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# National Origin, Equality and the UK's Domicile Law as it relates to Taxation

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## Press summary

Unlawful indirect race discrimination takes place in the UK if a public authority provides a service that affords a person of one national origin a social advantage over a person of another national origin unless there is a legitimate and proportionate objective that justifies that different treatment.

In the UK HM Revenue & Customs supply domicile rulings when requested to do so by individuals whose national origin is outside the UK which mean that, on average, they pay 16% less tax than persons of UK national origin on identical sources of income. This provides those persons of national origin outside the UK with a social advantage over those of origin in the UK by allowing them to command greater resources within society, which is a basis for affording social status, and so advantage. HM Revenue & Customs have publicly stated that there is no policy to justify this differentiation, it being the consequence of piecemeal legal development over 200 years that has created a situation which is now contrary to UK law on race discrimination.

## Executive Summary

This paper considers whether the UK's domicile laws are, in their application to taxation a cause of discrimination on the grounds of race and concludes that they are. This is because a person's domicile is determined on the basis of their national origin, which has since 2003 been a basis for discrimination on the grounds of race. Since that same date it has been illegal to provide a social advantage to a group on the grounds of their national origin.

The law of domicile when applied to UK taxation provides a social advantage by differentiating the tax burdens of two people with identical gross incomes from similar sources purely on the grounds of national origin, the payment of less tax by

one being considered a social advantage unavailable to the other. No legitimate policy reason exists for this practice which affords non-domiciled people a collective benefit worth at least £1 billion a year. HM Revenue & Customs are an active, though an indirect and unintentional party in this process by having to provide determination of a person's domicile status, which means that the discrimination results from the action of a public authority. Those suffering the discrimination are those of national origin from within the UK and who are domiciled within one of its constituent countries. Evidence suggests that this may be 53 million (88%) of the UK's 60 million resident population.

Because the case for illegal discrimination is proven one of two consequences must follow. Either:

1. those of UK domicile must be provided with the same basis of taxation as those who are not domiciled in the UK, or
2. those who are not domiciled must be given the same tax status as those who are domiciled in the UK.

In either event, the determination of a person's tax liability on the basis of their place of national origin is unlawful since it is contrary to the provisions of the Race Relations Act 1976 (as amended).

### **Domicile - a definition**

Domicile is not defined in English law, but broadly speaking a person is domiciled in the country in which they have their permanent home. A person acquires their domicile or origin at birth, from their father if their parents were married or their mother if they were not. This domicile can change if a child's parents adopt a new domicile before the child's sixteenth birthday. Thereafter a person can only change domicile by abandoning their domicile of origin and by adopting a domicile of choice. Long term residence in the UK, or even the adoption of UK nationality does not necessarily reflect the adoption of a UK domicile. Both might be pragmatic choices that do not prevent a planned return to the domicile of origin at some stage in the future, meaning that a person's country of origin can be their place of domicile for a considerable period even if, on occasion, they have never lived there. A more detailed discussion of this issue may be found in Appendix 1.

### **Domicile - its relevance in UK tax law**

The way in which a person is taxed to income tax, capital gains tax and inheritance tax in the UK depends upon their status in respect of:

- residence in the UK;
- ordinary residence in the UK;
- domicile.

Residence issues are not of concern here; there is no suggestion that residence status is determined contrary to the requirements of UK laws on discrimination.

In summary, the impact of domicile in UK taxation law is as follows (in each case it being assumed that the person being considered is resident and ordinarily resident in the UK):

<b>Domicile status</b>	<b>Income tax / capital gains tax</b>	<b>Inheritance tax</b>
<b>Domiciled in UK</b>	Taxpayer is liable to tax on their worldwide income and gains	Taxpayer is liable to tax on the value of their worldwide assets
<b>Not domiciled in the UK</b>	Taxpayer is only liable to tax on income and gains remitted (which in broad terms means paid) to the UK	Taxpayer is only liable to tax on the value of their assets located in the UK

It can immediately be seen that these rules mean that a person who is not domiciled in the UK might obtain a substantial reduction in their tax bill if they have either income or gains arising out of the UK which are not remitted to the UK, or if they have assets outside the UK. A more detailed description can be found in Appendix 2.

### **Domicile - the number of people affected**

We estimate that at least 7 million people in the UK might be able to claim non-domicile status. Our workings are noted in Appendix 3.

Although this might be the case, the number taking advantage of non-domiciled status is much lower according to official information. According to a report in Accountancy Age (08 Dec 2005):

*Non-domiciled people avoid £1bn of tax through their privileged tax status, according to the former Inland Revenue’s internal research.*

*According to documents released to Accountancy Age under the Freedom of Information Act, 77,000 individuals pay £5bn in UK taxes.*

This suggests that only 1.1% of those who are non-domiciled claim that status. Those who make that claim benefit from doing so by reducing their tax bill by an average of 16% according to this data.

### **Domicile - the process of making the claim**

HM Revenue & Customs will determine a person's domicile in one of two circumstances:

### 1. On application

A person may make application to be considered non-domiciled at any time although HM Revenue & Customs will only consider such an application when there is reason for them to do so i.e. when the question of how to tax a source of income whose taxable status changes depending upon a person's domicile is declared to them and the person making the declaration says that they do not wish to pay tax on that source of income as a result of their non-domiciled status.

It is important to note that this is the only positive process by which a person's domicile status may be agreed. The second test referred to below is a negative test.

It is also important to note that this is HM Revenue & Customs' clear preferred approach to agreeing this issue and, for example, the tax return page on non-residence and domicile (question 9.27) says "Have you submitted full facts to HM Revenue & Customs (for example, on forms DOM1 or P86) regarding your domicile in the six years ended 5 April 200X?" If the answer is no then it is highly likely that any person claiming to not be domiciled in the fashion noted as option 2 below will be subject to an enquiry and will have to complete one of those forms, of which only form DOM 1 relates to domicile as such, the other relating to residence and therefore being outside the scope of consideration here.

Finally, it should be noted that one interest paying offshore bank account is sufficient to trigger this issue. Interest income from such an account is always taxable when credited if paid to a person who is domiciled in the UK, but is taxed when remitted to the UK if paid to a person who is not domiciled.

It must be stressed that the person need not declare or claim that they are non-domiciled. If they do not they are liable on income arising outside the UK as if they are domiciled i.e. their taxation status is similar to that of all UK domiciled individuals. Therefore, and by clear implication, non-domiciled status is adopted by choice. The only rational reason for making that choice is that it provides the applicant with an advantage, which it always does (without exception for the applicant; the one case where non-domiciled status might increase a tax charge being under the rules of inheritance tax where transfers from a domiciled to a non-domiciled spouse are not exempt from the tax, but the charge is always on the domiciled spouse and as such the argument that non-domiciled status always affords advantage to the applicant remains true).

The Revenue use data supplied by the taxpayer on the application form (form DOM 1) to determine the person's domicile unless it is being determined solely for Inheritance tax purposes when form D2 is used instead. A copy of form DOM1 is attached as Appendix 6 for information purposes only.

Section B of form DOM1, which is the part that relates specifically to domicile, is relatively easy to complete, and with the assistance of even a moderately experienced accountant or lawyer answers to questions can quite easily be constructed that show that even modest ties with a country of original origin remain significant.

The most important questions are however in Section 19, which says:

19.
  - a. *What are your intentions for the future?*
  - b. *If you do not intend to stay permanently in the United Kingdom, when and in what circumstances do you envisage that your residence here will cease?*

These are the questions that are used to determine whether a domicile of choice in the UK has been adopted. It has only to be stated that a person intends to return to their country of origin in their retirement for this not to be the case. This intention is, of course, impossible to prove in most cases.

The reality is that this form reflects the fact that a domicile of origin outside the UK is hard to lose, even after quite considerable periods in the UK.

## **2. On submission of a tax return**

Under the UK's self assessment taxation system an individual need not submit a form DOM1 to claim non-domiciled status for the first time. They are only legally obliged to submit a tax return of their income, and might make application to be non-domiciled on that return. As noted above, however, if they fail to disclose the information required by form DOM 1 it is very likely that an enquiry requesting that information will be raised by HM Revenue & Customs. In that case circumstances with regard to consideration of form DOM 1 would then apply in the argument noted below. In the unlikely circumstance that an enquiry is not raised it is still the case the HM Revenue & Customs supply a service involving indirect discrimination for the reasons noted further below.

### **The Race Relations Act**

(Note: much of this section is based on information available from the Commission for Racial Equality website).

Under UK race relations law it is unlawful for a person to discriminate on racial grounds against another. The law defines racial grounds as including race, colour, nationality or ethnic or national origins.

It is not necessary to prove that a person intended to discriminate against the person suffering discrimination: it is only necessary to show that the person discriminated against received less favourable treatment as a result of what happened.

There are four main types of racial discrimination defined in law: direct, indirect, victimisation and harassment.

1. **Direct racial discrimination** occurs when a person is able to show that they have been treated less favourably on racial grounds than others in similar circumstances.
2. **Indirect racial discrimination** may fall into one of two categories depending on the racial grounds of discrimination. The first is on grounds of colour or nationality. This category of discrimination is not of consequence in the consideration of taxation and domicile. The second is on grounds of race, ethnic or national origin. This was introduced by the Race Relations Act (Amendment) Regulations 2003 to comply with the EU Race Directive. This is of significance to the use of domicile in taxation. This discrimination occurs when a provision, criterion or practice which, on the face of it, has nothing to do with race and is applied equally to everyone:
  - puts or would put people of the same race or ethnic or national origins at a particular disadvantage when compared with others; and
  - puts a person of that race or ethnic or national origin at that disadvantage; and
  - cannot be shown to be a proportionate means of achieving a legitimate aim.
3. **Victimisation** is not of concern with regard to domicile issues.
4. The definition of **harassment** applies when the discrimination is on grounds of race or ethnic or national origins, but not colour or nationality. A person harasses another on grounds of race or ethnic or national origins when he or she engages in unwanted conduct that has the purpose or effect of:
  - violating that other persons dignity; or
  - creating an intimidating or hostile, degrading, humiliating or offensive environment for them.

Harassment is unlawful in the context of employment, in the provision of goods, facilities, services and premises and when a public authority subjects

a person to harassment in the course of carrying out any functions of the authority which consist of the provision of:

- (a) any form of social security;
- (b) healthcare;
- (c) any other form of social protection; or
- (d) any form of social advantage.

The legislation on harassment is based directly on EU Regulation in this area. The term social advantage has been defined by the Commission as encompassing

*“benefits of a social or cultural nature which are granted within the Member States either by public authorities or private organisations”*. (‘The Starting Line And The Incorporation Of The Racial Equality Directive Into The National Laws Of The EU Member States And Accession States’ Isabelle Chopin and Jan Niessen (eds) Commission for Racial Equality, Migration Policy Group, 2001. )

Those same authors comment as follows:

*“The breadth of this concept has become evident in EU law on nationality discrimination, where it has been used to challenge discrimination in diverse areas, such as unemployment benefits, or public assistance with funeral expenses. Therefore, this is a valuable concept to apply in the area of racial discrimination.”*

**Are the UK’s laws of taxation based on the principle of domicile in conflict with the Race Relations Act 1976 (as amended)?**

Deciding whether this is the case would initially appear to depend upon whether these laws are in contravention of Section 1A of the Act. This section is reproduced in Appendix 5.

Note that this section is intended to create the concept of “indirect discrimination” on the grounds of national origin. This was one of the extensions to UK legislation required by the EU Race Directive. As such it is quite clear that the provisions of this section are different from those in Section 1 of the Act, which deal with direct discrimination. Section 1 deals with direct discrimination in circumstances described under Section 19B (1A), which requires harassment to have taken place. Section 1A in contrast deals with indirect discrimination “in any circumstances relevant for the purposes of any provision referred to in subsection (1B)” (which brings Section 19B (1A) within the scope of Section 1A). But if section 1A is to have any meaning it cannot require the same test with regard to the circumstances to which Section 19B (1A) refers that Section 1 requires or Section 1 would have already covered them. In other words, harassment does not have to be proved to have taken place for an offence to have occurred under Section 1A; it is

sufficient that indirect discrimination takes place in the supply of a service described by Section 19B (1A) for an offence to have occurred. As such, further consideration of the term “harassment” is not required in this paper even though the term is included in Section 19B (1A) since it is not a requirement that harassment occur for indirect discrimination to take place. Indeed, quite what indirect harassment might be is hard to imagine.

In that case it has only to be proved for an offence to be committed under Section 1A that there has been:

1. discrimination on the grounds of race or ethnic or national origin;
2. a provision by a public authority of one of the four services described.

There is clearly a public authority engaged in taxation matters; HM Revenue & Customs are entrusted with collecting tax on behalf of the Crown. HM Revenue & Customs are covered by the Race Relations Act as a result of the 2001 amendments to that Act.

It is equally clear that when they are considering domicile issues HM Revenue & Customs are not engaged in the supply of social security, health care or social protection services.

It can however be argued that they are, if they supply more favourable treatment to one group in society than another, providing a social advantage. In a society where income maximization to secure the benefits of consumption is considered the key indicator of success then this must also follow as being true since reducing the tax bill of one group when compared with another group who enjoy the same gross income from the same sources must provide social advantage to that group which is favoured by affording them a greater capacity to command resources out of which they might consume. The evidence noted above from official sources shows that those who successfully claim not to be domiciled reduce their tax bills, and therefore increase their capacity to consume by 16% on average. In that case it seems certain that social advantage is supplied as a consequence of the application of the domicile laws.

The question does remain though as to whether this social advantage arises from a “provision” by the public authority. There are two reasons why this is the case if a positive application for non-domiciled status is made on form DOM 1 or if HM Revenue & Customs request that information referred to on that form be supplied as part of an enquiry arising from submission of a tax return on which claim for non-domiciled status was made:

1. HM Revenue & Customs is an active agent in conferring this benefit in this case. They have to consider the information supplied by the taxpayer in either circumstance described before the status of being not domiciled is agreed. The agreement of that status by HM Revenue & Customs must be a



provision of a service from which the social advantage naturally follows, the matter not being considered unless and until some tax advantage is available to the applicant giving cause for the issue to be decided;

2. Whilst it is hard to see that assessing a person to tax is the provision of a service (even if HM Revenue & Customs like to describe taxpayers as “customers”) the supply of a discount against a tax bill on the basis of application for it having been made would appear to be a provision of service, and the only possible benefit that can arise from that supply is the advancement of the social advantage of the recipient.

If, the rare circumstance of a claim for non-domicile status being made by a person on a tax return without form DOM 1 having been submitted does not give rise to an enquiry and as such the discount against a person’s tax liability for reason of non-domiciled status is granted, in this case by default, there is still a supply of a service by HM Revenue & Customs in which indirect discrimination has occurred for two reasons:

- a. The tax return has been processed, which must be a service, and
- b. The liability will have been accepted as due by a positive process (either by sending the taxpayer an agreement to their calculations or by way of sending them a statement of account based on their submission, including the claim to be non-domiciled in this case), which is a positive process associated with a negative one, which none the less includes indirect discrimination, which is the decision of the Inspector processing the return to not raise an enquiry on a situation which grants a person a discount on their taxation liability as a consequence of their national origin.

As such it is clear that HM Revenue & Customs do make provision of a social advantage when either conferring non-domiciled status or when they agree it by default.

The final issue is, therefore, whether HM Revenue & Customs provide that social advantage for reason of difference in race, ethnicity or national origin? The answer is clearly that they do. Indeed, the whole intent of form DOM 1, which is used to determine the availability of this advantage, is that the applicant can prove their differentiation on these grounds. It is stressed, the differentiation is not by nationality or colour; (both of which are irrelevant in domicile matters), but is by reason of race, ethnicity or national origin.

There is therefore clear proof that the domicile laws enable HM Revenue & Customs to provide those who have a place of national origin outside of the UK with a social advantage from which tangible benefits accrue. It does not matter that they did not mean to do this, and that the race discrimination that results is not the consequence of conscious policy on their part. In other words, whether or not HM Revenue & Customs harass people is not relevant in determining this issue. This is because the introduction of the concept of “indirect discrimination” into

the Race Relations Act in 2003 meant that discrimination of this form occurs if (as is also noted above) the actions of the public authority when supplying one of the four noted services:

- puts or would put people of the same race or ethnic or national origins at a particular disadvantage when compared with others; and
- puts a person of that race or ethnic or national origin at that disadvantage; and
- cannot be shown to be a proportionate means of achieving a legitimate aim.

There are three tests here. In this case the first two are clearly easily proved:

1. people born in any country of the UK of parents giving them their domicile or origin who were also born of a line of persons born in the UK are people of a determinate national origin who are placed at a particular disadvantage by the application of the domicile laws for reason of having to pay more tax on certain sorts of income than other people resident in the UK of different national origin, and
2. in practice that disadvantage is real since it is clear that those who have non-domiciled status have according to HM Revenue & Customs' own data saved at least £1 billion in tax, so conferring them with a social advantage over those with a national origin in any of the countries in the UK.

It does therefore remain to be seen if the differentiation is a proportionate means of achieving a legitimate aim. It is hard to see how this can be the case when the Inland Revenue, as predecessors of HM Revenue & Customs, said in paragraph 1.2 of the April 2003 review paper on the residence and domicile laws that:

*The Government values a dynamic and open economy, and supports the international interchange of skills and expertise. However, the current rules determining residence and domicile have developed over the past 200 years, are complex and poorly understood, and do not reflect the reality of today's more integrated world. (Reviewing the residence and domicile rules as they affect the taxation of individuals: a background paper, April 2003, HM Treasury and Inland Revenue)*

It appears that the government accepts that:

1. these laws developed, and were not the consequence of a legitimate strategy determined to justify proportionate racial discrimination;
2. the laws are in need of reform and, therefore no longer have any legitimacy they might have possessed when first used.

Accordingly the third part of this test appears to be fulfilled. As such indirect racial discrimination is taking place and persons of national origin within any of the constituent countries of the United Kingdom are suffering social disadvantage as a consequence. The fact that they are a majority of the population does not matter; the existence of discrimination is the issue of concern. Since it exists the domicile laws must be revised to eliminate these grounds for discrimination.

On the basis of this argument that illegal discrimination is taking place one of two consequences must follow. Either:

1. those of UK domicile must be provided with the same basis of taxation as those who are not domiciled in the UK, or
2. those who are not domiciled must be given the same status as those who are domiciled in the UK.

## Appendix 1

### Domicile - a definition for tax purposes

The following definition of domicile is based on that in HM Revenue & Customs Inheritance Tax Manual (<http://www.hmrc.gov.uk/manuals/ihtmanual/ihtm13002.htm>, accessed 4-5-06) but because that is constructed in confusing grammatical style has been edited for these purposes without changing the intended meaning:

*Domicile is a legal term the purpose of which is to connect an individual to a territory that has a distinct system of law, e.g. England and Wales, Scotland, France. This law will regulate such issues as the validity of wills, marriages and civil partnerships. However, there is no precise or agreed definition of domicile. Broadly speaking, under English law a person is domiciled in the country in which they have made their permanent home. Other countries have their own definition of domicile.*

*Domicile is separate from other connecting factors such as nationality or residence. So, it is possible to be a national of the UK, resident (say) in Spain but domiciled (say) in Jersey. However, nationality and place(s) of residence will be relevant facts to consider when ascertaining a person's permanent home.*

*The mechanics of domicile ensure that a person has one, and only one, domicile. At birth under UK law a person is assigned a domicile of origin which is usually dependent upon the domicile of one of their parents (the father if the parents are married at the time of birth, the mother if not). While a person is under 16 their current domicile will change with any change in that parent's domicile (described as a domicile of dependence). After the age of 16 a person can change their domicile voluntarily by moving to another country permanently (adopting a domicile of choice)*

*This can be replaced with another domicile of choice. However, if a person leaves a domicile of choice for good but does not decide to live somewhere else permanently, their current domicile reverts to their domicile of origin.*

## Appendix 2

### The relevance of domicile in UK taxation

HM Revenue & Customs explain the importance of domicile with regard to taxation in their leaflet IR20 (<http://www.hmrc.gov.uk/pdfs/ir20.htm#domicile> accessed 4-5-06).

They give an overview as follows:

#### ***Tax treatment of those not domiciled in the UK***

***4.9 Those who are resident in the UK but not domiciled here receive special tax treatment in respect of income and gains arising outside the UK. For details, see paragraphs 5.12 and 6.2 (income tax) and 8.8 (capital gains tax). We will consider the question of your domicile only where this will affect your current tax liability.***

The paragraphs referred to are as follows:

***(5.11) We tax you on your other earned income from overseas sources on the remittance basis (see paragraph 5.12) if you are***

- *resident but not domiciled in the UK, or*
- *resident but not ordinarily resident in the UK, and either a Commonwealth citizen (which includes a British citizen) or a citizen of the Republic of Ireland.*

*The remittance basis does not apply to other types of earned income arising in the Republic of Ireland.*

***5.12 Where the remittance basis applies, you are liable to UK tax on the amount of your overseas income that is remitted to the UK. Income is remitted if it is paid here or transmitted or brought to the UK in any way. In working out your tax liability, we include all income remitted to the UK.***

*The remittance basis may also apply to any overseas investment income you receive (see paragraph 6.2) and to capital gains arising overseas (see paragraph 8.8).*

***6.2 If you are resident in the UK, you will normally pay UK tax on all your investment income, wherever it arises. The remittance basis will apply to overseas investment income (other than investment income arising in the Republic of Ireland) if you are***

- *resident but not domiciled in the UK, or*

- *resident but not ordinarily resident in the UK, and either a Commonwealth citizen (this includes a British citizen) or a citizen of the Republic of Ireland.*

*Where the **remittance basis** applies, you are liable to UK tax on the amount of your overseas investment income that is remitted to the UK. Income is remitted if it is paid here or transmitted or brought to the UK in any way. In working out your tax liability, we include all income remitted to the UK.*

**8.8 Overseas assets** *An overseas asset is one situated outside the UK under the capital gains tax rules. For assets such as land and most types of movable property the asset is situated where it is located. For other assets (for example shares and securities) the rules are more complex. Your Tax Office will be able to advise you further.*

*If you are resident or ordinarily resident in the UK, and dispose of overseas assets, you will normally be liable to capital gains tax on any gains arising. But if you are not domiciled in the UK, you are taxed on such gains only to the extent that they are received in or remitted to the UK in a tax year for which you are resident or ordinarily resident in the UK. There is no capital gains tax charge on gains remitted to the UK before you become resident in the UK. (See also paragraph 5.12 on the remittance basis.) Where the proceeds of a disposal are remitted, an appropriate proportion of the proceeds is treated as a remittance of the gain.*

This overview ignores the impact of domicile status on **Inheritance Tax**. This is summarised in the HMRC Inheritance Tax manual as follows (<http://www.hmrc.gov.uk/manuals/ihtmanual/ihtm13001.htm> accessed 5-5-06)

#### **HTM13001 - Domicile: Introduction**

*The law of domicile is of fundamental importance to IHT.*

*Firstly, as part of the overall legal framework within which the Act applies, e.g. it will determine the relevant (UK) rule for the succession to personal (movable) property, wherever situate, and thus help establish “who gets what”, and if to a spouse or civil partner the extent to which a relevant transfer is exempt.*

*Secondly, as one of the conditions for the limitation of the territorial scope of IHT (excluded property....). We are interested principally in the domicile of transferors/deceased for foreign free estate and the domicile of settlors in relation to foreign settled property, whether discretionary or fixed interest.*

*Domicile is also one of the conditions for leaving the value of non-sterling*

*bank accounts in the UK out of account so the subject is not exclusively concerned with foreign property.*

*Thirdly, as part of protective and anti-avoidance legislation spouse or civil partner exemption may be limited if the recipient is domiciled outside the UK long term residents of the UK and those who have emigrated recently may be treated as being domiciled in the UK for the purposes of IHT even though they have a domicile outside the UK under general law.*

*Lastly, domicile is relevant to the application of double taxation conventions. In particular the removal of property from the charge to IHT (again including property in the UK) or the giving of a tax credit will depend upon the “fiscal” domicile, by which we mean the domicile that applies for the purposes of the convention.*

What this summary fails to make clear is that for a person who is domiciled in the UK their world wide assets are subject to Inheritance Tax; for a person not domiciled in the UK only their assets in the UK are taken into account for the purpose of charging this tax. This is of substantial value to those who have mobile capital assets, who are usually the wealthiest in any society.

## Appendix 3

### The number of non-domiciled people

According to the Office for National Statistics 4.6 million people (7.9% of the population) in the UK come from ethnic minorities identified by not being white. (The UK Population: by ethnic group, April 2001. Source: ONS, accessed via <http://www.esrcsocietytoday.ac.uk/ESRCInfoCentre/facts/UK/index39.aspx?ComponentId=12534&SourcePageId=14975> on 5-5-06). The ONS also says that (Source : <http://www.statistics.gov.uk/cci/nugget.asp?id=1312> accessed 5-5-06):

- *In 2001, 4.9 million (8.3 per cent) of the total population of the UK were born overseas. This is more than double the 2.1 million (4.2 per cent) in 1951.*
- *The increase in absolute numbers of the foreign-born population between 1991 and 2001 was greater than in any of the preceding post-war decades. There was an increase of nearly 1.1 million over the decade to 2001 in line with the general trend of rising international migration over the same period.*
- *Among the foreign-born residents Europe was the most common continent of birth, and the Republic of Ireland the largest single country of birth in both 1971 and 2001. However, the proportion born in Europe fell between these years, from 51 per cent to 33 per cent, and in particular those born in the Republic of Ireland fell from 24 per cent to 11 per cent.*
- *There are large variations in the length of stay of foreign-born immigrants. Just over a third (34 per cent) of foreign-born migrants who came to the UK in the 1990s emigrated within four years of arrival. Migrants from OECD countries stayed on average for significantly shorter periods than those from non-OECD countries. In the 1990s, 50 per cent of foreign-born migrants from the OECD emigrated within four years of arrival compared with 23 per cent from non-OECD countries.*

It should be noted that:

1. You do not have to be born overseas to be non-domiciled, this status can be acquired from a non-domiciled father living in the UK at the time of a person's birth and can be retained for a considerable period;
2. Given the relatively short length of stay of many immigrants it is clear that many do not have a commitment to live in the UK in the long term, and many of these might be young, a fact that the ONS acknowledges.

None the less, these facts in combination suggest a substantial proportion of foreign born immigrants and those from ethnic minorities in the UK (the two groups



by no means overlapping) and totaling (assuming a 50% overlap) not less than 7 million people in all might qualify for non-domicile tax status at any time.

## Appendix 4

### What is racial discrimination?

**(Note: this section is based on information on the web site of the Commission for Racial Equality)**

*The Race Relations Act is concerned with people's actions and the effects of their actions, not their opinions or beliefs. Racial discrimination is not the same as racial prejudice.*

*It is not necessary to prove that the other person intended to discriminate against you: you only have to show that you received less favourable treatment as a result of what they did.*

*Under the Race Relations Act, it is unlawful for a person to discriminate on racial grounds against another. The Act defines racial grounds as including race, colour, nationality or ethnic or national origins.*

*To bring a case under the Race Relations Act, you have to show you have been discriminated against in one or more ways that are unlawful under the Act.*

*There are four main types of racial discrimination: direct, indirect, victimisation and harassment. The following text describes each in turn.*

#### **Direct racial discrimination**

*This occurs when you are able to show that you have been treated less favourably on racial grounds than others in similar circumstances. To prove this, it will help if you can give an example of someone from a different racial group who, in similar circumstances, has been, or would have been, treated more favourably than you. Racist abuse and harassment are forms of direct discrimination.*

#### **Indirect racial discrimination**

*Indirect racial discrimination may fall into one of two categories depending on the racial grounds of discrimination.*

*The first is on grounds of colour or nationality, under the original definition in the Race Relations Act.*

*The second is on grounds of race, ethnic or national origin. This was introduced by the Race Relations Act (Amendment) Regulations 2003 to comply with the EC Race Directive.*

### ***On grounds of colour or nationality***

*This occurs when an apparently non-discriminatory requirement or condition which applies equally to everyone:*

- *can only be met by a considerably smaller proportion of people from a particular racial group; and*
- *which is to the detriment of a person from that group because he or she cannot meet it; and*
- *the requirement or condition cannot be justified on non-racial grounds.*

*For example, a rule that employees or pupils must not wear headgear could exclude Sikh men and boys who wear a turban, or Jewish men or boys who wear a yarmulka, in accordance with practice within their racial group.*

### ***On grounds of race, ethnic or national origin***

*This occurs when a provision, criterion or practice which, on the face of it, has nothing to do with race and is applied equally to everyone:*

- *puts or would put people of the same race or ethnic or national origins at a particular disadvantage when compared with others; and*
- *puts a person of that race or ethnic or national origin at that disadvantage; and*
- *cannot be shown to be a proportionate means of achieving a legitimate aim.*

*The definition of indirect discrimination on the grounds of race, ethnic or national origin is in general terms broader than on the grounds of colour or nationality and as a result it may be easier to establish racial discrimination than previously on that ground.*

### ***Victimisation***

*This has a special legal meaning under the Race Relations Act. It occurs if you are treated less favourably than others in the same circumstances because you have complained about racial discrimination, or supported someone else who has. A complaint of racial discrimination means that someone has:*

- *brought proceedings under the Race Relations Act against the discriminator or anyone else; or*
- *given evidence or information in connection with proceedings brought by another person under the Race Relations Act; or*
- *done anything under the Race Relations Act or with reference to it; or*
- *alleged that a person has acted in a way which would breach the Race Relations Act. The complaint does not need to expressly claim discrimination when making the complaint.*

## **Harassment**

*The definition of harassment introduced by the Race Relations Act 1976 (Amendment) Regulations 2003 applies when the discrimination is on grounds of race or ethnic or national origins, but not colour or nationality. Harassment on grounds of colour or nationality amounts to less favourable treatment and may be unlawful direct discrimination.*

*A person harasses another on grounds of race or ethnic or national origins when he or she engages in unwanted conduct that has the purpose or effect of:*

- *violating that other persons dignity; or*
- *creating an intimidating or hostile, degrading, humiliating or offensive environment for them.*

*Harassment is unlawful not only in the context of employment, but also within:*

- *partnerships*
- *trade unions*
- *qualifying bodies*
- *vocational training; and*
- *employment agencies*

*It is also an unlawful form of discrimination in education, planning, within public authorities, in the provision of goods, facilities, services and premises, and in relation to the training and employment of barristers and advocates.*

**(Source - the Commission for Racial Equality website, accessed 8-5-06)**

## Appendix 5 - Relevant Race Relations Law (all from the Race Relations Act 1976 (as amended))

### *Racial discrimination*

*1A - A person also discriminates against another if, in any circumstances relevant for the purposes of any provision referred to in subsection (1B), he applies to that other a provision, criterion or practice which he applies or would apply equally to persons not of the same race or ethnic or national origins as that other, but -*

*(a) which puts or would put persons of the same race or ethnic or national origins as that other at a particular disadvantage when compared with other persons,*

*(b) which puts that other at that disadvantage, and*

*(c) which he cannot show to be a proportionate means of achieving a legitimate aim.*

*1B - The provisions mentioned in subsection (1A) are -*

*(a) Part II;*

*(b) sections 17 to 18D;*

*(c) section 19B, so far as relating to -*

*(i) any form of social security;*

*(ii) health care;*

*(iii) any other form of social protection; and*

*(iv) any form of social advantage;*

*which does not fall within section 20;*

*(d) sections 20 to 24;*

*(e) sections 26A and 26B;*

*(f) sections 76 and 76ZA; and*

*(g) Part IV, in its application to the provisions referred to in paragraphs (a) to (f).*

*1C - Where, by virtue of subsection (1A), a person discriminates against another, subsection (1)(b) does not apply to him.*

### **Harassment**

*3A. - (1) A person subjects another to harassment in any circumstances relevant for the purposes of any provision referred to in section 1(1B) where, on grounds of race or ethnic or national origins, he engages in unwanted conduct which has the purpose or effect of -*

*(a) violating that other person's dignity, or*

*(b) creating an intimidating, hostile, degrading, humiliating or offensive environment for him.*

*(2) Conduct shall be regarded as having the effect specified in paragraph (a) or (b) of subsection (1) only if, having regard to all the circumstances, including in particular the perception of that other person, it should reasonably be considered as having that effect..*

### **Public authorities**

*19B - (1A) It is unlawful for a public authority to subject a person to harassment in the course of carrying out any functions of the authority which consist of the provision of -*

*(a) any form of social security;*

*(b) healthcare;*

*(c) any other form of social protection; or*

*(d) any form of social advantage,*

*which does not fall within section 20."*

*(NB: For the elimination of doubt, Section 20 is concerned with providers of goods, facilities or services outside the public sector.)*

## **Appendix 6**

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