

## THE DEFINITION OF 'RELIGION OR BELIEF' IN EQUALITY AND HUMAN RIGHTS LAW

### (i) Legislative definitions of religion and belief

<i>Legislation</i>	<i>Definition</i>
Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation	The term 'religion or belief' is not explicitly defined. The pre-amble to the Directive expressed respect for the principles of the European Convention on Human Rights (ECHR). The terms 'religion or belief' should therefore be read consistently with Article 9 ECHR.
Employment Equality (Religion or Belief) Regulations (SI/2003/1660)	Section 2(1): In these Regulations, 'religion or belief' means any religion, religious belief, or similar philosophical belief.
Racial and Religious Hatred Act 2006	Schedule 1, amending Public Order Act 1986: 'religious hatred' means hatred against a group of persons defined by reference to religious belief or lack of religious belief.
Equality Act 2006	<p>Introduces a new and broader definition of religion or belief for the purposes of prohibiting discrimination in the provision of goods and services and amends the 2003 Regulations to make the definition consistent. No longer any requirement that a belief should be 'similar' to a religion and protects lack of religion and belief.</p> <p>Section 44 Religion and belief</p> <p>In this part –</p> <p>(a) 'religion' means any religion,</p> <p>(b) 'belief' means any religious or philosophical belief,</p> <p>(c) a reference to religion includes a reference to lack of religion, and</p>

	(d) a reference to belief includes a reference to lack of belief.
Equality Act 2010	<p>Mirrors the EA 2006 definition.</p> <p>Section 10 Religion or belief</p> <p>(1) Religion means any religion and a reference to religion includes a reference to a lack of religion.</p> <p>(2) Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.</p>

**(ii) Government's policy intention concerning the definition of religion or belief in equality law**

<i>Date</i>	<i>Reference</i>	<i>Statement</i>
2001	DTI consultation, <i>Towards Equality and Diversity, Implementing the Equality and Race Directives</i>	Government consultation on implementing EU Directive 2000/78 stated that it would be inappropriate for the government to define religion or belief 'given the wide variety of different faiths and beliefs in this country' (para 13.5). It was appropriate to leave it to the courts and tribunals to deal with definitional issues as they arose.
17 June 2003	Hansard HC, Fourth Standing Committee on Delegated Legislation, Cols 03, 07	<p>Gerry Sutcliffe, Minister for Employment Relations, Competition and Consumers, explaining the rationale for the introduction of the 2003 Regulations:</p> <p>'Members of Muslim, Sikh, Jewish and other communities have been dismissed, victimised and turned down for work unfairly, simply because of their faith. The regulations are designed to outlaw such unacceptable treatment. They have a wide application. ... It is not for the</p>

	Hansard, HL, Vol 649, Col 786	<p>Government to decide on a religious doctrine, or decide whether a cult is sensible. That question is for the tribunals to decide.'</p> <p>Lord Sainsbury, government minister in the House of Lords, commented:</p> <p>'There is no specific protection at the moment for those who experience discrimination at work on the grounds of their religion or belief. Members of Muslim, Christian and other communities have been dismissed, victimised and turned down for work unfairly simply because of their faith. Of those who are not religious, atheists and humanists, for example, have also experienced discrimination at work because of their beliefs or absence of them. These regulations will make this kind of unacceptable treatment unlawful. They have a wide application.'</p>
11 Oct 2005	Hansard HL, Col 161	<p>Lord Falconer, promoting the Racial and Religious Hatred Bill in the House of Lords, commented on the definition of religious belief:</p> <p>'I point out that religious belief is not defined in the context of the religiously aggravated offences, which already exist, and this does not seem to have caused a problem. Religion is not defined also in relation to discrimination on the grounds of religion and belief in the Employment Equality (Religion or Belief) Regulations 2003 and, again, we are not aware that that has caused any problems whatever; nor are we intending to define what a religion is in the context of the religious discrimination provisions in Part 2 of the Equality Bill. <u>It will therefore be for the courts, as they have already done, to decide what constitutes a religious belief for the purposes of this legislation. In doing so, they will take into account existing case law on the issue; for example, the case of <i>Campbell and Cosans v the United Kingdom</i> suggests that any religious belief will need to attain a certain level of cogency, seriousness, cohesion and importance. As I said in answer to the question of the noble Earl, the beliefs must also be worthy of respect in a democratic society and not incompatible with human dignity.</u> We expect, therefore, that religious beliefs that advocate child abuse or violence would not be protected by the Bill. As for groups such as Scientologists or the Moonies, it may be that the courts will decide that their beliefs equate to religious beliefs.'</p>

13 July 2005	HL, Vol 673 Col 1109-10	<p>Baroness Scotland, promoting Equality Bill in the House of Lords, explained the shift in the definition of religion and belief from the 2003 Regulations to that contained in Part 2 of the Equality Bill:</p> <p>'The intention behind the wording in Part 2 is identical to that in the employment regulations. However, in drafting Part 2, it was felt that the word 'similar' added nothing and was, therefore, redundant. This is because the term 'philosophical belief' will take its meaning from the context in which it appears; that is, as part of the legislation relating to discrimination on the grounds of religion or belief. Given that context, philosophical beliefs must therefore always be of a similar nature to religious beliefs. <u>It will be for the courts to decide what constitutes a belief for the purposes of Part 2 of the Bill, but case law suggests that any philosophical belief must attain a certain level of cogency, seriousness, cohesion and importance, must be worthy of respect in a democratic society and must not be incompatible with human dignity.</u> Therefore an example of a belief that might meet this description is humanism, and examples of something that might not—I hope I do not give any offence to anyone present in the Chamber—would be support of a political party or a belief in the supreme nature of the Jedi Knights.'</p>
2010	Explanatory Notes to the Equality Act 2010	<p>'51. ... It is a broad definition in line with the freedom of thought, conscience and religion <u>guaranteed by Article 9 of the European Convention on Human Rights.</u> The main limitation for the purposes of Article 9 is that the religion must have a clear structure and belief system. Denominations or sects within a religion can be considered to be a religion or belief, such as Protestants and Catholics within Christianity.</p> <p>52. <u>The criteria for determining what is a "philosophical belief" are that it must be genuinely held; be a belief and not an opinion or viewpoint based on the present state of information available; be a belief as to a weighty and substantial aspect of human life and behaviour; attain a certain level of cogency, seriousness, cohesion and importance; and be worthy of respect in a democratic society, compatible with human dignity and not conflict with the fundamental rights of others.</u> So, for example, any cult involved in illegal activities would not satisfy these criteria.</p>

		<p><u>53. ... The Baha'i faith, Buddhism, Christianity, Hinduism, Islam, Jainism, Judaism, Rastafarianism, Sikhism and Zoroastrianism are all religions for the purposes of this provision. Beliefs such as humanism and atheism would be beliefs for the purposes of this provision but adherence to a particular football team would not be.'</u></p> <p>NB. The Explanatory Notes to the Equality Bill had suggested that 'political beliefs and beliefs in scientific theories are not religious or philosophical beliefs for these purposes.' This comment was not adopted in the Notes to the Act.</p> <p>Parliamentary debates did not deal with definition of religion or belief, presumably because it replicated the existing definition in the EA 2006.</p>
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These policy statements support the following points:

- The use of the term 'religion or belief' was always meant by Parliament to have a wide meaning in equality legislation.
- It was never intended to be limited to established religions.
- The concept of religion or belief was intended by Parliament and the European Union to be consistent with the interpretation given to Article 9 ECHR by the European Court of Human Rights, which protects beliefs which 'attain a certain level of cogency, seriousness, cohesion and importance' (see below).
- Part of the motivation for introducing legislation was to ensure that all religions and beliefs, including non-religious beliefs, were protected. The Race Relations Act 1976 had already provided protection to Sikhs and Jews as recognised racial groups (as a consequence of the House of Lords decisions in *Mandla v Dowell Lee* (1983) 2 AC 548) but not to other religious or philosophical beliefs.
- Policy-makers intended the judiciary to determine the scope of the concept on a case-by-case basis. It was not deemed appropriate for government to assess the legitimacy of particular religions or beliefs.

### **(iii) Judicial principles devised to determine which religious and other beliefs are protected under equality and human rights law**

The UK courts use the principles below to determine whether a religious or other belief merits protection under equality legislation or Article 9 ECHR.

They are derived from the principles set out by the European Court of Human Rights.

- It must be genuinely held.
- It must be a belief and not an opinion or viewpoint based on current information (for example, a belief that single-sex couples should not adopt that was based on current research into effects on children was characterised as an opinion rather than a belief in *McClintock v Department of Constitutional Affairs* [2008] IRLR 29. It would have been protected if it formed part of broader Christian faith).
- It must attain a certain level of cogency, seriousness, cohesion and importance (*Campbell and Cosans v United Kingdom* (1982) 4 EHRR 1). There are very few examples of a belief being rejected on this ground and the House of Lords has questioned the propriety of this enquiry by courts, which are not equipped to weigh up theological doctrines (*R (Williamson) v Secretary of State for Education and Employment* [2005] 2 AC 246).
- It must be worthy of respect in a democratic society. It cannot be incompatible with human dignity and it must not conflict with the fundamental rights of others. Thus a religious belief which involved subjecting others to torture or inhuman punishment would not qualify for protection (*R (Williamson)*); see also rejection of BNP beliefs by the Employment Tribunal in *Baggs v Fudge* (2005) Case No 1400114/05 (ET)).
- A philosophical belief should have a similar status or cogency to a religious belief, but it does not need to be shared by others (*Grainger Plc v Nicholson* [2010] ICR 360).
- A 'one-off belief', namely a belief that does not govern the entirety of a person's life, may be protected. For example, pacifism and vegetarianism are one-off beliefs in this sense, but both have been classified as protected beliefs (*Grainger*).

- The belief in question does not need to constitute or allude to a fully-fledged system of thought; it does not need to be an “-ism” (*Grainger*).
- Beliefs are not static and may change over a person’s lifetime (*R (Williamson)*); see also *Streatfield v London Philharmonic Orchestra Limited* [2012] EqLR 901, where the Employment Tribunal accepted that a person did not have to be consistent in expressing their beliefs across all aspects of their life).

In general, the UK courts have found that most beliefs qualify for protection (see table below) and the courts have exhibited a reluctance to question the legitimacy or worth of a person’s genuinely held belief unless it is incompatible with human dignity.

Note that the courts in the USA and Canada have adopted a similar approach. The US Supreme Court has stated that the US Constitution protects moral and ethical beliefs when they are held with the strength of conviction of traditional religious beliefs (*Welsh v United States* 398 US 333 (1970)). The Canadian Supreme Court has held that secular beliefs are protected by the Canadian Charter of Rights and Freedoms (*R v Morgentaler & Others* [1988] 1 SCR 30).

The Commission’s guidance on religion and belief in the workplace sets out the position accurately and succinctly:

‘A protected belief should be more than an opinion or a viewpoint, and it should be serious, genuinely and sincerely held, and worthy of respect in a democratic society. It should also be compatible with human dignity and should not conflict with the fundamental rights of others. The law protects adherents to all the generally recognised religions, as well as druids and pagans, for example. It also protects people without any religion or belief, including humanists and atheists.’

**(iv) Religious and other beliefs which have been deemed to warrant protection under equality and human rights law**

Case	<i>Religion or belief</i>
<p><i>Arrowsmith v United Kingdom</i> (1978) 3 EHRR 218; <i>R (Williamson) v Secretary of State for Education and Employment</i> [2005] 2 AC 246</p>	<p>European Court of Human Rights (ECtHR) recognised that <b>pacifism</b> was a belief that attracted protection under Article 9.</p> <p>The House of Lords accepted that pacifism was a protected belief in <i>Williamson</i> and suggested that it might stem from either religious or humanist ethics.</p>
<p><i>X and the Church of Scientology v Sweden</i> (1979) 16 DR 68; <i>Church of Scientology Moscow v Russia</i> (2008) 46 EHRR 16</p>	<p>ECtHR recognised that Article 9 protects belief in <b>Scientology</b>.</p> <p>Note that the Charity Commissioners have held that Scientology is not a religion for the purposes of English charity law because its followers did not perform acts of worship (<i>Application for registration as a charity by the Church of Scientology</i>, 17 November 1999).</p>
<p><i>Omkaranda and the Divine Light Zentrum v Switzerland</i> (1981) 25 DR 105</p>	<p>ECtHR accepted that a belief in the teachings of the <b>Divine Light Zentrum</b> was protected under Article 9.</p>
<p><i>Campbell and Cosans v United Kingdom</i> (1982) 4 EHRR 293</p>	<p>ECtHR held that a belief that <b>corporal punishment should not be used against children</b> constituted a 'conviction' under Protocol 1, Article 2. The Court found that 'convictions' and 'beliefs' under Article 9 were similar.</p>
<p><i>Chappell v United Kingdom</i> (1987) 53 DR 241</p>	<p>ECtHR recognised <b>Druidism</b> under Article 9.</p> <p>The Charity Commission has also recognised Druidism as a religion (<i>Application for</i></p>



	<i>Registration of the Druid Network</i> , 21 September 2010). By contrast, the Commissioners did not recognise the Pagan Federation ( <i>Application for the Registration of the Pagan Federation</i> , 2012) or the Gnostic Centre as charities for the advancement of religion ( <i>Application for the Registration of the Gnostic Centre</i> 16 December 2009).
<i>H v UK</i> (1992) 16 EHRR CD 44; <i>Jakobski v Poland</i> (2010) 30 BHRC 417 (see also <i>R (Williamson) v Secretary of State for Education and Employment</i> [2005] 2 AC 246)	ECtHR accepted that <b>veganism</b> and <b>vegetarianism</b> are protected under Article 9.
<i>R (Williamson) v Secretary of State for Education and Employment</i> [2005] 2 AC 246	Parents belief in <b>corporal punishment</b> for their children was protected by Article 9.  The House of Lords also accepted that <b>pacifism, vegetarianism and total abstinence from alcohol</b> were protected by Article 9. It commented that ' <b>atheist, the agnostic, and the sceptic</b> are as much entitled to freedom to hold and manifest their beliefs as the theist'.
<i>Baggs v Fudge</i> (2005) Case No 1400114/05 (ET)	Employment Tribunal held that membership of the <b>British National Party</b> did <b>not</b> constitute a belief for the purposes of the 2003 Regulations.
<i>McClintock v Department of Constitutional Affairs</i> [2008] IRLR 29 (EAT)	Employment Appeal Tribunal held that the opinion that <b>single-sex parents should not adopt children</b> was <b>not</b> a philosophical belief because claimant accepted that it did not stem from a fixed philosophical belief and was based on current evidence. It would have been protected if it formed part of broader Christian faith.
<i>Islington London Borough Council v Ladele</i> [2010] 1 ICR 532; <i>Ladele v United Kingdom</i>	UK courts and ECtHR recognised a belief that <b>marriage should be preserved for men and women</b> was an element of Christian faith.

[2011] ECHR 737	
<i>Grainger Plc v Nicholson</i> [2010] ICR 360	<p>Employment Appeal Tribunal finds that a belief in <b>man-made climate change</b>, and the alleged resulting moral imperatives, was capable, if genuinely held, of being a philosophical belief for the purposes of the 2003 Regulations.</p> <p>The Claimant explained the nature of his belief in the following terms: 'The philosophical belief is that mankind is heading towards catastrophic climate change and therefore we are all under a moral duty to lead our lives in a manner which mitigates or avoids this catastrophe for the benefit of future generations, and to persuade others to do the same.'</p>
<i>Farrell v South Yorkshire Police Authority</i> [2011] EqLR 934 (ET)	<p>Employment Tribunal held that the claimant's belief in a <b>New World Order</b> – 'a secret satanic ideology to enslave the masses and claim control of the world's resources' – was not a protected belief. It was 'wildly improbable' and did not meet the requirements of cogency or coherence.</p>
<i>Maistry v BBC</i> [2011] EqLR 549 (ET)	<p>Employment Tribunal found that a belief in the <b>higher purpose of public service broadcasting</b> was protected.</p>
<i>Hashman v Milton Park Dorset Limited</i> [2011] EqLR 426 (ET)	<p>Employment Tribunal held that belief in the <b>sanctity of life and anti-fox-hunting</b> were protected.</p> <p>By contrast, the House of Lords has held that <b>pro-hunting</b> views are <b>not</b> covered by Article 9 ECHR (<i>R (Countryside Alliance) v Attorney General</i> [2008] 1 AC 719).</p>
<i>Lick v Shield Guardian Co and Others</i> [2011] EqLR 1290	<p>Employment Tribunal found that it is <b>not</b> a protected belief that it is <b>necessary to show respect for the war dead by wearing a poppy</b>.</p>

<i>Alexander v Farmtastic Valley Ltd and Others</i> [2012] EOR 222	Employment Tribunal held that beliefs about <b>treatment of animals</b> that included vegetarianism and aspects of Buddhism were protected beliefs.
<i>Streatfield v London Philharmonic Orchestra Limited</i> [2012] EqLR 901	Employment Tribunal recognised <b>humanist beliefs</b> as protected under the Equality Act 2010.

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