



## EQUALITY ACT 2010 – GUIDANCE NOTE FOR CATHOLIC SCHOOLS

Throughout this Note the term ‘Catholic school’ also applies to Catholic academies in England.

This Note provides an overview with a particular emphasis on matters relevant to Catholic schools. The DfE has produced useful and more extensive guidance – *Equality Act 2010: Advice for School Leaders, School Staff, Governing Bodies and Local Authorities* which is referenced throughout this Note and can be accessed via the following link: <http://www.education.gov.uk/f00215460/equality-act-2010-departmental-advice>

The Equality and Human Rights Commission has also published *Technical Guidance for Schools in England* in respect of provisions of the **Equality Act 2010** (“the Act”) relevant to schools’ legal obligations. The guidance can be accessed here: [http://www.equalityhumanrights.com/uploaded\\_files/EqualityAct/PSED/technical\\_guidance\\_schools\\_england\\_final.pdf](http://www.equalityhumanrights.com/uploaded_files/EqualityAct/PSED/technical_guidance_schools_england_final.pdf)

### Background

The **Equality Act 2010** was harmonising legislation which replaced existing legislation and introduced some further protections. In England and Wales the Act applies to all maintained schools, independent schools, including academies, and maintained and non-maintained special schools.

In relation to schools most of the provisions remained unchanged but there were some changes of significance.

The Act makes it unlawful to discriminate against, harass or victimise **a pupil or potential pupil** (subject to certain exceptions including those applying to schools with a religious character):

- In relation to admissions;
  - In the way it provides education for pupils;
  - In the way it provides pupils access to any benefit, facility or service; or
- By excluding a pupil or subjecting them to any other detriment.



## **Protected characteristics**

It is unlawful to discriminate against **a pupil or prospective pupil** by treating them less favourably on the basis of the following protected characteristics:

- Sex;
- Race;
- Disability;
- Religion or belief;
- Sexual orientation;
- Gender reassignment- this protection was introduced by the Act;
- Pregnancy or maternity – the Act extended this protection to pupils.

It is also unlawful to discriminate on the basis of association or perception i.e. because a person with whom the pupil or prospective pupil is associated has a protected characteristic, or if you think a person has a protected characteristic even if this is mistaken.

Although age is also a protected characteristic in relation to employment and to the provision of goods and services (except for children) this does not apply to pupils in schools. This allows schools to differentiate on the basis of age so that schools can continue to organise children in age groups and treat them age appropriately etc. This applies even where the pupil is over the age of 18.

**Schools remain free to admit and organise children in age groups and to treat them in ways appropriate to their age and stage of development.**

In relation to disability, the Act provide protection for disabled people but not those who are not disabled so schools can treat disabled pupils more favourably. The Act imposes a duty to make reasonable adjustments for disabled pupils and prospective disabled pupils. The Act also contained a new duty for employers to provide an auxiliary aid if without it the disabled person would be at a substantial disadvantage. The duty was extended to auxiliary 'services'.

From September 2012 schools and local authorities have a duty to supply auxiliary aids and services as reasonable adjustments to pupils, where they are not being supplied through special educational needs statements or through other sources.



## Unlawful behaviour

- **Direct discrimination** – occurs when one person treats another less favourably because of a protected characteristic, than they treat, or would treat, other people;
- **Indirect discrimination** – occurs where a “provision, criteria or practice” is applied which has the effect of putting people who have a particular protected characteristic at a disadvantage when compared to people without that characteristic;
- **Harassment** – “unwanted conduct, related to a relevant protected characteristic, which has the purpose or effect of violating a person’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

In schools this applies only to harassment because of sex, race, disability and pregnancy and maternity. It does not apply to religion or belief, sexual orientation or gender reassignment. This does not of course mean that such behaviour would be permissible; it would remain unlawful discrimination notwithstanding that this legal definition does not apply;

- **Victimisation** – is where a person is treated less favourably because of something done (“a protected act”) in connection with the Act e.g. because the person has brought a claim under the Act.

## School Exceptions: General

- **Single sex schools**

Single sex schools are able to refuse to admit pupils of the opposite sex. They are not prevented from admitting a small number of pupils of the opposite sex on an exceptional basis or in relation to particular courses or classes only. Other forms of sex discrimination against those opposite-sex pupils would be unlawful e.g. not allowing them access to school facilities.

- **Religion or Belief**

The Act provides an exception from the prohibition on religion and belief discrimination in the provision of services in schools. For all schools the areas covered by the exception are the curriculum, collective worship, school transport and the establishment, alteration and closure of schools. For schools with a religious character the exceptions also apply to anything done in connection with admissions or in relation to the responsible body of such schools i.e. for Catholic schools the school’s governing body.



- **Curriculum**

The **content** of the curriculum has never been caught by discrimination law and the Act states that it is specifically excluded. The **delivery** of the curriculum is however explicitly included.

The DfE guidance highlights the relationship between protection because of sexual orientation and protection of religious freedom. It states that many people's views on sexual orientation/sexual activity are grounded in religious belief. It refers to concerns of schools with a religious character that they may be prevented from teaching in line with their religious ethos. It also refers to teachers having expressed concerns that they may be subject to legal action if they do not voice positive views on same sex relationships, whether or not this view accords with their faith. The guidance also refers to concerns that such schools may teach and act in ways unacceptable to lesbian, gay and bisexual pupils and parents when same sex relationships are discussed because there are no express provisions to prevent this occurring.

**The guidance makes clear that, like all schools, schools with a religious character have a responsibility to the welfare of children in their care and to adhere to curriculum guidance. It goes on to say that, provided their beliefs are explained in an appropriate way in an educational context that takes into account existing guidance on the delivery of Sex and Relationship education (SRE) and Religious Education, then schools should not be acting unlawfully. Further that it would not be unlawful for a teacher in any school to express personal views on sexual orientation provided that it is done in an appropriate manner and context. The guidance however provides a note of caution about the influential role of a teacher and that their actions and responsibilities extend beyond the requirements of the equality legislation and that expressing personal views should not extend to allowing unlawful discrimination.**

- **Acts of worship**

The Act contains a general exception to the religion or belief provisions which allows all schools to have acts of worship or other forms of collective religious observance. The daily act of collective worship is not covered by the religion or belief provisions, which means that schools will not be acting unlawfully if they do not provide an equivalent act of worship for other faiths.

For maintained schools a daily act of collective worship remains a mandatory requirement. It continues to be the case that in any maintained school collective



worship is to be 'wholly or mainly of a broadly Christian character' except where a determination otherwise has been successfully obtained.

A school must of course comply with any request by a parent for a pupil to be wholly or partly excused from attending RE. Parents have the right to withdraw their children from collective worship and sixth form pupils have the right to withdraw themselves.

The character and content of collective worship in a voluntary aided school continues to be determined by the governing body and for a VA school with a religious character will be in accordance with the school's trust deed or in accordance with the beliefs of the religion or denomination specified for the school. For Catholic schools this will be in accordance with the teachings of the Catholic Church.

Schools are also free to celebrate religious festivals and would not be discriminating against children of other faiths e.g. putting on a nativity play.

- **Uniforms**

The Act does not deal specifically with school uniform or appearance but the general requirement not to discriminate would apply. Governing bodies must also have regard to their obligations under the **Human Rights Act 1998**.

It is for the governing body to decide matters relating to uniform and appearance. The DfE guidance on school uniform policy advises that schools should be sensitive to the needs of different cultures, races and religions and that the Department would expect schools, where possible, to act reasonably in accommodating these needs, within a general uniform policy, without compromising important school policies, such as school safety or discipline.

### **Exceptions for Schools with a Religious Character**

- **Admissions**

Priority may be given on the basis of faith criteria in cases of where schools are oversubscribed in accordance with admissions law and the provisions of the School Admissions Code. Schools designated as having a religious character **must** have regard to any guidance from the body or person representing the religion or religious denomination when constructing faith-based oversubscription criteria and must also



consult that body or person when deciding how membership or practice of the faith is to be demonstrated.<sup>1</sup>

Catholic schools must therefore have regard to diocesan guidance and consult with their diocese. This applies to **all** Catholic schools, including schools which are under the trusteeship of a religious order.

- **Benefits, facilities and services**

Exceptions are provided for schools with a religious character in relation to how education is provided and access to aspects of school life.

Catholic schools will still be able to mark or celebrate events specific to their religion and ethos. Parents, guardians or carers will not be able to claim that their children have been discriminated against simply because an equivalent celebration of events of significance to their particular religion is not arranged. Schools will also still be able to organise trips to a local church and will not have to organise visits to accommodate children of other faiths within the school. The DfE guidance also states as an example that a child of a different faith could not claim that they were being treated less favourably because objects symbolic of a school's faith, such as the Bible, were given a special status on the school.

- **Employment**

The Act provides that for schools with a religious character it will not be unlawful discrimination to do certain things permitted by the **School Standards and Framework Act 1998** ("the SSFA").

This means that for Catholic schools, in common with other voluntary aided schools, preference may be given in connection with the appointment, remuneration or promotion of teachers, to those whose religious beliefs or religious practice is in accordance with the tenets of the school's religion or religious denomination or who give or are willing to give religious education in accordance with the tenets of the faith. Conduct that is incompatible with the precepts of the Church, or which fails to uphold its tenets, may be taken into consideration in determining whether the teacher's employment should be terminated.<sup>2</sup>

Independent schools with a religious character may also take into account religious considerations. Academies, although publicly funded, are independent schools. The Act contains equivalent provisions for Catholic independent schools as apply to

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<sup>1</sup> DfE School Admissions Code 1<sup>st</sup> February 2012 paragraph 1.38

<sup>2</sup> Section 60(5) School Standards and Framework Act 1998



Catholic voluntary aided schools.<sup>3</sup> **The exceptions which apply to Catholic academies following conversion will therefore remain unchanged.**

The exceptions were extended in England (not Wales) to remove the provision that no person shall be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship, from being employed or engaged for the purposes of a school otherwise than as a teacher.<sup>4</sup> This meant that preference could be given to practising Catholics in non-teaching posts where there was a genuine occupational requirement, which would previously not have been permissible.

The Act provides for occupational requirements<sup>5</sup>. Of particular relevance are the provisions<sup>6</sup> which provide that where an employer has an ethos based on religion or belief they do not contravene the Act by applying a requirement to be of a particular religion or belief if, having regard to the nature of the work, it is an occupational requirement and is a proportionate means of achieving a legitimate aim.

The importance of the role of the teaching staff is acknowledged by the Bishops collectively. The Bishop's Conference of England and Wales has set out its requirement to its schools as follows:

*"The preservation and development of the quality and distinctive nature of Catholic schools depends on the faith, practice and commitment of the teachers in the schools, working with their governing bodies"*<sup>7</sup>

The Bishops' Memorandum:  
<http://www.catholiceducation.org.uk/index.php/schools/recruitment/item/1000002-memorandum-on-appointment-of-teachers-to-catholic-schools>

refers to the employment of Catholic teachers as a high priority, whilst at the same time recognising the contribution of teachers of other Christian Churches, other faiths and other teachers.

**The Memorandum also requires that for the most senior roles i.e. the posts of Headteacher, Deputy Headteacher and Head or Co-ordinator of Religious Education the post must be filled by a baptised and practising Catholic. For other leadership posts that directly affect the Catholic Mission of the school they should, wherever possible, be staffed by skilled practitioners who are committed Catholics.**

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<sup>3</sup> Section 124A School Standards and Framework Act 1998

<sup>4</sup> Section 37 education and Inspections Act 2006

<sup>5</sup> Schedule 9 Equality Act 2010

<sup>6</sup> Schedule 9(3) Equality Act 2010

<sup>7</sup> Memorandum on Appointment of Teachers to Catholic Schools





## **The Public Sector Equality Duty**

The Act introduced an Equality Duty which applies to all public bodies, which includes maintained schools and Academies and which extends to all protected characteristics. In carrying out their functions public bodies are required to “have due regard to” the need to:

- Eliminate discrimination and other conduct prohibited by the Act;
- Advance equality of opportunity between people who share a protected characteristic and people who do not share it;
- Foster good relations across all characteristics – between people who share a protected characteristic and people who do not share it.

For schools age is relevant in relation to employees but not pupils.

The CES has produced separate guidance in relation to the application of the Public Sector Equality Duty for schools in England and Wales which can be accessed on the CES website via the following link:

<http://catholiceducation.org.uk/guidance-for-schools/equality>

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