

2003 No. 2037

EDUCATION, ENGLAND AND WALES

**The Independent Schools (Employment of Teachers in Schools
with a Religious Character) Regulations 2003**

<i>Made</i> - - - -	<i>5th August 2003</i>
<i>Laid before Parliament</i>	<i>11th August 2003</i>
<i>Coming into force</i> - -	<i>1st September 2003</i>

The Secretary of State for Education and Skills, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to discrimination (b), in exercise of the powers conferred by section 2(2) of that Act hereby makes the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Independent Schools (Employment of Teachers in Schools with a Religious Character) Regulations 2003, and shall come into force on 1st September 2003.

(2) These Regulations extend to England and Wales only.

Amendments to the School Standards and Framework Act 1998

2. The School Standards and Framework Act 1998(c) is amended in accordance with regulations 3 to 5.

3. After section 124 there is inserted —

“PART 5A

**EMPLOYMENT OF TEACHERS AT INDEPENDENT SCHOOLS HAVING A
RELIGIOUS CHARACTER**

124A. Employment of teachers at independent schools having a religious character

(1) This section applies to an independent school which has a religious character.

(2) Preference may be given, in connection with the appointment, promotion or remuneration of teachers at the school, to persons—

(a) whose religious opinions are in accordance with the tenets of the religion or the religious denomination specified in relation to the school under section 124B(2), or

(a) 1972 c.68.

(b) See the European Communities (Designation) (No. 3) Order 2002, S.I. 2002/1819

(c) 1998 c.31.

- (b) who attend religious worship in accordance with those tenets, or
- (c) who give, or are willing to give, religious education at the school in accordance with those tenets.

(3) Regard may be had, in connection with the termination of the employment or engagement of any teacher at the school, to any conduct on his part which is incompatible with the precepts, or with the upholding of the tenets, of the religion or religious denomination so specified.

124B. Designation of independent schools as having a religious character

(1) Subsections (3) and (5) of section 69 (which relate to the designation of foundation or voluntary schools as having a religious character) apply in relation to an independent school as they apply in relation to a foundation or voluntary school, but as if —

- (a) in subsection (3), the reference to Part 2 were a reference to this Part, and
- (b) in subsection (5), the reference to subsection (4) of that section were a reference to subsection (2) of this section.

(2) An order made under section 69(3) by virtue of subsection (1) shall specify, in relation to each school designated by the order, the religion or religious denomination (or as the case may be each religion or religious denomination) in accordance with whose tenets education is provided at the school or the school is conducted.”

4.—(1) Section 142 (interpretation) is amended as follows.

(2) In subsection (1), in the definitions of “Church in Wales school”, “Church of England school” and “Roman Catholic Church school”, after “means a” there is inserted “foundation or voluntary”.

(3) In subsection (3), after “section 69(4)” there is inserted “or 124B(2)”.

5. In section 143 (index), for the entry beginning “school which has a religious character” there is substituted —

“school which has a religious character

(in Part 2 in relation to a foundation or voluntary school) section 69(3)

(in Part 5A in relation to an independent school) sections 69(3) and 124B(1)”.

Consequential amendment

6. In regulation 39(1)(a) of the Employment Equality (Religion or Belief) Regulations 2003 (a) (those regulations not to prejudice certain provisions of School Standards and Framework Act 1998) after “60” there is inserted “and 124A”.

5th August 2003

Stephen Twigg
Parliamentary Under Secretary of State
Department for Education and Skills

(a) S.I. 2003/1660.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations insert two new sections in the School Standards and Framework Act 1998. The new sections enable independent schools which have a religious character to give preference in employment matters to teachers whose religious beliefs are in accordance with the religious tenets on which the school is based. These amendments are similar to provisions found at sections 60 and 69 of the School Standards and Framework Act 1998 which permit those maintained schools which are voluntary aided schools and have been designated as having a religious character by order under section 69(3) of the Act to give preference in employment matters to teachers whose religious beliefs are in accordance with the religious tenets on which the school is based. These amendments are related to the implementation of Council Directive 2000/78/EC of 27th November 2000 establishing a general framework for equal treatment in employment (OJ L 303, 2.12.2000, p.16) and in particular to Article 4(2) of that Directive.

The effect of the new section 124A is that preference may be given, in connection with the appointment or remuneration of teachers at independent schools with a religious character, to teachers whose religious beliefs are in accordance with the tenets of the religion or religious denomination on which the school is based. An independent school with a religious character may also have regard to any conduct on the part of a teacher, which is incompatible with the upholding of the tenets of the religion or the religious denomination in accordance with whose tenets education is provided at the school or the school is conducted, in connection with the termination of the employment of teacher.

Section 124B (1) applies sections 69(3) to (5) of the 1998 Act with modifications. Section 69(3) provides that a foundation or voluntary school has a religious character if it is designated by an order made by the Secretary of State (if the school is in England) or the National Assembly for Wales (if the school is in Wales). Subsection (2) of section 124B provides that an order under section 69(3) in respect of an independent school must state the religion or religious denomination in accordance with whose tenets education is provided at the school or the school is conducted.

The amendments to section 142 amend the definitions of three terms so that they only refer to maintained schools. Those three terms are “Church in Wales school”, “Church of England school” and “Roman Catholic Church school”.

The regulations also make a consequential amendment to the Employment Equality (Religion or Belief) Regulations 2003.

STATUTORY INSTRUMENTS

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