

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 16: General and Miscellaneous

Schedule 11: Schools: exceptions

Part 2: Religious or belief-related discrimination

866. **Part 2** of this Schedule makes some exceptions to the prohibition on discrimination because of religion or belief in relation to schools with a religious character, and to acts of worship or other religious observance in any school.

Background

867. These exceptions, and the amending powers in paragraph 7, are designed to replicate the effect of provisions in Part 2 of the Equality Act 2006.

Schools with religious character, etc.: paragraph 5

Effect

868. This paragraph allows schools which have a religious character or ethos (often referred to as faith schools) to discriminate because of religion or belief in relation to admissions and in access to any benefit, facility or service. It means that faith schools may have admissions criteria which give preference to members of their own religion and it allows them to conduct themselves in a way which is compatible with their religious character or ethos. It does not allow faith schools to discriminate because of any other of the protected characteristics, such as sex, race or sexual orientation. Nor does it allow them to discriminate because of religion in other respects, such as by excluding a pupil or subjecting him to any other detriment.

Examples

- A Muslim school may give priority to Muslim pupils when choosing between applicants for admission (although the Admissions Code will not allow it to refuse to accept pupils of another or no religion unless it is oversubscribed). However, it may not discriminate between pupils because of any other of the protected characteristics, such as by refusing to admit a child of the school's own faith because she is black or a lesbian.
- A Jewish school which provides spiritual instruction or pastoral care from a rabbi is not discriminating unlawfully by not making equivalent provision for pupils from other religious faiths.
- A Roman Catholic school which organises visits for pupils to sites of particular interest to its own faith, such as a cathedral, is not discriminating unlawfully by not arranging trips to sites of significance to the faiths of other pupils.
- A faith school would be acting unlawfully if it sought to penalise or exclude a pupil because he or she had renounced the faith of the school or joined a different religion or denomination.

Curriculum, worship etc.: paragraph 6

Effect

869. This paragraph disapplies the prohibition on religious discrimination from anything done in relation to acts of worship or other religious observance organised by or on behalf of a school, whether or not it is part of the curriculum.

Background

870. This exception applies to any school, not just faith schools, and reflects the need to avoid any conflict with the existing legislative framework in respect of religious worship in schools, which generally requires collective worship to be of a broadly Christian nature. While parents can remove their children from collective worship, and sixth form pupils may decide to withdraw themselves, schools are under no obligation to provide opportunities for separate worship for the different religions and beliefs represented among their pupils. The exception in paragraph 6 maintains that position. It is designed to replicate the position in the Equality Act 2006.

Examples

- Under education law, a school must allow Jewish or Hindu parents to withdraw their children from daily assemblies which include an element of worship of a mainly Christian character, but it will not be discriminating unlawfully against those children by not providing alternative assemblies including Jewish or Hindu worship.
- Schools are free to organise or to participate in ceremonies celebrating any faith, such as Christmas, Diwali, Chanukah or Eid, without being subject to claims of religious discrimination against children of other religions or of none.

Power to amend: paragraph 7

Effect

871. [Paragraph 7](#) provides a power for a Minister of the Crown to add to, amend or repeal these religious discrimination exceptions.

Background

872. This power is designed to replicate the effect of provisions in Part 2 of the Equality Act 2006, which first prohibited religious discrimination in schools. It has not yet been used. Its purpose is to enable a Minister of the Crown to review the working of these provisions once they have been in effect for a sufficient period and make any changes which appear to be necessary in the light of that experience, using secondary legislation.