

PE1708/M

Petitioner submission of 3 September 2019

I would particularly like to respond to the Scottish Government's assertion that there are no legal duties to vegans under existing legislation, and request that our response be circulated to relevant members in time for Thursday's meeting.

Firstly, I would point out that the Scottish Government is not invested with the power to determine the scope of protection offered by current human rights and equality legislation, and, failing to take account of current law and legal guidance, has made a false statement that "Veganism is not a protected characteristic for the purposes of the Equality Act 2010 and nor are there specific responsibilities in this area for public bodies under ECHR (European Convention on Human Rights) or the Human Rights Act 1998. There are no specific responsibilities for the UK Equality and Human Rights Commission with regard to veganism." I will address each of these false assertions in turn.

1. Protected Characteristics under the EA 2010.

As you will be aware, the Equality Act 2010 applies to both public and private bodies and imposes a duty not to discriminate against individuals with 'protected characteristics'. Section 4 lists the 9 protected characteristics as age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Section 10 explains the meaning of religion or belief:

10 Religion or belief

(1) Religion means any religion and a reference to religion includes a reference to a lack of religion.

(2) Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.

(3) In relation to the protected characteristic of religion or belief—

(a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular religion or belief;

(b) a reference to persons who share a protected characteristic is a reference to persons who are of the same religion or belief.

The guidance notes to the Equality Act 2010 explain that the definition of a religious or non-religious philosophical belief "is a broad definition in line with the freedom of thought, conscience and religion as guaranteed by Article 9 of the European Convention on Human Rights". I would point out that veganism was confirmed as

being within the scope of protection Under Article 9 of the European Convention on Human Rights in 1993 (*H v United Kingdom* (1993) 16 EHRR CD 44).

The criterion for determining a “philosophical belief” for the purpose of equality law aligns with that used by the European Court of Human Rights. When assessing whether or not an applicant’s beliefs can qualify for protection under the human right to freedom of conscience as granted by article 9 of the European Convention on Human Rights, consideration should be given to whether the belief is genuinely held; whether it is a belief and not an opinion or viewpoint based on the present state of information available; a belief as to a weighty and substantial aspect of human life and behaviour; that it attains a certain level of cogency, seriousness, cohesion and importance; be worthy of respect in a democratic society, compatible with human dignity and not conflict with the fundamental rights of others. Since veganism is already protected at the level of human rights, it is entirely relevant for the application of the Equality Act 2010.

Current research estimates that there are currently around 600,000 vegans in the UK, each living according to sincerely held beliefs and convictions that are genuinely held and concern weighty and substantial aspects of human life and behaviour. The beliefs of vegans are cogent, serious, cohesive, important, worthy of respect in a democracy and compatible with human dignity and do not conflict with the fundamental rights of others. Using the same principles that are used by the European Court of Human Rights, vegetarianism has been classified as a protected belief under UK law (*R (Williamson) v Secretary of State for Education and Employment* [2005] 2 AC 246) as have a vegan’s beliefs against fox hunting (*Hashman v Milton Park (Dorset) Ltd* [2011] ET 3105555/2009 31 January 2011).

The relevance of vegetarianism in UK law has been acknowledged in the legal reasoning of cases coming under the Equality Act 2010 (*Grainger Plc v Nicholson* [2010] ICR 360). Such recognition is consistent with the intention of equality law, namely that the wide application of the protected characteristic, religion or belief will ensure those who live according to philosophical beliefs have the protection of anti-discrimination legalisation.

With regards to the protection of non-religious philosophical beliefs under current equality law, I would direct you to the various publications regarding the Government’s policy intention concerning protection for religion or belief under equality law. Given the principle that protection for religion or belief be aligned with that of Article 9 of the Convention and that veganism has already been seen to come within the scope of protection, I submit that vegans hold sincere beliefs that are relevant to the protected characteristic religion or belief.

2. Specific responsibilities with regards to veganism for public bodies under ECHR or the Human Rights Act 1998

The Human Rights Act 1998 gives effect to the rights contained in the European Convention on Human Rights. Under this legislation, public bodies are under a duty not to contravene Convention rights. With regards to the human right to freedom of conscience, this means that public bodies must not act in a way that restricts the exercise of the human right to freedom of conscience.

The European Court of Human Rights confirmed in 1993 (*H v United Kingdom* (1993) 16 EHRR CD 44) that the convictions of vegans come within the scope of protection of the Article 9 right to freedom of conscience. The UK did not contest this ruling which has undoubtedly influenced the development of legislation around freedom of conscience and related equality law, as well as court decision making in the UK. In *R (Williamson) v Secretary of State for Education and Employment* ([2005] 2 AC 246), Lord Walker commented that vegetarianism is an uncontroversial example of what could constitute a belief within the legal meaning, and in 2011 an Employment tribunal confirmed that a vegan's beliefs about the immorality of fox hunting qualified for protection under current equality provisions (*Hashman v Milton Park (Dorset) Ltd* [2011] ET 3105555/2009 31 January 2011).

Public bodies are under a duty not to contravene the Convention rights of vegans, by acting in ways that limit or restrict the expression of vegan freedom of conscience. This also means that public bodies must not deny the validity of the sincere convictions of vegans or apply any pressure to assimilate vegans into the dominant regime of the wider majority. Rather, public bodies are under a duty to ensure that vegans are able to manifest their convictions unhindered. I therefore submit that public bodies have specific responsibilities with regards to veganism under the European Convention on Human Rights as represented in the Human Rights Act 1998.

3. Specific responsibilities for the UK Equality and Human Rights Commission with regards to veganism

The Council of Europe and European Court of Human Rights confirm that veganism is a matter for human rights protection. For current guidance, please see: https://www.echr.coe.int/Documents/Guide_Art_9_ENG.pdf

The Equality and Human Rights Commission has a statutory duty to oversee human rights and equality measures and disseminate accurate and useful information to the public and private sectors. It publicly states that veganism is within the scope of protection of law. Please see: <https://www.equalityhumanrights.com/en/human-rights-act/article-9-freedom-thought-belief-and-religion>

I therefore submit that with regards to veganism, the UK Equality and Human Rights Commission has taken its responsibilities seriously and carried out its statutory duty appropriately and effectively.

I do hope that the information outlined above is helpful to the work of Scottish Ministers who are considering next steps with regards to the development of a Good Food Nation Bill and trust that the needs of vegans will be taken into account. For your convenience I have summarised below relevant legislation, cases and legal guidance regarding the protection of vegans in law. I trust that this documents the obligations of public authorities adequately but if you require more information or if I can be of further assistance, please let me know.

1. LAW

The sincere convictions of vegans are within the scope of the human right to freedom of conscience and relevant equality law. As such, public authorities must give due regard to the needs of vegans to ensure compliance with legal duties, so that vegans do not experience unlawful interference or discrimination.

European Convention on Human Rights (ECHR)

Article 9, Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others

Article 14, Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

The Human Rights Act 1998 (HRA)

The HRA provides that the human rights contained in the European Convention on Human Rights form part of UK law. Section 6 makes it unlawful for a public body to act in a way that is incompatible with a convention right.

Equality Act 2010

This Act is informed by the EU principle of non-discrimination, which reflects the importance of fundamental rights, the significance of provisions contained in the ECHR and the case law of the ECtHR.¹

Provisions for 'belief' should be consistent with Article 9 principles and case outcomes.²

Section 10 makes a belief a protected characteristic. Belief means 'any religious or philosophical belief or reference to belief, including a reference to a lack of belief.'

¹ Council Directive 2000/78/EC, Preamble (1) and (4).

² Explanatory Notes to the Equality Act 2010, Section 10, paras 51-52.

Section 19 makes indirect discrimination unlawful, this being to apply a criterion, provision or practice which is discriminatory to a person's belief and which is not a proportionate means of achieving a legitimate aim.

2. LEGAL CASES

Grainger Plc v Nicholson [2010] ICR 360

This case defined philosophical belief under the Equality Act as

- genuinely held;
- a belief, not an evidence-based opinion or viewpoint;
- related to a weighty and substantial aspect of human life and behaviour;
- cogent, serious, cohesive and important; and
- worthy of respect in a democratic society, not incompatible with human dignity and not incompatible with the fundamental rights of others.

General Municipal and Boilermakers Union v Henderson [2015] UKEAT/0073/14/DM

Simler J, the Employment Appeals Tribunal President, said: 'The law does not accord special protection for one category of belief and less protection for another. All qualifying beliefs are equally protected. Philosophical beliefs may be just as fundamental or integral to a person's individuality and daily life as are religious beliefs.'

H v United Kingdom (1993) 16 EHRR CD 44

A prisoner did not want to work in a print shop because he assumed the dyes were not vegan. Veganism was accepted as coming within the scope of Article 9 ECHR.

R (Williamson) v Secretary of State for Education and Employment [2005] 2 AC 246

Lord Walker commented that vegetarianism is an uncontroversial example of what could constitute a belief within the legal meaning.

Hashman v Milton Park (Dorset) Ltd [2011] ET 3105555/2009 (31 January 2011):

This case involved a vegan that worked at a garden centre. He was fired for his views on fox hunting. Relying on *Grainger*, the judge summarised the philosophical belief in question as follows:

They derive from the sanctity of life and animal welfare. They affect every area of his life. His beliefs are cogent, serious, coherent and important

The judge found that the claimant lived his life in accordance with his beliefs (including veganism) and therefore they amounted to a philosophical belief, both within the ordinary sense of the word and within the meaning of The Employment Equality (Religion or Belief) Regulations 2003, which adheres to the principle of Article 9 ECHR.

The judge found there was no competing right, as there was not a human right to indulge in fox hunting.

3. LEGAL GUIDANCE

The Council of Europe and European Court of Human Rights confirm that veganism is a matter for human rights protection.³

The Equality and Human Rights Commission has a statutory duty to disseminate information about equality measures and publicly states that veganism is within the scope of protection of UK law.⁴

³ The Council of Europe and European Court of Human Rights 'Guide on Article 9 of the European Convention on Human Rights' (2019) https://www.echr.coe.int/Documents/Guide_Art_9_ENG.pdf

⁴ <https://www.equalityhumanrights.com/en/human-rights-act/article-9-freedom-thought-belief-and-religion>