

Race Relations Act 1968: 50th Anniversary

Summary

On 25 October 1968 the Race Relations Act received royal assent. The Act sought to build on the Race Relations Act 1965, which at the time was widely regarded as providing insufficient protection from discrimination, by extending prohibition of racial discrimination in relation to housing, employment and public services, as well as strengthening the Race Relations Board. This briefing sets out the chronology of how the Race Relations Act 1968 came to be passed, referring for context to the passage through Parliament earlier that year of the Commonwealth Immigrants Act.

Background

Post-Empire Migration to Britain

British nationality was originally based on birth in the land controlled by the monarch, wherever that was.¹ Everyone was a British ‘subject’. Following changes brought in by the British Nationality Act 1948 (with some exceptions), people based in the UK or based in a British colony overseas would become citizens of the UK and Colonies (CUKCs). CUKCs were therefore people born, adopted, registered, or naturalized in the UK or the Colonies, or whose father was such a person and who therefore had a right to come to the United Kingdom.²

After the war, the need to rebuild Britain’s infrastructure invited substantial labour immigration, especially from the British Caribbean in the 1950s.³ During the 1960s, the reaction of the newly independent former colonies in East Africa to past white domination was policies of Africanisation: a process of giving preference to their own citizens in trade and employment, which led to the departure of people who were not local citizens and whose right to work or trade there had been withdrawn.⁴ Kenya, Tanganyika (now Tanzania), and Uganda had substantial populations of Asian descent, often families who had for generations served in the British civil service.⁵ Africanisation affected these populations and they began to exercise their right to come to the UK.⁶

Race Relations Act 1965

In response to concerns since the 1950s about racial discrimination, movements, including the Society of Labour Lawyers and the main lobby group, the Campaign Against Racial Discrimination (CARD), along with Fenner Brockway (Labour MP for Eton and Slough) and other members of both Houses of Parliament, campaigned for anti-discrimination laws.⁷ The Race Relations Act 1965 (1965 Act) prohibited discrimination on grounds of race in “places of public resort” such as restaurants, entertainment venues and public transport services and introduced the criminal offence of incitement to racial hatred. To conciliate complaints received under the 1965 Act, it also established the Race Relations Board (RRB). The 1965 Act was widely criticised for its limited extent.⁸ By the time of its first annual report, the RRB had received 309 complaints but 70 percent of them fell outside of its jurisdiction. The report recommended the 1965 Act to be extended to cover housing, employment, financial facilities and further places of public resort because in its view, the “effect of discrimination in housing and employment [was] more painful to the individual and more damaging to society as a whole”.⁹ Calls to

broaden the scope of the 1965 Act persisted as evidence suggested “substantial” racial discrimination continued¹⁰ and activists, including the CARD, considering it a “great let-down”.¹¹

Commonwealth Immigrants Acts

The Commonwealth Immigrants Act 1962 applied immigration control for the first time to Commonwealth citizens. In broad terms, it made CUKCs subject to immigration control unless they had a UK passport issued by the UK Government rather than the government of a colony, or by a high commission even in a colony.¹² Ordinarily, when a territory was decolonised, residents of the territory automatically became citizens of the newly independent state and could often also retain their UK citizenship. This did not happen with some East African countries where, instead, the European and Asian minorities were given a time limited option to decide whether to retain their citizenship of the United Kingdom and Colonies or become citizens of the newly independent country whilst renouncing the former.¹³ Due to Africanisation policies, many East African Asians decided to retain their British citizenship and therefore their right of entry into the United Kingdom.

According to cabinet papers, in 1965 Sir Frank Soskice, the Home Secretary, drew the cabinet’s attention to the presence of around 285,000 Asians (CUKCs with no other citizenship) living in newly independent colonies of East Africa who were not subject to immigration control if they chose to come to the UK, and were indeed doing so at an estimated rate of approximately 5,000 per annum.¹⁴ In his view, depriving them of their existing right to come to the UK would be difficult to “justify”.¹⁵ Subsequently, various memoranda were circulated by cabinet ministers in response, including concerns raised by the Official Committee on Commonwealth Immigration who highlighted that controls may be contrary to international legal obligations.¹⁶ By October 1967, Roy Jenkins, by then Home Secretary, summarised the arguments relating to controlling immigration.¹⁷ He stated that the people that would be affected by legislation “acquired and retained” their UK citizenship by and in accordance with the provisions made by successive British governments. He explained that many of them had “based their lives” on the “knowledge, or at least expectation” that their UK citizenship included a right of entry into the UK and it was on this “assumption” that many Asians decided to remain in East Africa after their country’s independence. Depriving them of their rights would “provoke accusations that we are not only inflicting great hardships on these people, but acting in a way that is manifestly unjust”.¹⁸

Between 1965 and 1967, the annual number of Asian migrants from East Africa increased from 6,150 to 13,600, and in the first two months of 1968, the number of people exercising their right was 12,800.¹⁹ In February 1968, James Callaghan, as Home Secretary, wrote to the commonwealth immigration committee arguing that in light of the rising numbers arriving from East Africa, urgent legislative control should be extended to CUKCs “who do not belong to the UK”.²⁰ According to Mr Callaghan, a balance was needed between the number of Commonwealth citizens and the UK’s ability to ensure that they have a “fair deal” on jobs, housing, other social services, and against “racial prejudice”. He noted the imminent Race Relations Bill would “be a timely factor in helping us to show that we are aiming at a fair balance all round”. Recognising that the East African Asians were affected by policies of Africanisation, the effect of any legislation would be that “Asians in East Africa and others will be treated exactly as all other Commonwealth citizens” and this, along with the Race Relations Bill, should be “sufficient to show that we are not dishonouring any of the international obligations”.²¹ His memorandum was discussed at a cabinet committee who decided that there was no alternative but to legislate in order to prevent “a large influx from the Asian community in East Africa to this country”.²²

The cabinet met to discuss the matter on 15 and 22 February 1968.²³ Although the cabinet recognised the “moral and legal objections” and international and administrative “problems” of legislating, these

were “outweighed” by ministers’ concerns about the impact on social services expenditure and race relations policy if immigration continued “unchecked”.²⁴ In summing up, Harold Wilson, the Prime Minister, noted the cabinet “were, on balance, agreed” that legislation should be introduced aimed at CUKCs “with no substantial connection” with the UK. He added the bill should be “tabled that afternoon” with its passage a “matter of urgency preclude[ing] the prior notification of Commonwealth Governments”.²⁵ The bill was introduced on 23 February 1968 and progressed through all its parliamentary stages by 29 February 1968, receiving royal assent on 1 March 1968. In his diaries, Richard Crossman, then Leader of the House of Commons, described the “lack of preparation and incompetence of the last minute rush” of the bill.²⁶ Recalling the events from 1965 to 1968, he stated although the problem relating to the East African Asians was known to exist, nothing was done about it until it suddenly became acute.²⁷

In 1973, the Commonwealth Immigrants Act 1968 (1968 Act) was challenged before the European Commission on Human Rights in *East African Asians v UK* (1973). The 1968 Act divided CUKCs into those who could enter the UK without restriction and those who could not.²⁸ It provided that a UK passport holder could enter the UK free of immigration control only if he, or at least one of his parents or grandparents, was born, naturalised, adopted or registered as a UK citizen in the UK itself. The commission concluded that the relevant sections of the 1968 Act had “racial motives and that it covered a racial group” and accordingly “discriminated against this group of people on grounds of their colour or race”.²⁹ The case was not taken higher to the European Court of Human Rights and instead, in 1974, the Home Secretary, Roy Jenkins, increased the annual quota of those who could enter and settle in the UK.³⁰ The applicants and the other British Asians were not restored to full citizenship rights, but their rate of entry into the United Kingdom was greatly accelerated.³¹

Race Relations Act 1968

In January 1968, at the First Secretary of State’s request, the Home Affairs Committee considered proposals for amending the 1965 Act and confirmed that it was necessary to extend its scope with the “object of not only protecting immigrants against discrimination, but of educating public opinion” and supporting those citizens “promoting tolerance”.³² The cabinet agreed to extend the scope of the 1965 Act.³³ On 20 April 1968, three days before the second reading of the Race Relations Bill in the House of Commons, Enoch Powell, Shadow Secretary of State for Defence, delivered a speech about immigration to a Conservative Association meeting in Birmingham.³⁴ He argued, referring to immigrant communities, that the “Race Relations Bill is the very pabulum they need to flourish” to show that immigrant communities can “organise to consolidate their members, to agitate and campaign against their fellow citizens [...] and dominate the rest with the legal weapons which the ignorant and the ill-informed have provided”.³⁵

At the bill’s second reading on the 23 April 1968, James Callaghan, the Home Secretary, stated:

The House has rarely faced an issue of greater social significance for our country and our children. We are discussing a subject which is heavily charged with emotion, in which there is nothing easier than to fan the flames of suspicion and resentment or of fear. [...] We are called upon to lead the country and our fellow men and women away from a prospect of strife and enmity and towards a society in which we shall live in freedom and in peace with each other, no matter what may be our race or our colour. [...]

There is evidence that coloured people suffer from grave disadvantages on matters like housing and jobs. To remove those disadvantages and place them on the same footing as their fellows is

not to create a privileged class. What the bill is concerned with is equal rights, equal responsibilities and equal opportunities, and it is, therefore, a bill for the whole nation and not just for minority groups. Its purpose is to protect society as a whole against actions which will lead to social disruption, and to prevent the emergence of a class of second-grade citizens.³⁶

Quintin Hogg, the Shadow Home Secretary, was supportive of the general aims of the bill but criticised its scope. For example, he asked whether legislation could be improved if “exemptions [were made] for a small employer, a small landlord, a person letting his house or part of it and an owner-occupier not using a house agent, and if he tried to operate against the mass effects, at any rate at this stage”.³⁷

As passed, the Race Relations Act 1968 (with some exceptions) extended the scope of non-discrimination to include the provision of goods, facilities and services; membership of a trade union; housing accommodation; and advertisements and notices with the intention to discriminate. The Race Relations Board’s (RRB) remit was also extended to enable it to initiate enforcement action through the courts against those acting discriminatorily without needing to exhaust its conciliatory process. However, complaints against employers would have to be referred to the then Department of Employment and Productivity which would refer them to a ‘suitable industry machinery’. They would only be referred to the RRB if the complainant was dissatisfied with the outcome of the ‘suitable industry machinery’.³⁸ The 1968 Act also established the Community Relations Commission (CRC) with the responsibility to promote ‘harmonious community relations’.³⁹ Geoffrey Bindman QC described the 1968 Act as having “serious weaknesses”.⁴⁰ He stated although the RRB brought a number of successful cases to court, these resulted in “trivial awards of damages”. In employment cases, he described the position as “pathetic” and the ‘suitable industry machinery’ having “little practical effect” due to the level of enthusiasm for it amongst employers and trade union leaders.⁴¹

The Race Relations Act 1976 went on to include employment, education, goods and services, introduced indirect discrimination, and established the Commission for Racial Equality (by combining the RRB and the CRC). According to Sir Rabinder Singh QC (now Lord Justice Singh), the 1976 Act was at the time “perhaps one of the strongest pieces of legislation of its kind in the world and certainly in Europe”, yet it still excluded discrimination by public authorities in the exercise of their public functions.⁴² Twenty-four years later, following the report by Sir William MacPherson into the Metropolitan Police’s investigation of the murder of Stephen Lawrence, Parliament passed the Race Relations (Amendment) Act 2000, which covered the police and public authorities.⁴³

The race relations acts were later consolidated, along with several other equality laws, in the Equality Act 2010. The Human Rights Act 1998 also provides protection from discrimination by the incorporating the European Court of Human Rights into domestic law.

¹ Gina Clayton, *Immigration and Asylum Law*, 2016, para 3.1.4.

² *ibid.*

³ *ibid.*, para 3.1.5.

⁴ *ibid.*

⁵ *ibid.*

⁶ HM Government, [Cabinet: Immigration Legislation—Memorandum by the Secretary of State for the Home Department](#), 12 February 1968.

⁷ Jenny Bourne, [‘The Race Relations Act 1965—Blessing or Curse?’](#), Institute of Race Relations, 13 November 2015.

⁸ *ibid.*

⁹ Race Relations Board, [Report of the Race Relations Board for 1966–67](#), 1967, p 21.

- ¹⁰ Samuel Baum, '[A Survey of Racial Discrimination in Employment and Other Fields in the United Kingdom](#)', *International Labour Review*, 1967, vol 96 no 5, pp 529 and 531.
- ¹¹ Jenny Bourne, '[How Should We Evaluate the Race Relations Acts Fifty Years On?](#)', in Runnymede Trust, *How Far Have We Come? Lessons from the 1965 Race Relations Act*, December 2015, p 22.
- ¹² Gina Clayton, *Immigration and Asylum Law*, 2016, para 3.1.5.
- ¹³ For example, see: section 3 of the Kenya Independence Act 1963.
- ¹⁴ HM Government, [Cabinet: Immigration of Asians from East Africa—Memorandum by the Secretary of State for the Home Department](#), 6 July 1965.
- ¹⁵ *ibid.*
- ¹⁶ Lord Lester of Herne Hill, 'Thirty Years On: The East African Asians Case Revisited', *Public Law*, 2002, Spring, pp 52–72.
- ¹⁷ *ibid.*
- ¹⁸ *ibid.*
- ¹⁹ *ibid.*
- ²⁰ HM Government, [Cabinet: Immigration Legislation—Memorandum by the Secretary of State for the Home Department](#), 12 February 1968.
- ²¹ *ibid.*
- ²² Lord Lester of Herne Hill, 'Thirty Years On: The East African Asians Case Revisited', *Public Law*, 2002, Spring, pp 52–72.
- ²³ HM Government, [Cabinet: Conclusions](#), 15 February 1968; and [Cabinet: Conclusions](#), 22 February 1968.
- ²⁴ *ibid.*
- ²⁵ *ibid.*
- ²⁶ Richard Crossman, *Diaries of a Cabinet Minister*, 1972, vol 2, p 733.
- ²⁷ *ibid.*
- ²⁸ Gina Clayton, *Immigration and Asylum Law*, 2016, 7th ed, para 3.1.5.
- ²⁹ *East African Asians v the United Kingdom* (1973) 3 EHRR 76.
- ³⁰ Lord Lester of Herne Hill, 'Thirty Years On: The East African Asians Case Revisited', *Public Law*, 2002, Spring, pp 52–72.
- ³¹ *ibid.*
- ³² HM Government, [Cabinet: Immigration Legislation—Memorandum by the Secretary of State for the Home Department](#), 12 February 1968.
- ³³ *ibid.*
- ³⁴ *Telegraph* (£), '[Enoch Powell's 'Rivers of Blood' Speech](#)', 12 December 2007.
- ³⁵ Better known as the 'Rivers of Blood' speech, Enoch Powell was sacked from the shadow cabinet the next day.
- ³⁶ [HC Hansard, 23 April 1968, col 53](#).
- ³⁷ *ibid.*, col 80.
- ³⁸ Race Relations Board, [Report of the Race Relations Board for 1968–69](#), 1969, p 7.
- ³⁹ Jenny Bourne, '[How Should We Evaluate the Race Relations Acts Fifty Years On?](#)', in Runnymede Trust, *How Far Have We Come? Lessons from the 1965 Race Relations Act*, December 2015, p 22.
- ⁴⁰ Geoffrey Bindman QC, '[Race Relations After 50 Years](#)', in Runnymede Trust, *How Far Have We Come? Lessons from the 1965 Race Relations Act*, December 2015, pp 10–11.
- ⁴¹ *ibid.*
- ⁴² *ibid.*
- ⁴³ *ibid.*

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