



*Guidance on new measures to outlaw
discrimination on grounds of religion
or belief in the provision of goods,
facilities and services*

(Part 2, Equality Act 2006)



*Guidance on new measures to outlaw
discrimination on grounds of religion
or belief in the provision of goods,
facilities and services*

(Part 2, Equality Act 2006)

Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 020 7944 4400
Website: www.communities.gov.uk

© *Crown Copyright, 2007*

Copyright in the typographical arrangement rests with the Crown.

This publication, excluding logos, may be reproduced free of charge in any format or medium for research, private study or for internal circulation within an organisation. This is subject to it being reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the publication specified.

Any other use of the contents of this publication would require a copyright licence. Please apply for a Click-Use Licence for core material at www.opsi.gov.uk/click-use/system/online/pLogin.asp, or by writing to the Office of Public Sector Information, Information Policy Team, St Clements House, 2-16 Colegate, Norwich, NR3 1BQ. Fax: 01603 723000 or email: HMSOlicensing@cabinet-office.x.gsi.gov.uk

If you require this publication in an alternative format please email alternativeformats@communities.gsi.gov.uk

Communities and Local Government Publications
PO Box 236
Wetherby
West Yorkshire
LS23 7NB
Tel: 08701 226 236
Fax: 08701 226 237
Textphone: 08701 207 405
Email: communities@twoten.com
or online via the Communities website: www.communities.gov.uk

April 2007

Product Code: 07 DOC 04574

Contents

Foreword	4
Introduction	5
Discrimination on grounds of religion or belief	7
Direct and indirect discrimination	8
Victimisation	8
Discriminatory practices	9
Discriminatory advertisements	9
Instructing or causing discrimination	9
Validity and revision of discriminatory contracts	9
Employer's and principal's liability	10
Aiding unlawful acts	10
Territorial application	10
Goods, facilities and services	10
Premises	12
Public authorities and public functions	13
Education	15
Organisations relating to religion or belief	15
Charities	17
Special needs for education, training and welfare	17
Statutory requirements	17
Action under Section 2 Local Government Act 2000	18
Claims of unlawful action	18
Annex A – Q&A for members of the public and providers of goods, facilities and services	20

Foreword

We are delighted to introduce this guidance on new measures outlawing discrimination on grounds of sexual orientation and religion or belief in the provision of goods, facilities and services, education, the use and disposal of premises and the exercise of public functions.

Modern British society is founded on the principles on which this legislation is based: fairness, tolerance, decency and respect. These are the principles that have seen this Government take great strides towards a more equal society over the last decade, not least through similar legislation outlawing discrimination on these grounds in employment.

The new protections are mutually supportive. While the case for new legislation in both areas was widely accepted, there was concern that in safeguarding the rights of one group, the sometimes competing rights of another may be infringed. The Government recognised the sensitivity of these issues, which go to the very heart of our society. These measures we have brought forward protect the rights of individuals and organisations to hold religious beliefs while also ensuring that everyone lives a life free from harmful discrimination.

As with previous discrimination legislation, these measures will provide real benefits to people's everyday lives. It cannot be right in modern Britain that a shopkeeper or restaurant can refuse to serve someone because of their religion. Equally, it cannot be right for a child to be denied the best possible education on the grounds of either their or their parents' sexual orientation. These are rights that the majority of people take for granted; rights which we have a moral imperative to ensure all can enjoy.

This guidance provides practical advice on what this legislation means for businesses, public authorities, charities and voluntary organisations, religious organisations, letting and estate agents, as well as society at large. In the majority of cases there will be no need to change current practice – the two sets of measures simply require services to be provided in a non-discriminatory fashion. The guidance offers clear and common sense to advice about the way the two sets of provisions work from a range of perspectives, including everyday examples of what they will and will not do. It also offers advice on what to do if someone feels that they are being discriminated against.

In order to create a fair and cohesive society it is important that the rights of all are balanced. This is what both sets of measures do. Protecting individuals from discrimination should not prevent communities which share cultural, religious or racial identities from celebrating the things that bind them together. Equally, nobody should be prevented from living the life they choose, or made to feel a second-class citizen simply because of who they are.

These protections, together with this guidance, will encourage and promote the rich diversity of our society, accomodating difference and guaranteeing tolerance, respect and the principle of fairness for all.



Ruth Kelly



Meg Munn

Introduction

This document sets out guidance on Part 2 of the Equality Act 2006, and its implications for organisations within the private, public and voluntary sectors.

The religion or belief provisions of Part 2 prohibit discrimination on grounds of religion or belief (or lack of religion or belief) in the provision of goods, facilities and services, in education, in the use and disposal of premises, and in the exercise of public functions. They provide protection from religion or belief discrimination that is on a par with the protection already provided on grounds of race and sex, as well as new measures prohibiting discrimination on the grounds of sexual orientation.

The religion or belief provisions of Part 2 do not deal with employment.¹ Nor do they make specific provision to cover harassment².

Commencement

The religion or belief provisions of Part 2 of the Act came into effect on **30th April 2007**.³

Other Parts Of The Equality Act

Part 1 of the Act establishes the Commission for Equality and Human Rights⁴, which will have a broad remit of championing and promoting equality, good relations and human rights. The Commission for Equality and Human Rights' role will include supporting and enforcing the operation of equality legislation, including the religion or belief provisions of Part 2 of the 2006 Act and the regulations made under Part 3 in relation to discrimination on the grounds of sexual orientation in Great Britain. It is intended that the Commission for Equality and Human Rights will assume all of its functions in October 2007

Part 3 of the Act contains powers to make regulations in Great Britain and Northern Ireland prohibiting discrimination on grounds of sexual orientation. The Regulations covering Great Britain came into force on **30th April 2007**. Further information on these provisions can be found at <http://www.communities.gov.uk/index.asp?id=1509721>

Part 4 of the Act amends the Sex Discrimination Act 1975 to prohibit discrimination on grounds of sex in the performance by public authorities of public functions and to impose a general statutory duty on public authorities in relation to elimination of discrimination and promotion of equality of opportunity between men and women.

1 Discrimination on grounds of religion or belief in employment and vocational training has been unlawful since December 2003 under the Employment Equality (Religion or Belief) Regulations 2003. The Act however does make one minor change to the definitions of religion or belief and of direct discrimination in the 2003 Regulations.

2 Specific consideration is to be given through the Discrimination Law Review to the subject of harassment on the grounds of religion or belief outside the employment context (harassment in the workplace is covered by the Employment Equality (Religion or Belief) Regulations 2003).

3 The Act and its Explanatory Notes, can be found at <http://www.opsi.gov.uk/acts/acts2006.htm>

4 Further information about the Commission For Equality and Human Rights can be obtained on their website, at <http://www.cehr.org.uk/>.

Making claims

Complaints may be made to the courts under Part 2 by individuals who believe that they have been discriminated against on the grounds of religion or belief. This process is explained in more detail in the section below on ‘making a claim’, including advice on what to do if you feel that you have been discriminated against.

Further information on the Equality Act in general, or on this guidance (but not on individual claims) can be obtained from the Department for Communities and Local Government at EqualityActEnquiries@communities.gsi.gov.uk (please head your enquiry “Part 2 of the Equality Act 2006”)

Discrimination on grounds of religion or belief

The religion or belief provisions of Part 2 of the Equality Act prohibit discrimination on the basis of:

- a person's actual religion or belief;
- a religion or belief they are thought to have; or
- the religion or belief of someone else with whom they are associated (for instance, someone such as a friend or member of their family).

They also prohibit discrimination against a person because they do not hold a religion or belief.

Part 2 protects people from being discriminated against because, for example:

- They hold a particular religion;
- They are married to a person of a particular religion;
- They appear to be of a particular religion because of the way they dress;
- They are not of a particular religion.

The concepts of religion and belief in the Equality Act will be interpreted by the courts with reference to relevant case law, including that relating to the European Convention on Human Rights. This will mean that in order to attract protection under the Act, a religion or belief should attain a certain level of cogency, seriousness, and cohesion, and not be incompatible with human dignity.

Thus, the concept of religion will include, but not be limited to, those religions widely recognised in this country such as the Baha'i faith, Buddhism, Christianity, Hinduism, Islam, Jainism, Judaism, Rastafarianism, Sikhism, and Zoroastrianism. Denominations or sects within a religion can be considered as a religion or religious belief, such as Catholics or Protestants within Christianity.

The concept of belief includes beliefs such as Humanism, or other philosophical beliefs similar to a religion. However, other categories of beliefs, such as support for a political party, are not included.

Part 2 also outlaws discrimination on grounds of lack of religion or belief. It will therefore be unlawful to discriminate against someone on the grounds, for example, that they do not belong to a particular religion (or any religion at all), or that they do not adhere to a particular belief, such as Humanism.

Direct and indirect discrimination

Part 2 of the Equality Act prohibits both direct and indirect discrimination on the grounds of religion or belief.

Direct discrimination takes place when someone is **treated less favourably** than other people are/would be treated. This is where there is no material difference in the relevant circumstances and the reason for the treatment is the religion or belief the victim holds or is thought to hold, or that of someone associated with them.

This might occur if a person were, for example:

- refused entry to commercial premises;
- refused service;
- denied accommodation.

Indirect discrimination occurs when provisions, criteria or practices, that are applied generally, result in people of a particular religion or belief (or lack of religion or belief) being put at a disadvantage, as compared with others, and these provisions, criteria or practices cannot be objectively justified. This applies even if the negative impact is **unintentional**.

Victimisation

The religion or belief provisions of Part 2 also protect against victimisation. This means that it will be unlawful for a service provider or public authority to treat a person less favourably because they:

- Have brought, have intended to bring, or intend to bring, proceedings under Part 2;
- Have given, have intended to give, or intend to give, evidence or information in connection with such proceedings or any investigation;
- Have alleged, have intended to allege, or intend to allege, that a person contravened Part 2;
- Have done, have intended to do, or intend to do, any other thing in connection with Part 2;
- Suspect them of doing the above things.

An example of victimisation would be if a witness in a case of religion or belief discrimination by a service provider was, as a result of their giving evidence, barred from using the service.

However a person who makes an allegation which is untrue and not made in good faith will not be protected against adverse consequences for so doing. It is not unlawful for a person to treat less favourably someone who has maliciously made a false allegation against them under the religion or belief provisions of Part 2.

Discriminatory practices

The religion or belief provisions of Part 2 make it unlawful for a person to adopt or maintain a discriminatory practice. This is a policy, requirement or condition which would be likely to result in unlawful discrimination if applied to persons of a particular religion or belief, but where there is not an individual victim of the practice in question. The Commission for Equality and Human Rights is the only body entitled to take enforcement action in respect of discriminatory practices, which, once it is fully operational, it may do using its powers in sections 20 to 24 of the Equality Act (investigations, unlawful act notices and action plans, agreements, and applications to the court to enforce these – <http://www.cehr.org.uk>).

Discriminatory advertisements

The religion or belief provisions of Part 2 make it unlawful to publish an advertisement for goods, facilities, services and premises that can reasonably be understood to indicate the intention to act in a way that is unlawfully discriminatory.

- For example, it would be unlawful for a company to advertise to the effect that persons of a certain religion would not be able to access its services.

The publisher of the advertisement will not be held liable if able to prove that he or she relied on a statement from the person who placed the advertisement that it was not discriminatory. However, it is a criminal offence for a person knowingly or recklessly to make a false statement to that effect.

Only the Commission for Equality and Human Rights is entitled to bring proceedings in respect of unlawful advertisements which, once it is fully operational, it may do using its powers set out in section 25 of the Act.

Instructing or causing discrimination

The religion or belief provisions of Part 2 make it unlawful for a person to **instruct**, or cause, another person to discriminate in a way which is unlawful under Part 2. Only the Commission for Equality and Human Rights will be entitled to bring proceedings in respect of a contravention which, once it is fully operational, it may do using its powers set out in section 25 of the Act.

Validity and revision of discriminatory contracts

The religion or belief provisions of Part 2 make clear that terms of contracts which provide for doing an act which is made unlawful by the Regulations, or are included to further an act which is unlawful under the Regulations, are **void**. Where provisions provide for, or further, unlawful discrimination against a party to the contract they are unenforceable against that party.

A contractual term that seeks to exclude or limit the requirements of Part 2 will be **unenforceable**, except where it is part of a settlement agreement relating to a claim under Part 2.

Employer's and principal's liability

Under the religion or belief provisions of Part 2 employers and principals are liable for the actions of their employees and agents, whether or not they know about or approve of the act.

- For example, if an individual employee of a company refused to serve a member of a particular religious group, the company would be potentially liable as well as the individual concerned.

It is a defence however for an employer to prove that he or she took reasonable steps to prevent breaches of Part 2. Organisations will therefore need to take steps to ensure that their employees/agents are aware of the prohibition of discrimination on grounds of religion or belief, and understand the implications for their own work.

Individuals who are concerned that the requirements of their job may be incompatible with their religious beliefs may ask their employer to be redeployed. Employers should be sensitive to the religious beliefs and perspectives of their employees, and will need to be mindful of their obligations under the Employment Equality (Religion or Belief) Regulations 2003 not to discriminate against their employees on grounds of religion or belief.

Aiding unlawful acts

It is unlawful knowingly to help another person to do anything which is unlawful under the religion or belief provisions of Part 2.

Knowingly or recklessly making a false statement that a proposed act is not unlawful under Part 2, in order to secure someone else's assistance (eg to place a discriminatory advertisement), is a criminal offence. It is liable to result on summary conviction in a fine.

Territorial application

The religion or belief provisions of Part 2 apply to anything done in Great Britain⁵; and to the provision of facilities for travel on, and benefits, facilities or services provided on, a British aircraft, ship or hovercraft.

Goods, facilities and services

Where individuals or organisations enter the public realm to provide a service to the public at large, they should accept business from people of all walks of life and provide services to the public as it is constituted – not pick and choose who will benefit or be served.

⁵ In relation to immigration entry clearance it applies to acts both inside and outside the UK.

The provisions of Part 2 of the Equality Act require providers of goods, facilities and services to ensure that they are not treating their customers unfairly on the grounds of religion or belief, just as they are already required not to treat their employees unfairly on these grounds.⁶

Unlawful treatment of customers on the grounds of religion or belief includes:

- refusing to provide a person with goods, facilities or services if they would normally do so to the public, or a section of the public to which the person belongs. For example, if a service provider normally sells at a discount to pensioners, he may not refuse to sell discounted tickets to a pensioner because of his/her particular religion;
- providing goods, facilities or services of an inferior quality than those which would normally be provided; or,
- Providing goods facilities or services in a less favourable manner or on less favourable terms than would normally be the case (eg in a hostile or less courteous way).

The religion or belief provisions of Part 2 apply to all forms of goods, facilities and services. The Act gives as examples the following goods, facilities and services in the provision of which discrimination on grounds of religion or belief would be unlawful:

- **Access to and use of a place** that the public is permitted to enter;
- **Accommodation** in establishments such as hotels and boarding houses;
- Facilities for **banking/insurance**, or for **grants, loans, credit or finance**;
- Facilities for **entertainment, recreation or refreshment**;
- Facilities for **transport or travel**;
- **Professional or trade** services.

This list is illustrative, not exhaustive.

Discrimination is unlawful **whether or not a charge** is made for the goods, facilities or services concerned.

Many businesses already feel that treating actual or potential customers in a non-discriminatory manner makes sound business sense, and act accordingly.

Some businesses design their services and products in a way which is likely to appeal to particular customers/users on the basis of their religion or belief. Providing commercial goods and services likely to be of more interest to a certain group is **not** unlawful under the new regulations. However, it would be unlawful for the business to turn away customers on the grounds of their religion, or to advertise in a way which implies that clients of a certain religion or belief are unwelcome.

⁶ See the Employment Equality (Religion or Belief) Regulations 2003:
<http://www.dti.gov.uk/employment/discrimination/religion-belief/index.htm>

The religion or belief provisions of Part 2 do not require businesses to start providing goods, facilities or services that they do not usually provide.

- For example, a company that targets its services at people of a particular religious belief would not be obliged to provide services of particular interest to people of all religious beliefs.

Premises

The religion or belief provisions of Part 2 prohibit discrimination on grounds of religion or belief when disposing of premises, i.e. when selling or renting property. This would include:

- refusing to sell or rent premises to a particular person;
- offering less generous terms; or
- discriminating against people on a list of those requiring housing: for example by giving priority to people of a certain religion or belief or deliberately overlooking those of a certain religion or belief.

The Act also makes unlawful any discriminatory behaviour by a manager of premises on account of the religion or belief of a tenant or other occupier, or someone who is associated with them. This would cover all aspects of a manager's duties towards a tenant or other occupier, including the facilities they would provide and the terms under which they would evict a person.

The Act does not apply where a landlord, or his near relative, shares small premises, as described below, with the tenant.

This applies if:

- the landlord or a near relative⁷ lives in another part of the same premises (and intends to continue to do so); and
- the premises include parts that he or a near relative would share with the tenant such as a bathroom or kitchen; and
- the premises are of a size where no more than two households, or six individuals, can live in the premises in addition to the landlord or a near relative.

The Act also provides an exception from the prohibition on discrimination in the disposal of premises for people who own and occupy the whole of the premises, and when selling them do not use an estate agent or advertise for a buyer. So, for example, a person giving or selling their home privately to someone they know would not breach the Act.

⁷ ie a spouse or civil partner; parent or grandparent; child or grandchild (whether or not legitimate), or his/her spouse or civil partner; brother or sister (half or full blood); any of the above that arise through marriage, civil partnership or adoption.

The prohibition on discrimination in disposal of premises only applies to premises which are in Great Britain: premises which are elsewhere are not covered, even if the sale takes place in Great Britain.

Public authorities and public functions

The religion or belief provisions of Part 2 make it unlawful for public authorities to discriminate when exercising public functions. This includes the non-legislative decisions of Ministers, and the work of local authorities, the police and other governmental organisations⁸.

Public authorities, such as local authorities, must ensure that all their services of any particular kind are provided in such a way that no-one entitled to use any service is disadvantaged in receiving it by reason of religion or belief. They should ensure that their employees and agents also do so using contractual or other controls as appropriate to achieve that result.

The following public functions are exempt from the prohibition in Part 2 in order to safeguard **national security** or to preserve the **constitutional independence** of the judiciary or **legislative and executive freedom**:

- All activities of either House of Parliament, including the House authorities;
- Security Service, Secret Intelligence Service, GCHQ and servicemen assisting the latter as required by the Secretary of State;
- Judicial functions and things done on the instruction of those exercising judicial functions;
- Legislating, whether by Westminster, devolved bodies or the General Synod of the Church of England, and making secondary legislation;
- Decisions whether to prosecute.

Even when public authorities are not specifically exempt, they should not stop working with religious organisations because of a fear that working with religious organisations may be perceived as discriminatory under the religion or belief provisions of Part 2. Nothing in Part 2 has such an effect.

- For example, if a local authority considers that it cannot provide meals on wheels to meet particular religious dietary requirements through its own direct provision, there is nothing to prevent it funding a separate provider or providers to do so.

Even where there is no strict religious requirement for it, there is nothing to prevent an authority funding one provider which offers a service restricted on religious grounds, and others that are not restricted, provided that decisions are made in a non-discriminatory way and that their provisions overall meet the needs of other users.

⁸ However, the Equality Act (Part 2) contains no equivalent to the general statutory duties that are set out in (s 71) of the Race Relations Act 1976, nor anything equivalent to Race Equality Schemes or Race Equality Impact Assessments. The duties of public authorities under Part 2 are solely to comply with the requirement not to discriminate unlawfully.

- For example, there is nothing to prevent a local authority from funding a religious group to run care homes to care for people of their own religion, so long as there are care homes available to people who are not of that religion.

The separate provision by the care home is made possible by specific exception in Part 2 which allows bodies whose purpose is related to a religion or belief to restrict access to their activities: this is described below.

Contracts or grants and religion or belief groups

The religion or belief provisions of Part 2 do not create specific requirements of public authorities in considering grants or contracts: ordinary decision-making processes should continue. But public authorities should not refuse to fund a group or activity that they would otherwise fund simply because of the religion or belief of the group, or put barriers in their way because of their religion or belief. Nor should public authorities give preferential treatment to a particular group because of its belief-system. Different treatment of religion or belief groups may be possible, for example to meet a particular need or because one of the specific exemptions in the Act applies.

Need to further cohesion

Public authorities should ensure that in complying with the religion or belief provisions of Part 2 due regard is given to the need to promote and maintain community cohesion. This needs to be based on an understanding of the local cultural, ethnic and religious demography; and should aim to avoid any group feeling that its traditions and interests are being unfairly neglected by comparison with another.

There are a number of exceptions to Part 2 which may be relevant to public authorities: these are described below.

Religious festivals

Public authorities, and particularly local authorities, are rightly often involved in activities to celebrate major religious festivals. It would be very difficult however, for any authority to recognise equally the festivals of **all** religions. This does not mean that an authority cannot be involved in any.

The key test is whether the authority's policy is affecting its users' access to or experience of a service or function in a discriminatory way. Essentially, an authority considering whether or not to involve itself in celebration of a religious festival will not be in breach of Part 2 if, for example, it takes a decision to act in that way under powers available under s 2 of the LGA.

For example, Part 2 has nothing in it to discourage a public authority from recognising Christmas by putting up Christmas trees or sending Christmas cards to stakeholders. Many public authorities choose, as a matter of good practice and respect to minority faith and belief communities within their area or among their users, to recognise their festivals too. **Involvement in such festivals may help a local authority to engage positively with these parts of the community.**

It is right that in taking decisions on whether to mark a particular festival, the make up of the section of the public concerned should be considered: for example, a local authority with a substantial Hindu or Muslim population as well as a substantial Christian population may wish to mark Diwali or Eid in addition to Christian festivals. Generally speaking, Part 2 neither prohibits nor requires such activity.

Where action is taken specifically to give recognition to a minority community through celebration of its festivals, care may be needed to ensure that the festivals of the predominant religion of the local community, which is usually Christianity, are not overlooked.

Education

Guidance on discrimination on grounds of religion or belief in education can be found on the Department for Education and Skills website at <http://www.teachernet.gov.uk/wholeschool/equality/religion/>.

Organisations relating to religion or belief

The Government recognises that some bodies or groups have a religious or belief-related purpose, and that such bodies may have a legitimate need to limit membership, or access to their activities, to people who wholly or partly share their religion or belief. The religion or belief provisions of Part 2 contain exceptions to make this possible.

The exceptions apply to an organisation and to persons acting on behalf of or under the auspices of an organisation which has any of the following purposes:

- to practice a religion or belief;
- to advance a religion or belief;
- to teach the practice or principles of a religion or belief;
- to enable persons of a religion or belief to receive any benefit, or to engage in any activity within the framework of a religion or belief;
- to improve relations, or maintain good relations, between persons of different religions or beliefs.

This will cover a range of formal and informal groups.

Those wanting to take advantage of the exceptions will need to demonstrate that:

- i. their purpose is not mainly or wholly commercial;
- ii. the restrictions are imposed by reason of, or on the grounds of, the purpose of the organisation, or in order to avoid causing offence, on grounds of the religion or belief to which the organisation relates, to persons of that religion or belief.

Where the exceptions apply, part 2 of the Act allows organisations lawfully to **restrict** on the grounds of religion or belief:

- their **membership**;
- **participation** in their activities, or activities undertaken on their behalf or under their auspices;
- the **provision of goods, facilities or services** in the course of their activities/activities undertaken on their behalf or under their auspices;
- the use or disposal of **premises** owned or controlled by them.

A **minister of religion** or other person with a similar function in such an organisation⁹ may for the same reasons restrict:

- **participation in activities** carried on in the performance of his or her functions in relation to that organisation;
- the **provision of goods, facilities or services** in the course of those activities in the performance of his or her functions.

These exceptions will enable organisations and ministers of religions to continue to manifest their religious belief freely in a wide range of activities, including the social activities which are often central to the life of religious communities.

Below are some illustrative examples of areas where it will be **lawful to impose restrictions** on the grounds of religion or belief, where these restrictions are imposed by reason of, or on the grounds of, the purpose of the organisation, or in order to avoid causing offence, on grounds of the religion or belief to which the organisation relates to persons of that religion or belief:

- The decision by a minister of religion as to whom to administer religious rites (eg in Christianity; baptism, Holy Communion, reconciliation, confirmation, marriage or Ordination, or the sacrament of the sick);
- Who should be allowed to attend related activities – eg confirmation or marriage preparation/support sessions;
- Who should be allowed to attend activities such as a prayer or theological study/support group;
- Who should be admitted to religious residential accommodation/activities eg diocesan centres, religious conference centres, retreats, faith-based camps, pilgrimages etc – provided they are not run by commercial organisations;
- Who should be admitted to clubs and societies run by the religious organisation;
- Who should be admitted to the organisation's social activities eg parish fundraisers or social events;

⁹ ie someone who performs functions in connection with a religion to which a religious organisation relates, and holds an office or appointment in, or is accredited, approved or recognised for the purposes of, a religious organisation.

- Who should be allowed to use the organisation's premises, eg for meetings/celebrations;
- Who should be allowed to occupy housing provided by a religious organisation.

Charities

It will be unlawful for charities to discriminate on the grounds of religion or belief.

However charities¹⁰ may lawfully provide benefits only to persons of a particular religion or belief if acting in pursuance of a charitable instrument¹¹, and if **the restriction is imposed by reason of or on the grounds of the provisions of the charitable instrument**. Examples of this might include:

- a charity established to provide funding for education in accordance with a particular religion will not have to start funding education of other kinds;
- a charity dedicated to providing housing for retired members of a particular religion will not have to broaden the range of people it serves.

Religious charities may qualify for the religious organisation exemption.

Special needs for education, training and welfare

The religion or belief provisions under Part 2 of the Equality Act allow for separate/targeted provision for different groups on the basis of religion or belief, where this meets special needs for education, training or welfare, or to provide ancillary services in connection with meeting such a need. This is in cases where this is the best way to meet a specific need facing people of a particular religion or belief, or to overcome discrimination or disadvantage.

For example, some services (whether delivered by the public, voluntary or private sector) may target provision towards particular groups, on the grounds that this will lead to greater take up of/more effective services. This might include targeted:

- advice services;
- direct service provision.

Under Part 2 these targeted services, where meeting a justified need, will continue to be lawful.

Statutory requirements

Nothing in the religion or belief provisions of Part 2 make it unlawful to do anything which is necessary to comply with statutory requirements.

¹⁰ ie in relation to England and Wales, a charity as defined in the Charities Act 2006, and in Scotland, a body entered in the Scottish Charity Register.

¹¹ ie the instrument establishing or governing a charity.

Action under s2 Local Government Act 2000.

The Equality Act provisions do not affect any actions taken under section 2 of the Local Government Act (LGA) 2000, which provides a wide-ranging power for principal local authorities to promote or improve the economic, social and environmental well-being of their area. This means that local authorities may continue to take a wide range of actions with faith-based organisations or others that they consider helpful for, among many other things, the promotion of good relations and community cohesion through the strategies they have developed in their area under s4 of the LGA, without fear of challenge under the religion or belief provisions of Part 2. Proposals in the Local Government and Public Involvement in Health Bill will extend this power to Quality Parish Councils.

Claims of unlawful action

Individual claims

In most circumstances under Part 2, remedies for discrimination on grounds of religion or belief can be obtained by the victim bringing proceedings in the county court in England and Wales or the sheriff court in Scotland. Advice and assistance relating to the bringing of such proceedings may be obtained from the Citizen's Advice Bureau, Law Centres, or solicitors. From October 2007, there will also be a possibility of obtaining assistance from the Commission for Equality and Human Rights (CEHR).

In some circumstances it may not be clear whether an individual has been discriminated against on grounds of religion or belief, or of race: in such a case it may also be helpful, before October 2007 when the CEHR is expected to take responsibility for racial discrimination, to consult the Commission for Racial Equality. <http://www.cre.gov.uk>

The claimant must prove facts from which the court could conclude, in the absence of a reasonable alternative explanation, that an act of unlawful discrimination has been committed. In these circumstances the court must assume an unlawful act has been committed unless the respondent can prove otherwise.

The court can award **compensation** and other remedies if a claim is successful. If a claim fails, the claimant may have to pay the respondent's costs.

The **time limit** for bringing a case under Part 2 of the Equality Act is six months from the date of the action (or the last of a number of actions) that is being complained about.

Discrimination can be difficult to prove. Claimants will stand a better chance of convincing a court that they have been discriminated against if they gather as much **evidence** as they can, as soon as possible, including the names of possible witnesses.

It may be possible to sort out the problem **informally** by making an approach to someone in authority.

If claimants wish formally to question the person they think has discriminated against them, this can be done by writing to that person setting out the facts as they appear to the claimant, and asking them the reason for their actions. To help this process, a **standard form** has been provided which can be found at: http://www.opsi.gov.uk/Si/Si2007/uksi_20071038_en.pdf

This form and the reply may be used in evidence in court provided the questions were put within six months of the act complained of and served on the respondent in accordance with The Religion or Belief (Questions and Replies) Order 2007, which sets out the forms, which provide that the claimant may:

- deliver it;
- send it by post to the respondents usual or last known residence or place of business;
- deliver it or send it to a solicitor acting for the respondent.

If the respondent does not reply within 8 weeks, or gives an evasive reply, the court may draw an inference from that fact. A failure to reply might for example lead a court to infer that an unlawful act of discrimination has taken place.

When replying to a complaint, the respondent may use a similar **standard form**, which can be found at: http://www.opsi.gov.uk/si/si2007/uksi_20071038_en.pdf

Replies delivered or posted to the respondent should be sent to the address stated on the claim form, or if no such address is stated, to the usual or last known residence of the claimant.

Questions and replies may also be served on a body corporate, trade union or employers' association by sending it to the secretary or clerk of the body at its registered or principal office.

The reply may be admissible as evidence in court.

The response forms allow space for responses to the questions posed in the claimant's form, or statements as to why a reply will not or cannot be given.

Actions instigated by the Commission For Equality and Human Rights

The Commission for Equality and Human Rights will be responsible for enforcement of the discriminatory advertising and discriminatory practice provisions of Part 2. The only criminal offences created by the Regulations relate to the making of false statements that acts or advertisements are not discriminatory.

Among other things the Commission may:

- **conduct an investigation** where it suspects that a person or organisation may have contravened these Regulations;
- apply to a court for an **injunction** (in England and Wales) or an **interdict** (in Scotland) where it suspects that a person or organisation will, unless stopped, commit an act of unlawful discrimination under these Regulations.

Annex A

Q and A for members of the public and providers of goods, facilities and services

From **30th April 2007** it will be unlawful for anyone providing goods, facilities or services, or managing or disposing of premises, to discriminate against a person because of their religion or belief, or their lack of religion or belief.

Why has the Government introduced these provisions?

The principles behind these measures are straightforward. It can't be right in a decent, tolerant society that a shopkeeper or restaurant can refuse to serve a customer because of his or her religion or belief. It cannot be right for a school to discriminate against a child because of their parents' religion or belief, or to refuse to take bullying on those grounds as seriously as it should.

The provisions make such discrimination unlawful. We want to ensure that when people visit their hospital, study at school or college, or even do something as everyday as shopping or booking a holiday, they get treated fairly and with respect, no matter what their religion or belief.

Who does this apply to?

The prohibition includes anyone supplying goods, facilities or services of any kind, including for example banking, retail services, and hotel accommodation. It also includes management and disposal of premises. There are exceptions for people who manage small premises, where they or a close relative live in them, and for people who dispose of premises privately, without advertisement.

What does it mean?

When providing goods, facilities or services, it is prohibited to:

– refuse to supply normal service to someone, or to treat them less well than others, on ground of their religion or belief (or their lack of religion or belief), their assumed religion or belief, or the religion or belief of someone with them.

For example: a shopkeeper may not refuse to admit people of a particular religion or belief he does not like, nor may he make them wait until everybody else in the shop has been served before attending to them because of their religion.

– apply some provision, criterion or practice which puts, or would put, people of a particular religion or belief (or who lack a religion or belief) at a disadvantage compared to others, unless there is some other good reason for it (such as a safety requirement or a need to comply with particular regulations).

For example, a company hiring out a hall used by local religious groups for festivals might act unlawfully if they required that all users had to use the company's own catering, without offering food suitable for vegetarians, since to do so might discriminate against those for whom vegetarianism is a religious requirement.

– treat someone less well because they have been involved in making, or supporting, a complaint about discrimination of this kind – unless they were acting maliciously in knowingly making a false complaint.

– advertise in a way which indicates an intention to discriminate unlawfully.

It would be unlawful to advertise a service with a statement to the effect that it would not be provided to people of a particular religion, or to advertise to the effect that that it would not be provided to anyone wearing a head covering, since that would discriminate indirectly against people for whom covering the head was a religious duty.

– get someone else to do any of these things.

What if employees discriminate?

Under the religion or belief provisions of Part 2 employers and principals are liable for the actions of their employees and agents, whether or not they know about or approve of those actions.

For example, if an individual employee of a company refused to install or maintain equipment in premises belonging to a particular religion, the company would be responsible.

It is a defence however for an employer to prove that he or she took reasonable steps to prevent breaches of Part 2. Organisations will therefore need to take steps to ensure that their employees/agents are aware of the legislation, and understand the implications for their own work.

Discriminating accidentally?

Good customer service which responds to the needs and wishes of customers is unlikely to discriminate accidentally, and will help show up any areas where change is needed.

Do businesses have to start providing goods or services they have not provided before?

No-one is required to change the nature of their business by this legislation.

For example, no-one is obliged to sell a range of goods they do not normally sell, or provide services they do not normally provide. But they must supply their normal goods or services to customers equally whatever the religion or belief of the customer.

Does this apply to people of any kind of belief at all?

What constitutes a religion or belief is not explicitly defined within the Equality Act, and ultimately it will be for courts to decide. The concepts of religion and belief will be interpreted by the courts with reference to relevant case law including that relating to the European Convention on Human Rights. This is likely to mean that to benefit from protection under the Act, a religion or belief should attain a certain level of cogency, seriousness, and cohesion, and not be incompatible with human dignity.

The concept of religion will include those religions widely recognised in this country such as the Baha'i faith, Buddhism, Christianity, Hinduism, Islam, Jainism, Judaism, Rastafarianism, Sikhism, and Zoroastrianism. Denominations or sects within a religion can be considered as a religion or religious belief, such as Catholics or Protestants within Christianity.

The concept of belief includes beliefs such as Humanism, or other philosophical beliefs similar to a religion. However, other categories of beliefs, such as support for a political party, are not included.

Religion or belief also covers a lack of religion or belief, which means that people will also be protected if they suffer discrimination because they have no specific religion or belief.

But what if people behave in a way that is unacceptable?

The Act does not prevent businesses from excluding people who behave in ways that are unacceptable, for example if they intrude on other customers, even if they claim their religion requires them to act in that particular way. The Act simply requires that businesses provide their normal service in a non-discriminatory way.

For example if a customer wants to preach to other customers in, for instance, retail premises, the owner is entitled to ask him not to do so and to refuse to allow him entry if he insists: allowing people to preach is not part of the normal service the owner offers, and his other customers might object. But the owner may not refuse to admit him simply because he does not like the religion or belief of the customer.

If in doubt – it is good business not to discriminate

Treating people fairly and being open to suggestions that customers or potential customers may raise is good practice. Small adjustments that make life easier for customers may increase business opportunities.

Dealing with complaints

Businesses need to take complaints seriously and try to resolve them promptly. They need to decide whether they agree with the complainant about the facts of what happened, and to be clear why the complainant thinks they have been discriminated against. If businesses find they have discriminated, they should consider what steps to take to resolve the matter with the customer, for example by apologising or taking steps to ensure it does not happen again. A person who complains has the right to take court action in support of their claim, and may seek to use any response from the business in evidence.

What does 'on grounds of religion or belief' mean?

Unlawful discrimination on grounds of religion or belief is discrimination against a person because of their religion or belief, or that of someone else with whom they are associated (such as a friend or a member of their family). This includes discriminating against someone because of a religion or belief they (or someone they are associated with) are believed to hold, even if they do not in fact hold it.

For example, a customer may appear to belong to a particular religion because of what they are wearing. Should discrimination occur, they can still claim protection under the Equality Act even though the perception of the discriminator was wrong.

Unlawful discrimination includes discrimination against a person of the same religion or belief as the discriminator.

However, the definition of discrimination on grounds of religion or belief does NOT include discrimination on any other grounds, such as gender or sexual orientation, even if the discrimination is motivated by the religion or belief of the discriminator. Such a case would be fall to be dealt with under the legislation relating to discrimination on the protected ground in question, such as the Sex Discrimination Act.

Does this prohibit expressions of my own religion or belief?

The religion or belief provisions of Part 2 are not intended to hinder people in the expression of their own religion or belief; they seek to balance the right of individuals and groups to express their own religion or belief, with the rights of other people to have equal access to goods, facilities and services and any of the other activities covered by Part 2.

for example the display of religious posters, or symbols, in a room in which a service is provided, is not likely to impose a disadvantage on anybody: on the other hand, insisting that someone read and assent to a religious tract before letting them into the room would put people of a different religion or belief, who would not be willing to agree, at a disadvantage.

expressing support for a particular group by charitable giving, whether in cash or kind, is not affected by Part 2, since such giving is not a service on offer to the general public.

What are the penalties for falling foul of the religion or belief provisions?

The Regulations will provide for a civil remedy for discrimination through the County Courts.

The Regulations will not lead to individuals being subject to criminal sanctions, unless they knowingly or recklessly making a false statement that a proposed act is not unlawful under these Regulations, in order to secure someone else's assistance (for example, to place a discriminatory advertisement). If convicted, they may be liable to a fine.

Do these Regulations make it illegal to say certain things?

The religion or belief provisions of Part 2 will have no effect on freedom of speech; rather, they will ensure that businesses/public authorities do not give customers a hostile or less courteous service on grounds of their religion or belief.

They will not:

- i) enable someone to be sued for holding or expressing views about religion or belief;
- ii) prohibit bookshops from stocking religious or other texts that make statements about other religions or beliefs.

