

# RACE RELATIONS WORKING PARTY: DISCUSSION DOCUMENT

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Presented to the States on 14th December 1999  
by the Legislation Committee

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**STATES OF JERSEY**

**STATES GREFFE**

140

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## RACE RELATIONS WORKING PARTY: DISCUSSION DOCUMENT

### Introduction

As we begin the new Millennium our Island faces an important challenge and a unique opportunity. We have the chance to eliminate racial discrimination, to reject prejudice and, instead, promote tolerance and equality of opportunity. Procedures to combat discrimination and improve race relations exist in virtually every European state and it is more than two decades since the United Kingdom passed the Race Relations Act to achieve these important objectives.

Among the freedoms enshrined in the European Convention on Human Rights is freedom from discrimination on grounds of race, colour, language, national or social origin. Jersey also has international obligations under the International Convention on the Elimination of All Forms of Racial Discrimination. Article 1 of that Convention obliges participating countries to introduce legislation to outlaw racial discrimination. Furthermore, the principles enshrined in those conventions have both a formal aspect, such as notional equality before the law, and a material aspect involving actual, demonstrable rights and benefits within a community. Thus the recommendations set out in this report seek to address not just the nature of the legislation required to deal with discrimination but also different means of access to remedies.

These draft recommendations for legislation protect the basic right of all individuals to be free of discrimination. Implicit in the recommendations is the assertion that there is positive value in good relations between different racial or ethnic groups. While it is recognized that a new law alone cannot eliminate discrimination, legislation clearly defines the boundary of all

unacceptable behaviour in civilized jurisdictions. It also has a role to play in changing attitudes by articulating what is and what is not acceptable in our community by underpinning codes of practice and by punishing the worst offenders.

The members of the Race Relations Working Party have adopted a pragmatic approach. They took the view that it is not pessimistic, rather it is probably realistic, to accept that unfair discrimination will always be present in some form, against some groups, and that this will continue to constitute a challenge to our community. But it would be irresponsible to maintain that nothing can be done within the restrictions of our legal system and culture. The vast majority of decent people will follow the lead set by legislation and this will go a long way towards combating racism and discrimination in our Island.

An effective anti-discrimination strategy will require three vital components to work in concert. Firstly, the key principles of anti-discrimination must be articulated and generally agreed. Secondly, legislation must be enacted and appropriately enforced to deal with the specific circumstances within which different kinds of discrimination occur. Thirdly, there must be strategies to combat discrimination in all areas of society. These are the pre-conditions for successful anti-discriminatory action. Unless these elements are properly included progress can be uncertain and vulnerable to changing circumstances, such as economic downturn and shifts in public opinion.

In seeking to contribute to an effective strategy, the Legislation Committee has decided to circulate this document as widely as possible in order to promote discussion and debate around the key principles enshrined in the proposals. The working party believes that the proposals for enactment and enforcement are appropriate to Jersey in both resource demands and administrative tone. At a very basic level there must be provisions to prohibit discrimination in all essential allocative areas such as employment, education, delivery of services in both the public and private sectors. We must also have sections dealing with pressure to discriminate, victimization and incitement to racial hatred. It should be noted that the concept of discrimination on "racial grounds" does not include religion as a separate category. Northern Ireland, in the context of the 'troubles' between Protestants and Catholics, is the only jurisdiction to make discrimination on religious grounds a specific offence. However "racial grounds" means colour, race, nationality or ethnic or national origins. The term "ethnic" is construed relatively widely so that Sikhs and Jews would be defined as a specific ethnic group for the purposes of the law.

We welcome your comments on all these matters and, indeed, on any aspect of the recommendations. However, it is essential to note that these draft recommendations are for general public discussion. As such, the language is not as precise as it will be in the Law. This document represents the start of a process of consultation and review that will be concluded by the Spring of 2000 with the implementation of a Race Relations Law for Jersey in 2001.

All comments should be sent to Peter Bryans, Law Review Officer, c/o Driver and Vehicle Standards Department, La Route de la Veulle, La Collette, St. Helier, JE1 3UE. Please ensure your comments are received by 31st March 2000.

Senator W. Kinnard  
*Chairman, Race Relations Working Party*

November 1999

**LEGISLATION COMMITTEE**  
**RACE RELATIONS WORKING PARTY**  
**CONSTITUTION AND TERMS OF REFERENCE**

**1. Constitution**

Senator W. Kinnard (Chairman)	Vice-President, Legislation Committee
Deputy I.S. Nicholls	President, Legislation Committee
Senator S. Syvret	States Member
C. Gallichan	Agricultural Industry
B. Heath	Chief Probation Officer
Dr. R. Le Herissier	Lecturer
D. Lord	Tourism Industry
K. Patel	Solicitor
G. Pollano	Advocate
Mrs. Z. Powell	Catholic Pastoral Centre
R. Tremoceiro	Advocate
Ms. E. Ventura	CAB Nationality Advice Worker
J. Noel	Deputy Chief Immigration Officer/Union Official
R. Pallot	French Consul
P.J. Bryans	Law Review Officer (Administrator)

**2. Terms of reference**

To draw up recommendations capable of providing the basis of drafting instructions for a new Race Relations Law

- to render racial discrimination unlawful;
- to prevent the dissemination of ideas and propaganda based on racial superiority;
- to prevent activities inciting racial discrimination or hatred which falls short of constituting a breach of the peace or other contravention of existing Jersey law;
- to proscribe organisations promoting or inciting racial discrimination and of participation in the membership of such organisations.

**Background to proposals for a Race Relations Law**

The International Convention on the Elimination of All Forms of Racial Discrimination was adopted by the General

Assembly of the United Nations on 7th March 1969 and brought into force on 6th April 1969. The CERD is the oldest and most widely ratified United Nations human rights convention.

The Convention was ratified by the United Kingdom on behalf of “territories under the territorial sovereignty of the United Kingdom”, which included Jersey. On 3rd May 1994, the Policy and Resources Committee approved a report for inclusion in Her Majesty’s Government’s report to the United Nations. This report was presented to the States in R.C.14/94. A further report was submitted in August 1996 which was published as an Appendix to the report and proposition of the Policy and Resources Committee, P.213/96.

On 25th April 1995, Deputy G. Matthews lodged “au Greffe” a report and proposition - “Racism and Racial Discrimination: Working Party” (P.53/95) asking the States to request the Policy and Resources Committee to set up a working party to inquire into the extent of racism and racial discrimination in the Island and report back with recommendations.

On 13th May 1997, the States adopted a proposition of the Policy and Resources Committee - “Racial Discrimination: Report and Recommendations” (P.213/96) and charged the Committee -

- (b) to take the necessary steps to enable legislation to be assessed for priority for inclusion in the States Legislation Programme -
  - to render racial discrimination unlawful;
  - to prevent the dissemination of ideas and propaganda based on racial superiority;
  - to prevent activities inciting racial discrimination or hatred which falls short of constituting a breach of the peace or other contravention of existing Jersey law;
  - to proscribe organisations promoting or inciting racial discrimination and of participation in the membership of such organisations;
- (c) to encourage more enlightened attitudes through education and a promotional campaign, which would incorporate the Island’s responses to the proclamation by the European Union of the year 1997 as ‘European Year Against Racism’.

In taking forward these recommendations the Policy and Resources Committee asked the Legislation Committee to progress the matter.

Provision has been made in the 2000 Legislation Programme for this legislation and a Project Officer has been seconded with the specific task of drawing up a brief for the Law Draftsman.

On 18th December 1998, the Legislation Committee decided to set up a working party under the Chairmanship of the Vice-President to consider the proposed Race Relations Law. The members of the working party were confirmed on 5th February 1999.

## **Working party methodology**

The first introductory meeting of the Race Relations Working Party was held on 4th March 1999.

The working party has met on nine occasions during the year. In addition, the Chairman and Law Review Officer met with the Chief Executive and senior staff of the Commission for Racial Equality. There have been meetings with Senior Officers of the States of Jersey Police, the Department of Employment and Social Security and the International Relations Officer of the Policy and Resources Department. On 23rd October, the Chairman and Law Review Officer attended a Forum organised by the Policy and Resources Department to discuss race relations issues.

In preparing the recommendations a number of sources were used. These included -

### Local sources

**Human Rights Conventions: Reports for Jersey (R.C.14/94)** - Policy and Resources Committee

**Racism and Racial Discrimination: Working Party (P.53/95)** - Deputy G. Matthews of St. Brelade

**Racial Discrimination: Report and Recommendations (P.213/96)** - Policy and Resources Committee

### International sources

**United Nations Declaration on Elimination of Discrimination (1963)**

**The International Convention on the Elimination of All Forms of Racial Discrimination (1966)**

### United Kingdom sources

**United Kingdom Race Relations Act 1976**

**United Kingdom Human Rights Act (1988)**

**Stephen Lawrence Inquiry, Macpherson Report (1999)**

**Stephen Lawrence Inquiry - Home Secretary's Action Plan (1999)**

**Publications from the Commission for Racial Equality.**

### Articles and research papers

In addition to the sources outlined above, a number of articles and research papers were made available to members of the working party by way of background reading. These included -

**Brown, C. and Gay, P.** (1985) 'Racial Discrimination: 17 Years after the Act', in Paul Burstein (ed) *Equal Employment Opportunity, Labour Market Discrimination and Public Policy*, New York: Aldine De Gruyter, pp.315-327.

**Dummet, A.** (1997) 'A European Perspective', in Ann Dummet (ed) *Racially Motivated Crime, Responses in Three European Cities*, London: Commission for Racial Equality, pp.131-144.

**Dummet, A.** (1998) 'British Race Relations in a European Context', in Tessa Blackstone, Bhiku Parekh, and Peter Saunders (eds) *Race Relations in Britain, a developing agenda*, London: Routledge, pp.204-220.

**Forbes, I.** (1995) 'Institutionalising Anti-Discrimination in Europe', in Hardgreaves, A. and Leaman, J. (eds) *Racism, Ethnicity and Politics in Contemporary Europe*, Aldershot: Edward Elgar.

**Hepple, B.** (1987) 'The Race Relations Acts and the process of change', *New Community* Vol. XIV No. 1/2 (Autumn 1987) pp.32-39.

**Husbands, C.T.** (1993) 'Racism and Racist Violence: Some Theories and Policy Perspectives', in Tore Björge and Rob Witte (eds) *Racist Violence in Europe*, Basingstoke: Macmillan, pp.113-127.

**Iganski, P.** (1995) 'Euro-racism, Euro-policy', *Public Policy Review*, Vol.3, Issue 6: 32-35.

**Iganski, P. and Jacobs, S.** (1997) 'Racism, immigration and migrant labour', in Tony Spybey (ed) *Britain in Europe*, London: Routledge, pp.147-160.

**Iganski, P.** (1999) 'Racist violence and the European Community', in Gundara, J. And Jacobs, S. (eds) *Interculturalism in Europe: Cultural Diversity and Social Policy in the European Union*, Aldershot: Avebury.

**Iganski, P.** (1999) 'Legislating against hate: outlawing racism and anti-Semitism in Britain', *Critical Social Policy*, Vol. 19, No. 1.

**Solomos, J.** (1990) 'Changing forms of racial discourse', in *Social Studies Review* (November 1990) Philip Allan Publishers Ltd., pp.74-8.

The working party reviewed the relevant propositions, reports, articles and pieces of legislation set out above; identified various issues and where appropriate made recommendations. These Recommendations were summarized and are set out in the main body of the Report in Part A- G.

The working party ratified the draft recommendations on 11th November and a preliminary draft report was presented to the Legislation Committee on 26th November and distributed to them on 7th December 1999.

**BRIEF OUTLINE**

**RACIAL DISCRIMINATION (JERSEY) LAW**

**Part A - Racial discrimination to which the Law applies**

A1 - It would be unlawful to racially discriminate either directly or indirectly.

A2 - Racial discrimination

(a) *Direct discrimination*

Direct discrimination would occur when someone was treated less favourably on racial grounds than others are, or would be, treated in similar circumstances.

When someone was segregated from others on racial grounds this would also be direct discrimination. Racial abuse and harassment would also be unlawful direct discrimination if it occurred in circumstances covered by the law.

**Example**

If a black 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 black woman has been directly discriminated against.

(b) *Indirect discrimination*

Indirect discrimination would occur when a condition or requirement was applied equally to people of all racial groups, but many fewer people of a particular group were able to comply with it. Such indirect discrimination would be unlawful when it cannot be shown to be justifiable other than on racial grounds.

### **Example**

- A rule about clothing or uniforms which disproportionately disadvantages a racial group and cannot be justified.
- An employer who requires higher language standards than are needed for safe and effective performance of the job.

(N.B. see section 1 of the United Kingdom Race Relations Act 1976.)

#### A3 - Victimisation

It would also be unlawful under the law to treat someone less favourably than others, because they have taken a case of racial discrimination, or given evidence relating to a case, or alleged that discrimination has occurred, or where the discriminator knows that the person intends to do any of these things, or suspects that the person victimized has done, or intends to do any of them.

There must, however, be protection from false/malicious allegations not made in good faith.

(N.B. see section 2 of the United Kingdom Race Relations Act 1976.)

#### A4 - Racial definitions

- (a) *racial grounds* means any of the following grounds, namely colour, race, nationality or ethnic or national origins;
- (b) *racial group* means a group of persons defined by reference to colour, race, nationality or ethnic or national origins, and references to a person's racial group refer to any racial group into which he falls.

(N.B. see section 3 of the United Kingdom Race Relations Act 1976.)

- (c) *racial hatred* means hatred against a group of persons in Jersey defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins.

(N.B. see Part III of the United Kingdom Public Order Act 1986.)

### **Part B - Discrimination in employment**

(It is suggested that the definitions of employer, employee/worker should mirror those used in the Employment and Social Security Committee Minimum Wage/Employment Laws. Such definitions should include agency workers, casual labourers, temporary contracts, and home-workers.)

B1 - It would be unlawful for all employers, no matter how small or large their number of employees, and for all employees, to discriminate on racial grounds in any aspect of employment, including -

- (a) recruitment;
- (b) selection;
- (c) training;
- (d) promotion;
- (e) transfer;
- (f) pay and benefits;
- (g) hours of work;
- (h) redundancy;
- (i) dismissal.



(N.B. see section 4 of the United Kingdom Race Relations Act 1976.)

B2 - Exceptions

However, there would be a number of exceptions to the Law -

- (a) for a person working in a private household, or applying to work in a private household. But the legislation should distinguish between domestic work which is focussed on members of the household, e.g. Nanny, au-pair, live-in carer (normally a contract of service); and work which is performed in private households by a tradesperson (normally a contract for service) or an employee of a person who carries out his/her business from home which would be treated under normal employment law.
- (b) for a person working all or most of the time outside Jersey. This exception should not be interpreted to cover seasonal labour employed in tourism, retail and agriculture, etc.  
  
e.g. A resident who is employed for services in a country abroad such as Saudi Arabia.
- (c) for a person who lives outside Jersey but is employed by a company based inside Jersey which trains them to work overseas.
- (d) for a person applying for a job where race is a 'genuine occupational qualification' for part or all of the job, such as acting in plays or films, or providing personal welfare services to people of a particular racial group.
- (e) discrimination will not be unlawful if it is done to comply with any piece of statutory legislation.

(N.B. see sections 5, 6, 7, 8 and 9 of the United Kingdom Race Relations Act 1976.)

B3 - Partnerships

It would be unlawful for a firm of **two** or more partners to discriminate in the arrangements they make for the -

- (a) selection of new partners;
- (b) access by partners to benefits, facilities or services; or
- (c) dismissal of partners.

(N.B. see section 10 of the United Kingdom Race Relations Act 1976.)

B4 - Trade Unions, workers and employers' associations

B4.1 It would be unlawful for any of the following bodies to discriminate in -

- (a) the terms for admission to membership;
- (b) members' access to benefits, facilities or services;
- (c) varying the terms of membership; or
- (d) depriving a person of membership.

B4.2 The bodies concerned would be -

- (a) any organisation of workers e.g. Trade Unions, Bank Staff Associations;
- (b) any organisation of employers, e.g. Institute of Directors; and
- (c) any organisation whose members carry on a particular profession or trade for the purpose of which the organisation exists, e.g. Law Society, BMA.

(N.B. see section 11 of the United Kingdom Race Relations Act 1976.)

B5 - Qualifying bodies

It would be unlawful for any body or authority which can confer an authorisation or qualification to discriminate if, as a matter of law or practice a person is unable (or would find it difficult) to carry on a particular profession, trade, business or vocation without such an authorisation or qualification.

Discrimination would be unlawful -

- (a) in the terms for conferring, renewing or extending the authorisation or qualification;
- (b) by refusing or deliberately omitting to grant an application; or
- (c) by withdrawing or depriving membership from a person.

(N.B. see section 12 of the United Kingdom Race Relations Act 1976.)

B6 - Vocational training bodies

It would be unlawful for any vocational training body to discriminate against a person seeking, or undergoing training which would help fit him for any employment as regards -

- (a) terms of access to any training courses or other facilities;
- (b) refusing or deliberately omitting to afford access to them; or
- (c) terminating the training.

(N.B. see section 13 of the United Kingdom Race Relations Act 1976.)

B7 - Employment agencies

B7.1 It would be unlawful for an employment agency to discriminate against a person -

- (a) in the terms on which it offers to provide its services;
- (b) by refusing or deliberately omitting to provide them; or
- (c) in the way it provides them.

B7.2 It would not be unlawful for an employment agency to discriminate if the employer assures the Agency that the Genuine Occupational Qualification Exception (see section B2(d)) applies to that vacancy. The onus should be on the employer to provide the correct statement.

“Employment agencies” would include -

- (a) commercial agencies;
- (b) Employment and Social Security Job Centre; and
- (c) schools and Education Committee Careers Service;
- (d) Farmers’ Union - any others?

(N.B. see section 14 of the United Kingdom Race Relations Act 1976.)

**Part C - Discrimination in other areas**

C1 - Education

The Law would apply to any schools and colleges maintained by the Education Committee, independent (fee-paying) schools and colleges and special schools. It also includes the governors of a school or college and the

## Education Committee.

It would be unlawful for the Education Committee or the governors of an independent school or college to discriminate in the way that duties are carried out in relation to -

- (a) terms of admission to any establishment;
- (b) refusing or deliberately omitting to accept an application for admission;
- (c) access to benefits, facilities or services for any particular pupil; or
- (d) excluding or treating unfavourably any pupil/student.

(N.B. see sections 17, 18 and 19 of the United Kingdom Race Relations Act 1976.)

Note: If human rights legislation is implemented before the Race Relations Law, this can only reinforce the provisions set out above, and complaints could still be dealt with by the tribunal (see section G4).

## C2 - Housing

C2.1 It would be unlawful for anyone selling, letting or managing property (including business premises) to discriminate in any of the following ways -

- (a) in the terms on which persons are offered the premises;
- (b) by refusing to let persons buy the premises;
- (c) by treating persons differently from other people who want to buy or rent;
- (d) by refusing to transfer a lease to a particular person;
- (e) by refusing access to any benefits or facilities at the premises;
- (f) by evicting individuals or subjecting them to other disadvantages.

C2.2 There would be some exceptions -

- (a) owner-occupiers selling or letting their property are excluded if they do not advertise or use an estate agent;
- (b) small residential premises are excluded (defined as “not more than 5 persons in addition to the members of the household, or in the case of premises comprising residential accommodation for one or more households under separate letting agreements in addition to the accommodation occupied by the relevant occupier there is not normally accommodation for more than two such households and only the relevant occupier and members of his household reside in the accommodation occupied by him.”);

(e.g. An occupier of a house who takes in up to five lodgers.)

(e.g. A single house divided into two self-contained flats, one of which is occupied by the owner and members of his family while the second flat is to let to another household.)

- (c) someone who takes children, elderly people or anyone else who needs special care or attention into their home and treats them as if they were members of his or her own family.

(N.B. see sections 21, 22, 23 and 24 of the United Kingdom Race Relations Act 1976.)

Note: Previous claims made to the European Court that Jersey’s Housing Laws contravene human rights have been rejected. Such complaints have been looked at on their own merits and in the particular circumstances in which they arose. In general terms, the European Court has not seen the Housing Regulations as objectionable in themselves, but as having a legitimate purpose (control of immigration, economic well-being, protection of rights and freedoms of others) - provided that their application is not disproportionate. Thus, it has been argued that all those coming to live in the Island are discriminated against on grounds of length of residence, not on racial grounds.



C3 - Goods, facilities and services

The Law would cover any goods, facilities or services offered to the public. For example, it would apply to hotels and catering, banking, insurance and other financial services, cinemas, theatres, bars, restaurants, pubs and other places of entertainment or refreshment, transport and travel services, and services provided by any public utility or public authority, e.g. States department, States committee, sub-committee, other States agency or parochial authority, and any profession or trade.

It would be unlawful for any such organisation to discriminate by either refusing a person their services, or giving a person their services on less favourable terms or conditions than offered to people of other racial groups.

C3.2 There are some exceptions, namely -

- (a) someone taking in foster children or elderly people;
- (b) financial facilities for a purpose to be carried out outside Jersey, e.g. loans for development outside the Island;
- (c) goods, facilities and services provided outside Jersey, e.g. in the case of an organisation with corporate headquarters in Jersey with worldwide interests; and
- (d) providing education or training for people not intending to remain in Jersey after it is over, e.g. a language school.

(N.B. see section 20 of the United Kingdom Race Relations Act 1976.)

C4 - Clubs and associations

C4.1 Discrimination by clubs and associations against members or persons seeking to become members may be unlawful -

- (a) if it is an organisation covered by paragraph B4.2 (any organisation of workers, employers or professional association);
- (b) if it is an organisation covered by paragraph C3 (goods, facilities and services open to the public or section of the public, e.g. British Airways Executive Club);
- (c) if it is an organisation with 25 or more members which is not covered by (a) or (b) which has a constitution regulating admission to membership which is so conducted that members do not constitute a section of the public, e.g. golf club.

C4.2 There is an exception to this, namely -

If the main object of the club or association is to enable the benefits of membership (whatever they may be) to be enjoyed by persons of a particular racial group defined other than on grounds of colour.

(N.B. see sections 25 and 26 of the United Kingdom Race Relations Act 1976.)

C5 - Proscribed organisations

C5.1 There would need to be a general provision to proscribe any organisation whose purpose or practical activity is likely to promote or incite racial discrimination, and of any individual's participation in such organisations (see Part F).

Note: If required to list the organisations, this could be done in a Schedule attached to the Law, amended by Regulations.

C5.2 The definition of "organisation" will have to include informal groups not formally constituted or incorporated.

Note: Under the prevention of terrorism provisions there is an existing power to exclude individuals and proscribe organisations from outside the Island. However, there would need to be wider political discussion and the advice of

the Attorney General sought to establish whether it would be possible to use exclusion orders against individuals living in the Island.

C6 - Elected posts for public office

C6.1 It will be an offence to discriminate on racial grounds in any aspect of the election process including nomination, electoral procedure, ratification of result, induction or appointment.

C6.2 However, there is a statutory exception in so far as candidates for Senator and Deputy must be a British subject.

C6.3 Furthermore, the parochial officials including Connétables, Honorary Police and Roads Inspectors may have dual nationality.

C7 - Charities

Charities are not specifically exempt because in Jersey “charitable status” is not clearly defined and there is no regulatory body such as the Charities Commission. An automatic exception under the Law could provide the potential for abuse. It is preferable that when a complaint is made involving an organisation defined as charitable it should be referred to the Race Relations Officer, who should refer the matter through the appropriate enforcement route if necessary.

It should be noted that under Part E2(d) there is a general exception under special needs.

**Part D - Other unlawful acts**

D1 - Advertisements

D1.1 Any advert which indicated an intent to discriminate on racial grounds would be unlawful, e.g. it would be unlawful for an employer to state in a job advert that only white people should apply. There would also be an onus on the Jersey Evening Post, etc. so that it would be unlawful to publish or cause to be published any advertisement that indicates or might be reasonably understood as indicating, an intention to discriminate.

D1.2 However, it would not be unlawful for adverts to be placed or published where there is an indication of an act of discrimination if any of the following exemptions apply -

- (a) genuine occupational qualification;
- (b) employment to provide training in skills intended to be exercised outside Jersey (see section E2(a));
- (c) certain clubs and associations (see section C4);
- (d) special needs (see section E2(d));
- (e) sports and competition (see section E2(b));
- (f) compliance with statutory legislation (see section E2(c)).

(N.B. see section 29 of the United Kingdom Race Relations Act 1976.)

D2 - Pressure or instructions to discriminate

It would be unlawful to instruct, induce or attempt to induce any person or organisation to discriminate, e.g. it would be unlawful for an employer to tell the job centre that they should NOT send any “coloured” or “foreign” persons for interview.

(N.B. see sections 30, 31 and 32 in the United Kingdom Race Relations Act 1976.)

**Part E - General exceptions**

E1 - Exceptions in Parts B, C and D

Note: A number of specific exceptions have been made to the provisions contained in Part B (Employment), Part C (Housing), Part C (Goods, facilities and services) and D1 (Adverts). The following exceptions are general and will apply in relation to all the discrimination and associated conduct provisions which would otherwise be unlawful.

E2 - General exceptions

- (a) *Non-residents' training* - It shall not be unlawful to discriminate when affording access to education or training and any ancillary benefits where the discrimination is against a person who is not normally resident in Jersey and it appears that the person in question does not intend to remain in Jersey after his period of education or training.

(N.B. see section 36 of the United Kingdom Race Relations Act 1976.)

- (b) *Sport* - It shall not be unlawful to discriminate on the basis of nationality, place of birth or length of residence in any place or area if the discrimination is for the purpose of selecting a person or team to represent a particular place or area or is in pursuance of specific competition rules relating to eligibility.

(N.B. see section 39 of the United Kingdom Race Relations Act 1976.)

- (c) *Statutory authority* - It shall not be unlawful to discriminate in order to comply with either any provision of Jersey Law or in pursuance of arrangements approved by a Committee of the States where the power to make such arrangements is vested in statutory law, including subordinate legislation.

(Regard would have to be had by the Crown Officers as to whether any existing statutory legislation would be in contravention of the Race Relations Law.)

(N.B. see section 41 of the United Kingdom Race Relations Act 1976.)

- (d) *Special needs* - If a particular racial group has special needs as regards education, training, welfare or ancillary benefits, it shall not be unlawful to discriminate in favour of members of that group if it can be clearly demonstrated that their need can only be met by a restriction or preferential allocation.

Note: There will be no exemption to permit overt positive discrimination, e.g. it would be unlawful to discriminate in favour of a person on the grounds that he has been disadvantaged in the past and should therefore be helped to "catch up".

(N.B. see section 35 of the United Kingdom Race Relations Act 1976.)

**Part F - Incitement to racial hatred**

F1 - Introduction

As Jersey does not have the equivalent of Part III of the Public Order Act 1986 which covers all aspects of incitement to racial hatred there will need to be an article making it an offence to use threatening, insulting, abusive words or behaviour with the intention of stirring up racial hatred as well as when in all the circumstances racial hatred is likely to be stirred up. It should also cover the publication and broadcasting of such material through any media.

F2 - Acts intended or likely to stir up racial hatred will include -

- (a) use of words or behaviour or display of material, written or otherwise;
- (b) publishing or distributing written material;
- (c) public performance of play;
- (d) distributing, showing or playing a recording;
- (e) broadcasting or including programme in cable programme service;
- (f) possession of racially inflammatory material with a view to displaying, publishing, distributing, showing or



playing;

(g) computer websites, etc.

- F3 - The offence of incitement to racial hatred would be a criminal matter to be dealt with by the police.
- F4 - The penalty for incitement to racial hatred shall be a fine or a term of imprisonment not exceeding two years or both.
- F5 - As the laws of Jersey do not mirror those of the United Kingdom, there will need to be a wider political discussion about powers of entry, search (with or without a warrant) and forfeiture in cases involving racially inflammatory material.
- (N.B. see Part III, sections 18 to 29 inclusive of the United Kingdom Public Order Act 1986.)
- F6 - As the courts have flexibility over powers of sentencing which would take into account matters such as a racially motivated attack, it is not proposed to create a separate offence of aggravated racial assault, or interfere with the existing basis of the burden of proof.

## **Part G - Enforcement**

### G1 - Introduction

- G1.1 The proposals for enforcement are ones that are appropriate to Jersey in both resource demands and its administrative “tone” (see **Figure 1**).
- G1.2 There will be no equivalent of the Commission for Racial Equality which is far too bureaucratic, expensive and cumbersome for Jersey.
- G1.3 There would be a single Race Relations Officer to whom all non-criminal complaints would be addressed and initially vetted and s/he would be the person who would act as the filter through which such complaints must go - in a similar manner to the Data Protection Registrar.

Note: There will need to be a wider political discussion about the powers of the Race Relations Officer, e.g. low-grade functionary or fairly independent individual.

- G1.4 Exceptionally an individual who feels wronged may take a private civil action or seek a judicial review.

### G2 - Criminal offences

- Where a complaint is one of a criminal nature or an incitement to racial hatred the case will be referred to the police, who would thereafter take over all aspects of the investigation and preparation for the prosecution in the usual way.

### G3 - Discrimination in employment

- Where a complaint relates to discrimination in any aspect of employment (see Part B), the matter will be referred to the Jersey Advisory and Conciliation Service (JACS) to be set up by the Employment and Social Security Committee and, where appropriate, thereafter to an Employment Tribunal constituted under the provisions of the new employment law.\*

\*It is planned that the implementation of this Law and the new employment law will be concurrent.

### G4 - Other discrimination

- G4.1 Discrimination in other areas, namely education, housing, goods, facilities and services, clubs and associations, advertisements, pressure or instructions to discriminate (see Parts C and D) will be dealt with by way of a Race Relations Tribunal.
- G4.2 There would be a panel of adjudicators with a quorum of three sitting as a tribunal. They would be honorary and appointed by the States on a recommendation of the Policy and Resources Committee. They would be fair-minded

distinguished members of the community to whom the Race Relations Officer would allocate cases for adjudication, hopefully without the need for court proceedings ever being initiated by the Race Relations Officer, acting as executive officer on behalf of the Tribunal.

G4.3 Where a tribunal upholds a complaint, authority should be given to the Race Relations Officer on their instruction to issue a non-discrimination compliance notice to remedy situations that are in breach of the law. The decision to issue a compliance notice will be taken only after careful consideration of any representations made by respondents.

G5 - Right of appeal

G5.1 There will be a right of appeal against any decision of -

- (a) the Race Relations Officer;
- (b) the Race Relations Tribunal;
- (c) the Employment Tribunal.

Political discussions will need to take place as to the extent of the right of appeal, i.e. general or on fact of law.

G5.2 There will, of course, be the normal right of appeal against decisions of a lower court.

G6 - Education and promotion

The Race Relations Officer would communicate any race relations issues publicly to the Jersey community at large, perhaps in the form of Codes of Practice with the aim of preventing that particular type of discrimination ever occurring again.

G7 - Administering committee

It is felt that the appropriate administering committee for the Race Relations Officer and Race Relations Tribunal is the Policy and Resources Committee.

