty

- 1.7 The duty will help Public Authorities to make steady progress in achieving race equality and fairness. In relation to policy development and service delivery, the duty will –
- a. encourage policy makers to be more aware of possible issues;
 - b. contribute to more informed decision making;
 - c. make sure that policies are properly targeted;
 - d. improve the Authority’s ability to deliver suitable and accessible services that meet varied needs;
 - e. encourage greater openness about policy making;
 - f. increase confidence in public services, especially among ethnic minority communities;
 - g. help to develop good practice; and
 - h. help to avoid claims of unlawful racial discrimination.

Purpose of the Code

- 1.8 The Code’s aim is to help Public Authorities to adopt good practice and to eliminate racial discrimination.

Nature of the Code

- 1.9 This Code of Practice is a ‘statutory’ Code. This means that it has been prepared in accordance with the Act, laid before Tynwald and issued by the Department. It also means that the Code is admissible in evidence in any legal action, and a court or tribunal should take the Code’s recommendations into account. On its own, the Code does not place any legal obligations on Public Authorities. It is not a complete statement of the law, as only the courts can give this.

PART 2

THE LEGAL FRAMEWORK

2.1 The Act defines unlawful racial discrimination and victimisation; it makes the publication of discriminatory advertisements unlawful; and it establishes that instructing or pressuring a person to commit actions that are unlawful under the Act is also unlawful.

2.2 The Act places a general duty on Public Authorities and gives power to the Department to issue a Code or Codes of practice containing practical guidance on how Public Authorities can meet the general duty.

The general duty to promote race equality

2.3 This general duty applies to all Public Authorities and its aim is to make the promotion of race equality in the performance of their functions an everyday part of the work of Public Authorities.

2.4 Public Authorities should be able to demonstrate that they are taking action to promote race equality in pursuance of this general duty.

Liability under the Act

2.5 Public Authorities are responsible for meeting their general statutory duty. Within each Public Authority, this responsibility will rest with the groups or individuals who are liable (legally responsible) for the Authority's acts or failure to act.

Private or voluntary organisations carrying out a Public Authority's functions

2.6 When a Public Authority has a contract or other agreement with a private company¹ or voluntary organisation to carry out any of its functions the Public Authority remains responsible for meeting the general duty. The Authority should consider the arrangements it will need to be put in place to incorporate the general duty among the performance requirements for delivery of the service. For example, a contractor could be required to monitor service users by their racial group, to make sure the Authority is meeting its duties. This would not involve requirements concerning the contractor's internal practices. Whatever action the Authority takes, it must be consistent with the policy and legal framework for public procurement.

2.7 In addition to specifications for the general duty, Public Authorities may promote race equality by encouraging contractors to draw up policies that will help them (contractors) to avoid unlawful discrimination, and promote equality of opportunity. Such encouragement should only be within a voluntary framework, once contracts have been awarded, rather than by

¹ For example, from the DHSS to a private company to provide children's services.

making specific criteria or conditions part of the selection process. Public Authorities should be mindful that the general duty does not override other laws or regulations on public procurement. In particular, as above, whatever action the Authority takes must be consistent with the policy and legal framework for public procurement.

Partnership

- 2.8 Public Authorities should take account of the general duty when they work with other public, private or voluntary organisations. There is no similar obligation on private or voluntary-sector partners.
- 2.9 Public Authorities that are involved in partnership work with other Public Authorities, or with private or voluntary-sector organisations, are still responsible for meeting the general duty.
- 2.10 In practice, this will mean that a Public Authority working within a partnership will need to seek agreement from its partners to arrangements necessary to meet the general duty.

Inspecting and auditing Public Authorities

- 2.11 Agencies that audit or inspect Public Authorities need to consider how the general duty fits with their inspection or audit obligations.

PART 3

THE GENERAL DUTY

The general duty

- 3.1 This chapter explains what Public Authorities can do to meet the general duty to promote race equality as set out in section 1(1) of the Act.

Guiding principles

- 3.2 Four principles should govern Public Authorities' efforts to meet their duty to promote race equality in the performance of their functions —
 - a. Promoting race equality is obligatory for all Public Authorities,
 - b. Public Authorities must meet the duty to promote race equality in all relevant functions,
 - c. The weight given to race equality should be proportionate to its relevance.
 - d. The elements of the duty are complementary (which means they are all necessary to meet the whole duty).

‘Obligatory’

- 3.3 Public Authorities must make race equality a priority in the performance of their functions (such as planning, policy making, service delivery, regulation, inspection, enforcement). The general duty does not tell Public Authorities how to do their work, but it requires them to do everything they can to meet the general duty. The duty should underpin all policy and practice, and should encourage improvement.

‘Relevant’

- 3.4 Race equality will be more relevant in the performance of some functions than others. Relevance is about how much a function affects people, as members of the public or as employees of the Authority. Public Authorities should therefore assess whether, and how, race equality is relevant to the performance of each of their functions. A Public Authority may decide that the general duty does not apply to the performance of some of its functions; for example those that are purely technical, such as traffic control or weather forecasting.

‘Proportionate’

- 3.5 Under section 1(1) of the Act, Public Authorities are expected to have “due regard” to each part of the duty. This means that the weight given to race equality should be proportionate to its relevance to the performance of a particular function. In practice, this approach may mean giving greater consideration and resources to functions or policies that have most effect on the public, or on the Authority's employees. The Authority's concern should be to ask whether particular policies in relation to the performance of its functions could affect different racial groups in different ways, and whether the policies will promote good race relations.
- 3.6 “Due regard” does not mean that race equality is less important when the ethnic minority population is small. It is also not acceptable for a Public Authority to claim that it does not have enough resources to meet the duty. This is because meeting the general duty is a statutory requirement. In practice, Public Authorities should draw on work they already do and build on it, using their existing administrative systems and processes and adjusting their plans and priorities, where necessary.
- 3.7 The general duty is a continuing duty. What a Public Authority has to do to meet it may change over time as its functions or policies change, or as the communities it serves change.

'Complementary'

- 3.8 The general duty has three parts —
- a. eliminating unlawful racial discrimination;
 - b. promoting equality of opportunity between people of different racial groups; and
 - c. promoting good relations between people of different racial groups.
- 3.9 These three parts support each other. And, in practice, they may overlap (for example, promoting equality of opportunity may also eliminate or prevent unlawful racial discrimination, and promote good race relations). However, it is important to remember that the three parts are different, and that achieving one of them may not lead to achieving all three. For example, an equal opportunities policy that is not clearly explained when it is introduced may improve equality of opportunity, but it may also damage race relations and create resentment if it is not explained to staff how it benefits everyone.
- 3.10 Public Authorities should consider and deal with all three parts of the general duty.

How to meet the general duty

- 3.11 Public Authorities should consider the following four steps to meet the general duty —
- a. Identify which of their functions and policies are relevant to the duty, or, in other words, affect most people.
 - b. Put the functions and policies in order of priority, based on how relevant they are to the duty.
 - c. Assess whether the way these 'relevant' functions and policies are being carried out meets the three parts of the duty.
 - d. Consider whether any changes need to be made to meet the duty, and make the changes.

Identifying relevant functions

- 3.12 To identify relevant functions, a Public Authority will find it useful, first, to make a list of all its functions. It should then assess how relevant each function is to each part of the general duty. Some functions may, by their nature, have little or no relevance.
- 3.13 A Public Authority should consider setting priorities, and giving priority to those functions that are most relevant to the duty.

Assessing impact and considering change

- 3.14 To assess the impact its functions and policies have on its duty, the Public Authority may find it useful to draw up a clear statement of the aims of each function or policy. It should then consider whether it has (or should have) information about how different racial groups are affected by the function or policy, as employees or users (or possible users) of services. The Authority should also consider whether its functions and policies comply with the duty. The Authority could obtain this information from various sources; for example previous research, records of complaints, surveys, or local meetings. These methods should help Public Authorities to assess which of their services are used by which racial groups, or what people think of their services, and whether they are being provided fairly to people from different racial groups. This kind of evidence should help Public Authorities to decide what they might need to do to meet all three parts of the general duty.
- 3.15 Public Authorities may also need to consider adapting their existing information systems, so that they can provide information about different racial groups and show what progress the Authority is making on its general duty in terms of its service delivery.
- 3.16 To assess the effects of a policy, or the way a function is being carried out, Public Authorities could ask themselves the following questions —
- a. Could the policy or the way the function is carried out have an adverse impact for some racial groups? In other words, does it put some racial groups at a disadvantage?
 - b. Could the policy or the way the function is carried out have an adverse impact on relations between different racial groups?
 - c. Is the adverse impact, if any, unavoidable? Could it be considered to be unlawful racial discrimination? Can it be justified by the aims and importance of the policy or function? Are there other ways in which the Authority's aims can be achieved without causing an adverse impact on some racial groups?
 - d. Could the adverse impact be reduced by taking particular measures?
 - e. Is further research or consultation necessary? Would this research be proportionate to the importance of the policy or function? Is it likely to lead to a different outcome?
- 3.17 If the assessment suggests that the policy, or the way the function is carried out, should be modified, the Authority should do this to meet the general duty.

PART 4
FURTHER GUIDANCE

Race equality scheme

- 4.1 There is no statutory duty for Public Authorities to publish a race equality scheme. However, Public Authorities may wish to consider whether making this Code available at public counters, in a prominent place on their websites etc may be of benefit to the public.

Awareness of obligations

- 4.2 Staff of Public Authorities should be made aware of the obligations of the provisions of the Act in relation to the general duty and eliminate unlawful racial discrimination.

Public access to information and services

- 4.3 Public Authorities should ensure all persons are able to obtain information about the services that they provide and ensure that all persons are able to access those services.
- 4.4 Public Authorities might consider the following action –
- a. Consider access to information and services when they assess their functions. For example, is there enough information available to the public? Is the information user-friendly?
 - b. Consider whether a service is not being fully used because people do not have enough information about it, or because they are not confident that the service can meet their particular needs sympathetically or fairly.
 - c. Ask whether information is available at the right time, in the right format and in the right place.
 - d. Take steps to improve the information available.
 - e. Monitor how effectively information is given to the public, and make improvements, where necessary.
 - f. Make sure that staff have the skills, information and understanding needed to deal fairly and equally with all clients.
- 4.5 Public Authorities might also consider how they can improve public access to their services. Possible ways include –
- a. asking local communities what services they need and how they want them provided;
 - b. providing ‘outreach’ services to particular groups in an environment and style they are familiar with;
 - c. strengthening cooperation with particular groups;

- d. arranging for interpreters;
- e. taking positive action; and
- f. developing access to computers and internet services.

PART 5

SUPPLEMENTARY

Remedies and Enforcement

- 5.1 A person may make a claim against another person in respect of an alleged act of unlawful racial discrimination in civil proceedings in like manner as any other claim in tort.
- 5.2 Powers of enforcement in respect of discriminatory advertisements, instructions to discriminate, or pressure to discriminate lie with the Attorney General.

Code of Practice

- 5.3 This Code of Practice is admissible in evidence in court. A court will be expected to take the Code of Practice into account if it seems relevant to any matter the court is ruling on. Public Authorities do not have to follow the guidance in this Code of Practice. However, they are expected to meet the general duty by which they are bound

Role of the Department of Home Affairs

- 5.4 The role of the Department is set down in section 16(1) of the Act –
 - “(1) The Department of Home Affairs (in this section referred to as 'the Department') may issue Codes of practice containing such practical guidance as it thinks appropriate for all or any of the following purposes-
 - (a) the implementation of this Act by Public Authorities and others;
 - (b) the elimination of discrimination;
 - (c) the promotion of equality of opportunity between persons of different racial groups.”
- 5.5 In section 16(2) of the Act the Department is required; if it does decide to issue a Code of Practice, to consult with such organisations and persons as appear to it to be appropriate.
- 5.6 In accordance with section 16(3) of the Act, the Department laid a draft copy of the code before the October 2010 sitting of Tynwald. The code is now issued and public authorities are invited to have regard for it.

Further advice and guidance

- 5.7 The Race Relations Act 2004 gives the Department no other role than to prepare, consult on, and issue a Code of Practice such as this. Any person who wishes to obtain further advice or guidance on any aspect of the operation of the Act should consider obtaining appropriate legal advice.

Glossary

In this Code, the words below have the meanings shown.

Act

The Race Relations Act 2004 (“the Act”). A copy of the Act can be found on the internet at:

<http://www.gov.im/lib/docs/infocentre/acts/rra2004.pdf>

ethnic monitoring

the process you use to collect, store and analyse data about people’s ethnic backgrounds.

monitoring

the process of collecting, analysing and evaluating information, to measure performance, progress or change.

policies

the formal and informal decisions about how a Public Authority carries out its duties and uses its powers.

positive action

action permitted by the Schedule to the Race Relations Act that allows a person to provide facilities to meet the special needs of people from particular racial groups in relation to their training, education or welfare.

proportionate

this refers to the fact that the weight given to race equality should be proportionate to its relevance to a particular function. This approach may mean giving greater consideration and resources to functions or policies that have most effect on the public, or on the Authority's employees.

public appointments

appointments to the boards or governing bodies of public bodies. These are bodies that have a role in the processes of national or local government, but operate at arm's length from government (e.g. school governing bodies, advisory councils or boards, consultative groups such as the Police Consultative Group).

Public Authority

a body named, defined or described in section 6 of the Human Rights Act 2001 [c.1] as referred to by section 1(2) of the Act. That is to say, Government Departments and their constituent parts (such as the Police, Prison and Fire Services), Statutory Boards, Local Authorities and any person certain of whose functions are functions of a public nature.

public functions

functions that affect, or are likely to affect, the public or a section of the public. While only the courts can decide this, public functions would normally not include internal management or contractual matters such as employing staff; purchasing goods, works or services; or buying or selling premises. This term is used to refer to those Authorities that are bound by the duties only in relation to their public functions.

public procurement

the contractual or other arrangements that a Public Authority makes to obtain goods, works or services from an outside organisation.

racial group

a group of people defined by reference to their race, colour, nationality (including citizenship), or ethnic or national origins.

racial grounds

reasons of race, colour, nationality (including citizenship), ethnic or national origins.

relevance

this refers to the fact that race equality will be more relevant to some public functions than others. Relevance is about how far a function or policy affects people

statutory Code of practice

a document such as this one, which offers practical guidance on the law, has been approved or, as in this case, laid before Tynwald, and is admissible in evidence in a court of law.

Unlawful racial discrimination

Unlawful racial discrimination means treating a person less favourably on racial grounds than other persons (this is known as “direct discrimination”); or equally applying a condition or requirement which adversely affects a particular racial group and which cannot be justified on non-racial grounds (this is known as “indirect discrimination”). Segregating a person from other people on racial grounds counts as unlawful racial discrimination.



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