

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6: Education

Chapter 1: Schools

Section 84: Application of this Chapter

Effect

290. This section provides that this Chapter of the Act, which prohibits discrimination, harassment and victimisation in the field of education in schools, does not apply to discrimination or harassment of people in those circumstances because of age or marriage and civil partnership.

Background

291. This replicates the position in previous legislation and in, addition, extends protection because of gender reassignment and pregnancy and maternity to pupils in schools.

Examples

- It is not unlawful discrimination for a school to organise a trip for pupils in one year group, but not for pupils in other years.
- It is not unlawful discrimination for a school to allow older pupils to have privileges for which younger pupils are not eligible, such as more choice of uniform or the right to leave school during the lunch period.

Section 85: Pupils: admission and treatment, etc.

Effect

292. This section makes it unlawful for the responsible body of a school to discriminate against, harass or victimise a pupil or prospective pupil in relation to the terms on which it offers him or her admission, by not admitting him or her, or in the way it treats the pupil once admitted. The responsible body for a maintained school is the local authority or the governing body, and for an independent educational institution or a non-maintained special school is the proprietor.
293. It also imposes on the responsible body of a school the duty to make reasonable adjustments for disabled pupils and prospective disabled pupils.
294. However, the prohibition on harassment of pupils or prospective pupils does not cover gender reassignment, sexual orientation or religion or belief.

Background

295. This section is primarily designed to replicate the effect of provisions in current legislation applying to schools. In addition, it extends protection from discrimination to transsexual pupils and pupils who become pregnant.

Examples

- A school refuses to let a gay pupil become a prefect because of his sexual orientation. This would be direct discrimination.
- A selective school imposes a higher standard for admission to applicants from an ethnic minority background, or to girls. This would be direct discrimination.
- A pupil alleges, in good faith, that his school has discriminated against him because of his religion (for example claiming that he is given worse marks than other pupils because he is Jewish), so the school punishes him by making him do a detention. This would be victimisation.
- A teacher ridicules a particular pupil in class because of his disability, or makes comments which have the result of making the girls in the class feel embarrassed and humiliated. This would be harassment.

Section 86: Victimisation of pupils, etc. for conduct of parents, etc.

Effect

296. This section protects children in schools from being victimised as a result of a protected act (such as making or supporting a complaint of discrimination) done by their parent or sibling. The aim is to prevent parents being discouraged from raising an issue of discrimination with a school because of worry that their child may suffer retaliation as a result.
297. Where a parent or sibling maliciously makes or supports an untrue complaint, the child is still protected from victimisation, as long as the child has acted in good faith. But, in common with the general approach to victimisation, where a child has acted in bad faith, he or she is not protected, even where a parent or sibling makes or supports an untrue complaint in good faith.

Background

298. This section is designed to replicate the effect of provisions in the Disability Discrimination Act 1995 and extend the protection to cover all characteristics protected under this Chapter.

Examples

- The parent of a pupil complains to the school that her daughter is suffering sex discrimination by not being allowed to participate in a metalwork class. The daughter is protected from being treated less favourably by the school in any way because of this complaint.
- A pupil brings a case against his school claiming that he has suffered discrimination by a member of staff because of his sexual orientation. The pupil's younger brother, at the same school, is protected against any less favourable treatment by the school because of this case, even if it is later found that the older brother was not acting in good faith.

Section 87: Application of certain powers under Education Act 1996

Effect

299. This section enables the Secretary of State to give directions, using powers under the Education Act 1996, to require a maintained school or a non-maintained special school to comply with its duties under section 85. It enables the Secretary of State to require a school to stop a discriminatory practice or policy even if no complaint has been brought by an individual pupil or prospective pupil.

Background

300. Sections 496 and 497 of the Education Act 1996 empower the Secretary of State to give directions to local education authorities and to governing bodies of maintained schools to prevent them exercising their functions under the Education Acts unreasonably, or to require them to perform statutory duties where they are not doing so. This power has already been extended to require compliance with the law on sex discrimination, and this section extends those powers to all the protected characteristics covered by section 85.

Example

- The governing body of a school refuses as a matter of policy to let disabled pupils participate in school trips because of the extra risk management required. The Secretary of State could direct the governing body to change its policy so as to make reasonable adjustments to enable disabled pupils to participate.

Section 88: Disabled pupils: accessibility

Effect

301. This section introduces Schedule 10 which requires local authorities and schools to prepare and implement accessibility strategies and plans. These will increase disabled pupils' access to the curriculum and improve the physical environment and the provision of information. They are explained in more detail in the notes to that Schedule.

Section 89: Interpretation and exceptions

Effect

302. This section explains what is meant by terms used in this Chapter, such as "school" and "pupil". It also makes it clear that the prohibitions in the Chapter do not apply to anything done in relation to the content of the school curriculum. This ensures that the Act does not inhibit the ability of schools to include a full range of issues, ideas and materials in their syllabus and to expose pupils to thoughts and ideas of all kinds. The way in which the curriculum is taught is, however, covered by the reference to education in section 85(2)(a), so as to ensure issues are taught in a way which does not subject pupils to discrimination. This section also gives effect to Schedule 11 which provides some exceptions to the provisions in this Chapter.

Background

303. This section is designed to replicate the effect of an exception relating to discrimination because of religion or belief in the Equality Act 2006, and extends it to other protected characteristics.

Examples

- A school curriculum includes teaching of evolution in science lessons. This would not be religious discrimination against a pupil whose religious beliefs include creationism.

*These notes refer to the Equality Act 2010 (c.15)
which received Royal Assent on 8 April 2010*

- A school curriculum includes *The Taming of the Shrew* on the syllabus. This would not be discrimination against a girl.