

Department of Health Nursery Milk Scheme

Legal Opinion

24 September 2019

The Government is legally required to ensure that the actions it takes, including the implementation of secondary legislation, are non-discriminatory against people with different beliefs. Veganism constitutes a qualifying belief under both human rights and equality legislation, in part because it is cogent and affects every aspect of a person's life from the clothes worn, to the entertainment avoided and the food eaten. The Welfare Food Regulations 1996 provides for the Department of Health Nursery Milk Scheme and indirectly discriminates against vegans who are not provided with free plant-based milk as an alternative to cow's milk. For this scheme to be lawful the Government would need cogent justification of the discrimination. This would need to take into account the widespread evidence that fortified plant milks are rich sources of calcium.

The primary Act that enables the Welfare Food Regulations is the Social Security Act 1988, specifically Section 13. Section 13 does not discriminate against vegans meaning the Government has the power to introduce new or amended Regulations that include plant-based milks within the nursery milk scheme. This would satisfy the Government's duty under the Equality Act to eliminate discrimination and prevent a court action that could see the current Regulations being quashed due to their incompatibility with The Human Rights Act.