

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 16: General and Miscellaneous

Schedule 11: Schools: exceptions

Part 1: Sex discrimination

860. **Part 1** of this Schedule makes exceptions from the prohibition on sex discrimination by schools in section 85 to allow for the existence of single-sex schools and for single-sex boarding at schools, and to make transitional provisions for single-sex schools which are turning co-educational.

Background

861. These provisions are designed to replicate the effect of provisions in the Sex Discrimination Act 1975.

Admission to single-sex schools: [paragraph 1](#)

Effect

862. This paragraph allows a single-sex school to refuse to admit pupils of the opposite sex. A school is defined as single-sex if it admits pupils of one sex only. This is so even if it admits a small number of pupils of the opposite sex on an exceptional basis or in relation to particular courses or classes only. Limiting those pupils to particular courses or classes is not discrimination. However, other forms of sex discrimination by the school against its opposite-sex pupils would still be unlawful.

Examples

- A school which admits only boys is not discriminating unlawfully against girls.
- If the daughters of certain members of staff at a boys' school are allowed to attend, it is still regarded as a single-sex school.
- A boys' school which admits some girls to the Sixth Form, or which lets girls attend for a particular GCSE course not offered at their own school is still regarded as a single-sex school.
- A boys' school which admits girls to A-level science classes is not discriminating unlawfully if it refuses to admit them to A-level media studies or maths classes.
- A boys' school which admits girls to the Sixth Form but refuses to let them use the same cafeteria or go on the same visits as other Sixth Form pupils would be discriminating unlawfully against them.

Single-sex boarding at schools: [paragraph 2](#)

Effect

863. This paragraph provides that a mixed-sex school some of whose pupils are boarders may lawfully admit only pupils of one sex to be boarders. The exception applies even if some members of the other sex are admitted as boarders, so long as their numbers are comparatively small. It allows a school to refuse to admit a pupil to a boarding place at the time he or she initially joins the school, or to provide him or her with boarding facilities at a later stage.

Example

- A mixed-sex school has facilities for female boarders and can lawfully state in its prospectus that males cannot be accepted as boarders.

Single-sex schools turning co-educational: paragraphs 3 and 4

Effect

864. Paragraphs 3 and 4 enable a school which is going through the process of changing from a single-sex to a co-educational institution to apply for a transitional exemption order to enable it to continue to restrict admittance to a single sex until the transition from single-sex is complete.
865. Paragraph 4 sets out the procedures for applying for a transitional exemption order for each type of school.

Examples

If a transitional exemption order is made in accordance with the arrangements in paragraph 4:

- A boys' school which decides to become co-educational by starting to admit girls to Year 7 while keeping upper classes as they are, will not be discriminating unlawfully by refusing to admit girls to other years, until co-educational classes have been phased in throughout the school.
- A girls' school which decides to become co-educational by initially admitting a certain number of boys to each year group will not be discriminating unlawfully by reserving a number of places in each year group for boys.
- A school in the process of becoming co-educational must treat its male and female pupils equally once they have been admitted, since the transitional exemption order only relates to admissions.

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

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

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.

Part 3: Disability discrimination

Permitted form of selection: paragraph 8

Effect

873. This paragraph provides that schools will not be discriminating against disabled children when applying a permitted form of selection that they are using.

Background

874. This provision is designed to replicate the effect of provisions in the Disability Discrimination Act 1995. Permitted forms of selection are the selective admission arrangements operated by grammar schools, and selection by ability and aptitude in accordance with the School Standards and Framework Act 1998.

Example

- The parents of a disabled pupil cannot claim disability discrimination against a particular school if that pupil fails to meet any educational entry requirements set by the school.