

## **Discrimination on Grounds of Religion or Belief Equality Act 2006 - Part 2:**

This guide is aimed at helping schools to understand their obligations under Part 2 of the Equality Act 2006, which introduces provisions outlawing discrimination on grounds of religion or belief in areas beyond employment and vocational training. This specifically includes education and other services in schools as from April 2007.

### **General background and context**

In developing the Act the Department for Children, Schools and Families (previously DFES) needed to strike the right balance between combating religious discrimination and the need to protect pupils on the one hand and, on the other, maintaining the position of schools with a religious character (faith schools), upholding current statutory provision for schools more generally and protecting schools against possible vexatious claims as they carry out their normal functions.

To achieve this balance, a number of exceptions to the prohibition of discrimination in respect of the provision of education and schools have been included in the Act.

These exceptions are limited to include faith schools, religious education and daily acts of collective worship; curriculum, exclusions, school uniform.

### **Faith schools are not exempt from the whole of this Act**

For further information please contact your Education Improvement Adviser or Amani Robinson, Equalities Officer – [amani.robinson@learningtrust.co.uk](mailto:amani.robinson@learningtrust.co.uk)

# **Definitions**

## **The Meaning of Religion or Belief**

A religion or belief must have a clear structure and belief system, it should have a certain level of cogency, seriousness, and cohesion, and not be incompatible with human dignity. “Religion” will include, for example, all the major faith groups and “belief” will include non-religious worldviews such as humanism. Religion will also include denominations or sects within a religion, such as Catholics or Protestants within Christianity. It is not however intended to include political beliefs such as Communism or support for any particular political party.

Lack of religion or belief is also included in the definition of “religion or belief”. This means it will be unlawful to discriminate against someone on the grounds that they do not adhere or sufficiently adhere to a particular religion or belief (even one shared by the discriminator), or indeed any religion or belief at all – such as, for example, an atheist.

## **What Does Discrimination on Grounds of Religion or Belief Mean?**

Discrimination on the grounds of religion or belief means treating a person less favourably than another person is or would be treated, because of their religion or belief, or the religion or belief they are perceived to have, their lack of religion or belief, or the religion or belief, or lack of it, of someone else with whom they are associated.

The definition makes it clear that unlawful discrimination can include discrimination against another person of the same religion or belief as the discriminator. This is to ensure that discrimination between, e.g. Orthodox and Reform Jews, or Shia and Sunni Muslims, is caught. It does not, however, include less favourable treatment on grounds of conduct by a person that is motivated or required solely by their own religion or belief. Thus for example, if a Sunni Muslim refuses to serve Shia Muslim customers in his shop; that would be religious discrimination within Part 2 of the Act. However if a Catholic printer refuses to produce leaflets advertising an abortion clinic, that might be motivated by his own religious belief but would not be based on the religion of the person refused the service, and would not be caught by these provisions.

## How the legislation applies to schools

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

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

Many schools will already have in place fair, non-discriminatory policies for dealing with pupils and their parents<sup>1</sup>. They may not need to make any change to these in order to comply with the Act. Indeed, schools often lead the way in our society which is home to people of many cultures, religions and beliefs, by practising and teaching about equality, inclusion and recognising diversity.

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 parents<sup>2</sup> - 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'<sup>1</sup> 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'<sup>1</sup>) religion or belief or lack of it.

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.

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<sup>1</sup> Also includes guardians or carers.

<sup>2</sup> Also includes guardians, carers, or associates

## **Exceptions for schools of a religious character (also known, and referred to in this guidance, as FAITH SCHOOLS)**

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.

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.

It is also important to recognise that whilst faith schools have a particular religious ethos and will, on the whole, cater for pupils of parents<sup>1</sup> 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 body of all maintained schools to promote community cohesion and gave Ofsted powers to inspect how governing bodies are carrying out this duty.

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.

The exceptions mean that maintained and independent schools which have a religious character or ethos (and are registered as such ie Faith schools) 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. Undersubscribed 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 parents<sup>3</sup>. 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.

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<sup>3</sup> Also includes guardians, carers, or associates.

## **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 parents<sup>4</sup> or children.

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.

## **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. Parents<sup>5</sup> 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 parents<sup>1</sup> of children in maintained faith schools which provide religious education and activities more closely reflecting the school's ethos.

The right also extends to parents<sup>1</sup> of children in Academies although it should be noted that this right is by virtue of the Academy funding agreement and is not set in legislation as it is for maintained schools.

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.

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 parents<sup>1</sup> 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.

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<sup>4</sup> Also includes guardians or carers.

<sup>5</sup> Also includes guardians or carers.

## **Exclusions**

A key aspect of the education provisions in Part 2 of the Act is the provision that makes it unlawful to exclude any pupil from school on the basis of religion or belief (or lack of it). There is no exception from this provision.

Existing Government guidance on exclusions makes it clear that pupils should only be excluded from school as a last resort and exclusions should only be made on grounds of a pupil's behaviour.

Nothing in the Act conflicts with this guidance. Schools cannot exclude pupils merely on grounds of their or their parents'<sup>6</sup> religion or belief - or lack of it, nor for behaviour which would not lead to exclusion if it was not linked to religion or belief. A pupil might, for example, put forward robust views in class discussions in RE based on his own minority religious view or position as an atheist or a humanist. Although it would be unlikely, a school might view this as disruptive or disrespectful and wish to exclude the pupil. Such an act would be discriminatory, unless the pupil's behaviour was so extreme and disruptive as to merit exclusion in its own right.

## **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 engage pupils, parents, prospective pupils and parents, community groups and leaders representing minority racial, national, religious, cultural, and disability groups in the consultation process.

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.

## **Exceptions for local authorities and public authorities**

This is not directly relevant but may be of interest to schools.

Local Education Authorities are bound by the provisions of the Act and, like schools, need to be aware of their duties and obligations.

These exemptions have been included because certain everyday functions of local authorities and other public authorities (e.g. DfES) might otherwise be brought into question under the prohibition on discrimination contained in the Act.

One such area is the provision of schools. Without an appropriate exemption, the Act would effectively impose a duty on local authorities to ensure equality in meeting demand for schools for pupils of different religions or beliefs (or no religion or belief) in any particular catchment area - and that is not the Government's intention under this Act. For example,

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<sup>6</sup> Also includes guardians, carers, or associates

without an exemption, a group of Catholic parents<sup>7</sup> could claim to have been discriminated against by their LA because there is no Catholic school in the area although there is a Church of England school.

Another key area is the provision of free or subsidised home to school transport by local authorities. This, too, is exempt. This is because over and above an LA's duty to provide free home to school transport for all pupils who are attending their nearest relevant school when that is beyond the statutory walking distances, local authorities also have considerable scope to decide in which other cases to provide subsidised or free transport. Local authorities must consider each pupil's case on its merits, taking account of all relevant factors. In practice, local authorities often provide subsidised transport for pupils of a particular (often faith) school that is located outside the local area, even if it is not their nearest relevant school. This may be because a parent wishes their child to attend a school of their own faith. It could equally be because the nearest relevant school has a religious ethos which a parent thinks is inappropriate for their child, and the local authority therefore enables the child to attend a non-faith school further away. An exemption was accordingly included for local authorities' functions in relation to school transport to prevent local authorities from being inundated with claims of discrimination as a result of their decisions in relation to individual requests for free or subsidised home to school transport

Note however that the Act neither creates any new law in the area of free home-to-school transport nor exempts local authorities or any other public authority from their obligations under the Human Rights Act. It merely allows local authorities to continue to make decisions based on individual cases - as is the position now.

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<sup>7</sup> Also includes guardians or carers.