



SCOTTISH EXECUTIVE

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Our ref: Equality Act 2006

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Dear Sir/Madam

GUIDANCE TO EDUCATION AUTHORITIES AND SCHOOLS ON THE EQUALITY ACT 2006

You will be aware that the Equality Act came into effect on 30 April this year. I enclose guidance on the Act to help education authorities and schools understand their obligations under the Act. Education authorities should have regard to this guidance in exercising any of their educational functions. The guidance also applies to nurseries providing education and managed by local authorities. I would appreciate your assistance in disseminating the guidance to your headteachers.

The Equality Act, which is an Act of the UK Parliament, makes it unlawful to discriminate on grounds of religion or belief (including lack of religion or belief) when goods, facilities and services are being provided. These provisions extend to the delivery of education and other services by schools and apply to the whole of the UK. Similar guidance to the attached has been issued in England and Wales.

The Equality Act (Sexual Orientation) Regulations 2007 also arise from the Act and came into force on 30 April. The regulations make discrimination on the grounds of sexual orientation unlawful in a number of areas, including education in schools.

This guidance gives general advice to education authorities and schools on the provisions of the Equality Act and the related Regulations, and how they affect schools. While there are some exceptions to the Act, it is important that the ethos of schools recognises, values and celebrates the cultures, faiths and identities of all children in Scottish schools.

Yours faithfully

Mike Gibson
Head of Support for Learning Division



The Equality Act 2006

Guidance for Schools

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General background and context

The aim of this guidance is to help all Scottish schools understand their obligations under Parts 2 and 3 of the Equality Act 2006.

The provisions came into force on 30 April 2007 and apply to the whole of Great Britain. Equal opportunities are in principle reserved to the Westminster Parliament, but the encouragement of equal opportunities is an exception to this rule and falls within the devolved responsibilities of the Scottish Parliament. The Scottish Parliament passed a Legislative Consent Motion (formerly known as a Sewel Motion) to give consent to the devolved aspects of the Equality Act.

Part 2 of the Equality Act, which is an Act of the UK Parliament, makes it unlawful to discriminate on grounds of religion or belief (including lack of religion or belief) when goods, facilities and services are being provided. These provisions extend to the delivery of education and other services by schools. Nurseries providing education and managed by education authorities¹ are also covered by the guidance. Whenever an education authority is exercising its educational functions in respect of a child, even when that child is not attending a school under its management, then the education authority should still have regard to this guidance.

Section A of this guidance gives general advice to schools and education authorities on the provisions of the Part 2 of the Equality Act, and how they affect schools. The Act contains some exceptions from its provisions given the strong tradition of denominational schools in Scotland and the role religious observance plays in schools more widely. This guidance sets out what these exceptions are, and provides more detail on them in respect of Scottish schools. It is also worth remembering that while there are some exceptions to the Act, it is important to recognise, value and celebrate the cultures and faiths of all children in Scottish schools.

The Equality Act can be accessed online at:
<http://www.opsi.gov.uk/acts/acts2006/20060003.htm>

The Explanatory Notes to the Act can also be accessed online at:
<http://www.opsi.gov.uk/acts/en2006/2006en03.htm>

Part 3 of the Equality Act allows for regulations about discrimination or harassment on the grounds of sexual orientation. [**The Equality Act \(Sexual Orientation\) Regulations 2007**](#), in force from 30 April 2007, make discrimination on the grounds of sexual orientation unlawful in a number of areas, including education in schools, and provide individuals with the right to seek damages and redress through the courts if they believe they have been discriminated against because of their sexual orientation. The Regulations apply to Great Britain.

Section B of this guidance explains how the Regulations apply to schools. The Regulations can be accessed online at:

<http://www.opsi.gov.uk/si/si2007/20071263.htm>

¹ The term “education authority” means the local Council throughout this guidance.

Section A: Discrimination On Grounds Of Religion Or Belief

Definitions

“Religion or Belief” and “Discrimination”

[Section 44](#) of the Act defines what is meant by religion or belief.

[Section 45](#) sets out the definition of discrimination for the purposes of the Act.

For the precise wording of the provisions you will need to refer to the Act. General comments on these provisions are given below. Interpretation of the provisions is a matter for authorities and their advisers, and of course ultimately for the courts.

The Definition of Religion or Belief

The concepts of religion and belief in the Act will be construed by the courts in accordance with Article 9 of the European Convention on Human Rights, and with existing case law. This means that to benefit from protection under the Act, a religion or belief must have a clear structure and belief system, and should have a certain level of cogency, seriousness, and cohesion, and not be incompatible with human dignity. “Religion” includes, for example, all the major faith groups and “belief” will include non-religious worldviews such as humanism. Religion will also include denominations or sects within a religion, such as Catholicism or Protestantism within Christianity. The definition is not, however, intended to include political beliefs, such as Communism, or support for any particular political party.

Lack of religion or belief is also included within the definition of “religion or belief”. This means it is unlawful to discriminate against someone on the grounds that they do not adhere, or sufficiently adhere, to a particular religion or belief (even one shared by the discriminator), or indeed any religion or belief at all – such as, for example, an atheist.

What Does Discrimination on Grounds of Religion or Belief Mean?

Discrimination on grounds of religion or belief means treating a person less favourably than another person is or would be treated because of:

- i) their religion or belief;
- ii) the religion or belief they are perceived to have;
- iii) their lack of religion or belief; or
- iv) the religion or belief, or lack of it, of someone else with whom they are associated, such as a parent, relative or friend.

The Act makes it clear that unlawful discrimination can include discrimination against another person of the same religion or belief as the discriminator. This is to ensure that discrimination between, e.g. Orthodox and Reform Jews, or Shia and Sunni Muslims, is covered. Discrimination can also take place where an incorrect presumption about a person's religion or belief has been made.

Discrimination in this part of the Act does not, however, include situations where the less favourable treatment occurs where the conduct by a person is motivated or required solely by the religion or belief of the person treating another person less favourably. For example, if a Sunni Muslim refuses to serve a Shia Muslim customer in his or her shop, that would be religious discrimination under the Act. However, if a Catholic printer refuses to produce leaflets advertising an abortion clinic, that might be motivated by the printer's own religious belief, rather than the religion of the person refused the service, then such an example would, therefore, not be covered by these provisions.

Discrimination can be either direct or indirect:

Direct discrimination on grounds of religion or belief occurs when someone is given less favourable treatment on those grounds than someone else of another religion or belief, or none, receives or would receive, where there is no relevant difference in their circumstances.

Indirect discrimination on grounds of religion or belief occurs when a provision, criterion or practice is applied to everyone but has the effect of putting people of a particular religion or belief, or none, at a disadvantage, and it cannot reasonably be justified on other grounds. The complainant must actually have suffered a particular disadvantage – the situation cannot be merely hypothetical.

Treating someone less favourably because they have taken, or are thought to have taken, any kind of action under the Act (e.g. bringing proceedings claiming religious discrimination) is also unlawful discrimination.

How The Legislation Applies To Schools

[Section 49](#) of the Act sets out the provisions in relation to educational establishments, which in this context means schools².

Below is a summary of the specific education provisions in this area, how they will affect schools, and what schools need to do to comply.

Section 49:

The Act sets out that in Scotland it is unlawful for public schools, independent schools and grant-aided schools to discriminate against a person in the following ways:

- (a) in the terms on which it offers to admit him as a pupil,
- (b) by refusing to accept an application to admit him as a pupil, or
- (c) where he is a pupil of the establishment:
 - (i) in the way in which it affords him access to any benefit, facility or service
 - (ii) by refusing him access to a benefit, facility or service,
 - (iii) by excluding him from the establishment, or
 - (iv) by subjecting him to any other detriment.

The term “public school” means education authority run schools.

A “pupil” in the Scottish context means a person of any age for whom education is or is required to be provided in terms of the Education (Scotland) Act 1980.

The body responsible for ensuring that discrimination does not take place depends on the type of school. In Scotland, for public schools, it will be the education authority, for grant-aided schools it will be the manager, and for independent schools the proprietor of the school.

Obligations and Duties on schools

The Act provides that schools, (unless in relation to an exempted area detailed in this guidance):

- will **not** be allowed to admit or refuse to admit pupils on the basis of religion or belief; and
- **must** treat pupils equally, irrespective of their own or their parents’³ religion or belief or lack of it.

² Further and Higher Education Institutions are covered by existing regulations and are therefore not covered by these provisions: see SI 2003/1660, The Employment Equality (Religion or Belief) Regulations 2003, regulation 20.

³ Also includes guardians or carers. Where ‘parents’ is used throughout this guidance, this definition applies.

These principles also apply to access to benefits, facilities or services. In addition, pupils cannot be excluded from school or subjected to any detriment on the basis of their, or their parents', religion or belief, or lack of it.

Action for schools

We know that schools are already committed to ensuring that all young people benefit from education, and work hard to ensure that pupils and parents from all religious backgrounds are welcomed and treated respectfully. As part of this work most schools already have in place policies to help ensure that pupils, and their parents, are not discriminated against by the school on grounds of religion or belief.

Given this, schools, therefore, may not need to make changes to comply with the Act. However, it is important that schools fully understand the provisions of the Act and are aware of their obligations and duties under the Act.

Schools are advised that, even if they believe that they are already operating in a non-discriminatory way, they should take the following steps:

- consider their policies and practices to make sure these meet the requirements of the Act;
- change their policies and practices as necessary to address any risk that they might be discriminatory.

Exceptions

[Section 50\(1\)](#) of the Act exempts certain types of schools from the provisions in section 49 outlawing discrimination as listed above, except for (c)(iii) and (iv) which, respectively, make exclusion from a school unlawful and prohibits the subjection of a pupil to any other detriment. These schools are:

- denominational schools
- grant-aided schools which are conducted in the interest of a church or denominational body
- independent schools who only admit pupils belonging, or whose parents belong, to a particular denomination, or independent schools conducted in the interest of a church or denominational body.

[Section 50\(2\)](#) sets out specific exceptions to section 49 for **all** schools which relate to:-

- the content of the curriculum
- acts of worship or other religious observance organised by or on behalf of an educational establishment.

In Scotland, there are a number of denominational schools funded by education authorities e.g Catholic schools. Education authorities also have a statutory duty to provide religious and moral education, and religious observance. The Education (Scotland) Act 1980, which repeats legislation of previous Acts dating back to 1872, imposes a statutory duty on local authorities to provide religious education in Scottish schools. There are some limited exceptions, as indicated above, from the provisions of Part 2 of the Equality Act for the education sector in relation to providing religious and moral education, and religious observance. These exceptions will be considered within this guidance.

Throughout this guidance there are a number of boxed examples on how the Act, and its exceptions, will impact on both denominational and non-denominational schools. Please note that any references to claims or unlawful acts in the examples below are in relation to the Equality Act only, and not to any other education or equality legislation.

Exceptions: Denominational Schools

[Section 50](#) of the Equality Act contains the exceptions from the Act's provisions in relation to schools, and some of these exceptions apply only to denominational schools in Scotland.

The first category of exception in relation to education provided for under the Act relates to denominational schools in Scotland, which are education authority run schools with a certain legal position (as set out at section 50(1) of the Equality Act) and who have close links to a specific faith community. Such schools almost always have an ethos based on a particular faith. There are a substantial number of Catholic schools in Scotland, a small number of Episcopalian schools and one Jewish school. These schools are funded in the same way as any other public school, and are required by the law to be open to pupils of all denominations.

Independent schools which only admit pupils belonging, or whose parents belong, to a particular denomination, or independent schools conducted in the interest of a church or denominational body are also covered by this exception, as are grant-aided schools conducted in the interest of a church or denominational body.

The exception means that the Act does not outlaw discrimination on religious grounds by the responsible body of a denominational school in Scotland (i.e. the education authority for public schools or the Proprietor for independent schools) in relation to:

- (a) the terms on which it offers to admit a pupil;
- (b) refusing to accept an application to admit him as a pupil; or
- (c) where he is a pupil of the establishment -
 - (i) the way in which it affords him access to any benefit, facility or service
 - (ii) by refusing him access to a benefit, facility or service.

In Scotland the law⁴ requires all public schools to be open to pupils of all denominations and faiths, and pupils of no denomination or faith. The only area where education authorities can discriminate on religious grounds in relation to pupil admission is in their criteria for accepting placing requests. Education authorities can choose to give preference to children of a particular religious belief as part of their criteria for assessing whether to grant a placing request.

While the Equality Act does not require denominational schools to celebrate events of faiths other than the school's own faith, or make visits to local churches or shrines of other faiths, such actions could be beneficial to the school and its pupils as part of building links with the local community.

⁴ Section 9, Education (Scotland) Act 1980

Denominational schools are still lawfully able to:

- make available to pupils a local religious leader of the school's faith to give advice and counselling. For example, a Catholic school might make available a local priest to provide advice to pupils. If the parents of a Jewish pupil in attendance at the school objected because a Rabbi was not made available to provide advice for their child, they would be unable to claim that their child had been discriminated against on grounds of religion or belief.
- organise trips for pupils to their local church or religious shrine of the school's faith. If the parents of a Muslim pupil attending a Catholic school objected that a visit to a local mosque had not been arranged while a visit to a local Catholic church had taken place, they would be unable to claim that their child had been discriminated against on grounds of religion or belief.
- maintain practices specific to their religion and ethos. For example, a Jewish school might stipulate that only Jewish pupils are permitted to read aloud certain religious texts during assembly. Atheist parents of a pupil at the school could not claim that their child had been discriminated against simply because he or she was never selected to read these texts aloud.
- mark or celebrate events specific to their religion and ethos. Parents of pupils of other religions will not be able to claim that their children have been discriminated against simply because an equivalent celebration of events of significance to their particular religion is not arranged.

Denominational schools **cannot** lawfully:

- exclude a pupil on grounds of his or her religion, or that of his or her parents. For example, if a pupil at an Episcopalian school decided that he or she were an atheist and regularly questioned in class the existence of God (but not in a disruptive way that brought her behaviour into question), the school would be acting unlawfully if it were to exclude him or her on these grounds.
- treat a pupil less favourably because of their religion or lack of it by, for example, refusing to let them be a prefect, participate in the Pupil Council, putting them in detention or assigning extra homework, or holding them up to ridicule in class because they do not conform to the school's beliefs.

Once pupils have been admitted to any school they may not be excluded, or subjected to any other detriment, on grounds of their religion or belief, or lack of it, or the religion or belief (or lack of it) of their parents. Detriment is not precisely defined by law and therefore has its ordinary meaning.

Exceptions: The Content Of The Curriculum

There is a broad exception in the Act for anything in relation to the content of the curriculum. This is to ensure that all schools can continue to deliver a broad, coherent and balanced curriculum to our young people without fear of challenge based on the religious views of particular parents or children. For the precise wording of the exception please refer to [Section 50\(2\)\(a\)](#) of the Act.

The exception covers anything done by schools in connection with the content of the curriculum. It accordingly covers the current 5-14 programme reflected in *5-14 National Guidelines*, and the curriculum as pupils move through secondary education. It includes elements such as the provision of school library books, which are aimed at the delivery of a broad-based and balanced education to pupils. The exception will also apply to the forthcoming *Curriculum for Excellence*, once the ongoing curriculum review is complete.

It should be noted that the exception also extends to the content of the curriculum in independent schools.

Schools are able to select literature and texts for study which are challenging, interesting and promote discussion amongst pupils, without being inhibited by fear of legal challenge. For example, a school selects a controversial play to examine in S6 which depicts a particular religion in a negative light. The parents of a pupil of that religion at the school may object to the fact that their child is reading something of this nature as part of his or her studies, but would be unable to make a valid claim of discrimination on grounds of religion or belief.

The example above describes how schools may act in certain situations without falling foul of the provisions in the Act on discrimination on grounds of religion or belief. However, in any case where parents claim that an aspect of the curriculum conflicts with their religion or belief, or lack of it, schools should discuss the matter with parents (wherever possible and appropriate, bearing in mind the other obligations on schools), in order to reach a compromise with which both parties are happy. Cases will vary depending on the particular circumstances and should therefore be considered on a case by case basis. Clearly, though, schools should make appropriate decisions sensitively.

Exceptions: Religious Observance

In Scotland, religious observance is an important aspect of education for all pupils. Religious observance has a statutory basis and is included in the curriculum architecture of *Curriculum for Excellence*. Religious observance is defined in guidance as “community acts which aim to promote the spiritual development of all members of the school community and express and celebrate the shared values of the school community”⁵. At present school assemblies are the most common type of religious observance. Current guidance states that schools should provide a minimum of six opportunities for religious observance per pupil in the school year but preferably more frequently. Guidance also advises a clear distinction between assemblies devised for the purpose of religious observance and those for celebrating academic achievement.

Scotland is becoming increasingly diverse in terms of faiths and beliefs, and this should be taken into account when schools plan for religious observance or for other school management requirements. Religious observance needs to be developed in a way which recognises this diversity and allows all present to participate with integrity. It should be sensitive to Scottish traditions and origins and should seek to reflect these but it must equally be sensitive to individual spiritual needs and beliefs, whether these come from a faith or non-faith perspective. ([Circular 1/2005](#))

There is a statutory provision in the Education (Scotland) Act 1980 for parents to withdraw their children from participating in religious observance. This applies to all public and grant-aided schools. Parents of children in independent schools do not have the same statutory rights to withdraw their children from any religious observance, although a school might well permit them to do so.

All organised acts of worship and religious observance provided by any school are exempted from the prohibition on discrimination under the Equality Act. Please refer to [Section 50\(2\)\(b\)](#) of the Act for the precise wording.

This exception ensures that all schools can continue to provide religious observance in the way they have been doing. It extends to activities organised by or on behalf of the school. Schools can therefore continue to arrange, for example, for children to attend the local church to participate in a Christmas carol service, although parents would of course be expected to be informed of this and the likely content of the service, so they may elect to withdraw their child from that particular activity. Schools are not required by the Equality Act to provide equivalent activities for children of all religions and beliefs. However, [Circular 1/2005](#) says that schools should make suitable arrangements for children to participate in a worthwhile alternative activity. Within the informal curriculum schools can also make space for specific faith groups. For example, schools can facilitate Scripture Union groups, or Muslim prayer groups.

⁵ Scottish Executive [Circular 1/2005](#)

Schools will provide opportunities for religious observance. In designing these they may use the resources of Scotland's Christian heritage and take into account other traditions which reflect the composition of the school community. Parents of pupils who do not wish them to participate may withdraw their children from the religious observance since they have that right under section 9 of the Education (Scotland) Act 1980. [Circular 1/2005](#) says this right should be exercised after full discussion between the school and family. However, parents of other religions or beliefs cannot claim that their children are discriminated against on grounds of religion or belief simply because the school does not provide alternative facilities or services for separate worship by adherents to other religions or beliefs.

Schools can, if they wish, continue to organise other forms of religious observance for the school community to attend as part of the informal curriculum. For example, a school can organise a Christmas service at the local church. Parents of Muslim pupils may object to the fact that a service celebrating Eid-ul-Fitr is never organised but they will be unable to claim that their child has been unlawfully discriminated against on that basis. They should however be given the opportunity to decide whether or not they are happy for their child to join in with any other religious occasion the school organises, and the school should be prepared to discuss with parents the range of provision that is made for attending religious events, just as it would discuss with parents other matters relating to school life.

Exceptions: Education Authorities And Public Authorities

This is not directly relevant to schools but will be of interest to them.

Education authorities (EAs) are bound by the provisions of the Act and, like schools, need to be aware of their duties and obligations.

However, some exceptions have been included for EAs and for public authorities. The relevant sections of the Act are [Section 51](#) and [Section 52](#) respectively. These exceptions have been included to ensure that certain everyday functions of EAs and other public authorities are not affected by the prohibition on discrimination contained in the Act.

One such area is the provision of schools. Due to an exception in the Equality Act, it does **not** impose a duty on EAs to provide schools for pupils of different religions or beliefs (or no religion or belief).

Another key area is the provision of free or subsidised home to school transport by Local Authorities (LAs). This, too, is exempt. LAs have a duty under the Education (Scotland) Act 1980 to *make such arrangements as they consider necessary* for transporting pupils who are resident in, and attending, schools managed by them. Arrangements may include providing: free transport; transport facilities; or financial assistance for some or all of the journey between home and school. An exception was included for LAs functions in relation to school transport to allow them to continue to operate school transport as they did before the new provisions came into effect.

Examples of actions that might be taken by EAs and how they would be treated under the Act:

(Please note that any references to claims, legal challenge or unlawful acts in the examples below are in relation to the Equality Act only and not to any other education or equality legislation).

An education authority is lobbied by a group of Muslim parents and community leaders to set up a local authority Muslim school in the area. There is a well-established Catholic school nearby to serve the Catholic community so they desire a Muslim school for their community. The exception for authorities ensures that if an authority decided not to establish a Muslim school their decision would not constitute unlawful discrimination under the Act.

A Catholic pupil gets free transport to a denominational comprehensive school 10 miles away (the nearest EA-managed denominational school to his home) His neighbours, who are non-religious, feel that their daughter would benefit from the disciplinary and moral ethos of a denominational school even though their designated non-denominational school is closer to home, and make a successful placing request for their daughter to attend the same denominational school as their neighbour. They also make an application for free home to school transport, which is refused. They then claim to have been discriminated against on grounds of religion or belief, since their neighbour has received free transport but they have not – even though their reason for choosing the more distant denominational school was not related to their religion or belief - or lack of it. No discrimination has occurred, since in the second parents' case the LA's decision was unrelated to religion or belief.

Exclusions From School

A key aspect of the education provisions in Part 2 of the Act is the provision that makes it unlawful to exclude any pupil from school on the basis of religion or belief, or lack of it. There is no exception from this provision.

Existing Government guidance on exclusions from schools in Scotland can be found in [Circular 8/2003](#). This circular makes it clear that pupils should only be excluded from school as a last resort.

Nothing in the Act conflicts with this guidance. Schools cannot exclude pupils merely on grounds of their or their parents' religion or belief - or lack of it. Schools also cannot exclude a pupil for behaviour which would not lead to exclusion if that behaviour had not been linked to religion or belief. A pupil might, for example, put forward robust views in class discussions in RE based on his own minority religious view or position as an atheist or a humanist. Although it would be unlikely, a school might view this as disruptive or disrespectful and wish to exclude the pupil. Such an act would be discriminatory, unless the pupil's behaviour was so extreme and disruptive as to merit exclusion once other disciplinary measures were exhausted.

Section B: Discrimination On Grounds Of Sexual Orientation

Definitions

“Sexual Orientation” and “Discrimination”

[Section 35](#) of the Equality Act 2006 sets out the definition of sexual orientation for the purposes of the Act.

For the precise wording of the provisions you will need to refer to the Act through the website link on page 2. General comments on these provisions are given below. Interpretation of the provisions is a matter for authorities and their advisers, and of course ultimately for the courts.

What Does Discrimination on Grounds of Sexual Orientation Mean?

Discrimination on grounds of sexual orientation means treating a person less favourably than another person is or would be treated because of:

- (i) their sexual orientation;
- (ii) the sexual orientation they are perceived to have; or
- (iii) the sexual orientation of someone else with whom they are associated, such as a parent, relative or friend.

Discrimination can be either direct or indirect:

Direct discrimination on the grounds of sexual orientation happens when a person is treated less favourably than another person is, or would be, in the same circumstances and that treatment is because of their sexual orientation or that of a person with whom he or she is associated, such as a parent.

Indirect discrimination on the grounds of sexual orientation happens where a provision, criterion or practice is applied to everyone but it has the effect of putting a person of a particular sexual orientation at a disadvantage — and it cannot be reasonably justified by reference to considerations other than sexual orientation.

It is also unlawful discrimination to victimise someone by treating them less favourably because of anything they have done or intend to do in relation to these regulations, such as making a complaint or giving evidence for a complainant.

How The Regulations Apply To Schools

[The Equality Act \(Sexual Orientation\) Regulations 2007](#) ('the regulations'), make it unlawful for a school to discriminate against a person:

- in the terms on which it offers to admit him or her as a pupil
- by refusing to accept an application to admit him or her as a pupil
- in the way in which a pupil is afforded access to any benefit, facility or service
- by refusing access to any benefit, facility or service
- by excluding him or her
- by subjecting him or her to any other detriment.

All public, grant-aided and independent schools in Scotland are covered by the regulations, which make it unlawful for the responsible body of a school to discriminate on grounds of sexual orientation in the exercise of their functions. The responsible body in public schools will be the education authority, in grant-aided schools will be the manager of the school and in independent schools it will be the proprietor.

Discrimination is unlawful in civil law rather than being a criminal offence. A person who believes that he or she has been discriminated against unlawfully may bring a case to a sheriff court, which can award damages, including compensation for injury to feelings. Other possible options, in addition to such an award, may include an order of reduction (quashing the original decision and remitting the matter back to the decision maker for reconsideration), an interdict (prohibiting an unlawful act), or an order of specific implement (requiring a certain action to be performed).

Implications for schools

General

Schools that already employ non-discriminatory practices and adhere to Scottish Executive guidance should already be acting within the spirit and letter of the regulations.

Schools will need to make sure that gay or lesbian pupils, or the children of gay or lesbian parents, do not receive different and less favourable treatment from that given to other pupils. They should check that there are no practices which could result in unfair, less favourable treatment of such pupils. They will need to ensure that homophobic bullying is taken as seriously and dealt with as firmly as bullying on any other ground.

Pupil admissions

Education authority school places are usually allocated by geographical catchment areas, with parents able to submit a placing request to the council for their child to attend another school. An authority can only turn down such a request on one of several grounds set out in law, and an appeal system is in place if the parent or child nonetheless feels they have been discriminated against.

Under the sexual orientation regulations, the parent or child could also, or alternatively, seek redress for any discrimination through the courts, in both education authority and grant-aided or independent schools. A court would have the power both to reduce (i.e. quash) the decision not to award a school place and to award damages for the discrimination itself.

The regulations also apply to discriminatory behaviour in the arrangements surrounding the admissions process, such as open evenings and published material. Schools must not seek to deter applications, or deny admission, to pupils on the basis of their sexual orientation, or that of their parents. They must be careful, also, to ensure that such practices cannot be implied.

Teaching and the curriculum

The regulations should have no effect on teaching and the curriculum in schools. The [5 – 14 National Guidelines for Personal and Social Development](#) highlight the need to create within the school a warm, caring, supportive atmosphere in which all individuals, pupils, staff and parents know that they are valued. In addition, statutory guidance on the conduct of sex education, issued in [Circular 2/2001](#) to Directors of Education in March 2001, expresses the importance of sex education being non-discriminatory and sensitive to the diverse backgrounds and needs of all young people. If schools continue to adhere to this guidance, dealing sensitively and appropriately with issues around sexual orientation, then they should already be acting in compliance with the regulations. Schools should, nonetheless, make sure that they do not discriminate in delivering any part of the school curriculum or extra-curricular activity. So, for example, they must not prevent a pupil from taking part in a residential school trip because he is, or is perceived to be, gay, or make a pupil get changed for PE separately from the other boys because he is gay, or prevent a girl from being head prefect because she is a lesbian.

Whilst the [5-14 Guidelines](#) in relation to Personal and Social Development set out the requirements for education authority schools, they also provide useful guidance for independent schools and following them would help to ensure that independent schools are best placed to meet the requirements of the new regulations.

Conflict with religious freedom

Protection in the area of discrimination on grounds of religion or belief and the right to manifest one's religion or belief has already been addressed in Part 2 of the Equality Act 2006. The intention of these regulations is to ensure that pupils are not discriminated against on the grounds of their own, or their parents', sexual orientation. They do not prevent denominational schools from delivering appropriate teaching in accordance with their beliefs. In Scotland, denominational schools teach religious and moral education according to the 5-14 National Guidelines, or in the case of Catholic schools the religious education guidance agreed with the Scottish Catholic Education Service. This framework is considered sufficient to ensure that schools deal appropriately with subjects and situations where sexual orientation is a relevant issue.

The regulations do not prevent a teacher from expressing views on sexual orientation, based on their particular religion, provided this is done in an appropriate manner and context (for example when responding to questions from pupils, or in a religious and moral education class). However, conveying a belief within an educational context in a way that harasses or berates a particular pupil or group of pupils is unacceptable and may constitute unlawful discrimination.