

*Status: Point in time view as at 30/04/2021.*

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## SCHEDULES

### SCHEDULE 11

Section 89

#### SCHOOLS: EXCEPTIONS

#### PART 1

#### SEX DISCRIMINATION

##### *Admission to single-sex schools*

- 1 (1) Section 85(1), so far as relating to sex, does not apply in relation to a single-sex school.
- (2) A single-sex school is a school which—
- (a) admits pupils of one sex only, or
  - (b) on the basis of the assumption in sub-paragraph (3), would be taken to admit pupils of one sex only.
- (3) That assumption is that pupils of the opposite sex are to be disregarded if—
- (a) their admission to the school is exceptional, or
  - (b) their numbers are comparatively small and their admission is confined to particular courses or classes.
- (4) In the case of a school which is a single-sex school by virtue of sub-paragraph (3)(b), section 85(2)(a) to (d), so far as relating to sex, does not prohibit confining pupils of the same sex to particular courses or classes.

##### *Single-sex boarding at schools*

- 2 (1) Section 85(1), so far as relating to sex, does not apply in relation to admission as a boarder to a school to which this paragraph applies.
- (2) Section 85(2)(a) to (d), so far as relating to sex, does not apply in relation to boarding facilities at a school to which this paragraph applies.
- (3) This paragraph applies to a school (other than a single-sex school) which has some pupils as boarders and others as non-boarders and which—
- (a) admits as boarders pupils of one sex only, or
  - (b) on the basis of the assumption in sub-paragraph (4), would be taken to admit as boarders pupils of one sex only.
- (4) That assumption is that pupils of the opposite sex admitted as boarders are to be disregarded if their numbers are small compared to the numbers of other pupils admitted as boarders.

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*Single-sex schools turning co-educational*

- 3
- (1) If the responsible body of a single-sex school decides to alter its admissions arrangements so that the school will cease to be a single-sex school, the body may apply for a transitional exemption order in relation to the school.
  - (2) If the responsible body of a school to which paragraph 2 applies decides to alter its admissions arrangements so that the school will cease to be one to which that paragraph applies, the body may apply for a transitional exemption order in relation to the school.
  - (3) A transitional exemption order in relation to a school is an order which, during the period specified in the order as the transitional period, authorises—
    - (a) sex discrimination by the responsible body of the school in the arrangements it makes for deciding who is offered admission as a pupil;
    - (b) the responsible body, in the circumstances specified in the order, not to admit a person as a pupil because of the person's sex.
  - (4) Paragraph 4 applies in relation to the making of transitional exemption orders.
  - (5) The responsible body of a school does not contravene this Act, so far as relating to sex discrimination, if—
    - (a) in accordance with a transitional exemption order, or
    - (b) pending the determination of an application for a transitional exemption order in relation to the school,
 it does not admit a person as a pupil because of the person's sex.
- 4
- (1) In the case of a maintained school within the meaning given by section 32 of the Education and Inspections Act 2006, a transitional exemption order may be made in accordance with such provision as is made in regulations under section 21 of that Act (orders made by local authority or adjudicator in relation to schools in England).
  - (2) In the case of a school in Wales maintained by a local authority, a transitional exemption order may be made in accordance with [<sup>F1</sup>section 82 of, or Part 3 of Schedule 3 to, the School Standards and Organisation (Wales) Act 2013] (orders made by Welsh Ministers).
  - (3) In the case of a school in Scotland managed by an education authority or in respect of which the managers are for the time being receiving grants under section 73(c) or (d) of the Education (Scotland) Act 1980—
    - (a) the responsible body may submit to the Scottish Ministers an application for the making of a transitional exemption order, and
    - (b) the Scottish Ministers may make the order.
  - (4) <sup>F2</sup> .....
  - (5) [<sup>F3</sup>Where proposals are made to the Welsh Ministers under section 113A of the Learning and Skills Act 2000 for an alteration in the admissions arrangements of a single-sex school or a school to which paragraph 2 applies—
    - (a) the making of the proposals is to be treated as an application to the Welsh Ministers for the making of a transitional exemption order, and
    - (b) the Welsh Ministers may make the order.]
  - (6) In the case of a school in England or Wales not coming within sub-paragraph (1), (2), (4) or (5) or an independent school in Scotland—

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- (a) the responsible body may submit to the Commission an application for the making of a transitional exemption order, and
  - (b) the Commission may make the order.
- (7) An application under sub-paragraph (6) must specify—
- (a) the period proposed by the responsible body as the transitional period to be specified in the order,
  - (b) the stages within that period by which the body proposes to move to the position where section 85(1)(a) and (c), so far as relating to sex, is complied with, and
  - (c) any other matters relevant to the terms and operation of the order applied for.
- (8) The Commission must not make an order on an application under sub-paragraph (6) unless satisfied that the terms of the application are reasonable, having regard to—
- (a) the nature of the school's premises,
  - (b) the accommodation, equipment and facilities available, and
  - (c) the responsible body's financial resources.

#### Textual Amendments

- F1** Words in Sch. 11 para. 4(2) substituted (E.W.) (1.10.2013) by [School Standards and Organisation \(Wales\) Act 2013 \(anaw 1\)](#), s. 100(4), [Sch. 5 para. 28\(2\)\(a\)](#); S.I. 2013/1800, art. 3(j)
- F2** Sch. 11 para. 4(4) omitted (1.10.2010) by virtue of [The Equality Act 2010 \(Consequential Amendments, Saving and Supplementary Provisions\) Order 2010 \(S.I. 2010/2279\)](#), [art. 10](#)
- F3** Sch. 11 para. 4(5) omitted (E.W.) (1.10.2013) by virtue of [School Standards and Organisation \(Wales\) Act 2013 \(anaw 1\)](#), s. 100(4), [Sch. 5 para. 28\(2\)\(b\)](#); S.I. 2013/1800, art. 3(j)

## PART 2

### RELIGIOUS OR BELIEF-RELATED DISCRIMINATION

#### *School with religious character etc.*

- 5 Section 85(1) and (2)(a) to (d), so far as relating to religion or belief, does not apply in relation to—
- (a) a school designated under section [<sup>F4</sup>68A or] 69(3) of the School Standards and Framework Act 1998 (foundation or voluntary school with religious character);
  - (b) a school [<sup>F5</sup>(other than an alternative provision Academy)] listed in the register of independent schools for England or for Wales, if the school's entry in the register records that the school has a religious ethos;
  - (c) a school transferred to an education authority under section 16 of the Education (Scotland) Act 1980 (transfer of certain schools to education authorities) which is conducted in the interest of a church or denominational body;
  - (d) a school provided by an education authority under section 17(2) of that Act (denominational schools);
  - (e) a grant-aided school (within the meaning of that Act) which is conducted in the interest of a church or denominational body;

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- (f) a school registered in the register of independent schools for Scotland if the school admits only pupils who belong, or whose parents belong, to one or more particular denominations;
- (g) a school registered in that register if the school is conducted in the interest of a church or denominational body.

#### **Textual Amendments**

- F4** Words in Sch. 5 para. 5(a) inserted (W.) (30.4.2021) by [Curriculum and Assessment \(Wales\) Act 2021 \(2021 asc 4\)](#), s. 84(1), **Sch. 2 para. 63** (with savings and transitional provisions in S.I. 2022/111, regs. 1, 3)
- F5** Words in Sch. 11 para. 5(b) inserted (E.W.) (1.4.2012) by [The Alternative Provision Academies \(Consequential Amendments to Acts\) \(England\) Order 2012 \(S.I. 2012/976\)](#), arts. 1, 2, **Sch. para. 28**

#### *Curriculum, worship, etc.*

- 6 Section 85(2)(a) to (d), so far as relating to religion or belief, does not apply in relation to anything done in connection with acts of worship or other religious observance organised by or on behalf of a school (whether or not forming part of the curriculum).

#### *Power to amend*

- 7 (1) A Minister of the Crown may by order amend this Part of this Schedule—
- (a) so as to add, vary or omit an exception to section 85;
  - (b) so as to make provision about the construction or application of section 19(2) (d) in relation to section 85.
- (2) The power under sub-paragraph (1) is exercisable only in relation to religious or belief-related discrimination.
- (3) Before making an order under this paragraph the Minister must consult—
- (a) the Welsh Ministers,
  - (b) the Scottish Ministers, and
  - (c) such other persons as the Minister thinks appropriate.

### **PART 3**

#### DISABILITY DISCRIMINATION

#### *Permitted form of selection*

- 8 (1) A person does not contravene section 85(1), so far as relating to disability, only by applying a permitted form of selection.
- (2) In relation to England and Wales, a permitted form of selection is—
- (a) in the case of a maintained school which is not designated as a grammar school under section 104 of the School Standards and Framework Act 1998, a form of selection mentioned in section 99(2) or (4) of that Act;

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- (b) in the case of a maintained school which is so designated, its selective admission arrangements (within the meaning of section 104 of that Act);
  - (c) in the case of an independent educational institution, arrangements which provide for some or all of its pupils to be selected by reference to general or special ability or aptitude, with a view to admitting only pupils of high ability or aptitude.
- (3) In relation to Scotland, a permitted form of selection is—
- (a) in the case of a school managed by an education authority, arrangements approved by the Scottish Ministers for the selection of pupils for admission;
  - (b) in the case of an independent school, arrangements which provide for some or all of its pupils to be selected by reference to general or special ability or aptitude, with a view to admitting only pupils of high ability or aptitude.
- (4) “Maintained school” has the meaning given in section 22 of the School Standards and Framework Act 1998.

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