

**Paper for the Bills Committee on Race Discrimination Bill**

**A Table of Comparison of the provisions of the Race Discrimination Bill  
with those of the Race Relations Act 1976 of the United Kingdom**

- The clause numbers in the first column refer to the clause (and sub-clause) numbers in the Race Discrimination Bill (the Bill). The section numbers in the second column refer to the section (and subsection) numbers of the corresponding provisions in the United Kingdom Race Relations Act 1976 (RRA) as amended.
- The third column sets out the significant differences observed between the texts of the corresponding provisions. Differences originating from the need to adapt the provisions of RRA to the Hong Kong context are not regarded as significant for the purposes of this table.
- The fourth column contains comments on the observed significant differences, including legal or practical issues arising from the relevant provisions. In appropriate cases, brief information on the contents of the RRA provision is provided for easy reference.
- Key to Abbreviations:-
  - CA* – Court of Appeal
  - Cl/Cls* – clause/clauses
  - Connolly* – Michael Connolly, *Discrimination Law*, 2006 (the number following the citation gives the paragraph no. in the book)
  - EAT* – Employment Appeals Tribunal established under RRA
  - ECJ* – European Court of Justice
  - HL* – House of Lords
  - Reg* – regulation
  - Subcl/Subcls* – subclause/subclauses
  - Sec/ss* – section/sections
  - Subsec/subss* – subsection/subsections

| Clause      | Section               | Significant differences observed  | Comments   |
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| 1(1)        | 80(1)                 | The short titles are different.   |  |
| 1(2)        | 79(2)                 | None.   |  |
| 2(1)        | 78(1) & (5)           | The Bill usually follows the definitions found in RRA but each includes definition of terms or expressions not found in the other.  |  |
| 2(2) & (3)  | -                     | No equivalent in RRA.   |  |
| 2(4)        | 78(4)                 | None.   |  |
| 2(5) to (7) | -                     | No equivalent in RRA.   |  |
| -           | 78(2), (3), (6) & (7) | No equivalent in the Bill.  | Miscellaneous provisions concerning interpretation of terms or numbers in RRA.   |
| 3           | 75(1)                 | RRA refers specifically to Minister of the Crown, and acts done on behalf of the Crown by a statutory body or a person holding a statutory office. Subss (2) to (10) of the RRA section have not been included. | The expression “of a kind similar to an act done by a private person” (sec 85(1) of Sex Discrimination Act) has been held by HL in <i>R v Entry Clearance Officer, Bombay ex parte Amin [1983] 2 All ER 864</i> to mean acts “similar to acts that could be done by private persons” and quite different in kind from acts done in the course of formulating or carrying out government policy. The effect of the decision may have somewhat been mitigated by sec 19B of RRA, which applies specifically to public authorities but is not included in the Bill. |
| 4(1)(a)     | 1(1)(a)               | None.   | Cl 4(1)(a) covers <i>direct</i> discrimination.<br>Discriminatory motive is not required ( <i>R v Birmingham City Council ex parte Equal Opportunities Commission [1989] 1 All ER 769</i> ).   |

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|         |         |      | <p>Stereotyping was recognised as a form of direct discrimination in <i>Skyrail Oceanic Ltd v Coleman</i> [1981] ICR 864, CA and also in the recent HL case of <i>R (on the application of European Roman Rights Centre) v Immigration Officer at Prague Airport</i> [2005] 1 All ER 527.</p> <p>The prohibited ground need not be the sole ground for the less favourable treatment but it must be the principal or at least an important or significant cause of the less favourable treatment (<i>Owen &amp; Briggs v James</i> [1982] ICR 618).</p> <p>The test for “on the ground of” appears to be the “but for” test (<i>James v Eastleigh Borough Council</i> [1990] 2 All ER 607), but there is also judicial opinion suggesting that the test should be subjective (e.g. HL in <i>Chief Constable of West Yorkshire v Khan</i> [2001] 4 All ER 834).</p> <p>The legislation permits a claim based on the comparison with a hypothetical comparator. Only by excluding matters of race can one discover whether the differential treatment was on racial grounds (<i>Showboat Entertainment Centre Ltd v Owens</i> [1984] 1 All ER 836). The approach appears to be consistent with that adopted by HL in <i>James v Eastleigh Borough Council</i> [1990] 2 All ER 607.</p> |
| 4(1)(b) | 1(1)(b) | None | <p>Cl 4(1)(b) covers <i>indirect</i> discrimination.</p> <p>Subcl (1)(b) only applies if there is a “requirement or condition”, i.e. a must. In UK, CA has interpreted the expression strictly; mere preference is neither requirement nor condition (e.g. <i>Perera v Civil Service Commission &amp; the Department of Customs &amp; Excise</i> [1983] ICR 428).</p>  |

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|  |  |  | <p>“Can” in “can comply” has been held by HL in <i>Mandla v Dowell Lee [1983] 1 All ER 1062</i> to mean not “physically can” but “can in practice” or can consistently with the custom and cultural conditions of the racial group to which the complainant belongs.</p> <p>Whether “detriment” means “put under a disadvantage”. HL in <i>Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] 2 ALL ER 26</i> ruled that there could be a ‘detriment’ in the employment context where a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work and that, although an unjustified sense of grievance could not amount to a “detriment, it was not necessary to demonstrate any physical or economic consequence”.</p> <p>An important issue is how to determine the relative proportions of the claimant’s group and of others who can comply with the disputed requirement or condition. The choice of the pool of comparison is a question of fact (<i>Kidd v DRG (UK) Ltd [1985] ICR 405</i>, EAT). Appeal Courts did overturn lower courts’ choice of pools when they consider the choice was incorrect, e.g. <i>Jones v University of Manchester [1993] ICR 474</i>. In <i>Allonby v Accrington &amp; Rossendale College &amp; ors [2001] ICR 1189</i>, Sedley LJ expressed the view that he would prefer to characterise the identification of the pool as a matter neither of discretion nor of fact finding but of logic.</p> <p>Also an important issue is what constitutes a “considerably smaller” proportion. CA in <i>London Underground Ltd v Edwards (No. 2)</i></p> |
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|  |  |  | <p>[1999] ICR 494 held that since the disparate impact question would require to be resolved in an infinite number of different employment situations, an area of flexibility is necessarily applicable to the question whether a particular percentage was to be regarded “substantially smaller” in any given case. In <i>R v Secretary of State for Employment, ex parte Seymour-Smith &amp; Perez (No. 2)</i> [2000] ICR 244, Lord Nicholls held that a considerable disparity could be more readily established if the statistical evidence covered a long period and the figures showed a persistent and relatively constant disparity. In such a case, a lesser statistical disparity might suffice to show that the disparity was considerable than if the statistic covered only a short period or if they present an uneven picture.</p> <p>Lord Walker in <i>Secretary of State for Trade and Industry v Rutherford and anor</i> [2006] 4 All ER 577 ruled that after the pool has been decided, one should look at the relative percentages in the advantaged group. Only if the disparity in the disadvantaged group is shown to be extraordinary should it be considered.</p> <p>Once a prima facie case is established, the discriminator has the evidential burden to show that the requirement or condition is justifiable. It has been held in <i>Hampson v Department of Education and Science</i> [1990] 2 All ER 25 that in considering whether a condition is justifiable an objective balance had to be made between the discriminatory effect of the condition and the reasonable needs of the person who applied the condition.</p> |
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|             |   |                       | <p>The test for justification is further provided in subcls (2) to (5). Please see comments below.</p> <p>Subss (1A)-(1C), which are not included in the Bill, have been inserted in RRA after sec 1(1) by the Race Relations Act 1976 (Amendment) Regulation 2003 SI2003/1626 reg. 3. The newly added subss are made to implement EU Council Directive 2000/43/EC. Subs(1A) refers to “provisions, criterion or practice”, which have been considered by academic opinion to be broader than “requirement or condition” in subs (1)(b), and is therefore able to cover mere preferences, thus reversing the effect of the decision in <i>Brook v Haringey London Borough Council</i> [1992] IRLR 478 (Connolly, 6-006).</p> <p>Instead of “comply with”, sec 1(1A) refers to “puts ... at a particular disadvantage”. Also instead of “justifiable”, reference is made to “a proportionate means of achieving a legitimate aim”. The Bill seems to have attempted to include the last mentioned provision in the following subcls. Please see comments below.</p> |
| 4(2) to (5) | - | No equivalent in RRA. | <p>It is not very clear what the subcls intend to achieve. Subcl (2)(a) appears to have adopted the test stipulated by ECJ in <i>Bilka-Kaufhaus GmbH v Weber von Hartz</i> [1987] ICR 110. However, subcls (2)(b), (3) &amp; (4) seem to follow CA decision in <i>Hampson v Department of Education and Science</i> [1990] 2 All ER 25. The view that the two cases could be harmonized may not be entirely accurate (Connolly, 6-031).</p>  |

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| 4(6) | 1(2)     | None.   | Despite this express provision, EAT in <i>FTATU v Modgill; Pel Ltd v Modgill [1980] IRLR 142</i> held that acquiesced segregation without positive action on the part of the employer was not less favourable treatment.   |
| 5    | -        | No equivalent in RRA.   | This provision appears to intend to incorporate UK case law which held that “on the ground of” would cover discrimination against a person for his/her association with another person, such as spouse or child.   |
| 6    | 2        | The Bill has added a reference to “or any other person (“the third person”)”. | English case law has established that victimisation must be caused by (“by reason that”) the victim having done any of the acts specified in sec 2(1). Otherwise, the person victimized would not be protected, e.g. in <i>Waters v Commissioner of the Police of the Metropolis [1997] ICR 1073</i> . What effect the addition in the Bill of a reference to “the third person” would have on the scope of protection afforded under this cl is not immediately clear.<br><br>What should be the comparator in determining what is less favourable treatment is still a controversial issue as illustrated by a number of UK cases, e.g. <i>Cornelius v University College of Swansea [1987] IRLR 141</i> ; <i>Chief Constable of West Yorkshire v Khan [2001] 4 All ER 834</i> ; and <i>Brown v TNT Express Worldwide [2001] ICR 182</i> . The case law seems to suggest that acting honestly and reasonably on the <i>existence</i> of proceedings may not be regarded as acting against the <i>bringing</i> of such proceedings. |
| 7(1) | 3A(1)(a) | The Bill covers expressly harassment on the ground of the race of the near    | It is unclear whether “unwelcome” is intended to signify a lesser or higher degree of “unwantedness” of the conduct.   |

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|      |          | <p>relative of the person harassed.</p> <p>RRA refers to “unwanted conduct”. CI 7(1) has instead employed the term “unwelcome conduct” and specifically includes an oral or written statement.</p> <p>Sec 3A(1)(a) refers to unwanted conduct that has the purpose or effect of “violating the other person’s dignity”, but the Bill refers to unwelcome conduct that a reasonable person would have anticipated that the victim would be “offended, humiliated or intimidated by that conduct”.</p> | <p>CI 7(1) stipulates an objective test of a reasonable man. It seems to follow <i>Driskel v Peninsula Business Services Ltd.</i> [2000] IRLR 151.</p>   |
| -    | 3A(2)    | No equivalent in the Bill.   | <p>Sec 3A(2) applies to sec 3A(1)(a). It requires the perception of the person subject to harassment to be part of all the circumstances to be considered in determination of the effect of the unwanted conduct. As the Bill does not contain any similar provision, it is not clear whether the reasonable man test includes this requirement.</p> |
| 7(2) | 3A(1)(b) | <p>The Bill covers expressly harassment on the ground of the race of a near relative of the victim and harassment by more than one person jointly.</p> <p>RRA covers also “degrading or offensive environment”, but the Bill</p>   | <p>The reason for expressly providing here, but not in subcl (1), for harassment by more than one person jointly is not clear.</p> <p>CI 7(2) would provide no protection if a person is harassed by his/her neighbours or public officers or in a recreational or receiving service context.</p>  |

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|               |      | only refers to hostile or intimidating environment “in which the victim works, studies or undergoes training, or carries out related or incidental activities”. |   |
| 8(1)(a)       | -    | No equivalent in RRA.   | Definition of “race”.   |
| 8(1)(b) & (d) | 3(1) | Nationality is not included in the local definition of “racial” and “racial group”.   | The exclusion of a major ground of discrimination might reduce the overall effectiveness of the Bill.   |
| 8(1)(c)       | -    | No equivalent in RRA.   | Restricted the meaning of discrimination on the ground of descent.  |
| 8(2) & (3)    | -    | Ditto.  | New Territories indigenous inhabitants and “new immigrants” are expressly excluded.<br><br>In the light of the interpretation of “ethnic origin” by HL in <i>Mandla v Dowell Lee [1983] 1 All ER 1062</i> , the provisions of cl 8 do not seem to exclude ethnic groups based on provincial or regional divisions. Hence, “new immigrants” who are members of such groups or other minority races in China may have a claim if they could rely on a condition or requirement that is not one of the matters specified in subcl (b), (c) and (d). .<br><br>It is not clear whether nationality is expressly excluded for considerations other than those applicable to the “new immigrants”. |
| 8(4)          | 3(2) | None.   |   |
| -             | 3(3) | No equivalent in the Bill.  | The construction of the expressions “discrimination” and “racial discrimination” employed in RRA.   |

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| 8(5)          | 3(4)       | None.  | In <i>Shamoon v Chief Constable of the RUC [2003] 2 ALL ER 26</i> , which concerned similar provisions in the Sex Discrimination Act, HL held that sec 3(4) applied to sec 1(1) as a whole, i.e. circumstances must not be altered for both the “less favourable treatment” and “on the ground of sex”. |
| 8(6)          | -          | No equivalent in RRA.  | The provision seems to intend to make the principle applicable to a comparison under cl 4(1) as stated in subcl (5) equally applicable to a comparison under cl 5.  |
| 9             | -          | Ditto.   | The provision appears to override the effect of some UK cases (e.g. <i>Owen &amp; Briggs v James [1982] ICR 618</i> ) that required discrimination to be a substantial factor in the decision.  |
| 10(1) & (2)   | 4(1) & (2) | None.  |   |
| 10(3)         | 4(3)       | RRA refers to “private household” and the Bill refers to an employer employing not more than 5 persons.<br><br>RRA excludes discrimination on grounds of race, ethnic or national origins. | The local provision is an exception created for business having not more than 5 employees.  |
| 10(4) & (5)   | -          | No equivalent in RRA.  | Subcl (4) excludes from the application of cl 4 to continuing provisions relating to death or retirement in employment existing before the commencement date of the enacted Bill. Subcl (5) provides for exceptions to subcl (4).   |
| 10(6)         | 4(4)       | None.  |   |
| 10(7) to (10) | -          | No equivalent in RRA.  | Subcl (7) makes an exception in respect of employment to perform domestic duties on premises in which the employer or his or her near   |

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|              |             |   | relative resides.  |
| 2(3)         | 4(4A)       | None.   | The provisions appear to cover cases involving non-renewal and constructive dismissal.   |
| -            | 4A          | No equivalent in the Bill.  | The provision creates an exception to discrimination on grounds of race or ethnic or national origins for genuine and determining occupational requirements. It was added in 2003 by IS2003/1626 reg.7.  |
| 11           | 5(1) & (2)  | None.   |  |
| -            | 5(3) & (4)  | No equivalent in the Bill.  | Subsec (3) provides that the requirements in subsec (2) apply to some as well as all of the duties of a job. Subsec (4) creates an exception to the application of subsec (2).   |
| 12           | 6           | In RRA, discrimination on ground of race, ethnic or national origins is excepted from this exception. | The difference results from an amendment effected by SI2003/1626 reg. 9.   |
| 13           | -           | No equivalent in RRA.   | An exception is made for employment requiring special skills, knowledge or experience not readily available in Hong Kong when the recruitment is done overseas. The questions are how and by whom the fact of not readily available in Hong Kong should be determined. |
| 14           | -           | Ditto.  | An exception is made for existing employment on local and overseas terms of employment.  |
| 15(1) to (4) | 7(1) to (4) | None.   | Minor amendments effected by IS2003/1626 reg. 10 not included.   |
| 15(5)        | -           | No equivalent in RRA.   | The subcl creates an exception which corresponds to the exception made in cl 13.   |
| 15(6)        | 7(5)        | None.   |  |

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| 16(1)              | 8(1)               | The local provision is the same as the RRA provision before the 2003 amendments.   | The amendments effected by IS2003/1626 reg 11 extend the scope of the coverage to an employee who does his/her work partly in UK. An employee who does work wholly outside UK is also covered if the conditions stipulated in subsec (1A) are satisfied. |
| 16(2)              | 8(2)               | The effect of the local provision is similar to the RRA provision before the latter being repealed by Equal Opportunities (Employment Legislation) (Territorial Limits) Regulations SI1999/3163 reg 3(1), (3). |  |
| 16(3) to (4)       | 8(3) to (4)        | None.  |  |
| -                  | 8(5) to (7)        | No equivalent in the Bill.   | RRA allows exceptions to be made by Order in Council concerning exploration of the sea bed or subsoil or the exploitation of their natural resources.  |
| -                  | 9                  | Ditto.   | Exception for seaman recruited abroad.   |
| 17(1) to (3) & (6) | 10(1) & (2) to (4) | None.  |  |
| -                  | 10(1A)             | No equivalent in the Bill.   | The limitation to 6 or more partners does not apply to discrimination on grounds of race or ethnic or national origins.  |
| 17(4), (5) & (7)   | -                  | No equivalent in RRA.  | Subcl (4) excludes continuing provisions relating to death or retirement for a person made before the commencement date of the enacted Bill from the application of subcl (1)(b) and (d). Subcl (5) provides for exceptions to subcl (4).                |
|                    | 10(5)              | No equivalent in the Bill.   | Subsec (5) refers to limited liability partnership.  |
| 2(3)               | 10(6)              | None.  | The provisions appear to cover cases involving non-renewal and   |

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|              |                    |   | constructive dismissal.  |
| 18(1) to (3) | 11(1) to (3)       | The Bill also covers an organization of both workers and employers. |  |
| 18(4) to (6) | -                  | No equivalent in RRA.   | Subcl (4) concern provisions relating to death or retirement from work of a member of an organization. Subcl (5) makes an exception for an organization of a particular racial group defined otherwise than by reference to colour and established before the enactment of the Bill. |
| 19(1)        | 12(1)              | None.   |  |
| 19(2) & (3)  | -                  | No equivalent in RRA.   |  |
| 19(4)        | 12(3)              | None.   |  |
| 19(5)        | 12(2)              | Ditto.  |  |
| 20(1)        | 13(1)              | Ditto.  |  |
| 20(2)        | -                  | No equivalent in RRA.   | Excluding holidays and medium of instruction from being regarded as discriminatory arrangements.   |
| 20(3)        | 13(2)              | None.   |  |
| 21           | 14(1) & (3) to (6) | Ditto.  |  |
| -            | 14(2)              | No equivalent in the Bill.  | Discrimination relating to service provided pursuant to arrangements made or a direction given under sec 10 of the Employment and Training Act 1973.   |
| -            | 15                 | Ditto.  | Training commission etc.   |
| 22           | -                  | No equivalent in RRA.   |  |
| 23           | -                  | Ditto.  |  |
| 24(1) & (2)  | 4(2A)              | None.   |  |
| 24 (3)       | -                  | No equivalent in RRA.   |  |

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| 24(4)         | 7(3A)        | None.   |  |
| 24(5)         | -            | No equivalent in RRA.   |  |
| 24(6) & (7)   | 10(1B) & (2) | None.   |  |
| 24(8) to (12) | -            | No equivalent in RRA.   |  |
| 25(1)         | -            | Ditto.  |  |
| 25(2)         | 12(1A) & (3) | None.   |  |
| 25(3)         | 13(3) & (4)  | Ditto.  |  |
| 25(4)         | 14(1A)       | RRA applies to the employment agency, but the Bill applies to the person operating the agency and the staff of such agency. | The Bill appears to intend to avoid the problem with liabilities of corporations. Who is the person operating an agency in the context of a corporation or a firm is not entirely clear. |
| 26(1)         | 17(1)        | None.   | RRA puts in column 2 of the table to sec 17 the responsible body for each educational establishment listed.  |
| 26(2)         | -            | No equivalent in RRA.   | Arrangements regarding holidays and medium of instruction are excluded.  |
| -             | 17A to 18D   | No equivalent in the Bill.  | These provisions apply to educational and training councils and agencies in England, Wales and Scotland.   |
| -             | 19           | Ditto.  | The provision relates to general duty in public sector of education and has been repealed by Race Relations (Amendment) Act 2000.  |
| -             | 19A          | Ditto.  | Discrimination by planning authorities.  |
| -             | 19B          | Ditto.  | The provision applies to public authorities.   |
| -             | 19C          | Ditto.  | Excepting certain judicial and legislative acts from sec 19B.  |

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| -                | 19D                 | Ditto  | Excepting from sec 19B certain acts in immigration and nationality cases.   |
| -                | 19E                 | Ditto.   | Monitoring of exception in relation to immigration and nationality cases.   |
| -                | 19F                 | Ditto.   | Exceptions from sec 19B for decisions not to prosecute etc.   |
| 27               | 20                  | None except in subsec (2)(g) RRA refers to “local or public authorities” but the Bill in subcl (2)(h) refers to any department of the Government or any undertaking by or of the Government. | It is not entirely clear what is meant by “undertaking by or of the Government”.  |
| 28(1) to (3)     | 21(1), (2) & (3)    | RRA takes discrimination on grounds of race or ethnic or national origins out of the exception provided in subsec (3), which is equivalent to subcl (3).                                     | The taking out is the result of an amendment effected by IS2003/1626 reg 23(2)(b).  |
| 28(4)            | -                   | No equivalent in RRA.  | The expression “power to dispose” is defined.   |
| 29(1), (2) & (4) | 24(1)(a), (2) & (4) | RRA takes discrimination on grounds of race or ethnic or national origins out of the exception provided in subsec (2), which is equivalent to subcl (2).                                     | The taking out is the result of an amendment effected by IS2003/1626 reg 26(2)(b).  |
| 29(3)            | -                   | No equivalent in RRA.  | It is expressly stipulated that the provision applies to tenancy created <b>before</b> the enactment of the Bill as well as those created <b>on or after</b> the enactment. |
| -                | 24(3)               | No equivalent in the Bill.   | Meaning of “small premises” defined in sec 22(2) also applies here.   |
| 30(1) & (2)      | 22                  | None except RRA excludes from the exception discrimination on ground of  | The exclusion results from the amendment made by IS2003/1626 reg 24.  |

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|              |                     | race, ethnic or national origins.  |  |
| 30(3)        | -                   | No equivalent in RRA.  | CE has power to vary the number in cl 30(2)(b).  |
| 31 & 32      | -                   | Ditto.   |  |
| 33(1)        | 23(2)               | None.  |  |
| 33(2)        | 23(1)               | Ditto.   |  |
| 34           | -                   | No equivalent in RRA.  |  |
| 35(1) to (4) | 26A(1) to (3) & (4) | None.  |  |
| -            | 26A(5)              | No equivalent in the Bill.   | The sec does not apply to Scotland.  |
| 36           | 25                  | RRA applies to an association that has not less than 25 members. The Bill applies to a club as defined in cl 2, its committee of management and a member of its committee. | By virtue of the definition of “club”, cl 36 is more restricted in scope of coverage than sec 25, which applies to all association not covered by sec 11 and having not less than 25 members.                        |
| 37(1) & (2)  | 26                  | Cl 37 provides for exceptions to cl 36 and therefore relates to clubs. Sec 26 provides exception to sec 25 which relates to association.                                   | The basic idea that underlies the exception to be made under the respective provisions is the same.  |
| 37(3) to (5) | -                   | No equivalent in RRA.  | It is not clear what these provisions would add to the effect of cl 37(1).   |
| 38(1)        | 17(2)               | None.  |  |
| 38(2) to (4) | -                   | No equivalent in RRA.  | The prohibition as well as the protection against harassment applies to a member of the staff and a student of an educational establishment and to a person seeking to be a student of an educational establishment. |

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| 39(1)        | 20(3)        | None.  |  |
| 39(2)        | 21(2A)       | RRA also covers person who occupies the premises.  | Whether the expression “applies for” is appropriate, as a matter of drafting, to cover also the competitive offers in private sector.  |
| 39(3)        | -            | No equivalent in RRA.  | The protection afforded to the person <b>occupying</b> the premises is against harassment by the person who <b>manages</b> the premises but not against that by the person who has <b>power to dispose</b> of the premises. The assumption appears to be that the person who has power to dispose is also the person who manages the premises. |
| 39(4)        | 24(1)(b)     | None.  |  |
| 39(5) & (6)  | -            | No equivalent in RRA.  |  |
| 39(7)        | 26A(3A)      | None.  |  |
| 39(8)        | 26A(3)       | Ditto.   |  |
| 39(9) & (10) | -            | No equivalent in RRA.  |  |
| 40(1) to (3) | 27(2) to (4) | Instead of “hovercraft”, references are made in the Bill to “dynamically supported craft”.<br><br>In subcl (3), there is a specific reference to “ship, aircraft or dynamically supported craft belonging to or possessed by the Government”, which does not appear in the corresponding provision of RRA. | The effect of subcl (1) is to restrict the application of Part 4 of the Bill. It is not clear why “ship, aircraft or dynamically supported craft belonging to or possessed by the Government” need to be specifically mentioned in subcl (3).  |
| 40(4)        | 27(5)        | RRA refers to a <b>country</b> outside Great Britain and the Bill refers to a <b>place</b>   |  |

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|             |             | outside Hong Kong.   |  |
| 40(5)       | 27(1)       | None.  |  |
| -           | 27A         | No equivalent in the Bill.   | This provision is added by SI2003/1626 reg. 29. The provision has the effect of overriding <i>Adekeye v Post Office (No.2) [1997] ICR 110</i> , in which CA held that discrimination in a post-dismissal appeal fell outside the scope of RRA. The decision has been overruled by HL in <i>Relaxion Group plc v Rhys-Harper [2003] 4 All ER 1113</i> . |
| 41          | 28          | The Bill does not have any provision corresponding to subsec (1)(b).   | Subsec (1)(b) refers to “provision, criterion or practice” that corresponds to sec 1(1A), which has not been included in the Bill.   |
| 42(1)       | 29(1)       | None.  |  |
| 42(2)       | 29(2)       | The formulation of the local provision is much shorter than the English provision but the effect is largely the same.                                  |  |
| -           | 29(3)       | No equivalent in the Bill.   | An exception is made in respect of advertisement for overseas employment of class of persons defined otherwise than by reference to race, colour or ethnic or national origins.  |
| 42(3)       | -           | No equivalent in RRA.  |  |
| 42(4) & (5) | 29(4) & (5) | None.  |  |
| 43          | 30          | None except the RRA contains a reference to sec 76ZA and sec 76.   |  |
| 44          | 31          | RRA merely says “induce” in subsec (1) and hence “inducement” in subsec (2). The Bill qualifies “induce” with “by offering to provide ... any benefit” | The local formulation appears to be more restrictive in scope. It is not clear what policy or other considerations, if any, have caused the difference in drafting.  |

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|       |             | and “subjecting or threatening ... to any detriment” in subcl (1) and hence refers to “an offer or threat” in subcl (2).<br>RRA also refers to sec 76ZA and sec 76. |   |
| 45    | -           | No equivalent in RRA.   | It is not clear what are intended to cover by the expression “activities in public”. It remains an open question whether, for example, preaching in a mosque, speech at a gathering of members of an association or a study group, or teaching a class of pupils or students falls within the cl.<br><br>It is not clear by what criteria contempt or ridicule is to be judged as “serious” or “severe”. Also it is unclear whether only a successful incitement would constitute the offence or a reasonable man test is applicable in determine if there has been incitement to hatred. |
| 46    | -           | Ditto.  | It is not clear what the constitutive elements of the new offence are.  |
| 47    | 32          | None.   | Subsec (1) of RRA already contains the provisions of subcl (4).   |
| 48    | 33          | Ditto.  |   |
| 49(a) | -           | No equivalent in RRA.   |   |
| 49(b) | 35          | RRA is restricted to services and facilities provided to meet the special needs in education, training, welfare or any other ancillary benefits.                    | There are <i>dicta</i> on the effect of sec 35 in the judgment in <i>Conwell v Newham London Borough Council [2000] 1 All ER 696</i> but no full argument on the point was heard.   |
| 49(c) | -           | No equivalent in RRA.   |   |
| 50    | 34(2),(3) & | None other than the special provisions  |   |

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|       | (4)    | for Scotland.  |   |
| -     | 34(1)  | No equivalent in the Bill.   | The cl alters the legal effect of a provision in a charitable instrument which operates to conferring benefits on persons of a class defined by reference to <b>colour</b> .  |
| -     | 34(3A) | Ditto.   | Unlawful acts on the ground of race or ethnic or national origins by virtue of sec 4 or 7 are excluded from application of subsec (2)(b).   |
| -     | 36     | Ditto.   | Provision of education or training for persons not ordinarily resident in Great Britain.  |
| 51(1) | 37(1)  | None except paragraph (ii) specifies that what to be compared are <b>proportions</b> whilst the corresponding paragraph (d) of the Bill compares <b>numbers</b> .  | It is not clear what is intended to be compared when paragraph (d) of the Bill states the number of persons doing the work was “comparatively small”. See also comments on cl 52 below.   |
| -     | 37(2)  | No equivalent in the Bill.   | The provision is similar to subsec (1) except that it applies to an area in Great Britain when the condition for the operation of subsec (1) is not met for the whole of Great Britain.   |
| 51(2) | 37(3)  | They have the same effect in their respect context.  |   |
| 52    | 38     | Subcl (1) combines subss (1) and (2).<br>Subcl (2) combines subss (3) and (4).<br>Subcl (3) is equivalent to subsec (5).<br>Subsec (6) (applying the meaning of employment at an establishment in Great Britain) is not included.<br><br>Whilst in subsec (2)(b) and (4)(b), the | It is not entirely clear what numbers should be compared in the compulsory comparison provided in subcls (1)(d) and (2)(d). There are a number of possibilities; e.g. comparing the number of the target racial group to the number of total employees doing that work, or comparing the number of the target racial group with that of any other racial group doing that work. Since the available resources for training would not be unlimited, it is not clear how competitive claims |

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|          |               | comparison is between <b>proportions</b> , the corresponding local provisions in subcl (1)(d) and (2)(d) provide for comparison between <b>numbers</b> . RRA further sets out details of the groups to be compared. The corresponding local provisions are much more concise. | of members of different racial groups of equal standing are to be dealt with.   |
| -        | 39            | No equivalent in the Bill.  | Sports and competitions.  |
| 53       | 40            | None.   |   |
| 54 & 55  | -             | No equivalent in RRA.   |   |
| 56       | 41            | RRA sets out in detail the nature of the statutory provisions, e.g. instrument made under enactment and Order in Council. It also excludes from the exception unlawful acts under sec 1(1)(1B).   |   |
| 57 to 59 | -             | No equivalent in RRA.   | Exceptions cater for local circumstances.   |
| -        | 42            | No equivalent in the Bill.  | Acts safeguarding national security.  |
| 60(1)    | 43(1)         | Paragraphs (c), (d) and (f) of the subcl has no equivalent in RRA.  |   |
| -        | 43(1A) to (4) | No equivalent in the Bill.  | These provisions cater for Commission for Racial Equality (CRE) in UK. Similar provisions applicable to the Equal Opportunities Commission (EOC) have already been provided in another local Ordinance. |

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| 60(2) &(3)    | -            | No equivalent in RRA.  |  |
| 61            | -            | Ditto.   | EOC has the duty to keep Schedule 5 under review.  |
| 62 & 63       | -            | Ditto.   | They are the usual operational provisions.   |
| -             | 44 to 46     | No equivalent in the Bill.   | These provisions relate to certain powers and duties of CRE.                                       |
| 64(1)         | 47(1)        | RRA specifies the fields in which discrimination and harassment are to be eliminated and does not contain any reference to vilification. The Bill provides generally for elimination of discrimination, harassment and vilification, and promotion of equality of opportunity and harmony between racial groups. |  |
| 64(2) to (10) | 47(2) to (8) | The procedures for preparing a code of practice are different in details but are broadly similar.  |  |
| 64(11)        | -            | No equivalent in RRA.  | Express power given to EOC for providing transitional and saving provisions in a code of practice. |
| 64(12) & (13) | 47(9) & (11) | None.  |  |
| 64(14)        | 47(10)       | None.  |  |
| 64(15)        | -            | No equivalent in RRA.  | The provision defines “sitting” for the cl.  |
| 65            | 48(1)        | None.  |  |
| -             | 48(2) to (3) | No equivalent in the Bill.   | The provisions relate to appointment of additional commissioner and power to delegate.             |

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| 66                  | 49           | None. Subcls (4) and (5) together are equivalent to subsec (4). Subcls (6) and (7) together are equivalent to subsec (5).  | It has been held that sec 49(4) requires CRE to have reasonable belief before it may embark on any formal investigation ( <i>In re Prestige Group plc [1984] IRLR 166</i> ). The legislative history shows that subsec (4) was inserted not for that purpose and should have been a new section 50 for the purpose of giving the person to be investigated a right to make representation. |
| 67                  | 50(1) to (6) | None.  |  |
| -                   | 50(7)        | No equivalent in the Bill.   | RRA stipulates the place for instituting criminal proceeding which is not relevant in local circumstances.   |
| 68                  | 51           | None.  |  |
| 69                  | 52           | None.  |  |
| 70                  | 53(1) & (2)  | None.  |  |
| -                   | 53(3) & (4)  | No equivalent in the Bill.   | Subsec (3) concerns Scotland and subsec (4) excepts from the application of subsecs (2) and (3) proceedings relating to government appointments other than those constitute an employment relationship.  |
| -                   | 54 to 57A    | Ditto.   | The provisions concern jurisdiction of Employment Tribunals, and burden of proof and remedies available in proceedings before such Tribunals.  |
| 71(1)(a), (b) & (c) | 57(1)        | The Bill seems to allow a claim in tort to be made on behalf of the person being discriminated or harassed. RRA excludes a claim under sec 26A or 26B not on the ground of race or ethnic or national origins. |  |
| 71(1)(d)            | -            | No equivalent in RRA.  |  |

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| 71(2)       | -                  | Ditto   |   |
| 71(3)       | 57(2)              | None except that RRA also makes specific provision for Scotland.  |   |
| 71(4) & (5) | -                  | No equivalent in RRA.   |   |
| 71(6) & (7) | 57(3) & (4)        | None.   |   |
| -           | 57(4A) to (7)      | No equivalent in the Bill.  | These provisions contain procedural restrictions in respect of certain proceedings that do not seem to have any equivalent in the Bill.       |
| -           | 57ZA               | Ditto.  | The provision concerns the burden of proof in county and sheriff courts.  |
| -           | 57A                | Ditto.  | Restrictions on bringing proceedings in respect of claims under sec 19B in immigration cases.   |
| 72          | 58(1) to (4) & (7) | None except subcl (2)(a), in which specific reference is made to discontinuing or changing of practices or other arrangements which occasioned the unlawful acts. |   |
| -           | 58(5)              | No equivalent in the Bill. Subsec (6) has been repealed by Race Relations (Amendment) Act 2000.   | RRA affords the person, against whom a non-discrimination notice is to be issued, an opportunity to be heard before the issue of the notice . |
| 73          | 59                 | None.   | The period within which an appeal may be made as provided in the Bill is 3 days longer than that of RRA (6 weeks).                            |
| 74          | 60                 | Ditto.  |   |
| 75          | 61                 | Ditto.  |   |
| 76          | 62(1)              | None except that the Bill also includes vilification and RRA refers to UK   |   |

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|              |                         | immigration legislation.   |   |
| -            | 62(2)                   | No equivalent in the Bill.   | The provision concerns a finding of Employment Tribunal.  |
| 77(1) to (4) | 63(1) to (4)            | None.  |   |
| 77(5) to (6) | -                       | No equivalent in RRA.  | Procedure for imposing financial penalty.   |
| -            | 63(5)                   | No equivalent in the Bill.   | The provision concerns a finding of Employment Tribunal.  |
| -            | 64                      | Ditto.   | Preliminary action in employment cases.   |
| 78           | 65(1) to (4), (5) & (6) | None except that the Bill includes vilification and RRA specifies a fixed period for the respondent to reply to questions served on him/her in respect of discrimination on grounds of race, national or ethnic origins or harassment. Also the Bill empowers EOC but RRA empowers a Secretary of State. |   |
| -            | 65(4A) to (4C) & (7)    | No equivalent in the Bill.   | The provisions relate to sec 19B proceedings and specific exceptions in respect of other UK legislation.      |
| 79           | -                       | No equivalent in RRA.  |   |
| 80(1)        | 66(1)                   | RRA covers also a prospective complainant but the Bill only applies after a complaint has been lodged.   |   |
| 80(2)        | 66(1)                   | RRA allows assistance by reason of “any other special considerations”.   |   |
| 80(3)        | 66(2)                   | RRA also includes procuring or attempting to procure the settlement of   | This is understandable because cl 80 starts on the basis that mandatory conciliation has not been successful. |

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|       |             | any matter in dispute which may have been covered by cl 79.               |  |
| -     | 66(3) & (4) | No equivalent in the Bill.  | The provisions set the time limit within which CRE must decide on an application for assistance and stipulate the means by which the time limit may be extended. |
| 80(4) | 66(5)       | None.   |  |
| 80(5) | 66(6)       | The Bill refers to Legal Aid Ordinance only.                              |  |
| 80(6) | 66(7)       | None.   |  |
| -     | 66(8) & (9) | No equivalent in the Bill.  | The provisions relate to immigration legislation and proceedings.  |
| -     | 67 & 67A    | Ditto.  | The provisions respectively provide for designated courts and procedure in proceedings involving national security.  |
| -     | 68(1)       | Ditto   | The provision concerns instituting proceedings in the Employment Tribunal.   |
| 81(1) | 68(2)       | RRA only allows six months beginning from the act complained of was done. |  |
| -     | 68(2A)      | No equivalent in the Bill.  | The provision concerns an immigration claim within the meaning of sec 57A.   |
| -     | 68(3)       | Ditto.  | The provision stipulated circumstances under which the period of 6 months may be extended in respect of a claim under sec 57.                                    |
| 81(2) | 68(4)       | RRA only allows six months beginning from the act complained of was done  |  |
| 81(3) | -           | No equivalent in RRA.   |  |
| -     | 68(5)       | No equivalent in the Bill.  | The provision only concerns Employment Tribunal.   |
| 81(4) | 68(6)       | None.   |  |

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| 81(5)       | -                                | No equivalent in RAA.   |  |
| 81(6) & (7) | 68(7)                            | None.   |  |
| 81(8) & (9) | -                                | No equivalent in RAA.   |  |
| -           | 69 to 71E                        | No equivalent in the Bill.  | Sec 69 provides for matters of evidence and the other sections provide for general statutory duties in various contexts. |
| 82          | 72(1) to (3), (4)(b), (5) to (6) | None.   |  |
| -           | 72(4)(a) & (aa)                  | RRA refers to provisions that have no equivalent in the Bill but the basic idea is to except a contract settling a complaint.   |  |
| -           | 72 (4A) to (4D)                  | No equivalent in the Bill.  | The provisions concern conditions regulating compromise contracts settling a complaint.                                  |
| -           | 72A & 72B                        | Ditto.  | The provisions relate to collective agreements and rules of undertaking.   |
| 83          | 74                               | The Bill empowers the EOC to make rules in respect of matters specified in the cl. RRA provides generally for the means by which a Minister of the Crown's power to make orders or regulations may be exercised and the extent of such power and the power of either House of the Parliament to annul such order or regulation. |  |

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| 84                   | -             | No equivalent in RRA.   |  |
| 85                   | 73            | RRA empowers a Secretary of State but the Bill empowers CE in Council to amend certain provisions of the legislation. | The scopes of provisions that may be amended and the means by which amendments are to be made are also different under the respective legislation.           |
| -                    | 75(2) to (9B) | No equivalent in the Bill.  | The subsecs contain specific provisions in respect of applicability of provisions of RRA to the Crown and matters relating to proceedings against the Crown. |
| -                    | 75A & 75B     | Ditto.  | Application to staff of two Houses of the Parliament.  |
| -                    | 76            | Ditto.  | Government appointments outside sec 4.   |
| -                    | 76ZA          | Ditto.  | Other office holders.  |
| -                    | 76A           | Ditto.  | Police forces.   |
| -                    | 76B           | Ditto.  | Other public bodies etc.   |
| -                    | 77            | Ditto.  | Financial provisions.  |
| -                    | 79 except (2) | No equivalent in the Bill.  | Transitional, amendments and repeals.  |
| 86 to 94 & Schedules | -             | No equivalent in RRA.   |  |
| -                    | Schedule 1    | No equivalent in the Bill.  | Provisions relating to incorporation of CRE, tenure of office of commissioners and other matters.  |
| -                    | Schedule 1A   | Ditto.  | Bodies and other persons subject to general statutory duty.  |

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| - | Schedule 2 | Ditto. | Transitional Provisions. |
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