

EU Article 13 Directive on Race

Regulatory Impact Assessment

Summary

An assessment of the possible financial impact of implementation of the Article 13 Directives relating to Race is detailed below.

Time constraints have prevented a more in-depth analysis of impact and the approach taken here has been to model the possible impact in Northern Ireland on the Regulatory Impact Assessment (RIA) produced for Great Britain (GB). In the main, this has meant taking proportionate costs based on Northern Ireland information such as: the number of businesses, the number of employees and so on. The assessments of cost and benefits contained within the text have also been derived from the RIA produced for GB.

As with all RIA's, costs and benefits are derived from assumptions about likely impacts. As such, the financial estimates should be treated as 'gross' rather than definitive.

It is estimated that the costs to business (including partnership costs) amount to around £267,400 as a one-off cost.

The cost to Government is estimated to be around £18,900 recurring.

The financial benefits to employees are difficult to quantify accurately.

EC ARTICLE 13 RACE DIRECTIVE **REGULATORY IMPACT ASSESSMENT**

1. Purpose and intended effect

1.1 The EC Article 13 Race Directive harmonises the level of protection from race discrimination across the European Union. It guarantees a minimum standard of legal protection for individuals from discrimination or harassment on the grounds of racial or ethnic origins and ensures a right of redress for all individuals who have been the victims of such discrimination. It covers the fields of employment and training, social protection and social security, social advantage, education, access to goods and services and membership of a workers' or employers' organisation.

1.2 Northern Ireland (NI) already has extensive legislation prohibiting discrimination on racial grounds; therefore compliance in NI is more about fine-tuning the existing legislation rather than introducing new provisions.

2. Identifying the options

2.1 There are 2 options. These are:

(a) do nothing

(b) amend the Race Relations (Northern Ireland) Order 1997 (RRO) to incorporate the provisions of the Race Directive and remove any exceptions that are contrary to the principle of equal treatment.

2.2 Option (a) would go against the Department's obligation to implement EU Directives and its commitment to race equality and would lay it open to the prospect of claims for infraction damages. This paper sets out the estimated cost implications related to Option (b). Amendment of the RRO will be in relation to discrimination on grounds of race or ethnic or national origins only. Discrimination on grounds of colour and nationality will not be covered by the revised legislation. This is because the Directive is limited in its scope in comparison with the grounds of discrimination set out in the RRO.

3. General cost assumptions

3.1 General compliance costs to employers linked to the implementation of the Race Directive should be minimal. Many employers will already have in place policies and systems that are in line with the Directive's requirements. Large organisations are more likely to have formal employment policies. It is assumed that these policies will cover race and will not have to be amended greatly in order to achieve compliance.

3.2 The impact on small businesses is assumed to be minimal, as the general principles of the RRO apply to both large and small businesses.

3.3 The Race Directive will also cover non-employment areas including access to goods and services. There may be some impact in terms of the revised definition of indirect discrimination (see section 6) and the shift in the burden of proof (see section 8). The compliance costs related to access to goods and services are assumed to be negligible, as service providers and retailers have been operating under the provisions of the Race Relations Order since 1997.

3.4 The Directive covers discrimination on the grounds of racial or ethnic origins so everyone is affected, regardless of his or her ethnic background. This means that all employers and service providers will have to take account of the provisions of the Directive. It will not apply solely to organisations that currently employ minority ethnic staff.

3.5 The Directive also covers areas that are currently exempt from the RRO such as partnerships of fewer than 6 individuals, charities as employers, and the disposal and management of small dwellings. Estimated costs in these areas are set out in this paper.

4. Compliance costs for employers

4.1 A key stage in the implementation of the Directive will be to communicate to employers the nature and extent of the changes being introduced, and employers will need to consider, and possibly seek advice on, any changes required by their organisation. Business already operates in line with the principles of the Race Relations Order and it is proposed that changes will be made to the RRO in order to implement the Directive. The impact on employers is expected to be minimal, as the minor changes involved should not lead to a significant increase in costs.

4.2 All businesses will have to spend some time considering the new guidance. It is envisaged that each employer will have access to guidance that will include information on the changes to NI law arising from the Article 13 regulations. This cost is estimated to be **£184,600**.

4.3 Large organisations are likely to have formal employment policies. Most of these already include chapters on race so minimal amendment would be required. Even small employers or employers that don't employ minority ethnic staff are likely to be aware of the fact that race discrimination is not permitted in the workplace. The Directive makes minor changes to the current provisions of the RRO in this regard so organisations will not have to spend too much time familiarising themselves with the new provisions. There is estimated to be a small additional cost to employers.

5. Costs to others

5.1 The proposal to remove certain exemptions from the RRO means that some areas will be newly covered. There will be an impact on landlords and individuals who work in private households who will have to familiarise themselves with the changes to legislation.

6. Indirect discrimination

6.1 The definition of indirect discrimination in the Directive is slightly different from the definition in the RRO and so amendment to the Order is necessary. The main difference relates to the sort of rules and practices that can be challenged as indirectly discriminatory. The Directive allows informal practices that are indirectly discriminatory to be challenged, in addition to those requirements that are formally and explicitly stated.

6.2 The definition in the Directive differs in a second respect from the one in current legislation. Domestic legislation requires a complainant to show that a considerably smaller proportion of a particular racial group is able to comply. Demonstrating that usually involves a reliance on the use of statistical evidence. In some EU countries, however, the collection of data on ethnicity is not permitted. The Directive requires Member States to set rules of evidence that makes it possible to demonstrate indirect discrimination without the need to produce statistical evidence.

Costs

6.3 Whilst the proposed change to the definition of indirect discrimination may lead to an increase in the amount of cases brought, there is no reason to assume the number will grow significantly.

6.4 Businesses may incur one-off costs of testing practices and amending existing procedures; though not all of these "test cases" will have to be put before an industrial Tribunal.

Benefits

6.5 The change would be of benefit to individuals as they would be able to bring a case on grounds not currently open to them.

7. Claims brought in respect of acts of discrimination occurring after the relationship between complainant and respondent has ended

7.1 The Directive allows claims to be brought when an act of discrimination has occurred after a relationship (e.g. employment) has ended. The RRO

does not currently allow for this and will have to be amended. Proposed changes to the RRO may apply to acts that occurred after the relationship had ended. There is no reason to believe that a large number of cases will be brought as a result of the change.

Costs

7.2 The cost is estimated to be negligible.

Benefits

7.3 Individuals and businesses will benefit from changes that will ensure that potential employees, tenants etc are not prevented from taking up goods, services or employment on the basis of a discriminatory act that occurred once a relationship had ended, such as the refusal to provide a reference.

8. Burden of Proof

8.1 The Directive requires Member States to have provisions in place to ensure that, where a complainant establishes before a court or tribunal facts from which it may be presumed that discrimination has occurred, it will be for the respondent to prove that discrimination has not occurred. Compliance with this requirement will involve amending the RRO.

8.2 Employers are likely to hold records on staff and these ought to show why a particular act was carried out and demonstrate why the act was not discriminatory (if indeed, it was not). Costs to an employer currently operating in this way should be minimal, although there will be compliance costs for employers who will need to introduce practices that will ensure their compliance.

8.3 Organisations may need to adjust their practices in order to demonstrate that their systems for the recruitment and treatment of staff are fair and transparent. They may wish to review their practices in light of the shift in the burden of proof. It is difficult to determine how many organisations are in the position where changes will have to be made. However, given the fact that business has been adhering to the basic principles of equality for over 25 years and race equality since 1997, it is assumed that the majority of organisations already operate in such a way as to be able to present evidence of non-discriminatory or justifiably discriminatory practices.

9. Partnerships

9.1 Partnerships of fewer than 6 people are currently exempt from the provisions of the RRO in relation to the employment of partners or potential partners. Such partnerships will be newly covered by the RRO. This will

impact on all activities relating to partners, including their appointment and terms and conditions. Extending coverage will mean that all partnerships not currently covered by the provisions of the RRO (approximately 90% of existing partnerships) will be affected. Partnerships regardless of size will continue to be subject to the provisions of the RRO in the treatment of their employees. The general cost implications for partnerships as employers is a subset of the compliance costs to business set out at section 4.

Costs

9.2 The cost to newly covered partnerships will apply in the treatment of partners, as partnerships of any size would still be required to abide by the general employment provisions of the RRO in relation to all other staff of the organisation. It is difficult to assess the impact the removal of this exemption will have. If 0.29% of newly covered partnerships have to defend a case at industrial tribunal, this will cost **£70,000**. The cost to Government would be **£18,900**.

9.3 There will be compliance costs, as the procedures for recruiting partners may have to change with more rigorous methods being introduced. The cost is estimated to be **£82,800**.

Benefits

9.4 The principles of fair procedures in relation to employment should already be apparent and it is assumed that a number of partnerships of fewer than 6 people already take equality issues into account when appointing partners, as many will already do so when employing staff.

10. Charities as employers

10.1 It is proposed that the exemption of charities from the employment provisions of the RRO be removed. In effect, this will prevent charities that target support to particular disadvantaged racial groups from being able to recruit staff from a particular racial group, unless they can demonstrate that there is a genuine occupational requirement for the staff to be of that racial group.

10.2 There will be an impact on the number of voluntary organisations that have to defend cases of "discrimination" in employment when they employ someone on the basis of a genuine occupational requirement.

10.3 Charities as employers of staff (regardless of whether the charity's specific remit is to target minority ethnic communities) will have to comply with the wider provisions of the Directive.

Costs

10.4 Although it has not been possible to calculate costs to charities, these are expected to be minimal.

Benefits

10.5 Charities must be allowed to continue their crucial work and it is envisaged that whilst no extra benefit will be gained from the changes, individuals will continue to be assisted by charities in line with existing support.

11. Disposal and management of small dwellings

11.1 Landlords who dispose of and manage small dwellings are currently exempt from the provisions of the RRO. The RRO will be amended to remove this exemption on the grounds of race or ethnic or national origins.

Costs

11.2 There may be some costs to landlords if they have to defend claims of discrimination, although this cost is estimated to be negligible.

Benefits

11.3 Protection from discrimination will be extended to circumstances not previously covered by the RRO.

12. Summary of costs

EC ARTICLE 13 RACE DIRECTIVE COSTS	ONE-OFF COSTS	ANNUAL COSTS
Awareness and guidance	£184,600	
Defending cases brought against partnerships		£70,000
Costs to partnerships (recruitment procedures)	£ 82,800	
Cost to Government		£18,900
SUB TOTAL	£267,400	£88,900
TOTAL	£356,300	