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MEMORANDUM

RACE RELATIONS (AMENDMENT) BILL

Background

1. The Race Relations (Amendment) Bill (the Bill) has now completed Committee stage in the House of Commons having been introduced in the House of Lords in November 1999. It makes a number of changes to the Race Relations Act 1976 ("the 1976 Act") partly in response to the Commission for Racial Equality's Third Review of the 1976 Act and the Macpherson Report of the Inquiry into the death of Stephen Lawrence. This memorandum is primarily concerned with matters relating to the UK Government's amendments to the Bill to introduce a new statutory duty on public authorities to promote race equality. These changes will apply right across the public sector.

Content of the Bill

2. The Bill as introduced makes changes to the 1976 Act to extend further the statutory anti-discrimination regime in relation to public authorities; to make chief officers of police vicariously liable for acts of racial discrimination by police officers; and to amend the exemption under the 1976 Act for acts done for the purposes of safeguarding national security thus remedying a European Convention of Human Rights incompatibility in that legislation.

3. The UK Government amendments made in Commons Committee create a new section 71(1) of the 1976 Act which places a new statutory duty on specified public authorities to "make arrangements to secure that [the authority's] functions are carried out with due regard to the need:-

(a) to eliminate unlawful racial discrimination; and

(b) to promote equality of opportunity and good relations between persons of different racial groups."

The wording of the new duty reflects the wording already in section 71 the 1976 Act which currently places a duty on local authorities.

4. The amendments also provide a supporting framework to ensure that the new positive duty to be placed on public authorities is effective and, in particular, that the arrangements are enforceable. This includes:

- a new section 71(2) enabling the Secretary of State to make regulations imposing further specific duties on the specified authorities to ensure their better performance of their duties under section 71(1);

- a new section 71C providing power for the CRE to issue Codes of Practice giving guidance to the specified authorities as to how to fulfil the duties imposed by sections 71(1) and 71(2) ; and

- new sections 71D and 71E providing for a compliance and enforcement mechanism, giving the CRE power to issue a compliance notice and ultimately apply for a court order in respect of enforcement of the duties imposed by order by the Secretary of State.

The UK Government and Executive will be consulting over the coming months on the content of the regulations under section 71(2). The Executive will look to contribute to those UK discussions and undertake similar discussions with Scottish interests such as the Race Equality Advisory Forum chaired by the Deputy Minister for Communities. This will help ensure that in the implementation of the new arrangements full account is taken of Scottish circumstances and interests.

Equal Opportunities and the Scotland Act

5. The Bill deals almost entirely with reserved matters in that the Scotland Act reserves equal opportunities including the subject-matter of the 1976 Act. There are two exceptions to the reservation: the encouragement (other than by prohibition or regulation) of equal opportunities and in particular the observance of the equal opportunities requirements; and the imposition of duties on Scottish public authorities and cross-border public authorities in relation to their Scottish functions. The new general duty on public authorities to promote race equality will impact on devolved areas of responsibility and the powers in new section 71(2) fall within the terms of the exception to the reservation.

Proposal

6. Recognising the devolution settlement the Scottish Executive has reached agreement with the UK Government that in relation to certain Scottish public authorities the Bill will confer on the Scottish Ministers regulation making powers in relation to the new duty. Although the amendments are expressed in terms of powers being conferred on the Secretary of State, the treatment of the amendments as a "pre-commencement enactment" within the terms of the Scotland Act ensures that these powers in new section 71(2) devolve to the Scottish Ministers insofar as they are exercisable within devolved competence. The amendments also place a duty on UK Ministers to consult the Scottish Ministers in deciding whether to approve or reject any Code of Practice prepared by the CRE under the new power contained in section 71C, and in deciding the day on which any Code will come into effect.

7. Whilst the new powers in section 71(2) fall within the legislative competence of the Scottish Parliament, the Scottish Executive considers that it makes sense for the Race Relations (Amendment) Bill to confer these powers to complement the new duty on public authorities put in place by new section 71(1). This will ensure that within the extended statutory regime for the promotion of race equality there is the necessary supporting framework in the interests of effective implementation and the Executive's commitment to promoting race equality.

The Parliament is invited to agree to:-

- The new power in section 71(2) allowing Ministers to make regulations imposing specific duties on specified authorities to ensure their better performance of their duties under new section 71(1) of the RRA.

- The requirement for the Scottish Ministers to be consulted on whether to approve any Code of Practice prepared by the CRE under section 71C, and on the date on which a Code should come into effect.

Scottish Executive
May 2000