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The *Race Relations Amendment Bill* [HL]

Bill 60 of 1999-2000

This Bill implements a principal recommendation of the Report of the Macpherson Inquiry into the death of Stephen Lawrence, that the *Race Relations Act 1976* should apply to the police and the Government decision that it should be extended to all those areas of public authority activity not expressly included by the Act, and excluded by the *Amin* judgment. It is to be debated in the House of Commons on second reading on Thursday March 9 2000.

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Summary of main points

The report of the Inquiry into the death of Stephen Lawrence found that institutional racism existed in the Metropolitan Police and elsewhere. It recommended that the *Race Relations Act 1976* should apply to all police activities, not merely the provision of services, but also law enforcement functions which case law had excluded. The Government accepted this recommendation, but decided to apply it to all public bodies. When the Race Relations Bill was presented in the House of Lords, it extended the concept of direct discrimination in this way, but excluded indirect discrimination. This paper looks at the history of race relations legislation, the provisions of the 1976 Act, the debate on the definitions of discrimination and reaction to the Government's decision to bring forward amendments to apply the indirect discrimination provisions of the 1976 Act to public bodies.

The explanatory notes to the Bill provide the clause-by-clause analysis and some background: this Paper seeks to trace the development in the House of Lords Debates of the arguments on particular themes which the Government has amended, promised to amend in the Commons, or agreed to study and reconsider.

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I Race Relations Legislation: an overview

A. The Acts of 1965 and 1968

Attempts were made in the 1950s to introduce legislation to outlaw discrimination on racial grounds in a series of private Members' Bills, notably by Reginald Sorenson and Fenner Brockway. The government Bill which was to become the 1965 *Race Relations Act* was introduced in April 1965 and provided that discrimination in hotels, public houses, restaurants theatres, public transport and any place maintained by a public authority was to be a criminal offence punishable by fines of up to £100. This met with great opposition and the criminal sanctions were replaced with a mechanism for conciliation to be overseen by the Race Relations Board. If conciliation failed, local committees could report to the Race Relations Board which could then refer the case to the Attorney General with a view to obtaining an injunction.

The 1965 Act was seen as providing little protection for victims of discrimination. Zig Layton-Henry comments

> "The Act was intended to have a declaratory effect and was not designed to suppress acts or racial discrimination by legal sanctions but to encourage people to do what was right by conciliation".[1]

The *Race Relations Act 1968* went much further. It made it unlawful to discriminate on grounds of colour, race, ethnic or national origins in employment, housing and the provision of commercial and other services. The Race Relations Board was reconstituted and charged with the duty to secure compliance with its provisions by investigating complaints of discriminatory behaviour, instituting conciliation procedures and, as a last resort, by legal proceedings. It also created the Community Relations Commission to promote 'harmonious community relations'. The Crown was included in the scope of the Bill, but was exempted from any proceedings in the courts. Alexander Lyon moved an amendment to delete the exemption and was supported by Quintin Hogg, who declared that it was unfair to treat private employers more strictly than public employers: "Why should the ordinary subject be liable to an action for damages, as the Home Secretary has decided that he should be, but the Home Secretary get off scot free?".[2]

By 1975 it was clear that the 1968 Act had not achieved what was hoped for. Surveys by Political and Economic Planning confirmed that discrimination in the areas of rented accommodation and employment remained high. The white paper *Racial Discrimination* of September 1975 stated that

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1 The politics of race in Britain, 1984, p 130
2 Debate in Standing Committee B, 25 June 1968 c 794

"…. the Government is convinced, as a result of its review of race relations generally and of the working of the legislation, that a fuller strategy to deal with racial disadvantage will have to be deployed than has been attempted so far".[3]

B. The Race Relations Act 1976 (The 1976 Act)

The Act, which applies to the whole of Great Britain, but not to Northern Ireland, makes racial discrimination unlawful in employment, training and related matters, in education, in the provision of goods, facilities and services and in the disposal and management of premises. It gives individuals a right of direct access to a county court in England and Wales or a sheriff court in Scotland, or, in employment cases, to industrial tribunals for legal remedies for unlawful discrimination. It defines two kinds of racial discrimination. Section 1(1)(a) defines **direct racial discrimination** which arises where a person treats another person less favourably on racial grounds than he treats or would treat someone else. 'Racial Grounds' means any of the following: colour, race, nationality (Including citizenship) or ethnic or national origins. The nature and effect of the action are to be considered rather than the openly expressed intention of the discriminator. In their guidance on the Act, the Commission for Racial Equality (CRE) offers the following example:

> If an Asian woman is turned down for a job as a shop assistant and told there are no vacancies , then a white woman with equivalent qualifications is offered the job a short while later, the Asian woman has been directly discriminated against.

As was foreseen in the White Paper, the definition of unlawful discrimination was expanded and section 1(1)(b) defines **indirect discrimination**. This consists of treatment which may be described as equal in a formal sense as between different racial groups but discriminatory in its effect on one particular racial group. It arises where a person applies to another (the victim) who is seeking some benefit from him a condition or requirement with which he must comply and which satisfies the following criteria:

(a) it is applied, or would be applied, equally to persons of any racial group;

(b) it is such that the proportion of persons of the victim's racial group who can comply with it is considerably smaller than the proportion of persons not of that group who can comply with it;

(c) it is to the detriment of the victim that he cannot comply with it;

(d) it cannot be shown to be justifiable irrespective of the colour, race, nationality or ethnic or national origins of the person to whom it is applied.

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[3] Cmnd 6234, September 1976, para 13

The Home Office guide to the Act identifies the questions to be address by the court or tribunal:

> Questions will arise as to the meaning of the words 'considerably smaller' and 'justifiable irrespective of the colour, race, nationality or ethnic or national origins of the person to whom it is applied'. Questions may also arise as to the composition of the groups from which the proportions of persons of different racial groups who can comply with a particular condition or requirement are to be drawn for the purposes of comparison. The answers will depend on the particular circumstances of each individual case. In each case the question can be determined authoritatively only by a court or tribunal.

As an example of indirect discrimination, the CRE suggests the following scenario:

> If an employer requires job applicants to have a qualification in a particular subject, but will only consider people whose degree is from a British university, this condition could amount to indirect discrimination.

Under s.57(3) of the 1976 Act, no award of damages may be made in a case involving indirect discrimination if the condition was not applied with the intention of treating the claimant unfavourably on racial grounds.

The application of the concept of indirect discrimination has been complicated by the decision of the Court of Appeal in the case of *Perera v Civil Service Commission* (1983) IRLR 166 that a requirement or condition exists only where it amounts to a complete bar if not met: if several criteria are used, all of which put ethnic minority employees or applicants at a serious disadvantage, but may be overcome by an individual who has extraordinary compensating qualities, use of those potentially discriminating criteria is lawful, even if it cannot be shown that it is 'justifiable'. If the preference were shown with the intention of adversely affecting any particular ethnic group it would amount to direct, rather than indirect, discrimination. In their third, 1998, review of the Race Relations Act, the CRE record the decision of the Employment Appeal Tribunal in the case of *Falkirk v Whyte* [1997] IRLR 560, where it was held that, despite *Perera*, where a criterion for a job was described as 'desirable' but not essential, it could still be indirectly discriminatory if, on the facts, inability to comply was decisive.

The 1976 Act covers all areas of employment, education, housing and, more recently, planning.[4] The concepts of direct and indirect discrimination apply under Section 4 to all employers, whether public authorities or not, and all aspects of employment including recruitment, selection, promotion, training pay and benefits, redundancy, dismissal and hours of work. Just as the CRE has undertaken a formal investigation of the employment policies of the Crown Prosecution Service,[5] it could also look at the recruitment and

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4 *Housing and Planning Act 1986*, s 55

5 "Racial equality watchdog to investigate CPS", *Guardian*, 25 October 1999

promotion policies of the police. Similarly, Part III of the Act applies to schools and colleges maintained by local education authorities, grant maintained schools, independent schools and colleges, special schools and universities. It includes the governors of a school or college and the local education authority in that it is unlawful for education authorities to discriminate in the performance of any of their duties. An often quoted example of indirect discrimination is the practice of drawing school catchment areas by reference to particular estates. However, the Court of Appeal in *R v Cleveland County Council ex parte* CRE [1992] 91 LGR 139, ruled that the provisions of the 1980 Education Act requiring local authorities to comply with parental preferences in the allocation of school places took precedence over the 1976 Act, even though it enabled local education authorities to allow parents to choose schools on the basis of the racial or ethnic composition of their pupil populations.

Section 20 of the 1976 Act makes it unlawful for anyone who is concerned with the provision of goods, facilities or services to the public, or a section of the public to discriminate by refusing or deliberately omitting to provide them, or as regards their quality or the manner in which or the terms on which he provides them. It applies, therefore, to hotels and catering, banking, insurance and other financial services, cinemas, theatres, bars, restaurants, pubs, transport and travel services provided by a local or public authority and any profession or trade.

Section 75 of the 1976 Act applies to an act done by or for the purposes of a Minister of the Crown or government department, or on behalf of the Crown by statutory bodies or office-holders, in the same way as they apply to acts done by a private person. In *Amin v Entry Clearance Officer, Bombay* [1983] 1A C 818, the House of Lords, by a majority of 3 to 2, held that the expression 'provision of goods and facilities and services' in anti-discrimination law applied only to activities or matters analogous to those provided by private undertakings, by one individual to another. It thus excluded areas of governmental and regulatory activities such as the areas of immigration control, the administration of prison system and the law enforcement activities of the police. The CRE's guide to the 1976 Act makes the distinction between regulatory activities and the provision of services:

> A frequent area of confusion is whether alleged discrimination by the police is covered by the Act. Government regulatory activities, such as those carried out by the police service, the Crown Prosecution Service, the courts, the immigration service and the prison service, are not covered by the Act. Any alleged discrimination in the police's law enforcement role is therefore not covered by the Act. However, services provided by these agencies for the public are not exempt from the Act. These might include, for example, the provision of neighbourhood security advice by the police, court translation services, or the provision of catering services in prisons.

It is under section 20 that Mr & Mrs Lawrence are reported to be bringing an action against the Metropolitan Police.[6]

The Act does not create offences and a successful complainant may be awarded damages by a court or tribunal for loss of earnings, for example, or injured feelings.

The Commission for Racial Equality

Under the 1976 Act the duties of the Commission are:

- to work towards the elimination of discrimination

- to promote equality of opportunity and good relations between persons of different racial groups generally and

- to keep under review the working of the Act and, when required by the Secretary of State or when it otherwise thinks it necessary, to draw up and submit to the Secretary of State proposals for amending it.

It may conduct formal investigations and require the provision of information. The White Paper on Racial Discrimination of 1971, para 111, stated that the successor body to the Race Relations Board would be able to conduct formal investigations on its own initiative into a named organisation for any purpose connected with the carrying out of its functions. However, *In re the Prestige Group PLC* [1984] IRLR 355, the House of Lords confirmed that no formal investigations were possible unless there were some initial evidence of unlawful activity.

If, in the course of a formal investigation the CRE is satisfied that a contravention of the Act has occurred, it may serve a non-discrimination notice on the person concerned and may institute proceedings for an injunction or an order in cases of persistent discrimination.

The Commission may also institute proceedings for an injunction or an order in respect of persistent discrimination, (section 62) and may assist an individual complainant where the case raises a question of principle.

Under section 47, the CRE may issue codes of practice containing such guidance as it thinks fit for the elimination of discrimination in the field of employment and the promotion of equality of opportunity in that field.

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6 *Daily Telegraph*, 21 December 1999

In 1998 the Commission received 1,657 applications for assistance. Complaints about employment made up two thirds of all applications received: 1,098 compared with 479 non-employment. Of these only three alleged indirect discrimination.[7]

C. Reviews of the working of the Race Relations Act 1976

In pursuance of its duty to keep under review the working of the 1976 Act, the CRE has published three reviews, in July 1985, in June 1991 and in April 1998. There was no formal response to the first of these, though some changes were made via legislative or case law.[8] The main areas where change was sought in all three reviews were:

- priority for anti-discrimination legislation – certification, as under the Human Rights Act 1998, that new legislation is consistent with the Race Relations Act 1976.

- amendment to overrule the *Amin* judgment (see p.10) so that the 1976 Act should apply to all aspects of the activities of government and public bodies.

- all public bodies to have a positive duty to promote equality of opportunity and work for the elimination of racial discrimination

- a new definition of indirect discrimination based on the EC directive on the Burden of Proof. The 1998 review suggests the following definition:

  > Indirect discrimination shall exist where an apparently neutral provision, criterion or practice disadvantages a substantially higher proportion of the members of a particular racial group, unless that provision, criterion or practice is appropriate and necessary and can be justified by objective factors unrelated to race.

- the ability to conduct formal investigations without prior evidence of unlawful discrimination

- possibility of separate legislation to prevent religious discrimination and incitement to religious hatred. The second (1991) Review commented:

  > It is the Commission's view that the law on blasphemy is unacceptable as it stands. Religious identity needs protection in law in a similar way to racial identity. International obligation would seem to demand a law on incitement to religious hatred in Britain, and probably also a law prohibiting discrimination on religious grounds. Some of the exceptions would be different from a law against racial discrimination, but it could be broadly similar. This will inevitably raise questions about whether a new Commission should come into existence.

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7 Source: CRE Annual Report 1998, p 24

8 For example: New section 19A bringing planning law within the scope of the Act

D. The Government's response

The Home Secretary, Jack Straw, responded to the CRE's Third Review of the *Race Relations Act* in a letter[9] to the former chairman, Sir Herman Ousely, on 14 July 1999. He stated the Government's agreement with the extension of the Act to cover the activities of public services – as had already been announced in the response to the Stephen Lawrence Inquiry report. It was also agreed that public bodies should be defined as widely as possible.

It was agreed that the public sector should promote race equality: "Officials have been asked to work up options, both legislative and non-legislative, for taking this forward in the fields of public sector employment, the provision of goods, facilities and services and the functions to be newly caught by the extension of the Act described above". The Government also accepted that some clarification of the definition of indirect discrimination is necessary and that the Burden of Proof directive which introduces a revised definition for gender cases should be adopted for race cases. It was agreed that the CRE should be able to act more strategically than at present and that the CRE's powers to initiate formal investigations in the light of the *Prestige* case should be clarified: "Officials have been asked to develop detailed proposals, to establish what can practicably be done to take it forward".

Some of these issues were also discussed in the Better Regulation Task Force's review of Anti-discrimination legislation, May 1999. The Government's response of 1999 did not mention the question of a specific law against incitement to religious hatred, but the previous Home Secretary, Michael Howard, in his response of July 1994 to the second review commented:

> These are complex and sensitive issues which cannot be easily resolved in the context of this Review. There are considerable problems in establishing which groups might be protected and from what. The Government would need a very substantial case to justify legislation. As yet there is little hard evidence of discrimination against individuals on religious rather than racial grounds. However, the Government will continue to listen to the views and concerns of those communities with a specific interest in this aspect of the law.

In her written statement on equality on 30 November, Mo Mowlam, Minister for the Cabinet Office, reported that the Government was aware of concerns about religious discrimination:[10]

> The Government are alive to the concerns that have been expressed about the issue of religious discrimination, and to the case for it to be made subject to the law. However, this issue raises many difficult, sensitive and complex questions.

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9 held in the Library as Deposited Paper 99/1395

10 HC Deb vol 340 c 176W

> We have commissioned research to try to assess the current scale and nature of religious discrimination, in mainland Britain. The results, due in autumn 2000, will help to inform our thinking about the appropriate response.

The CRE commented on the Government's response in a briefing on their website:[11]

"The government accepted some of the CRE's recommendations but overlooked or rejected other proposals. In most cases the government did not set a timetable for making changes. On some proposals, the government wished to consult further before making a decision".

II The Stephen Lawrence Inquiry

In July 1997, the Home Secretary asked Sir William Macpherson of Cluny to inquire into the matters arising from the death of Stephen Lawrence "in order particularly to identify the lessons to be learned for the investigation and prosecution of racially motivated crimes". Unlike Lord Scarman who stated in 1981 that "Institutional racism does not exist in Britain: but racial disadvantage and its nasty associate racial discrimination have not yet been eliminated".[12] Macpherson found that institutional racism did exist in the Metropolitan Police and elsewhere.[13] Chapter 6 of the report discusses in detail the question whether the colour, culture and ethnic origin of the Lawrence family affected the way in which the case was dealt with. Two significant points were made:

- A finding of institutional racism within the police service does not mean that all officers are racist.

- The only overt racism found was in the use of inappropriate expressions such as "coloured" or "negro".

The report offers the following definitions:

> "Racism" in general terms consists of conduct or words or practices which advantage or disadvantage people because of their colour, culture or ethnic origin. In its more subtle form it is as damaging as in its overt form.
>
> "Institutional Racism" consists of the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness, and racist stereotyping which disadvantage minority ethnic people.

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11 www.cre.gov.uk
12 The Brixton disorders 10-12 1981, Cmnd 8427, para 9.1
13 Cm 4262-I para 6.39

The distinctions made here do not reflect the difference between direct and indirect discrimination (see above, p 8), nor does the fact that prejudice may be unwitting make it indirect discrimination. Macpherson concludes

> The conclusion that there was a collective failure to provide an appropriate and professional service to the Lawrence family because of their colour, culture and ethnic origin is in our view inescapable.

The report contains 70 recommendations with an overall aim of eliminating racist prejudice and disadvantage and the demonstration of fairness in all aspects of policy. Recommendation 11 reads as follows:

> That the full force of the Race Relations Legislation should apply to all police officers and that Chief Officers of police should be made vicariously liable for the acts and omissions of their officers relevant to their legislation.

Also proposed was a new and simplified definition of a racist incident:

> A racist incident is any incident which is perceived to be racist by the victim or any other person.

The definition formulated by the Association of Chief Police Officers (ACPO) and adopted as standard in 1986 read as follows:

> any incident in which it appears to the reporting or investigating officer that the complaint involves an element of racial motivation; or any incident which includes an allegation of racial motivation made by any person.

The Home Secretary made a statement about the report on 24 February 1999 in which he said:[14]

> The very process of the inquiry has opened all our eyes to what it is like to be black or Asian in Britain today, and the inquiry process has revealed some fundamental truths about the nature of our society - about our relationships one with another. Some of those truths are uncomfortable, but we must confront them.
>
> I want this report to serve as a watershed in our attitudes to racism. I want it to act as a catalyst for permanent and irrevocable change, not just across our public services but across the whole of our society. The report does not place a responsibility on someone else; it places a responsibility on each of us. We must make racial equality a reality. The vision is clear: we must create a society in which every individual, regardless of colour, creed or race, has the same opportunities and respect as his or her neighbour. In terms of race equality, let us make Britain a beacon to the World.

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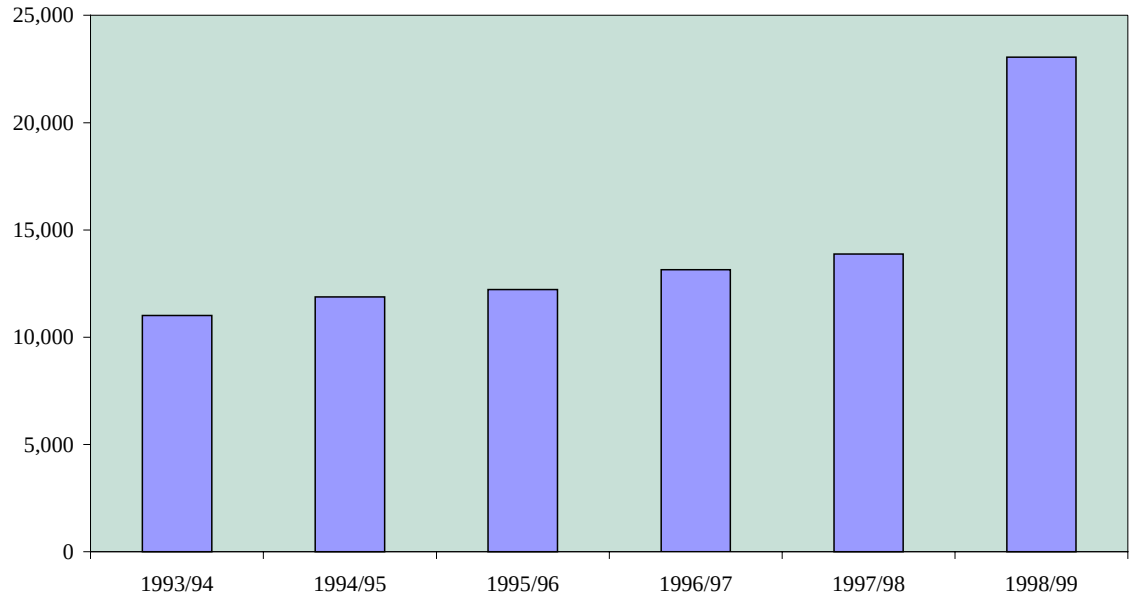
[14] HC Deb 326, c 393

He immediately announced the extension of the Race Relations Act 1976 to all public services:[15]

> The Macpherson report challenges us all, not just the police service. I want to use the opportunity that it gives us to tackle discrimination wherever it is found. I can announce today that we shall extend the Race Relations Act 1976 not just to cover the police, as the report recommends, but to cover all the public services. That means that in the civil service, the immigration service, and the national health service, for example, the law will back those who have been the subject of discrimination. The new law will allow the Commission for Racial Equality to investigate what is happening within individual police forces and other public services. Companies and other organisations in the private sector have long been subject to this legislation, but so far the Government have failed to keep their own house in order.

Other measures to ensure fairness in the use of stop and search powers, the setting of targets for the police to recruit and retain more black and Asian officers, the provision of racism awareness training, were set out in the Home Secretary's Action Plan, Home Office March 1999. The first annual report on progress was published recently and recorded significant progress in a number of key areas: the development of a Ministerial Priority to increase trust and confidence in policy among minority ethnic groups; pilots on the use of stop and search; improvements in recording racist incidents. The following chart indicates a rise in reported incidents regarded as reflecting improved awareness rather than an increase in such incidents:

Racist Incidents for all police force areas



For further detailed statistics on stop and search and racial incidents please see appendix.

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[15] ibid c 392

Other recent publications include:

Policing Plural Communities. Winning the Race Revisited, March 1999

Race and the Criminal Justice System

Policing London. A review of Murder Investigation and Community & Race Issues in the Metropolitan Police Service, HMIC, January 2000

These are available on the Home Office's website: www.homeoffice.gov.uk, heading race equality.

III The Race Relations Amendment Bill, 1999-2000

A. The indirect discrimination debate

The intention to introduce a Bill to implement the recommendations of the Macpherson Report was announced in the Queen's Speech on 17 November, when a background note made it clear that the intention was to make it unlawful for a public authority to discriminate directly in carrying out any of its functions.

The omission of indirect discrimination was immediately greeted with hostility by the CRE, lawyers and ethnic minority groups. The second reading debate in the House of Lords was on 14 December 1999, when the Parliamentary Under Secretary of State for the Home Office, Lord Bassam of Brighton, explained the reason for including direct but not indirect discrimination.[16]

> To outlaw indirect discrimination in all the functions to be newly covered by the Act would have uncertain and potentially far-reaching effects on the Government's ability to make policy. Any policy or practice that had a differential impact on different racial groups because of a requirement or condition could be challenged in the courts. That could potentially include any age-based policy because of the different demographic profiles of different racial groups, and also any regional policy because of the different regional spread of different racial groups. Not least, challenges could be mounted to those policies that are helping individuals from ethnic minority communities the most.
>
> The Government are working to ensure that discriminatory policy-making and practice must stop. But we believe that the most effective way of ensuring this is to retain the flexibility necessary to pursue policies which can benefit ethnic minorities and others without the risk of frequent and counter-productive challenges in the courts while obliging public authorities to tackle unjustifiable discriminatory practices through the promotion of race equality. That means, for example, consulting those affected by policy proposals and monitoring the differential impact of policy on different groups so that unexpected, unjustifiable

[16] HL Deb vol 608 c 130

> outcomes can be remedied. As announced in the Government's equality Statement, we are pursuing this administratively and are committed to placing a statutory duty on public authorities to promote equality as soon as parliamentary time permits.

Lord Lester of Herne Hill speaking, as he said, as "an architect of the Race Relations Act 1976" challenged this view:[17]

> Both the Race Relations Act and the Sex Discrimination Act already apply the concept of indirect as well as direct discrimination, not only to the employment field but also to public authorities and private bodies, in education and housing and in the provision of goods, facilities and services to the public or a section of the public. We are not aware of any complaint that has ever been made that the operation of the concept of indirect discrimination in any of these areas is unworkable or unfair. 1 should be grateful if the Minister would tell the House whether he and his department have any evidence that it has operated in a harmful way.

He recalled the recommendation that the "full force" of race relations legislation should apply to all police officers and the Home Secretary's statement that the Government would go further and bring all public services within the scope of the legislation;[18]

> What Mr Straw did not say was that public services were to be brought within the scope of only half of the concept of unlawful racial discrimination: only direct, and not indirect discrimination.

He said that as it stood the Bill discriminated between the public and the private sector, left the victims of indirect discrimination unprotected and deprived the CRE of its law enforcement powers to investigate indirectly discriminatory practices in public sector functions. It would, moreover, lead to uncertainty and litigation.

> Because of the immunity to be given to indirect discrimination by public authorities, there will also be much legal uncertainty and unnecessary litigation about opaque distinctions between what is direct and what is indirect discrimination by public authorities, about what discrimination (direct or indirect) by public authorities is already forbidden by Section 20 of the 1976 Act; and about the effects of the Bill on the recently recognised common law principle that public authorities must provide equal treatment to the public without discrimination *(Matadeen v Pointu* [1998] 3 WLR 18 (PQ).

Lord Cope of Berkeley and Viscount Astor for the Conservative opposition both noted the arguments for including indirect discrimination.

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17 ibid c 142
18 ibid c 140

Replying to this debate, Lord Bassam explained that the concept of indirect discrimination did not fit with law enforcement because this function did not impose a requirement or condition to be complied with:

> This approach, however, does not fit well with law enforcement where there is no requirement or condition with which an individual must comply. We believe that the widely acknowledged element of discrimination in the stop and search figures is due to the cumulative effects of direct discrimination, whether witting or unwitting, rather than indirect discrimination. That point began to emerge during the course of our deliberations.

Before Committee stage, Lord Lester and Lord Bassam made available to peers notes on the concept of indirect discrimination.

Introducing his response to some of the concerns expressed at second reading, Lord Bassam wrote that the debate had shown that there was some confusion between unwitting discrimination and indirect discrimination. Referring to the definition of unwitting discrimination in the Macpherson report, (see p 14) he cited many examples of this in different parts of the report, for example:[19]

> "Unwitting racism can arise because of lack of understanding, ignorance or mistaken beliefs. It can arise from well intentioned but patronising words or actions. It can arise from unfamiliarity with the behaviour or cultural traditions of people or families from minority ethnic communities. It can arise from racist stereotyping of black people as potential criminals or troublemakers. Often this arises out of uncritical self-understanding born out of an inflexible police ethos of the traditional" way of doing things (para 6.17)

or

> "in the conclusion that racist prejudice, stereotyping and insensitivity played its part in the lack of bite and energy devoted to the activities of the Incident Room. Unwitting racism was at work (para 16.28).

Unwitting racism is to be contrasted, rather, with overt racism which, as we have seen, was not found to be a feature of the way in which the Lawrence case was handled. The note points out that overt and unwitting racist behaviour can both take the form of direct or indirect discrimination:

> Overt racism can take the form of direct or indirect discrimination. For example, in the case of the former, a police officer using racially abusive language to an individual. And in the case of the latter, a police force intentionally setting a *condition or requirement* so that only officers with fair or brown hair could represent the force on parade.

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[19] para 6.12

> Unwitting racism can also take the form of direct or indirect discrimination. For example, in the case of the former, when an individual believes he or she is being impartial, colour blind, etc, but the outcome is nonetheless discriminatory because subconscious prejudice or stereotyping is at play. And in the case of the latter, when a *condition or requirement* has the *unintended* effect that the proportion of a racial group that can comply is considerably smaller than that of another racial group that can comply.

Lord Bassam addressed the anxieties which had been expressed about the use of stop and search powers against ethnic minorities and how the application of indirect discrimination would not afford protection nor affect performance:

> Law enforcement is a case in point. For example, in the case of stop and search there is no particular *requirement or condition* imposed upon an individual being stopped and searched and at least no requirement that cannot be complied with. In this instance, the law places the onus on the police officer to have reasonable suspicion or belief in order to stop and search an individual.

He recorded that a programme of research was being conducted on stop and search, following recommendation 61 of the Inquiry report that all stops and searches should be recorded and a copy of the record given to the person stopped to ensure that officers use the power fairly and effectively. Lord Bassam summed up:

> Overall, therefore, a number of key points emerge:
>
> - overwhelmingly, discrimination claims going to court in the field of goods, facilities and services, are on the grounds of direct discrimination (99%);
>
> - examples of witting and unwitting discrimination identified by the Stephen Lawrence Inquiry were forms of direct discrimination;
>
> - indirect discrimination would not catch stop and search, the discrimination identified by the Inquiry in the use of the tactic is direct discrimination;
>
> - the CRE will have powers to investigate direct discrimination in stop and search;
>
> - indirect discrimination, if applied to the implementation of certain Government policies (not services, which are already covered alongside the private sector) would put the courts in the position of having to determine whether policies were justifiable in a context which was never intended by the Race Relations Act;
>
> - the Government will oblige public authorities to promote equality, underpinning this in law, and sees this as a positive way of addressing any unjustifiable differentials that arise from conditions or requirements introduced by public authorities.

Lord Lester's note on the legal concept of indirect discrimination sought to summarise the relevant international European and comparative law on the subject. He outlined the UK's obligations under Community law and international instruments such as the *Convention for the Elimination of All Forms of Racial Discrimination* and the *International Covenant on Civil and Political Rights*, concluding that the Government's policy would be in breach of these, as well as incompatible with the *European Convention on Human Rights*.

He contested the findings of the House of Lords in the *Amin* case, agreeing with Lord Scarman's dissenting judgment that section 75(1) means "no more and no less than that the Act applies to the public acts of Ministers, government departments and other statutory bodies on behalf of the Crown as it applies to acts of private persons". The majority finding was that the goods, facilities and services provisions of section 20 applied to acts done by the Crown only if they are of a kind similar to acts done by a private person, and do not apply to the immigration service.

Lord Lester suggested that if *Amin* had been decided after the judgment in *Pepper v Hart* [1993] AC 593, which removed the restriction on considering Parliamentary debates as an aid to statutory interpretation, the conclusion would have been different. The Law Lords had not had the opportunity to consider the debates on the Race Relations Act 1968 (see p.7) which, Lord Lester wrote, showed that Parliament intended the Crown to be fully bound by the duty not to discriminate unlawfully and accountable in the courts for any breech of their statutory duty.

In this context, it is interesting to note that in Standing committee A on 18 May 1976, Brynmor John for the Home Office, said in answer to a question whether non-discrimination in the provision of goods, facilities or services applied to those carrying out statutory functions:[20]

> Clearly, the application of operational duties is outside the ambit of this clause. When a man is being breathalysed, for example, it cannot easily be said that the police are providing him with a service. Certain requisites are necessary in the performance of those duties. The police must perform those duties without racial discrimination and within the terms that they are sworn to do, and must carry them out without fear, favour or prejudice. To that extent, those operational duties will be carried out in a certain way, but not by reason of anything covered by the provisions of the clause.

[20] SC Deb c 329

Lord Lester concluded:

> The concept of indirect discrimination is an essential component of anti-discrimination legislation. It is well recognised in international and European law, and in other common law systems. The exclusion of the Crown and public authorities from liability for acts of indirect racial discrimination in discharging public functions is likely to result in breaches of the UK's obligations under international and European law. When the Human Rights Act 1998 is in force. from 2nd October 2000. British courts will be likely to overrule the restrictive interpretation given to Section 20 of the 1976 Act (and Section 29 of the Sex Discrimination Act 1975) in *Re Amin,* so as to ensure compatibility with Convention rights. Meanwhile, unless the Race Relations (Amendment) Bill applies the concept of indirect discrimination to the Crown and public authorities, there will be continuing legal uncertainty

He had queried the Bill's statement of compatibility under section 19 of the *Human Rights Act 1998*. In a letter dated 26 January 2000, Lord Bassam denied that the *Human Rights Convention* specifically prohibited indirect discrimination and claimed that the protection it afforded was limited:

> The text of the European Convention on Human Rights does not prohibit or explicitly refer to unjustifiable indirect discrimination. The case law in this area is sparse and open to interpretation. Not least, the convention allows direct discrimination to be objectively justified. There is no defence of justification for direct discrimination under the Act. The concept of unlawful discrimination is therefore different under the ECHR and in some respects it is narrower than that under the Race Relations Act.
>
> In addition, the protection offered by Article 14 of the ECHR applies only to the enjoyment of Convention rights. The Act goes further, as it is wider in scope than Convention rights. The Bill adds to those rights. Nothing in the Bill detracts from those rights or would prevent an individual from bringing proceedings before the European Court of Human Rights, or the Human Rights Act when it is brought into force later this year.
>
> For these reasons, it remains my view that the Bill is compatible with the European Convention on Human Rights.

In committee on 11 January 2000, as anticipated, Lord Lester moved Amendment no 2 which would have removed the exclusion of indirect discrimination from the Bill. He examined Lord Bassam's letter, pointing out that the extension of race relations legislation to a broad range of policies such as law enforcement, regulation and social and economic policies went "no further than a minimalist view of what the common law

anyway requires – that Ministers should not exercise their powers in an unfairly discriminatory way".[21]

He went on:[22]

> We do not understand the principle upon which one can properly distinguish between what constitutes "policy implementation" and what constitutes the provision of "services" to the public. Surely the touchstone is, or ought to be, whether a Minister, a department or any other part of the public services applies a requirement or condition which disproportionately hits at members of a particular group and cannot be justified. If banks or building societies were to impose such a requirement as a condition of obtaining credit or a mortgage, they would have to justify their rule or practice under Section 20 read with Section 1 (1)(b) of the Act. We do not understand why the Government should not be under exactly the same duty to justify an indirectly discriminatory rule or practice; for example, in relation to government funding of regional or community projects, hospital closures, immigration, nationality, or Customs and Excise rules and practices.
>
> It should make no difference if the indirect discrimination is caused by "policy implementation" or the provision of "services" to the public, especially, if I may say so, because the Government are elected to be the servants rather than the masters of the people. By making the Government and the public service subject to the full force of the Race Relations Act, Parliament would provide the necessary sanction to encourage public authorities to review outmoded and unfair practices and rules. Surely that is in the interests of good government and sound public administration.

There was considerable support for the amendment from all sides, Lord Cope of Berkeley concluding that the Government had not made a good case for their decision to exclude indirect discrimination. Lord Bassam, replying, pointed out that incorporation could have unforeseen consequences. He concluded, however, by saying that there was much for the Government to reflect upon and that their minds were not closed on the matter. He invited Lord Lester to withdraw his amendment.

On 26 January 2000, the day before the Bill was to be considered a report, the Home Secretary announced that an amendment would be brought forward to extend the indirect discrimination provisions of the Race Relations Act 1976 to the functions of public authorities:[23]

> **Mr. Straw:** The Government are committed to achieving a step change in race equality in this country. The Race Relations (Amendment) Bill is part of our programme to ensure that the public sector sets the pace in this drive towards

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21 HL Deb. Vol 608 c 548
22 ibid c 549
23 HC Deb vol 343 c 247-8W

equality. We want to send the clearest possible message that discrimination is not acceptable and will not be tolerated. The Government are, therefore, proposing two changes to strengthen the provisions of the Bill.

First, after very careful deliberation we have decided to extend the indirect discrimination provisions of the Race Relations Act 1976 to the functions of public authorities to be newly caught by the Act and we will bring forward an amendment to provide for that. The Government have always been in favour of this in principle, but were concerned to ensure that such a provision would be effective without leaving public bodies open to routine legal challenge in circumstances where their policies were entirely proper. Since the Bill was published, however, we have listened carefully to the arguments put forward about the issue and have concluded that, on balance, the risk of spurious challenge is outweighed by the principle of including indirect discrimination in respect of public sector functions in the Bill.

Direct and indirect racial discrimination is already prohibited under the Race Relations Act 1976 in the fields of employment, training, education, housing and the provision of goods, facilities and services in respect of the public and private sector. The Act is already being extended by the Bill to new fields in the public sector which have previously been determined by case law not to be a "service" and to which prohibitions on direct or indirect discrimination did not, therefore, apply. The Act will now extend to areas such as the implementation of central and local government's regulatory, economic and social policies and law enforcement in respect of indirect discrimination as well.

Secondly, the Government also see the promotion of equality as a positive way of eliminating unjustifiable indirect discrimination in these and other fields. Our setting of targets for ethnic minority recruitment, retention and promotion and our guidelines for mainstreaming race equality into policy development and implementation are examples. We are already committed to placing the promotion of equality by public bodies on a statutory footing. We will reinforce that commitment by bringing forward a Government amendment to the Race Relations (Amendment) Bill to enshrine the principle on the face of the Bill as a positive duty, leaving room for consultation on how the duty will operate in practice and how it will be enforced.

The amendments will be brought forward at Commons Committee stage. We are meanwhile considering whether there should be any procedural safeguards consistent with the principle of non-discrimination.

Lord Bassam repeated this at the beginning of the debate on 27 January and the decision was warmly welcomed. Lord Lester commented:[24]

> The concept of indirect discrimination and the difference between it and direct discrimination is something that only very few people in the world understand. It was entirely understandable that the Government would be troubled that their economic and social policies might be challenged time and again in the courts and that they would spend their time having to answer litigation instead of getting on with running the country. Therefore, careful analysis was needed of the case law which indicates that judges do not try to run the country and gives the Government the benefit of the doubt on matters involving economic and social policy. Other Government departments had to be consulted because what is being provided in the Race Relations (Amendment) Bill will surely need to be included in due course, in, for example, the sex discrimination legislation. When that is amended, indirect sex discrimination by government will have to be tackled as well.

Later, in answer to a question from the Bishop of Oxford about the confusion over whether use of the stop and search power came under the heading of direct rather than indirect discrimination, Lord Lester offered the following explanation:[25]

> My Lords, perhaps I may give some help. If the police stop and search black people more than white people in a given area because of prejudice or stereotyping, that is direct race discrimination. If the police impose a requirement for granting ball which applies equally to everyone in a formal sense - such as one has to have fixed employment or a fixed address - and that hits disproportionately at gypsies, although it is not intended to but has that effect, and a member of the Roma community challenges that decision and uses figures to support the challenge, that would be indirect discrimination
>
> The problem is that these are not watertight concepts. Very often a complainant needs to bring a case raising both.

The only criticisms made were that the amendment should be brought forward before the Bill went to the House of Commons and on third reading Lord Lester again moved his amendment. Lord Bassam explained that some consultation was necessary:[26]

> …. essentially we want to bring forward our own government amendments in another place so that we can get it right and so that a broader range of considerations can come into play. It may well be that in the end we shall have something very similar to that which the noble Lord, Lord Lester, has perfected in his usual, masterful manner.

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[24] HL Deb 608 c 1676
[25] ibid c 1679
[26] ibid c 354

The following table provides national (England and Wales) figures for stop and search by ethnic appearance and reason for search:

Percentage of Stop and Searches under s.1 of the Police and Criminal Evidence Act 1984 1997/98 and 1998/99, by ethnic appearance and reason for search (England and Wales)

Reason given	White		Black		Asian[1]		Other		Not Known		Total	
	1997/98	1998/99	1997/98	1998/99	1997/98	1998/99	1997/98	1998/99	1997/98	1998/99	1997/98	1998/99
Stolen Property	40	43	30	29	22	23	32	34	35	43	38	40
Drugs	31	32	41	44	48	53	38	36	36	33	33	34
Going equipped	17	15	14	14	11	9	13	10	15	13	16	14
Other	12	11	15	12	20	15	17	20	14	12	13	11
Total =100% (Thousands)	822	865	111	95	55	51	10	10	18	16	1015	1037

[1] South Asian: Indian, Pakistani or Bangladeshi

Source: Home Office, Statistics on Race and the Criminal Justice System, 1999.

The Police Federation, however, though they support the concept of a positive duty on public bodies to work for the elimination of racial discrimination and to promote equality of opportunity, have reservations about the application of indirect discrimination to law enforcement. They comment:

> The Police Federation of England & Wales fully supports the Home Secretary's drive towards equality and the elimination of discrimination, However, the inclusion of law enforcement in respect of indirect discrimination raises some concern. As the statutory body charged with promoting the welfare of our members, the Federation has some concern with the notion of vicarious liability (that individual police officers will be held responsible for public actions taken under order). In addition the Federation would also raise the problem of malicious allegations made against police officers where officers would be unable to defend themselves.
>
> We believe that such an extension would lead to legal and operational difficulties. The Police Service would find itself beset by potential litigation and red tape. The increase in bureaucracy is at odds with this Government's manifesto commitment to reduce red tape and free officers to do their job – policing. In addition, we believe that operational policing may be effected. Post Macpherson we have seen a reduction in the use of stop and search powers. This has been attributed to the reluctance of officers to use these important and essential powers rather than be accused of being racist. The intended extension of the Race Relations (Amendment) Bill to include indirect discrimination would only compound these problems further.
>
> Whilst ensuring that the police act in a non-discriminatory way, it is important that we are not prevented from enforcing the law.

B. Racial equality duties of public bodies

The Home Secretary's statement of 21 January reproduced above also undertook that an amendment would be brought forward to implement the commitment already given in the response to the CRE's third review to impose a positive duty on public bodies to promote racial equality. The response to the CRE and the Better Regulation task force stated that both legislative and non legislative options were being considered. The CRE considers that the introduction of an enforceable positive duty is essential to progress being made towards eliminating institutional racism. In its third review, the CRE proposed that, as part of a positive duty to promote racial equality, public authorities would be expected to:

- assess the impact on racial equality of the policies it is proposing and, where this is likely to be adverse, consider alternatives, consult on the policies, and justify, in a public statement, going ahead with them
- monitor employment and service delivery by ethnic group, where practicable
- include racial equality standards in 'best value', external contracts or funding of external organisations report annually on measures taken, and assess their impact
- undergo inspection and monitoring by the relevant statutory agency, such as the Audit Commission, the National Audit Office, Her Majesty's Inspectorate of Constabulary, OFSTED etc.
- provide evidence of compliance with the duty to the CRE, as required; where the CRE believes that the authority has not complied, the CRE would be able to serve a notice on the authority requiring compliance or seek an order by the court that would require the authority to take certain steps to comply with this duty.

The CRE saw the omission of a clear and enforceable positive duty from the Bill as a serious defect. On second reading, Lord Bassam referred to the equality statement made by Marjorie Mowlam for the Cabinet Office on 30 November 1999 in which she said "Public bodies must take the lead in promoting equal opportunities and the Government will put this obligation in legislation as soon as Parliamentary time permits"[27]

On 13 January 2000, Lord Lester of Herne Hill moved a new clause to impose a general duty on public authorities to promote racial equality and to make it enforceable by regulations requiring compliance statements. He referred to other legislation which provides models:[28]

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[27] HC Deb c1754
[28] HL Deb vol 608 c 774

> A duty to promote racial equality is not a novel concept in our race relations legislation. Section 71 of the 1976 Act - this was very much a child of the late Alex Lyon MP as Minister of State, as I recall imposes a similar duty on local authorities, but, without any effective means of enforcement, this has had a limited and uneven impact. The purpose of our amendment is to create a clearer, more enforceable and more direct positive duty covering all public authorities and not just local authorities.
>
> As the Minister has indicated, a few days before the publication of this Bill the Government published their equality statement, acknowledging that an obligation on public bodies to promote racial equality needs the force of statute. We very much welcome that. They have undertaken to legislate for this,
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> “as soon as parliamentary time permits".
>
> Why cannot this be done now in this Bill in relation to race discrimination? That would then serve as a model and as an experiment when parliamentary time is found for the wider equality Bill. There is no need for delay; the Bill constitutes a perfect opportunity to introduce such a duty.
>
> The Government have made progress in requiring public bodies to take action to eliminate inequality. The legislation establishing the Greater London Authority, the Welsh Assembly and the Metropolitan Police Authority all provide for a duty to promote racial equality. My noble friend Lord Dholakia played a particularly prominent part in relation to the Greater London Authority provision; namely, Section 404. But the problem with these statutory duties is that they remain essentially unenforceable. Any duty must be backed with a strong enforcement mechanism developed in consultation with the Commission for Racial Equality, as our amendment requires.
>
> There is one example of an elaborate enforcement mechanism; namely, the detailed procedure in Schedule 9 of the Northern Ireland Act 1998 which requires designated public authorities to adopt schemes for the regular appraisal of the extent to which they are abiding by their duty to promote equality. The Government were happy to introduce such a scheme for Northern Ireland; why therefore should not a similar enforcement mechanism be introduced here.

He recalled that the 1975 white paper on racial discrimination had proposed that legislation would extend the practice of Government departments of including in their contracts a clause requiring contractors to conform to the Race Relations Act 1968. This was not, however, included in the 1976 Act.

Lord Bassam replied that there was need to comment widely about this, but that there was an intention to legislate more widely:[29]

> The Government have made clear their position. It is not their intention to kick this issue into the long grass. We have made clear our intention to consult on how a duty to promote equal opportunities in relation not only to race but to sex and disability may work in practice. We are fully committed to the introduction of a legislative duty when that consultation has taken place and we have had the opportunity to take into account the views of all concerned when they have been properly sought. That opportunity for consultation is very important. We want to get it right and ensure that in this complex legal field we create that positive duty in the right framework.

C. The definition of public authorities

Schedule 1 of the Bill lists those bodies which are public authorities for the purposes of the legislation and clause 1 provides that it may be amended by order. The first amendment moved by Lord Lester on 11 January sought to define public authorities for the purpose of the *Race Relations Act* in the same way as the term is defined in the *Human Rights Act*, section 6 of which provides that a public authority includes any person certain of whose function are functions of a public nature.

He said:[30]

> The Race Relations (Amendment) Bill implements one part of the European Convention on Human Rights which guarantees non-discrimination in the enjoyment of other convention rights; for example, the right to education; the right to liberty without arbitrary arrest and stop and search; the right to a fair trial; the right to property, including the allocation of social security in some contexts, and so on.
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> Under Section 6 of the Human Rights Act, a public authority defined in the very broad way that 1 have described has a duty to comply with the human rights convention as regards non-discrimination. It is therefore essential to have a definition in the Race Relations (Amendment) Bill which captures all public authorities which would be captured by the Human Rights Act 1998; otherwise, there will be a gap. If in any part of the list prescribed by Ministers under the schedule there is a public authority that is not a public authority for the purposes of the Human Rights Act there will be a gap. Litigation will be required to try to fill the gap and - God forbid - a case may be brought before the court in Strasbourg if that gap is not properly filled. There will be a great deal of legal uncertainty. There is no reason in principle why the same definition in the Human Rights Act should not be used in this Bill.

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29 ibid c 784

30 HL Deb 608 c 534

> We may be told by the Minister that that is not the way it has been done in the Data Protection and Freedom of Information Bills because the Government want to achieve legal certainty by listing public body by public body exactly which is caught. But the price of such legal certainty is over-specificity. Unless one lists comprehensively every single public authority that exercises functions of a public nature, the Government are bound to leave out of account some bodies that are meant to be caught by the European Convention on Human Rights and the Human Rights Act. Therefore, the purpose of this and the related amendments is to bring the definition into line with the Human Rights Act. 1 beg to move.

Lord Avebury (c 541) raised the question of what would happen when a body is classified as having functions of a public nature for the purposes of the Human Rights Act but not for the provisions of the Race Relations (Amendment) Bill. In a letter dated 21 January (deposited paper 00/181) Lord Bassam wrote that it was thought unlikely that this would arise, because the schedule had been designed to be comprehensive. The order making power could be used to close such a loophole quickly, but it might not always be necessary to take such action.

Lord Lester returned to the question on report stage, on 27 January and gave the example of a privatised body exercising public functions:[31]

> I take as a hypothetical example a privatised prison organisation. Let us assume that that privatised prison organisation discriminates on racial grounds against a prisoner and the prisoner brings proceedings against the privatised prison body. Let us assume that the privatised prison body is not listed in the schedule, but there is no doubt that under the Human Rights Act, it would be a public authority which must not discriminate against somebody in the enjoyment of the right to liberty or something of that kind. Let us now assume that that victim brings proceedings against the privatised prison authority. What the Minister's letter to my noble friend Lord Avebury means is that there would then have to be case law to determine whether or not that privatised body was exercising a function which fell within Section 20 of the existing Race Relations Act.

He saw that there was good reason for having a specific list, but also a "catch-all, generic definition". This was again proposed on third reading on 3 February (c 351). On this occasion Lord Bassam said "I must say that I think his proposal to bring the two definitions together is novel, has value and has merit". He went on to say that the question was being further considered "to see whether we can accommodate both attempts at a useful definition by means of a single approach." (c 352).

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[31] HL Deb 608 c 1688

D. Criminal proceedings

As first printed, clause 1 would have inserted section 19D into the 1976 Act exempting a decision not to prosecute or acts leading to such a decision. In committee on 11 January, Lord Lester, on behalf of Lord Dholakia, moved an amendment to remove the phrase 'acts leading to such a decision' as being too vague:[32]

> The purpose of the amendment is to remove the exemption from the race relations legislation of acts leading to a decision not to prosecute. The amendment provides that such racially discriminatory acts are not to be exempt from being found to be unlawful under Section 19B. The valid justification for exempting from Section 19B decisions not to institute criminal proceedings - namely, to avoid a criminal trial in civil proceedings under the Race Relations Act - does not apply to the series of acts leading up to a decision not to prosecute, which could, for example, include significant but remote acts by the police in gathering or rejecting evidence. In particular, the vagueness of the words,
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> "acts leading to such a decision",
>
> is remarkable. Almost any police or prosecution practice that involved the gathering or assessment of the evidence could possibly come into a category of that breadth. Again, that stems from the Lawrence affair and the Macpherson report. We greatly hope that the amendment will be acceptable to the Government.

Lord Bassam said that the policy objective was to preserve the role of the criminal court as the sole forum for determining guilt, but that he agreed that all acts leading to a decision not to prosecute should not be excluded. On report stage he moved an amendment which would have the effect of leaving acts such as initial arrest and the gathering and assessment of evidences subject to section 19B, but retain protection for acts done for the purpose of making a decision about instituting criminal proceedings.

Clause 4 of the Bill is intended to limit the ability of individuals to enforce the Race Relations Act where to do so might prejudice criminal investigations or proceedings. The CRE regarded clause 4 in its initial form as unduly inhibiting complaints of discrimination against the police or the Crown Prosecution Service. On 14 December 1999 on second reading, Lord Bassam explained:[33]

> I wish to say a few words about the special provisions being made in relation to the prosecution function. These are covered in Clause 4 of the Bill. The functions of criminal prosecutors and investigators as listed in the schedule will be covered by the extension of the Act. This means that individuals will be able to bring proceedings against prosecutors and investigators who have directly discriminated against them or victimised them. The Government also have

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[32] HC Deb vol 608 c 588
[33] HL Deb 132

> important commitments in relation to the criminal justice system as a whole, including the objectives of dealing with cases with appropriate speed; meeting the needs of victims and witnesses; and promoting confidence in the criminal justice system. For this reason a number of safeguards have been built into the Bill to protect the proper investigation and prosecution of cases.
>
> The Government place weight on avoiding unnecessary delay to the criminal process where there are parallel criminal and civil proceedings. So they are seeking to strike a balance between ensuring that proper civil remedies are available and ensuring that those responsible for crimes are properly and effectively prosecuted without delay or prejudice to the prosecution case.

On 13 January, Lord Lester moved an amendment to require that any potential prejudice to a criminal investigation or prosecution must be serious. He said:[34]

> The requirement in the amendment for "serious prejudice" means that there must be a possibility of real and substantive harm before a complainant who has suffered racial discrimination is deprived of the relief to which he would otherwise be entitled. The amendment is modest. It preserves the vital right of the accused to a fair trial while ensuring that those who suffer from the civil wrong of racial discrimination can obtain effective remedies. Therefore, it seeks to preserve that vital fair balance between the rights of the accused in a criminal case and the rights of victims in civil proceedings.
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> That will mean that a court will be more able to grant a declaratory remedy where discrimination has taken place. That is important for the very good practical reason that one needs to have what is called a "finding" by a court or tribunal of an act of unlawful discrimination as a precondition for subsequent monitoring and enforcement action by the Commission for Racial Equality; for example, under Section 62 of the 1976 Act. Unless there is a finding, which means a declaratory judgment or order, the Commission for Racial Equality Is powerless to take steps effectively to stop the discrimination from happening again.
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> As the Bill stands, the CRE will be unable to mount effective enforcement action against the police or the prosecution service unless the court is satisfied that no prejudice can arise. In making it easier to obtain a declaration, the amendment makes it easier for the CRE to use its powers where necessary. We can trust the courts to make quite sure, as they always do, that they will exercise their discretion before granting a declaration and to ensure that it is granted only in the interests of the justice of everyone.

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[34] HL Deb 688 c 755-6

Lord Cope of Berkeley moved an amendment to remove the ability of the court to allow a remedy in damages. Lord Bassam replied in c 762 that:

> The main thrust of the Race Relations Act is to provide financial redress for victims of discrimination. We consider it highly unlikely that the award of damages would, of itself, prejudice criminal proceedings or investigations whereas other remedies, such as injunctive relief, may have that effect. For that reason we think it right that claimants should be able to obtain financial redress wherever possible. The present wording of new subsection (4A) makes that clear, However, in the few cases where consideration of the award of damages might have a prejudicial effect, the civil court could, in such circumstances, exercise its power to stay the proceedings until such time as the risk of prejudice to the criminal proceedings had passed. As it currently stands, the Government could not therefore agree to Amendment No. 20. 1 hope that the noble Lord will consider withdrawing it.
>
> I am, however, happy to consider the points made in this and the earlier debate, look at the two amendments together and see if we can better perfect the situation so that there are no apparent contradictions in the way in which the legislation seeks to work.

He went on to say that further consideration would be given to points made in the debate.

On report stage on 27 January, Lord Bassam moved a government amendment to remove the restriction on the courts' ability to make a declaration:[35]

> The debate on this provision at the Committee stage was very useful, with helpful points made on all sides. We all learnt from that debate. The Government have considered those points and agree that, logically, damages and a declaration ought to be treated in the same way under this provision. If there is no need to restrict the court's ability to award damages, as we believe, then nor can there be any need to restrict the court's ability to make a declaration. The Government's amendment would therefore remove the restriction on the court's ability to make a declaration. 1 should also say that the provision as amended would also not restrict the court's ability to make a finding, since a finding is not a remedy. 1 do not think that it was ever the Government's intention in this instance to restrict the court's ability to make a finding since the award of damages is predicated on a finding. Nor was it the Government's intention to restrict the ability of the CRE to carry out its proper monitoring and enforcement functions under this legislation.

Clause 4 also permits a public investigator or prosecutor not to reply to a questionnaire under s.65 of the Act if he reasonably believes that to reply would be likely to prejudice any criminal investigation or proceedings, without an adverse inference being drawn from such a refusal. In committee, on 13 January, Lord Lester sought to remove the proposed

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[35] HL Deb 608 c 1706

special right of public authorities in apply to the court for a ruling that no adverse inference would be drawn from a refusal to reply where to reply would prejudice criminal proceedings. He pointed out that section 65(2) of the 1976 Act already contained a defence of "reasonable excuse". Baroness Whitaker asked how the Bill would implement the recommendation of the CRE's third review that there should be a duty on courts and tribunals to draw inferences from failure to complete questionnaires within a time limit. Lord Bassam explained (c 772) that this would be included in the equalities bill promised on 30 November, but agreed that where criminal proceedings or investigations might be prejudiced, it should be made clear on the face of the Bill that a section 65 questionnaire need not be completed. Moving the amendment on 27 January, he said:[36]

> The amendment is consistent with the theme running through Clause 4 of striking a balance between the ability of an individual to seek redress through the civil courts while ensuring that the commitment to reduce crime and the fear of crime, to dispense justice fairly and effectively, and to promote the rule of law is not weakened or undermined.

The CRE comments on clause 4 as it now stands:

> A main impetus for this Bill was the need to bring the police fully within the Race Relations Act; the CRE is concerned that the gain will be very small if complaints of discrimination by the police can be delayed for long periods, requests for information not answered and certain remedies excluded. The CRE is considering whether these exceptions can be narrowed further.

E. Immigration and nationality

In Clause 1, which inserts new Section 19C in the 1976 Act, provides that the Bill will apply to a person carrying out immigration and nationality functions only if this action involves discrimination on the grounds of colour and race; but discrimination on grounds of nationality or ethnic or national origin will not be unlawful where this is done by ministerial authorisation or by officials acting within immigration laws or rules. The CRE regards an exception based on ethnic and national origins as reflecting "a higher priority for immigration control than for good race relations" and seeks an amendment to limit the exception to nationality only.

On second reading on 14 December, Lord Lester (c 143), Lord Cope and Lord Avebury drew attention to what the latter called "an open-ended power to discriminate" (c 160). Lord Bassam replied that existing safeguards in Section 41 of the 1976 Act are insufficient to allow the immigration system to continue to operate as Parliament intended:[37]

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36 HC Deb 608 c 1708

37 HL Deb 127 c 182

> Section 41 protects discriminatory acts which are carried out in pursuance of statutory provisions for ministerial arrangements. That was explained earlier. The courts have adopted a narrow interpretation, as required by law. The operation of an immigration system necessarily requires the exercise of some discrimination by Ministers and appropriately authorised officials. The authorisations are necessarily detailed in operational staff instructions approved by Ministers. It would therefore be impractical to set out in legislation every set of circumstances where discrimination would be required. I trust that that answers the question.

In a letter to Lord Cope of 22 December, Lord Bassam explained that once the Bill was enacted it would be unlawful for immigration staff to discriminate on grounds of nationality and ethnic and national origins when their actions *go beyond* what is specified in the laws or expressly authorised by Ministers: "At present, going beyond what has been expressly authorised could not be challenged under the Act".

On 11 January in committee, Lord Lester (c 580) moved an amendment to narrow the ability of the immigration and nationality service to discriminate by limiting it to an act done to afford persons of a particular nationality, religion, ethnic or national origin special treatment on humanitarian grounds. This was because he recognised the Government's aim to enable special arrangements to be more for particular groups such as Bosnians and Kosovars. Lord Cope (c 582) moved an amendment to allow for discrimination on the basis of nationality, but not of ethnic origin. Lord Bassam explained that pressures on the immigration system were such that no ambiguity should be allowed to arise in the application of the Race Relations Act. He went on (c 584):

> Failure to provide clarity in this legislation would be unwise, both as an act of policy and to ensure that staff are fully protected when they carry out the duties Parliament and Ministers have laid upon them. The Government do not share the noble Lord's confidence in the adequacy of the existing legal safeguards provided by the Race Relations Act. Section 41 of the 1976 Act protects discriminatory acts which are carried out "in pursuance to" statutory provisions or ministerial arrangements. But the courts have adopted a very narrow interpretation of "in pursuance to". For, acts to benefit from Section 41 they must be actually "required" by law.
>
> However, the operation of the immigration system necessarily requires the exercise of discretion by Ministers and by appropriately authorised officials in accordance with published, transparent instructions. For example, the Immigration Service at ports requires the ability to target and prioritise certain nationalities for particular scrutiny where it has intelligence that particular national travel documents are being abused or where there is intelligence that individuals or groups of one nationality are presenting themselves as the nationals of another country in order to benefit from compassionate policies or asylum procedures. There is chapter and verse on that. There are many such examples of such activity.

> The Immigration Service and Integrated Casework Directorate need the ability to carry out special "nationality specific" exercises involving the fast tracking of cases and even the use of detention in response to sudden or sustained influxes of certain nationals, most recently from eastern Europe, seeking to circumvent the control. Entry clearance officers need the ability to treat individuals differently on various grounds. Examples include if their country is associated with state-sponsored terrorism or has a track record of hostile intelligence activities or If their country is known to have lax or inappropriate passport issuing arrangements. Such activity is a necessary part of operating the immigration system but may not be considered by the courts as strictly required by law.
>
> There are also many examples of where the immigration system discriminates positively in favour of individuals on the basis of their nationality or ethnic or national origins. One example is the special treatment for Kosovan Albanians during the recent conflict in the Balkans. Kosovan Serbs were not treated the same way, for entirely understandable reasons. There are other examples where guidance to asylum caseworkers directs that the one ethnic or national group from a particular country should be treated differently from another. For example, our policy in relation to persons originating from Bosnia-Herzegovina is to grant exceptional leave where the applicant's ethnic group is no longer in the majority. A Bosnian Croat originating from a Serb area would not be expected to return there, nor would a Bosnian Serb originating from a Muslim area.
>
> Current asylum policy makes a distinction between Kosovan Serbs and Kosovan Albanians where the basis of claim is ethnic origin. The former are a minority and may qualify for asylum, while the latter may be refused and returned. The ethnic or national origin of the applicant in cases involving various other nationalities is also a key consideration in the determination of applications for asylum. It would be impossible to operate a rational asylum determination process if caseworkers were unable to make such distinctions. That is why the Bill makes it clear that discriminatory activity which is required or authorised by law, or by Ministers, cannot be considered to be unlawful.

In a letter to Lord Lester dated 26 January,[38] Lord Bassam amplified the reasons why the Immigration Service needs to differentiate between individuals on the basis of their ethnic or national origin:

> It has also become clear during the course of our examination that it is also necessary on some occasions for the Immigration Service to differentiate between individuals on the basis of their ethnic or national origin. As an example, from time to time, the Immigration Service detects Chinese nationals with falsified documents that misrepresent them as Malaysian or Singaporean nationals of Chinese ethnic origin. Were this problem to grow significantly, it would be necessary for the Immigration Service to scrutinise with particular care the documents presented by these nationals of Chinese ethnic origin and to interview

[38] Deposited Paper 00/220

> them. But with 89.1 million passenger arrivals in the United Kingdom between March 1999 and April 2000, of which 12.2 million passengers were non-EEA nationals subject to immigration control, the Immigration Service simply does not have the resources to interview every Malaysian or Singaporean seeking to enter the country, irrespective of their ethnic origin. An assessment of risk based on available intelligence must be made, and this risk may sometimes be based on the ethnic or national origin of passengers.
>
> During the calendar year 1999, the Immigration Service detected more than 5,000 attempts to enter the United Kingdom using forged or counterfeit travel documents or visas, or by persons impersonating a third party and presenting a passport to which they were not entitled. The threat to the immigration control is not imaginary, and the task of individual immigration staff performing their duties is becoming ever more difficult. Clearly, all immigration staff need clear guidance to ensure that they respect the rights of others. The immigration exemption in clause 1 of the Bill will provide Home Office Ministers with the framework within which to provide that guidance and, subject to any overriding reasons of operational necessity, it will be published for Parliament and the public to see in line with the Government's commitment to openness. Immigration procedures and practices will be thoroughly reviewed to ensure that only discriminatory activity that is necessary and justifiable is covered by clear instructions approved by Ministers, and that any discriminatory activity which cannot be justified is eliminated.

He encouraged Lord Lester to withdraw the amendment he had put down for report stage.

However, on 27 January Lord Lester again moved the same amendment (c 1691), though he said that as a result of the letter he understood better the concerns of the Immigration and Nationality Directorate. He was still concerned at the breadth of the exception. Baroness Prashar (c 1692) stated that exceptions in immigration should be based on objective considerations such as conditions in countries of origin or fear of persecution, not on ethnic or national origins. Lord Bassam (c 1694) re-stated the case for differentiation between individuals on the basis of ethnic or national origins. Lord Lester was critical:[39]

> The Minister is saying that because people look Chinese we must reserve the right to single them out for special treatment on the basis of their appearance - their ethnic characteristics - and the fact that they are not white. We could not do that with anyone who was white because there are no distinguishing ethnic characteristics of that kind. If that is what is being said, does not the Minister realise that that is quite different from singling out people on the basis of their country of origin or their nationality: it goes to the root of what they are and cannot help being because of their ethnicity, their colour or race. Does the

[39] HL Deb 608 c 1695

> Minister recognise that? Am I correctly understanding what is said in the letter and what is being said by him today?

He felt that no guidelines would make what he regarded as 'ethnic stereotyping' acceptable and expressed the hope that before third reading a form of words could be found which could give the Home Office necessary protection "without undermining the very principles of the legislation" (c 1697).

On third reading, on 3 February, Lord Lester moved an amendment to make clear that discrimination on grounds of ethnic origin would not be permitted in granting or refusing citizenship under the *British Nationality Act 1981*. Lord Bassam (c 357) referred to section 44 of the 1981 Act, which requires any discretion to be exercised without regard to the race, colour or religion of any person affected by its exercise. He anticipated that debates in the House of Commons would return to these issues.

Lord Lester then moved a further amendment (c 358) the purpose of which was to ensure that any discrimination on grounds of nationality or ethnic or national origin was carried out in accordance with the immigration rules. These state in paragraph 2 that:[40]

> Immigration Officers, Entry Clearance Officers and all staff of the Home Office Immigration and Nationality Department will carry out their duties without regard to the race, colour or religion of persons seeking to enter or remain in the United Kingdom.

Lord Lester argued (c 359):

> I hope that noble Lords will agree that the way in which it seeks to do that is most modest. It is simply by providing that any such discrimination will be in accordance with the Immigration Rules. The Immigration Rules are not legislation. They are provided for in Section 3 of the Immigration Act 1971. A statement of them has to be laid before Parliament. They can be readily amended. Therefore, one has all the advantages to which my noble Lord, Lord Bassam, of Brighton, referred on Report when he said that the rules must be transparent and public. They will be transparent and public if they are in the Immigration Rules and there will be some accountability to Parliament by the fact of them being in the Immigration Rules. I hope that noble Lords do not think that I am being too feeble in not pressing for them to be in proper subordinate legislation.

Lord Bassam (c 360) said that the Government was aware of the concern about the exemption's provision allowing discrimination on growth of ethnic origin. The matter was being given detailed consideration, but it was too early to say whether the amendment would provide a solution. He confirmed that one of the solutions being considered was the appointment of a person to monitor possible abuse of discretion.

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[40] 1993-94 HC 395

The Joint Council for the Welfare of Immigrants (JCWI) in their Winter bulletin 1999/2000 described the potential effect of the exclusion of indirect discrimination as first proposed and welcomed the change of heart:

> The difference between the two is significant. As it stood, the Bill would have made it possible to challenge staff operating immigration controls where there was enough evidence to show behaviour which actively discriminated against the individual in question. It would be necessary to show that the officer treated someone, on the grounds of that person's race, less favourably than they would have treated someone else. It would not have allowed any challenge where an officer applied some criteria or conditions that members of one racial or ethnic group could meet considerably less easily than others. This is the test for indirect discrimination, and it may be proved by showing a differential impact, using statistics, for instance, to demonstrate that a rule which appears to have nothing to do with a person's race nonetheless affects one ethnic group significantly more than another. Doing this with immigration decisions is easy. Different statistical results, varying by nationality, can be shown in virtually every area of immigration control.

The JCWI's Bulletin for summer 1999 analysed by nationality the refusal votes for visitors at ports of entry:

> In the last full year for which figures have been released, 1997, refusals of entry at the ports accounted for just 0.31% of all those admitted as visitors. Against this average, of course, there are big variations, between 0.04% (for both USA and Japan) and around 5%. The highest rates of refusal, not surprisingly, are generally for nationalities producing large numbers of asylum claims, including Somalia (the highest, at 6.73%), the Democratic Republic of Congo (formerly Zaire, second at 6.43%), Algeria (4.58%) and Angola (4.51%). Still, Jamaica comes out far ahead of any other nationality, at 4.78%, and way in advance of any other non-visa nationals (Colombians, at 4.26%, became visa nationals at the end of May that year, in response to the sharp rise in asylum applications). The only other country to come close is Sierra Leone, at 2.55.%

On the exemption for immigration control, the JCWI comment:

> We know the system needs to distinguish by nationality. Only commonwealth citizens can have the right of abode; those who have the nationality of an EEA state are free from controls under European law; visas are required for some nationalities and not others. But during the debates in the Lords, Lord Lester pointed out that the clause was unnecessary, since there is already a power in the Act to make exemptions based on nationality or residence. It is also unfair because it goes further, allowing immigration staff to discriminate on the grounds of ethnic or racial origins. The only purpose of this extra get - out is to give policy-makers a free hand in drawing up the instructions under which officers work. The published rules will continue to be framed in a neutral way which appears to apply equally to everyone. Officers, though, don't work to the rules. They go by the much more detailed instructions, some of which are available, some withheld.

> Already the rules contain a rule that officers "carry out their duties without regard to the race, colour or religion of persons seeking to enter or remain", but there must be very few people who believe this has any effect on the variations that occur between entry clearance posts in different parts of the world, or your chances of being stopped at a UK airport depending on your nationality or your colour. If this Bill is to make a serious inroad into the culture of disbelief and cynicism in which the operation of immigration controls is steeped it must go further. We need to see lasting and irreversible change in the immigration system (a bastion of 'institutionalised racism' if ever there was one), and that's not likely if this Bill makes it a special case, the one area of government policy where discrimination is encouraged.

F. Positive action

Though positive discrimination is not allowed, Section 35 of the 1976 Act makes positive action lawful where acts are done to enable the special needs of particular racial groups to be met as regards education, training or welfare or ancillary benefits. Section 37 makes special provision for training where particular racial groups are underrepresented.

On 11 January 2000, in committee, Lord Lester moved an amendment to allow public authorities to take "proportionate measures" to ensure that the special needs of racial groups are met or to compensate for disadvantages they have suffered, without unlawful indirect discrimination. He said:[41]

> This amendment would permit public authorities to take proportionate measures - I emphasise "proportionate measures" - to ensure that the special needs of racial groups are met. It supplements the ability of public authorities to justify policies and schemes that are intended to benefit particular communities. Alongside Section 35 of the 1976 Act, which already has provision to meet the special needs of ethnic minorities, it makes the taking of additional or different action lawful where that is appropriate to meet the needs of a particular racial group. Its object is to achieve a non-colour blind approach by public authorities, as was strongly urged by the Stephen Lawrence inquiry. Where special measures are targeted on grounds such as language, employment history, employment prospects or length of residence, that could constitute indirect discrimination, assuming that we succeed in amending the Bill to cover indirect discrimination. The amendment ensures that such measures will not be unlawful. It also reflects the European Commission's proposal for a greater equality directive

Lord Bassam (c 579) replied that the Government "see merit in the amendment and would like to take it away and consider it further". Lord Lester moved the amendment again on report stage on 27 January 2000 and Lord Bassam again replied that in view of the decision to include indirect discrimination, more work was needed "so that it fits with other parts of the emerging legislation" (c 1690).

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[41] HC Deb vol 608 c 578

Appendix: Statistics of stop and search and racial incidents

Table 1

Searches of persons[1] under s.1 of the Police and Criminal Evidence Act 1984 by ethnic appearance, 1994/95, 1997/98 and 1998/99

	1994-95		1997/98		1998/99	
	of white persons	of ethnic minority persons	of white persons	of ethnic minority persons	of white persons	of ethnic minority persons
Avon and Somerset	5,517	558	11,447	912	15,120	1,349
Bedfordshire	1,562	431	4,344	1,079	3,291	962
Cambridgeshire	2,463	178	8,492	501	8,426	593
Cheshire	910	24	9,301	208	13,364	367
Cleveland	5,186	117	46,500	1,067	47,641	667
Cumbria	7,635	61	10,312	40	11,962	66
Derbyshire	6,690	247	14,948	854	13,907	808
Devon and Cornwall	1,179	6	13,198	239	17,539	211
Dorset	2,485	35	2,471	31	3,964	55
Durham	3,046	42	7,957	50	10,203	44
Essex	4,747	167	7,825	375	6,393	364
Gloucestershire	3,681	296	6,137	331	4,546	371
Greater Manchester	40,753	3,749	44,712	4,770	52,255	5,151
Hampshire	3,128	161	12,905	464	17,191	769
Hertfordshire	4,262	450	6,635	1,025	6,538	901
Humberside	2,068	40	4,572	49	4,560	39
Kent	3,391	139	43,739	1,716	51,419	3,231
Lancashire	8,686	577	17,578	1,395	27,795	1,769
Leicestershire	15,485	1,972	12,169	2,190	13,968	2,633
Lincolnshire	2,096	20	9,853	75	9,357	110
London, City of	2,730	864	2,372	1,062	1,604	910
Merseyside	13,934	579	44,671	2,093	50,835	2,085
Metropolitan Police	189,928	112,763	199,304	126,756	182,032	106,547
Norfolk	7,767	89	12,409	224	13,363	353
North Yorkshire	2,334	35	6,528	510	11,611	172
Northamptonshire	3,674	179	45,244	286	6,853	402
Northumbria	18,903	145	11,744	184	40,304	302
Nottinghamshire	2,233	218	7,036	725	5,503	685
South Yorkshire	7,322	343	13,211	1,117	16,147	1,831
Staffordshire	2,132	139	8,054	396	10,665	584
Suffolk	3,195	65	5,304	184	6,258	221
Surrey	13,830	1,014	9,400	726	8,930	796
Sussex	5,601	191	9,159	630	9,110	580
Thames Valley	6,012	915	12,640	2,958	14,125	3,465
Warwickshire	4,836	260	8,002	686	8,188	507
West Mercia	8,949	464	15,447	813	16,141	861
West Midlands	5,616	2,805	28,878	13,311	15,798	9,050
West Yorkshire	3,708	609	19,291	3,465	25,184	4,220
Wiltshire	2,139	96	4,182	248	5,233	237
Dyfed Powys	8,616	33	18,262	86	21,447	67
Gwent	3,210	186	13,531	425	16,623	560
North Wales	12,619	40	11,891	62	17,822	122
South Wales	5,081	277	17,284	746	22,269	1,104
Total	**459,339**	**131,579**	**818,939**	**175,064**	**865,484**	**156,121**

[1] ethnic minorities = black, asian and other, this and white category exclude not knowns

Sources: HC Deb 29.3.96 c792 w

Statistics on Race and the Criminal Justice System, Home Office 1998 and 1999

Table 2

Searches of persons[1] under s.1 of the Police and Criminal Evidence Act 1984 by ethnic appearance, changes from 1994/95 and 1997/98 to 1998/99

	change 1994/5 - 1998/9		change 1997/8 - 1998/9	
	of white persons	of ethnic minority persons	of white persons	of ethnic minority persons
Avon and Somerset	174%	142%	32%	48%
Bedfordshire	111%	123%	-24%	-11%
Cambridgeshire	242%	233%	-1%	18%
Cheshire	1369%	1429%	44%	76%
Cleveland	819%	470%	2%	-37%
Cumbria	57%	8%	16%	65%
Derbyshire	108%	227%	-7%	-5%
Devon and Cornwall	1388%	3417%	33%	-12%
Dorset	60%	57%	60%	77%
Durham	235%	5%	28%	-12%
Essex	35%	118%	-18%	-3%
Gloucestershire	23%	25%	-26%	12%
Greater Manchester	28%	37%	17%	8%
Hampshire	450%	378%	33%	66%
Hertfordshire	53%	100%	-1%	-12%
Humberside	121%	-3%	0%	-20%
Kent	1416%	2224%	18%	88%
Lancashire	220%	207%	58%	27%
Leicestershire	-10%	34%	15%	20%
Lincolnshire	346%	450%	-5%	47%
London, City of	-41%	5%	-32%	-14%
Merseyside	265%	260%	14%	0%
Metropolitan Police	-4%	-6%	-9%	-16%
Norfolk	72%	297%	8%	58%
North Yorkshire	397%	391%	78%	-66%
Northamptonshire	87%	125%	-85%	41%
Northumbria	113%	108%	243%	64%
Nottinghamshire	146%	214%	-22%	-6%
South Yorkshire	121%	434%	22%	64%
Staffordshire	400%	320%	32%	47%
Suffolk	96%	240%	18%	20%
Surrey	-35%	-21%	-5%	10%
Sussex	63%	204%	-1%	-8%
Thames Valley	135%	279%	12%	17%
Warwickshire	69%	95%	2%	-26%
West Mercia	80%	86%	4%	6%
West Midlands	181%	223%	-45%	-32%
West Yorkshire	579%	593%	31%	22%
Wiltshire	145%	147%	25%	-4%
Dyfed Powys	149%	103%	17%	-22%
Gwent	418%	201%	23%	32%
North Wales	41%	205%	50%	97%
South Wales	338%	299%	29%	48%
Total	88%	19%	6%	-11%

[1] ethnic minorities = black, asian and other, this and white category exclude not knowns

Sources: *HC Deb 29.3.96 c792 w*

Statistics on Race and the Criminal Justice System, Home Office 1998 and 1999

Table 3

Searches of persons[1] under s.1 of the Police and Criminal Evidence Act 1984 1998/99, per head of population by ethnic appearance

	Searches		Searches per 1,000 popln		Ratio ethnic searches to one white search (rounded)
	of white persons	of ethnic minority persons	of white persons	of ethnic minority persons	
Avon and Somerset	15,120	1,349	12	54	5
Bedfordshire	3,291	962	8	24	3
Cambridgeshire	8,426	593	14	26	2
Cheshire	13,364	367	16	43	3
Cleveland	47,641	667	101	71	1
Cumbria	11,962	66	28	33	1
Derbyshire	13,907	808	17	33	2
Devon and Cornwall	17,539	211	13	24	2
Dorset	3,964	55	6	10	2
Durham	10,203	44	19	11	1
Essex	6,393	364	5	16	3
Gloucestershire	4,546	371	9	41	4
Greater Manchester	52,255	5,151	25	38	2
Hampshire	17,191	769	11	32	3
Hertfordshire	6,538	901	9	29	3
Humberside	4,560	39	6	5	1
Kent	51,419	3,231	38	108	3
Lancashire	27,795	1,769	23	32	1
Leicestershire	13,968	2,633	19	38	2
Lincolnshire	9,357	110	17	25	1
London, City of	1,604	910	373	3,033	8
Merseyside	50,835	2,085	42	105	2
Metropolitan Police	182,032	106,547	33	91	3
Norfolk	13,363	353	19	55	3
North Yorkshire	11,611	172	18	36	2
Northamptonshire	6,853	402	13	21	2
Northumbria	40,304	302	33	21	1
Nottinghamshire	5,503	685	6	23	4
South Yorkshire	16,147	1,831	15	59	4
Staffordshire	10,665	584	12	34	3
Suffolk	6,258	221	11	17	2
Surrey	8,930	796	13	38	3
Sussex	9,110	580	7	23	3
Thames Valley	14,125	3,465	8	41	5
Warwickshire	8,188	507	19	33	2
West Mercia	16,141	861	16	58	4
West Midlands	15,798	9,050	8	32	4
West Yorkshire	25,184	4,220	15	29	2
Wiltshire	5,233	237	10	26	3
Dyfed Powys	21,447	67	51	23	0
Gwent	16,623	560	35	76	2
North Wales	17,822	122	31	29	1
South Wales	22,269	1,104	21	45	2
England & Wales total	**865,484**	**156,121**	**20**	**62**	**3**

[1] ethnic minorities = black, asian and other, this and white category exclude not knowns

based on ONS mid-population estimates of those aged 10 or over and 1991 census

Sources: *HC Deb 29.3.96 c792 w*

Statistics on Race and the Criminal Justice System, Home Office 1999 table 3.1 and Appendix A1

Table 4

Racist Incidents for all police force areas 1993/94 to 1998/99

	1993/94	1994/95	1995/96	1996/97	1997/98	1998/99	Percentage change 97/98 to 98/99	1998/99 per 1,000 ethnic population
Avon and Somerset	159	286	318	310	409	626	53	25
Bedfordshire	60	41	43	77	75	134	79	3
Cambridgeshire	100	75	160	141	147	205	39	9
Cheshire	98	62	27	92	78	158	103	18
Cleveland	50	62	112	68	76	147	93	16
Cumbria	17	24	27	37	46	45	-2	23
Derbyshire	221	291	192	208	174	208	20	9
Devon & Cornwall	14	44	73	82	90	116	29	13
Dorset	25	37	41	67	86	145	69	26
Durham	32	26	23	24	37	75	103	19
Essex	133	127	178	116	160	229	43	10
Gloucestershire	28	37	34	34	32	83	159	9
Greater Manchester	658	637	776	595	624	1197	92	9
Hampshire	212	210	279	178	219	271	24	11
Hertfordshire	117	183	234	295	288	325	13	11
Humberside	79	75	58	55	72	111	54	14
Kent	160	173	129	256	276	273	-1	9
Lancashire	262	222	320	337	311	450	45	8
Leicestershire	315	366	270	299	237	367	55	5
Lincolnshire	4	2	0	7	6	14	133	3
London, City of	1	6	2	10	6	28	367	93
Merseyside	155	131	130	162	241	324	34	16
Metropolitan Police	5,124	5,480	5,011	5,621	5,862	11,050	89	9
Norfolk	33	39	41	56	89	94	6	15
Northamptonshire	102	146	214	195	318	282	-11	59
Northumbria	405	508	475	488	444	623	40	33
North Yorkshire	22	30	37	43	41	64	56	4
Nottinghamshire	264	259	362	330	391	475	21	16
South Yorkshire	115	156	194	169	213	293	38	9
Staffordshire	117	164	253	225	214	220	3	13
Suffolk	73	73	74	74	54	150	178	12
Surrey	79	39	77	55	45	126	180	6
Sussex	214	247	263	260	298	399	34	16
Thames Valley	166	233	266	233	279	486	74	6
Warwickshire	87	114	99	66	107	111	4	7
West Mercia	100	35	46	64	57	83	46	6
West Midlands	487	375	489	725	632	988	56	3
West Yorkshire	244	254	355	623	644	1,068	66	7
Wiltshire	51	64	37	35	59	101	71	11
Dyfed Powys	0	3	23	18	17	37	118	13
Gwent	21	22	32	60	45	98	118	13
North Wales	2	3	5	4	12	36	200	9
South Wales	400	517	443	357	367	734	100	30
England and Wales total	**11,006**	**11,878**	**12,222**	**13,151**	**13,878**	**23,049**	**66**	**9**

[1] ethnic minorities = black, asian and other, this and white category exclude not knowns

Based on ONS mid-population estimates of those aged 10 or over and 1991 census

Sources: Statistics on Race and the Criminal Justice System, Home Office 1999 table 3.1 and Appendix A1