



Manchester
Metropolitan
University

Guidance note for staff on:

The Race Relations Act 1976 (Amendment)
Regulations 2003
Employment Equality (Religion or Belief)
Regulations 2003
Employment Equality (Sexual Orientation)
Regulations 2003

Contents

Page

3	Important features of the legislation: scope
4	Forms of discrimination
7	Burden of proof
7	Definitions of race, religion or belief and sexual orientation
9	What needs to be done?
10	Religious observance
14	Appendix one Indicative list of religion and belief groups

Equalities Legislation: guidance note

This guidance note deals with three new pieces of equalities legislation:

- ❖ The Race Relations Act 1976 (Amendment) Regulations 2003
- ❖ Employment Equality (Religion or Belief) Regulations 2003
- ❖ Employment Equality (Sexual Orientation) Regulations 2003

The note sets out to do two things:

- ❖ examine the important features of the legislation
- ❖ consider what needs to be done to ensure that we both meet our obligations under the law and work towards our policy commitments of achieving best practice.

It is important to view our obligations under the law in the context of our related policy commitments. These new pieces of legislation do represent a significant risk if the University, and indeed individual members of staff, act in breach of them. It is important, therefore, to take steps and to follow guidance that minimizes those risks. However, by placing this action into a broader policy context our actions to minimize risk can also be seen to be important steps in ensuring that we continue to provide an appropriate and professional service designed to meet the needs of our diverse client groups and of the staff we employ.

Important features of the legislation

Scope

These regulations apply both to staff of the University and to its students. This guidance note deals primarily with the application of the regulations in relation to the field of employment, but the principles identified are applicable to developing appropriate practice for students. Examples draw on the application of the Regulations both to staff and to students.

In the employment context it is important to note that the regulations apply to “workers” and this is a broader term than “employee”. It will include staff with normal employment contracts, and will also include contract workers. For example, people employed to perform a specific task. The regulations naturally apply to job applicants, but also in certain circumstances, for example giving references, to former employees.

Each piece of legislation has its own focus and contains important definitions, but there are several common features and these are explored first.

They make it unlawful on the grounds of race, religion or belief, or sexual orientation to:

- ❖ discriminate directly against anyone. That is, to treat them less

favourably than others because of their race, religion or belief, or sexual orientation;

- ❖ discriminate indirectly against anyone. That is, to apply a criterion, provision or practice which disadvantages people by virtue of race, religion or belief, or sexual orientation unless it can be objectively justified
- ❖ subject someone to harassment. Harassment is unwanted conduct that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment having regard to all the circumstances and the perception of the victim.
- ❖ victimise someone because they have made or intend to make a complaint or allegation or have given or intend to give evidence in relation to a complaint of discrimination on the grounds of race, religion or belief, or sexual orientation;
- ❖ discriminate or harass someone in certain circumstances after the working relationship has ended.

Exceptions, in the field of employment, may be made in relation to direct discrimination in very limited circumstances if there is a genuine occupational requirement for the worker to be of a race, religion or belief, or sexual orientation in order to do the job.

Direct discrimination means that workers, students, job or student applicants must not be treated less favourably than others because of their racial grouping, the religion they follow, are perceived to follow, or do not follow a particular (or any) religion or belief. or because of their sexual orientation. For example it is unlawful to

- ❖ decide not to employ or admit someone
- ❖ dismiss or exclude them
- ❖ refuse to provide them with training or access to other benefits
- ❖ deny them promotion
- ❖ give them adverse terms and conditions

Direct discrimination may only be justified in the very limited circumstances where a genuine occupational requirement can be shown to apply.

Example: At interview although the applicant has all the skills and competences required of the job, the panel decides not to offer him the job because of his race, religion or belief, or sexual orientation. This is direct discrimination.

Indirect discrimination means that the University must not have

selection criteria, policies, employment rules or any other practices which although they are applied to all, have the effect of disadvantaging people of a particular racial grouping, religion or belief or sexual orientation unless the practice can be justified. Indirect discrimination is unlawful whether it is intentional or not.

In contrast to direct discrimination, indirect discrimination will not be unlawful if it can be justified. To justify it, the University must show that there is a legitimate aim, (i.e. a real business need) and that the practice is proportionate to that aim (i.e. necessary and there is no alternative means available).

Example: A department needs its staff to work late on a Friday afternoon to prepare for Open University courses that run on Saturday mornings. During the winter months some staff would like to be released early on Friday afternoon in order to be home before nightfall – a requirement of their religion. They propose to make the time up during the remainder of the week.

Simply refusing this request might be indirect discrimination. The department would need to consider if there is a real business need to do the work, whether the preparation has to be done in advance and if the answer to both of these is yes, then ask is there an alternative arrangement. This might include for example doing the work earlier, asking somebody else to do the work or doing the work in another way so that it could be completed earlier.

Similar considerations would apply if students were required to sit an end of module test at a time that extended beyond sunset. Consideration would need to be given to alternatives, for example rescheduling the test.

Harassment includes behaviour that is offensive, frightening or in any way distressing. It may be intentional bullying which is obvious or violent, but it can also be unintentional or subtle and insidious. It may involve nicknames, teasing, name-calling or other behaviour which may not be intended to be malicious but nevertheless is upsetting. It may be about the individual's race, religion or belief or sexual orientation or it may be about the race, religion or belief or sexual orientation of those with whom the individual associates. It may not be targeted at an individual(s) but consist of a general culture which, for instance, appears to tolerate the telling of religious, racist or homophobic jokes.

The University may be held responsible for the actions of its staff as well as the staff being individually responsible for their own actions. If

harassment takes place in the workplace or at a time and/or place associated with the workplace, for example a work related social gathering, the organisation may be liable and may be ordered to pay compensation unless it can show that it took reasonable steps to prevent harassment. Individuals who harass may also be ordered to pay compensation. It is less clear whether the University has a responsibility for the actions of its students (for example in cases of student to student harassment.) But, what is clear is that the University should take steps to prevent such harassment (through awareness raising for example), and if a member of staff is made aware that a student is suffering harassment, s/he must take the complaint seriously and take appropriate action to deal with the report.

The University has an obligation, where possible, to protect their workers from harassment by third parties such as service users and customers (this includes students).

Victimisation is when an individual is treated detrimentally because they have made a complaint or intend to make a complaint about discrimination or harassment or have given evidence or intend to give evidence relating to a complaint about discrimination or harassment. They may become labeled “troublemaker”, denied promotion or training, or be “sent to Coventry” by their colleagues. If this happens or if organisations fail to take reasonable steps to prevent it from happening, they will be liable and may be ordered to pay compensation. **Individuals who victimise may also be ordered to pay compensation.**

Discrimination, harassment or victimisation following **the end of a working relationship** covers issues such as references either written or verbal.

A genuine occupational requirement. In very limited circumstances it will be lawful for an employer to treat people differently if it is a genuine occupational requirement that the job holder must be of a particular race, religion or belief or sexual orientation. This provision will always be exceptional in its application, and there will be very few occasions where it is relevant to the University. Where they do arise, it is most likely to be during recruitment and your Personnel Officer should be contacted as soon as possible to discuss the circumstances.

Example: The University might wish to recruit a chaplain to minister to the spiritual needs of students and staff who are Christian. The University may be able to show that in the context in which the job is carried out it is a genuine occupational requirement that the appointee be a minister of the Christian faith.

Positive Action. Selection for recruitment or promotion must be on merit. However, it is possible to take certain steps where some groups are

under represented in the workforce. This is called positive action. Employers may give special encouragement to, or provide specific training for people who are from particular races, are members of religions or who hold beliefs or whose sexual orientation is/are in a minority in the workplace. The University has training schemes and advertising practice that are examples of positive action.

Burden of Proof. A further common feature of the regulations is the change that has been made to the burden of proof where action is taken by a complainant in the Employment Tribunal.

Under previous legislation, for example the 1976 Race Relations Act, it has been the responsibility of the complainant or claimant to establish that he or she has been discriminated against or harassed. A tribunal or a court could only draw inferences from a respondent's (the University's) failure to answer the complaint or put forward a defence.

Now, once the complainant or claimant has established a prima facie case that the act complained of has taken place, the onus is on the University and/or the person alleged to have committed the act of unlawful discrimination or harassment to prove that he/she did not commit such an act. If there is a case to answer and the University has not brought forward a satisfactory defence, or fails to respond, the tribunal or court will find against the University.

This change is potentially of great significance and it will be for all staff to exercise great care if the University is to fulfil its obligations under the law. It is also important to keep in mind the fact that individuals who commit acts of unlawful discrimination, harassment or victimisation can themselves be subject to complaint in the Employment tribunals

These are the aspects of the legislation that are, for practical purposes common. However, to understand their application completely it is important also to consider their scope.

❖ **The Race Regulations**

The regulations apply to discrimination on grounds of race, ethnic or national origins. In this note the shorthand term race is used to cover the relevant grounds defined by the regulations

❖ **Religion or belief**

Religion or belief is defined as being any religion, religious belief or similar philosophical belief. This does not include any philosophical or political belief unless it is similar to religious belief. It will be for the Employment Tribunals and other Courts to decide whether particular circumstances are covered by the regulations.

However it is likely that they may consider a number of factors when deciding what is a religion or similar belief. It is likely that they

will consider things such as:

- collective worship
- a clear belief system
- a profound belief affecting the way of life or view of the world.

The Regulations extend beyond the better known religions and faiths to include beliefs such as Paganism and Humanism. The Regulations also cover those without religious or similar beliefs. See Appendix one

It is also important to recognise that the Regulations apply where unlawful treatment is based upon the perception that a person belongs to a particular religious or belief group. Similarly the regulations will apply where unlawful treatment is based upon a person's association with or believed association with members of a particular religion or belief group.

Census data is available to provide some background on the distribution of religions within the population in general.

❖ **Sexual Orientation**

Within the Regulations, sexual orientation is defined as –

- Orientation towards persons of the same sex (lesbians and gay men)
- Orientation towards persons of the opposite sex (heterosexual)
- Orientation towards persons of the same sex and the opposite sex (bisexual)

It is also important to recognise that the regulations also apply where unlawful treatment is based upon the perception that a person is of a particular sexual orientation. Similarly the regulations will apply where unlawful treatment is based upon a person's association with or believed association with other people of a particular sexual orientation.

The regulations apply to sexual orientation and not to sexual practices where the law remains unchanged.

What needs to be done?

The University's Equal Opportunities Policy commits us to meeting our obligations under the law, but in addition to seek to achieve best practice. Much of the work that is already underway is relevant to these new regulations.

For example, guidance on the employment provisions of the new regulations, published by ACAS, places particular emphasis on the need to have clear policy statements against unlawful discrimination. We have these in place. Similarly, the need to develop recruitment, selection and admissions practice that is free of unlawful discrimination is also important. Again a considerable amount of work has already been done in this area and there is more being done at present. Moreover, the recently established Equalities Impact Assessment Team (EIAT) will establish a basis for the systematic equalities review of all significant University policies and processes.

This guidance note therefore concentrates on the additional issues raised by the new regulations.

Action at all levels

It is very important that staff and students are made aware of their responsibilities under these regulations. **Induction** is an important opportunity to make people aware of their legal obligations, and to begin to set an appropriate tone by emphasizing aspects of behaviour that are either welcome or inappropriate. Handbooks, information and guidance given at induction should reflect the University's commitment to welcome and where ever practicable, to accommodate diversity. It is also important to engage in staff development that is offered by the University.

The **new definition of indirect discrimination** is substantially broader than the previous one. There is much greater scope for the challenge of informal practices and these can occur both in the obvious course of the university's work, but also within the informal conduct of relations within the workplace. For example:

The discrimination potential of all practices should be considered. **Managers have a clear role** in establishing appropriate standards and in challenging inappropriate behaviour. However, there is an equally clear role for managers to ensure that their staff adopt an appropriate approach to the review and examination of practices and behaviour in order avoid discrimination.

Similarly, **those staff who have programme management or administrative responsibilities** will need to be sensitive and alert to these issues. Opportunities for **consultation with students** will be important as a means of establishing appropriate responses to issues raised, or better still for anticipating issues at an early stage.

For example:

A Department places great importance on student induction and has for several years hosted a get to know you event at which wine is served. It is understood that the relaxed atmosphere created is normal and all staff and students are expected to participate. This expectation could place staff and students who for religious or belief reasons avoid alcohol at a disadvantage. It is important here for the Department to question whether or not it is appropriate to serve alcohol. If it is, then water and soft drinks should be available and given prominence. Those attending events who do not drink alcohol should not be made to feel odd or different.

Similarly, a Department is organising a social event and has circulated invitations that although using the more neutral expression "partners welcome" include wording and images that imply opposite sex partners. This could be hurtful to staff with same sex partners.

Obvious examples are ensuring that jokes and banter are not offensive. Where these are directed at an individual or individuals they may constitute harassment, but even if there is no direct target person, jokes based on, for example, race, gender, religion, disability or sexual orientation are unacceptable and should be challenged. This is also true of inappropriate language and images. It is important to note that e-mail traffic is covered by these regulations.

There are two general points here. The first is that our policies, procedures and practices should be free of bias and should not give rise to unlawful or unfair discrimination. This applies to practices at all levels within the organisation. The second is that it is important that we create a climate in the work place that is supportive and welcoming to all staff. Managers cannot create a climate in a workplace alone, but they have a crucial responsibility both to model appropriate behaviour and to challenge inappropriate behaviour.

Religious observance

The new regulations require that employers do not discriminate, directly or indirectly, against staff on grounds of their religion. An important first step in this respect is to act positively to understand the faith needs of staff and students through dialogue.

This needs to work at various levels: discussions about specific events, or practices, and the establishment of means through which these discussions become the norm. However, it is also important to recognize that although it will be practical to issue guidance at institutional level, it will also be necessary to discuss issues locally.

Some examples might help to illustrate this point:

- *A major religious festival is approaching and several of your staff are likely to want time off. The regulations do not require additional time off to be granted, but it is appropriate to give careful and sympathetic consideration to annual leave requests. Discussions with staff about how best to meet their needs will be helpful. A first come first served solution is unlikely to be appropriate and might be indirectly discriminatory.*

Discussions will involve how best to meet the needs of staff and to balance this with the needs of the Unit. Additionally there might be general discussion to remind staff that as much notice as is practicable should be given when requesting annual leave. But again managers need to recognise that the dates of some religious or belief festivals are determined by lunar phases and will change from year to year.

- *At the start of autumn term a lecturer is outlining the programme of work to students and he identifies three key lectures that will be introducing important topics. He checks with the students in his group to ensure that the scheduled dates do not clash with any days of religious observance. This local practice will provide the opportunity to engage in practical discussions and to explore possible solutions.*
- *Staff have asked to discuss arrangements for them to meet obligations for prayer. Discussions should centre on the timing of prayers (is it possible to adjust break times, start or finish times to meet the needs) and any facilities necessary for prayer. For some groups there is a need to wash before prayers, and for some groups aspects of this requirement might be performed symbolically. What is important is for the manager to understand the needs of the staff group and, balancing these against the reasonable needs of the unit, to establish a way forward. Arrangements made to facilitate prayer should also reflect sensitivity to the affect that the arrangements may have on other people.*

- *Dress codes, however informal, need to be carefully considered. There may be circumstances where a balance has to be struck between religion/belief needs and for example health and safety. In these cases full discussion is important to understand both sets of needs, and where necessary external advice might need to be sought. Personnel Services can guide you to appropriate sources of advice.*
- *A member of staff involved in food preparation has asked that she should not be required to handle meat because this is counter to her religious beliefs. Discussion should be held to understand her needs and to examine what range of alternative duties might be made available to her.*

This specific discussion might give rise to a wider discussion and examination of food preparation and storage to ensure that inadvertently practices are not being followed that would give offence to religious or belief groups.

A member of staff has asked to take all of his leave allocation at one time so that he may go on pilgrimage. It will be important to establish if the pilgrimage can be contained within the period of annual leave or whether there will be a need for a period of unpaid leave. Discussion may also establish that the member of staff is Muslim and is required to make a pilgrimage to Mecca once in his lifetime. A manager should seek to be flexible and sympathetic to this request.

Similar considerations may be relevant for important family/cultural/religious events such as weddings or funerals.

The important issues here are:

- ❖ Discuss the needs openly with staff and students both to ensure that their religious or belief needs are understood and that the implications for the work of the unit can be properly assessed. If necessary before reaching a decision check with Personnel Services for staff related issues. Requests should not be unreasonably refused and where they are refused reasons should be given.
- ❖ Many religious or belief groups require members to pray or undertake a similar practice in privacy and in peace. The ideal solution is that a room is set aside for this purpose. Discussions should be held to understand needs and to ensure that if it is possible to provide a room that it is, so far as practicable, available

to all for purposes of prayer and private contemplation.

If it is not possible to set space aside on a permanent basis arrangements should allow for appropriate space to be booked as for other legitimate purposes.

Alternatively, there may be prayer space available outside the University. The Human Resources Division will establish a register of external faith groups who are willing to make their premises available to staff and students.

Discussions should be held with staff and students to explore whether arrangements can be made to enable them to attend and use offsite facilities. Discussions again would focus on their faith needs and the practical implications of attending off site. Flexibility might again be needed around times of breaks or starting and finishing.

- ❖ Similarly, some faith groups have periods of fasting and it may be necessary to adopt some flexibility and support during these periods.
- ❖ Consider all requests sympathetically. There are four important questions to consider:
 - Is the person(s) making the request a practising member of a religion or do they hold similar philosophical beliefs?
 - What are their religious or belief needs?
 - What are the implications of meeting those needs?
 - What steps can be taken to meet the religious or belief needs of the staff/students in a way that is in balance with the needs of the University?
- ❖ Useful information is available in the SHAP Calendar of Religious Festivals. Copies of this and the explanatory booklet are provided to all departments.

Conclusion

These are important new regulations and it is important that all staff are aware of them and their provisions. It is all too easy to see regulations of this kind in a negative light and simply act to avoid being caught out. It is more important to place them in the context of our policy aspirations and commitments. We are committed to meeting our obligations under the law and to meeting the needs of our staff and clients. If we fulfill our policy obligations sympathetically, professionally and objectively we will more often than not meet our obligations under the law.

Appendix One

Indicative list of religion and belief groups

Whether or not membership of a particular religion or belief group is relevant under these Regulations can be determined definitively only by decision of the courts. However, set out below, for illustration only is a list of religious or belief groups that has been derived from outside the area of discrimination law (for example in charity law or in cases before the European Court of Human Rights -ECHR).

In the main a “religion” is seen to be characterized by:

- ❖ A belief in a supreme being
- ❖ Worship of that supreme being; and
- ❖ A groups or following of people who observe the beliefs, values, customs and traditions as set down by that supreme being

On this basis the following have been held to be religions:

- ❖ Protestant
- ❖ Roman catholic
- ❖ Baptist
- ❖ Quaker
- ❖ Jehovah’s Witness.
- ❖ Seventh Day Adventist
- ❖ Buddhist
- ❖ Hindu
- ❖ Judaism
- ❖ Islam
- ❖ Sikh
- ❖ Rastafarian

On the other hand, a “belief” means more than just an opinion or deeply held feeling. There must be a holding of spiritual or philosophical convictions which have an identifiable formal content. On this basis ECHR have held the following to be “beliefs”

- ❖ Druidism
- ❖ Pacifism
- ❖ Veganism
- ❖ The Devine Light of Zentrum
- ❖ The Church of Scientology
- ❖ The Moon sect
- ❖ Krishna Consciousness
- ❖ Atheism
- ❖ Agnosticism

It is important to recognize that this list is not definitive.