

Introduction

To provide guidance in relation to Genuine Occupational Requirements (GOR) as set out in the Equality Act 2010.

Aims of Policy

To provide clear guidelines for managers on GOR where considerations of privacy and decency determine its application to a post.

Scope

All employees and managers.

School Based Employees

Newport City Council commend the Recruitment and Selection Policy to individual Governing Bodies for adoption. This guidance has been developed in line with the Recruitment and Selection Policy.

To be read in conjunction with

Equality Act 2010 Guidance

Recruitment and Selection Policy and Guidance

POLICY

The Equality Act 2010 (EA) explicitly states that it is illegal for any person to be treated unfairly or less favorably than someone else because of a protected characteristic. The Equality Act 2010 protects individuals from discrimination in the workplace and at all stages of employment, including pre-employment, which covers any recruitment process undertaken.

The Equality Act 2010 introduced a single 'genuine occupational requirement' (GOR), which applies to all of the protected characteristics. The Equality Act replaced all previous legislation covering GOR's and genuine occupational qualifications (GOQ). The protected characteristics covered in the legislation are;

- age
- disability

- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

When a Genuine Occupational Requirement can be claimed:

Under the Equality Act 2010, the legislation states that where a manager/Headteacher intends to recruit to a post and states that GOR exists, they would have to demonstrate that the requirement to discriminate in the form of the GOR is a 'proportionate means of achieving a legitimate aim'. An occupational requirement can only arise for a few specific jobs, which are reserved for people with a protected characteristic. It is important to understand that this exception is very limited, and in these rare cases, discrimination by the employer in favour of the particular protected characteristic will be allowed.

A GOR can only be claimed where it is **necessary** for the relevant duties to be carried out by a specified protected characteristic, not merely because it is preferable. A GOR will not be valid where members of the appropriate characteristic are already employed in sufficient numbers to meet the employer's likely requirements, without undue inconvenience.

If a discrimination claim is brought against the Authority, the burden of proof is on the manager/Headteacher to prove that a GOR is justified under the Equality Act 2010.

The safest way to proceed is for the manager/Headteacher to presume that no GOR exists until a careful analysis has been made at the start of the recruitment process. Also it must be shown that those duties *must* be carried out to achieve the objectives of the job.

The manager/Headteacher who is looking to recruit to a post must decide whether a GOR may be applicable before advertising the job.

All roles in an organisation must be considered separately. If there is a GOR relating to one role, it will not necessarily apply to all roles within the service area/team. A GOR cannot be used to establish or maintain a balance or quota of employees.

Where a GOR exists, it should be reviewed each time the post becomes vacant, as circumstances may change and consequently mean that a previous GOR no longer exists. It must not be assumed that because a GOR exists for one job it automatically exists for jobs of a similar nature or in a similar location. This is because the nature or extent of the relevant duties may be different or there may be other employees in the workplace who could undertake those duties.

Advertising with a Genuine Occupational Qualification/Genuine Occupational Requirement

Once a manager/Headteacher has advised that it is a GOR exemption exists for a position, and it is necessary for an applicant to have a protected characteristic, then it is lawful to advertise the position as such (for example, 'Personal care worker for elderly women required. This post is only available to female applicants as permitted under the Equality Act 2010').

Note: Only at an employment tribunal can it be ruled whether a particular GOR is valid. A written statement explaining the rationale for a GOR will not prevent a challenge, but it will help to substantiate a claim if a case is taken to the tribunal.

Therefore, support teams should not place an advert containing a GOR unless the recruitment requisition form is accompanied by a full statement by the manager/Headteacher.

Further Advice

If a manager/Headteacher or support teams require further advice regarding the claiming of GORs they should contact Human Resources in first instance.

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Document Control

Version	Date	Author	Notes/Changes
V1	09/04/2011	Human Resources	Corporate Review and New Template
V1.1	22/01/2013	Human Resources	Service Area to People & Transformation, school reference inclusion and Template change
V1.2	20/09/2017	Human Resources	Version control added
V2	06/05/2020	Human Resources	Policy template updated
V2.1	01/07/2020	Human Resources	Updated to reflect the changes in legislation under the Equality Act 2010.

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