

BHA BRIEFING 2010: Equality Bill: Employment for the purposes of an organised religion

Lords Committee, January 2010

Briefing from the British Humanist Association (BHA):

Schedule 9, Paragraph 2 – discrimination in employment for the purposes of an organised religion

The Equality Bill permits discrimination in employment for the purposes of an organised religion on a number of grounds, including on sex, sexual orientation, marital status and the marital status of the person's spouse or civil partner.

Although the permitted grounds for discrimination are broad, during Commons Committee stages the Government was very clear that the Schedule 9(2) exceptions are only to apply to very few positions. As the Minister Vera Baird QC MP explained to the Committee, 'We are talking about licensing discrimination, and consequently you will all accept that that exception must be as narrow as possible'¹.

The Bill as currently drafted reflects the intended narrowness of the exception:

(8) Employment is for the purposes of an organised religion only if the employment wholly or mainly involves—

- a) leading or assisting in the observation of liturgical or ritualistic practices of the religion, or
- b) promoting or explaining the doctrine of the religion (whether to followers of the religion or to others).

The BHA believes that the current wording of Schedule 9, paragraph 2(8) should not be amended in any way that would make the exception wider. We believe that permitting wider discrimination would be contrary to the aims of equality law and infringe further on individuals' human rights.

Further, the BHA also understands that a wider exception than that which is presently drafted may be in breach of the European Equal Treatment Directive. A reasoned opinion from the European Commission makes clear that in the UK 'exceptions to the principle of non-discrimination on the basis of sexual orientation for religious employers are broader than that permitted by the directive'² – hence why a redefinition of this area of law was required in the Equality Bill. We also understand that a wider exception could be contrary to UK case law and judgments³.

The types of jobs that should not fall under this exception include those which are teaching roles, such as youth workers and teachers of RE in faith schools (including where that is religious instruction). Importantly, this exception should not apply to posts in most organisations with a religious ethos. There is already an exception under Schedule 9(3) which permits discrimination on grounds of religion or belief for certain posts by organisations with a religious ethos, where it can be shown that is an occupational requirement and a proportionate means of meeting a legitimate aim. Therefore,

¹ 3rd Sitting of the Commons Equality Bill Committee, Evidence Session, 9th June 2009.

² 'Employment equality rules: reasoned opinion to the UK; cases closed for Slovakia and Malta', European Commission press release, November 2009.

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1778&format=HTML&aged=0&language=EN&guiLanguage=en>

³ For example, *Amicus vs Secretary of State*, where it was held that a religious organisation could not avoid sexual orientation discrimination by referring to lifestyle matters which were a lawful and direct expression of sexual orientation. Also, the *Reaney v Hereford Diocesan Board Of Finance* employment tribunal judgment which found that the Claimant, a youth worker, had been unlawfully discriminated against on the grounds of sexual orientation.

organisations may not refer to ethos in order to discriminate in employment on grounds of sexual orientation or other grounds listed under Schedule 9(2) – they may only do so on grounds of religion or belief in limited circumstances.

We strongly oppose any amendment that seeks to make wider the scope of discrimination on grounds of sexual orientation, or any other grounds, under Schedule 9(2), for employment for the purposes of an organised religion.

Amendments

The Government has reworded the Explanatory Notes to the Equality Bill, to include ‘youth workers’ as falling under the scope of this section, so that there can be a requirement for them to remain celibate if they are gay, should they teach Bible classes as part of their job. We are extremely concerned that this change to the Explanatory Notes encourages a wider interpretation of the exception and suggests that discrimination against a wide range of staff, including those which may include teaching on grounds of sexual orientation is permissible. We believe this section should be reworded to show the narrowness of this exception – and to clarify that it does not apply to teachers.

The Government has tabled an amendment which would reword the definition of ‘employment for the purposes of an organised religion’:

BARONESS ROYALL OF BLAISDON

Page 165, line 10, at end insert—

"() Employment is for the purposes of an organised religion only if—
a) the employment is as a minister of religion, or
b) the employment is in another post that exists (or, where the post has not previously been filled, that would exist) to promote or represent the religion or to explain the doctrines of the religion (whether to followers of the religion or to others)."

While this amendment does provide clarification that a minister of religion is covered ‘(a)’, the BHA is concerned that the rest of the new definition ‘(b)’ may be wider than how the paragraph is currently drafted in the Bill. For example, it introduces the term ‘or represent’ which could be interpreted as encompassing a much wider range of positions than those which are wholly or mainly for the purpose promoting and explaining the doctrines of a religion. The Government’s communication to Peers on this amendment explains that a ‘Director of Communications’⁴ would fall under the scope of this amendment, and we are very concerned that is wider than the Equality Bill originally intended or permitted. Should that be the case, **the BHA does not support this amendment.**

The BHA supports the following amendment:

BARONESS TURNER OF CAMDEN

100A Page 165, line 13, at end insert "purpose of the"

This amendment to Schedule 9(2)(8)

This would leave the original definition in 9(2) intact but emphasises that only the *purpose* of the employment would have to involve liturgy and so on. This would clarify that ministers of religion – priests for example – would be captured and do not have to spend at least 51% of the working week in order to be so.

This amendment clarifies the law within the definition as presently drafted in the Equality Bill, and does not “widen” the scope of the exception. The BHA supports this amendment.

⁴ Letter from the Rt Hon Baroness Royal of Blaisdon to Peers, concerning Government amendments to the Equality Bill. 14th January 2010.

About us

The British Humanist Association (BHA) is the national charity representing and supporting the non-religious and campaigning for an end to religious privilege and discrimination based on religion or belief. Our expertise lies in the 'religion or belief' equality strand, which includes non-religious beliefs such as Humanism, and how that strand relates to and intersects with other protected characteristics.

For more detail and evidence on our position on the below amendments, please contact us:

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