

EMPLOYMENT DISCRIMINATION AND THE CHRISTIAN

The Government has published its latest thinking with regard to forthcoming legislation that will outlaw discrimination by employers on the grounds of religion or belief, or sexual orientation.

The legislation, which stems from a European directive, has to be in place by 2 December 2003. Draft proposed regulations were published in October 2002 and will now be subject to a consultation period, which ends on 24 January 2003.

As a general rule, no discrimination is permitted by the draft regulations. But there is an exception for employers when the employment of someone with a particular religious ethos is 'a genuine occupational requirement'.

Churches and Christian organisations will be giving most attention to Section 7 - (3) which states, 'This paragraph applies where an employer has an ethos based on religion or belief and, having regard to that ethos and to the nature of the employment or the context in which it is carried out -

a. being of a particular religion or belief is a genuine occupational requirement for the job; and

b. it is proportionate to apply that requirement in the particular case. There will be no difficulty in demonstrating that a church or Christian organisation has an ethos based on religion or belief. It will be possible to argue that employing Christians is a genuine occupational requirement. What is less certain is how the issue of proportionality will be interpreted. For proportionality to be an issue at all, it must imply that there are some jobs for which it would be disproportionate to insist on a particular religion or belief in the candidate for a job. But churches in particular will rely heavily on the 'context' exception to make their case for employing Christians.

In connection with partnerships, the draft regulations make it unlawful to discriminate in the arrangements made for the purpose of determining to whom the firm should offer a partnership; in the terms on which a partnership is offered; and by refusing to offer a partnership. The Genuine Occupational Requirement exception for religious organisations does apply to partnerships. However, it is clear it will be much more difficult to sustain an all-Christian partnership. Similar wording applies to the proposed regulations on sexual orientation. The only exception is where being of a particular sexual orientation is a genuine and determining occupational requirement, and it is proportionate to apply that exception in the particular case. In connection with the sexual orientation regulations, there is no reference at all to the employer's ethos, which means that an organisation cannot rely on its overall beliefs about sexual orientation as a basis for its employment policy. The only apparent exception would be on the basis that a particular sexual orientation was a 'genuine and determining occupational requirement. 'If the draft regulations are confirmed into law, there would be certain to be test cases in the courts to resolve what constituted a 'genuine and

determining occupational requirement' on the issue of sexual orientation.

Over the next three months of consultation, there will be a major campaign by evangelicals to strengthen the 'ethos' exception in the case of religion and belief, and to seek an ethos exception in the case of sexual orientation. Evangelicals will also want greater certainty and clarity over what is meant by 'genuine occupational requirement' and 'proportionality'. The Christian Institute has promised to contend for improvements that take account of the special circumstances of churches and Christian organisations.

The Government is leaving most of the interpretation to the courts and tribunals, rather than including definitions in the legislation. Even the question of what is a religion or belief system is being left to the courts!

ROD BADAMS