

## EMPLOYMENT EQUALITY (RELIGION OR BELIEF) REGULATIONS 2003

### **BRIEFING PAPER**

Currently, some religious groups are protected under the Race Relations Act 1976 (RRA76). This protection extends to religions that can be classified as a “racial group” because they have a common heritage, such as Jews and Sikhs. However, this protection does not extend to Muslims, but this position is due to change with the introduction of the **Employment Equality (Religion or Belief) Regulations 2003, Statutory Instrument 2003/1660** (hereafter ‘Religious Regulations’), due to come into force on 2 December 2003. This Regulation implements the religious discrimination aspects of the EC Equal Treatment Framework Directive.

As well as the RRA76, the Human Rights Act 1998 (HRA 98) also protects the right to freedom of “thought, conscience and religion”; the Employment Act 1989 exempts Sikhs from wearing protective headgear in certain circumstances and the Employment Act 1996 protects shop and betting shop workers from dismissal and detriment if they refuse to work on a Sunday<sup>1</sup>.

The effect of the Religious Regulations means that discrimination on the grounds of “*religion, religious belief or some similar philosophical belief*” will be unlawful. Northern Ireland currently has legislation prohibiting discrimination on the grounds of religious belief or political opinion. The rules in Britain and Northern Ireland will be broadly the same, the main difference being that political opinions are and will continue to be protected in Northern Ireland.

#### **Who is covered?**

The Religious Regulations cover discrimination in the fields of employment and vocational training. It is unlawful for an employer to discriminate against a person in a wide range of circumstances including the arrangement they make to recruit, opportunities for promotion and training, the terms of employment and the dismissal.

**Regulation 6** protects employees and job applicants and **Regulation 8** protects contract workers i.e. an employment agency temp. By virtue of **Regulation 21**, individuals are protected when the working relationship come to an end.

**Unlawful acts** include:

- ✓ **Direct Discrimination** by treating another person less favourably on the ground of religion or belief. **Regulation 3 (1) (a)** states that direct discrimination will occur when, on the grounds of religion or belief, A treats B less favourably than he or she treats or would treat other persons. **Note: Regulation 3 (2) does not include A’s religion or belief.** This raises the question of whether non-believers are protected from direct discrimination because it is necessary for a religion or belief to be present (provided it is not A’s) in order to trigger the direct discrimination provisions. For example if a Jewish employer (A) refused to employ a non-believer (B) because s/he does not subscribe to the Jewish doctrine, B could not bring a complaint of direct discrimination because A’s religion (the reason for the discrimination) could not be taken into account. However, the guidance issued by ACAS<sup>2</sup> seems to contradict Regulation 3 (2) in that it states ‘workers and job applicants must not be treated less favourably than others because they follow or not follow a particular religion or belief’

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<sup>1</sup> This protection applies because these workers do certain jobs, and not because they may have a religion.

<sup>2</sup> Advisory, Conciliation and Arbitration Service

- ✓ **Indirect Discrimination** occurs where A applies to B a '*provision, criterion or practice*' which disadvantages people of a particular religion or belief without achieving a legitimate aim.
- ✓ **Harassment – Regulation 5** creates a specific offence of harassment on the grounds of religion or belief, which is an unlawful act distinct from direct and indirect discrimination. The wording of the Regulations requires on that the complainant show that the purpose or effect of the harassment is to violate dignity or damage the workplace environment. The harassment will be unlawful unless the employer can show that s/he has taken reasonable steps to prevent the harassment from occurring. Non-believers are protected so that if a devout employee (A) refers to a non-believing colleague (B) as a "heathen" with the result that B feels intimidated and/or offended, B could bring a claim of harassment on the ground of religion or belief against the employee and employer.
- ✓ **Victimisation – Regulation 4 (1)** provides that a person is victimised if treated less favourably because s/he has done a protected act i.e. brought proceedings against the discriminator. It is not necessary to have a religion or belief to bring a claim, therefore non-believers are protected.

### **Genuine Occupational Requirement (GOR)**

**Regulation 7** – An employer can treat applicants for a post differently on grounds of religion or belief, if there is a necessary occupational requirement to possess a particular religion for that post. An employer can also rely on this exception when promoting, transferring or training. This would cover the situation where a Christian school refuses to employ non-Christian teachers as it could be argued that being a Christian is a necessary requirement for that post. However, it is unlikely to cover the situation where they refuse to employ a non-Christian cleaner, because there is unlikely to be a necessary occupational requirement for a Christian cleaner. An employer who has a particular religious ethos, may also, in certain situations, be able to insist upon employing only people who share that ethos.

There are two types of GOR – **general** and **religious organisations ethos**. The latter would apply to churches, denominational schools, etc. Both can be relied on as a defence to claims of direct and indirect discrimination.

### **Exceptions:**

- ✓ **National Security** - action taken 'for the purpose of safeguarding national security' will not be unlawful if it is justified for that purpose.
- ✓ **Positive Action** – certain steps can be taken to redress the effects of inequality of opportunity. Possible measures could include training employees for work which has historically been the preserve of individuals from a particular religion and the placing of advertisements in publications aimed at minority religions.

### **Further reading:**

ACAS draft guidance on the "**Religious Regulations**" (copy available in the office or visit ACAS website at [www.acas.org.uk/art13.html](http://www.acas.org.uk/art13.html))  
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