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DISCRIMINATION ON GROUNDS OF RELIGION OR BELIEF

Part 2 of the *Equality Act 2006: Discrimination on grounds of religion or belief came into force on 30 April 2007.* The provisions make discrimination in the area of goods, facilities and services on grounds of religion or belief unlawful.

For schools this means admissions, benefits and services for pupils and treatment of pupils. For Local Authorities the provisions extend to the exercise of their functions.

Due to the nature and history of religious content in relation to school education, there are some limited exceptions from the provisions in certain areas and these, together with the responsibilities under the provisions, are fully explained in the guidance document which is available to download from

<http://www.governornet.co.uk/linkAttachments/Equality%20Act%20Part%202%20Guidance%20for%20Schools.doc>). There is a link on the Chairs/Clerks vle to this document. A brief overview of the implications for schools is provided below.

How the legislation applies to schools

Section 49 of the Act sets out the provisions in relation to educational establishments, which in this context means schools.

Below is a summary of the specific education provisions in this area, how they will affect schools and what schools need to do to comply.

The Act sets out that it is unlawful for maintained schools, independent schools and special schools to discriminate against a person in the following ways:

- a) in the terms on which it offers to admit him/her as a pupil,
- b) by refusing to accept an application to admit him/her as a pupil, or
- c) where he is a pupil of the establishment:
 - (i) in the way in which it affords him/her access to any benefit, facility or service
 - (ii) by refusing him/her access to a benefit, facility or service,
 - (iii) by excluding him/her from the establishment, or
 - (iv) by subjecting him/her to any other detriment.

A "pupil" means any person who receives education at the establishment in question – which in this legislation means schools.



The body responsible for ensuring that no discrimination takes place depends on the type of school. For maintained schools, it will be the LA or governing body, depending on who took the decision or action complained of.

Many schools will already have in place fair, non-discriminatory policies for dealing with pupils and their parents¹. They may not need to make any change to these in order to comply with the Act.

However, it is important that schools fully understand the provisions of the Act and are aware of their obligations and duties. Schools are advised to review their policies and practices to make sure these meet the requirements of the Act so that they are not doing anything which would discriminate against pupils on grounds of their religion or belief, or lack of it, or that of their parents² - even if they believe that they are already operating in a non-discriminatory way.

The Act provides that schools (unless exempted) will not be allowed to admit or refuse to admit pupils on the basis of religion or belief and must treat pupils equally irrespective of their own or their parents'¹ religion or belief or lack of it. This also applies to access to benefits, facilities or services. In addition pupils cannot be excluded from school or subjected to any detriment on the basis of their (or their parents'¹) religion or belief or lack of it.

However, there is a long tradition in this country of schools with a religious ethos and character. In addition, there are requirements on all schools to provide religious education, and daily acts of collective worship, most of which in any term must be wholly or mainly of a broadly Christian character (with limited exceptions). Taken alone, the prohibition of discrimination on grounds of religion or belief would create certain difficulties for schools in their proper, day-to-day operation. Some limited exceptions were therefore written into the Act

Exceptions for schools of a religious character (also referred to in the guidance, as faith schools)

Faith Schools have a significant history as part of the national education system, and with their distinct religious ethos and character, play an important role in diversity of provision. It was never the intention of part 2 of the Equality Act to undermine their position.

By their very nature, faith schools attract applications from pupils on the basis of religion. They may also offer special services, guidance, mentoring, religious visits etc for pupils who share their faith and these may not be extended to or duplicated for other pupils also attending the school. It is therefore clear that many of the everyday activities of faith schools would, without specific provision, be inconsistent with the prohibition of discrimination contained in the Act, leaving these schools open to claims of discrimination as a result of their normal operations.

Without specific exceptions in the legislation, parents³ could claim that their child had been discriminated against if he or she was not admitted to a faith school on grounds that they did not share the faith of the school. Similarly, parents¹ of an existing pupil not sharing the faith of the school could claim that the pupil had been discriminated against if special arrangements were made for pupils sharing the faith of the school but not for others.

To enable faith schools to continue to operate in accordance with their particular religious ethos, limited exceptions to the non-discrimination provisions have been introduced.

¹ Also includes guardians or carers.

² Also includes guardians, carers, or associates

³ Also includes guardians or carers.

However, whilst some specific exemptions have been provided for faith schools, they must abide by the provisions in the Act which do apply to them.

It is also important to recognise that whilst faith schools have a particular religious ethos and will, on the whole, cater for pupils of parents¹ sharing that faith, this does not mean that they should be inward-looking institutions and have no wider community outlook. All schools have important roles to play in working with other schools and the wider community and in promoting community cohesion. **That is why the Education and Inspections Act 2006 placed a new duty on the governing bodies of all maintained schools to promote community cohesion and gave Ofsted powers to inspect how governing bodies are carrying out this duty.**

It is good practice for faith schools to open a number of places each year for children who themselves, or whose parents¹, are of other faiths or no faith, in order to ensure a diverse mix of pupils and to reflect the wider community – and many schools already do this. In 2006 both the Church of England and Catholic Church pledged to make available 25% of places in new schools to children not of the school's faith. It is also the case that not all faith schools of the same faith necessarily interpret and teach that faith in the same way. Even some faith schools sharing the same religion may have different interpretations of the requirements of their faith, and different needs as a result. All schools should nevertheless practice tolerance and understanding of other religions and beliefs, including the beliefs of the non-religious, when teaching and in their everyday activities.

For the precise wording of the exceptions in this area you will need to refer to section 49 of the Act <http://www.opsi.gov.uk/acts/acts2006/20060003.htm> but in summary: the exceptions mean that maintained schools which have a religious character are not subject to the provisions relating to admissions and pupils' access to benefits, facilities and services.

This means that faith schools will still be able to give priority in admissions to children on the basis of their faith. Schools can also restrict certain services and benefits that they offer to pupils sharing the faith of the school, or can offer them in a different way to pupils of different beliefs or religions - or none. However, it is unlawful for a maintained faith school to leave places unfilled where there are fewer applications than places available. Under subscribed faith schools must admit all children who apply regardless of their faith. Similarly, where a school gives priority to a proportion of children not of the faith and there are insufficient applicants in this category, places must not be left open and must be filled by children of the faith (and vice versa).

However once pupils have been admitted, schools may not exclude them or subject them to any other detriment, on grounds of their religion or belief, or lack of it, or that of their parents⁴. Detriment is a wide concept and is not precisely defined by law. It is open to interpretation by the courts on a case-by-case basis.

Examples of actions faith schools might take and how they would be treated under the Act are available in the guidance.

Exceptions for the content of the curriculum

There is a broad exemption in the Act for anything to do with the content of the curriculum. This is to ensure that all schools can continue to deliver the broad-based and inclusive curriculum to which all children are entitled without fear of challenge based on the religious views of particular parents⁵ or children.

⁴ Also includes guardians, carers, or associates.

⁵ Also includes guardians or carers.

For the precise wording of the exemption please refer to section 50 of the Act.

<http://www.opsi.gov.uk/acts/acts2006/20060003.htm>

The exemption covers anything done by schools in connection with the content of the curriculum. It accordingly covers the National Curriculum, together with elements such as RE which is not part of the National Curriculum but which is required by law to be taught in maintained schools. It includes elements such as the provision of school library books, which are aimed at the delivery of a broad-based and balanced education to pupils. It also extends to independent schools, which do not have to teach the National Curriculum.

Examples of actions schools might take and how they would be treated under the Act are provided in the guidance.

Exceptions for collective worship

Under existing education legislation, all pupils in maintained schools are normally required to participate in a daily act of collective worship, the majority of which in any term must be wholly or mainly of a broadly Christian character. Parents⁶ have the right to withdraw their children from this activity so that they need not take part in the practising of another (or any) religion if they do not wish it. Schools must comply with this request by excusing those children.

This right also extends to parents¹ of children in maintained faith schools which provide religious education and activities more closely reflecting the school's ethos.

Section 55 of the Education and Inspections Act 2006 also gives sixth form pupils of maintained schools the right to withdraw from the daily act of collective worship without parental consent.

All acts of collective worship provided by any school are exempted from the prohibition of discrimination under the Act. Please refer to section 50 of the Act for the precise wording. <http://www.opsi.gov.uk/acts/acts2006/20060003.htm>

This exemption ensures that all schools can continue to provide collective worship in the way legislation requires them to. It also extends to activities organised by or on behalf of the school. Schools can therefore continue to arrange, for example, for children to attend the local church to participate in a harvest festival or Christmas carol service, although parents¹ would of course be expected to be informed of this and the likely content of the service, so they may elect to withdraw their child from that particular activity. Schools will not be required to provide equivalent worship or assemblies for children of all religions and beliefs, although they would be able to do so with agreement from their local SACRE.

Examples of actions schools might take and how they would be treated under the Act can be found in the guidance.

School Uniform

Governing bodies decide whether there should be a school uniform and other rules relating to appearance, and if so what they should be.

In setting school uniform/appearance policies, governing bodies must ensure that their policy is fair and reasonable. They should consult widely and the school uniform/appearance policy should take account of pupils drawn from particular social, religious or racial groups and those with a disability or special educational needs. Governing bodies also have duties under the Human Rights Act 1998 and under anti-discrimination legislation.

⁶ Also includes guardians or carers.