

CHAPTER 12  
SECTION 9RACE RELATIONS  
(RIGHTS OF APPEAL)

## 1. INTRODUCTION

This instruction gives some of the general background to the appeal provisions in the Race Relations (Amendment) Act 2000, together with detailed guidance on the application of the provisions. See *IDI Chapter 1 Section 11 Race Relations (General)* and annexes to that instruction for further information.

## 2. SUMMARY

The Race Relations (Amendment) Act extends the scope of the 1976 Act in relation to public authorities to include, amongst others, the police and IND. It does this by inserting new sections 19B to 19F into Part III of the 1976 Act. This makes it unlawful for a public authority to discriminate against a person or to victimise a person on the grounds of race, colour, nationality or ethnic or national origin in carrying out any of its functions. There is a limited exemption for immigration and nationality functions. Discrimination will be permitted on the grounds of nationality or ethnic or national origin where this is required by legislation or by Ministerial authorisation. For further, more detailed, information about the Race Relations (Amendment) Act 2000, see *Chapter 1, Section 11* of the IDIs.

## 3. THE ONE-STOP PROCESS

Race claims come within the one-stop system, although of course they may be raised rather later than most other claims, depending on the point at which the alleged discrimination occurs. They may be included as additional grounds to an existing application up to the point at which the appeal is finally determined. A certificate may be issued under section 96 in the usual way if they are raised late (see section 2 of this chapter on the one-stop system).

## 4. IMMIGRATION AND ASYLUM APPEALS

Generally speaking, appeals on the grounds of race discrimination are dealt with in exactly the same way as appeals on all other grounds. Race relations complaints relating to immigration decisions may be brought before the AIT under Part 5 of the Nationality, Immigration and Asylum Act 2002. Section 84(1)(b) of that Act specifies race discrimination as a distinct ground of appeal against an immigration decision under section 82. It is no longer necessary for a person to make a post-decision allegation in order to trigger the right of appeal. However, **an appeal on race grounds will not suspend removal action where the appeal can ordinarily only be brought from outside the UK**. The complaint must be related to the immigration decision in order to be raised during a right of appeal to the AIT. Where a complaint is solely about the treatment the person has received and not about the immigration decision itself, there is no right of appeal to the AIT. Instead, the complainant may

take the complaint through the normal departmental complaints channels and to the County Court. For further information on IND complaints procedures, see **Chapter 1, Section 13** of the IDIs.

An appeal can be allowed on the basis that racial discrimination has been proven, even if the immigration decision itself is otherwise in accordance with the law. For instance, the fact that an interviewing officer was racially abusive, reprehensible though it certainly is, does not mean that the applicant qualified under the immigration rules. The consequence of allowing the appeal on grounds of race discrimination only is that the case can be taken to the County Court (or Sheriff Court in Scotland) for damages to be assessed. Although allowing the appeal will not mean that the decision is overturned in these cases, it will be important for the AIT to make a finding of racial discrimination so that the applicant will be able to obtain damages in the County Court.

## **5. COMMENCEMENT OF THE RACE RELATIONS (AMENDMENT) ACT 2000**

The Race Relations (Amendment) Act came into force on 2nd April 2001 and was not retrospective. There is no right of appeal on race grounds against an immigration decision that was taken before 2nd April 2001. Where, in such cases, there is a right of appeal on other grounds, the AIT can consider the substance of the decision on appeal and may give weight to an assertion that it was motivated by racial discrimination.

## **6. INTERACTION BETWEEN APPEALS TO THE COUNTY COURT AND APPEALS TO THE AIT**

The principal effects of section 57A of the Race Relations Act 1976, as inserted by section 6 of the Race Relations (Amendment) Act 2000, are twofold:

1. to avoid the possibility of separate, and possibly conflicting, decisions, being taken on immigration claims by the immigration appellate authorities on the one hand, and the county or Sheriff court on the other; and
2. to ensure that those who lose their appeals under the immigration Acts cannot use the Race Relations Act as a means of delaying their removal from the United Kingdom in accordance with an immigration decision.

Section 57A relates to Section 57 of the Race Relations Act 1976, which provides that proceedings under Part III of that Act shall be brought in a designated County Court (or, in Scotland, a Sheriff Court). Subsection (1) of section 57A prevents an immigration claim being brought in the County or Sheriff Court if an appeal could be brought, or is pending, before the AIT. It also prevents a further appeal to the County or Sheriff Court if an appeal to the AIT on race relations grounds is dismissed.

Subsection (2) of section 57A defines an "immigration claim" in the context of race discrimination as a claim that a person has committed an act of discrimination against the claimant which is unlawful by virtue of section 19B or is treated as committing an act of discrimination by virtue of sections 32 and 33 of the 1976 Act. Section 19B extends the application of the 1976 Act to the police and other public authorities. Section 32 makes an employer liable for the acts of his employees, and makes both agent and principal liable where a person acts as an agent for another

for the purposes of an offence under the 1976 Act. Section 33 makes it unlawful for a person to assist knowingly in a breach of the 1976 Act.

Subsection (3) of section 57A prevents the County Court from questioning a decision of the AIT that a particular act was discriminatory and unlawful under section 19B. Where the AIT finds that a person has been subjected to racial discrimination under section 19B the matter may be referred to the County or Sheriff Court to assess a claim for damages under section 57(1). This subsection prevents the AIT's decision in respect of section 19B from being overturned.

Subsection (4) of section 57A prevents the County or Sheriff Court from challenging the immigration decision to which an immigration claim relates, or an appeal determination in respect of such a decision. There is a possibility that an immigration claim might be made to the County or Sheriff Court, but only after the conclusion of an appeal to the AIT on other grounds, as a means of delaying the enforcement of an immigration decision. This could happen if the appellant failed to take the opportunity of raising race discrimination at an immigration appeal. The amendment seeks to avoid the likelihood of the Court granting an injunction against the enforcement of the immigration decision, by preventing the Court from questioning that decision.

## **7. ENTRY CLEARANCE CASES**

Paragraph 3 of Schedule 2 of the Race Relations (Amendment) Act extends the application of clause 19B to apply to the grant of entry clearance outside of Great Britain. Paragraph 12 amends section 67 of the 1976 Act in order to protect those applicants whose visa applications are successful but who nevertheless consider that they have been racially discriminated against by an entry clearance officer. It ensures that redress is available in the County Court.