

November 2009

Employment in Faith Schools:

Accord Equality Bill Report Stage Briefing

The Accord Coalition brings together religious and non-religious organisations campaigning for an end to religious discrimination in school staffing and admissions. The coalition also campaigns for a fair and balanced RE curriculum and the removal of the requirement for compulsory collective worship. Accord supports the Equality Bill but has concerns about some of its provisions.

For Accord, the issue of employment in state-funded faith schools is the highest priority for the Equality Bill. This is because:

1. We believe that the Bill as proposed is incompatible with European law
2. Unless amended the law will continue to allow unjust discrimination affecting the employment rights of tens of thousands of teachers.
3. The amendments we are supporting will simplify the law by removing an unnecessary exemption.
4. The amendments are moderate and have widespread support.

Please find the full text of the amendments that we are supporting at the end of this briefing.

A huge legal loophole

Whereas employees in the vast majority of organisations can be discriminated against only where an “occupational requirement” can be demonstrated, teachers in faith schools are afforded no such protection. If the Bill is passed with its current wording, a Christian charity or Jewish business will have to prove that any restriction of posts to co-religionists is a “legitimate” and “proportionate” occupational requirement.

However, **Schedule 22 will exempt Sections 58 (6) and (7) and Section 60 (4) and (5) of the School Standards and Framework Act (1998) from the scope of the Bill. This mirrors a similar exemption contained in the Employment Equality (Religion or Belief) Regulations (2003).**

The consequence is that—in contrast to other employers with a religious ethos—voluntary aided faith schools can appoint, remunerate and promote teachers on grounds of their religion, without needing to show its an occupational requirement. More shocking still, any teacher at a voluntary aided faith school can be dismissed for “conduct ...which is incompatible with the...tenets of the religion” of the school, even if they were not appointed on grounds of their religious beliefs, and even where the conduct only concerns the private life of the teacher.

Thus the religious requirements that can be imposed on a PE or maths teacher at a voluntary aided school go far beyond those that could be applied even to the chief executive of, for example, a Catholic adoption agency.

Removing the exemption would be easy

What we are calling for is simply an end to this special exemption. The result would be that state funded faith schools would be required to operate according to the same rules as charities and businesses with a religious ethos. Thus discrimination would continue to be allowed, but only where deemed a “legitimate” and “proportionate” occupational requirement according to Schedule 9 (3) of the Bill. If this is sufficient scope to protect the ethos of religious charities and businesses, we see no reason why it would not be sufficient for schools that are entirely, or almost entirely, state funded.

We believe the current wording of the Bill is unlawful

In addition to simplifying the law and giving extra protection to teachers from discrimination, this amendment would help British law to comply with Council Directive 2000/78/EC, which is the European framework for equal treatment in employment. This conflict stems from the fact that the Directive frames permitted discrimination in terms of “genuine occupational requirements”, whereas the Bill allows discrimination against a very large category of employees, namely all teachers in most faith schools. UK legislation must be compatible with the Directive.

The argument that the current law may be incompatible with the Directive has recently been made by the Joint Committee on Human Rights, who said in their report on the Bill that:

We consider that substantial grounds exist for doubting whether sections 58-60 of the School Standards and Framework Act 1998 (SSFA) as currently framed are compatible with the requirements of Article 4(2) of the Framework Equality Directive 2000/78/EC. We also consider that the provisions of section 60(5) SSFA permit Voluntary Controlled and Voluntary Aided Schools to impose wide-ranging requirements upon employees to adhere to religious doctrine in their lifestyles and personal relationships which may go beyond what is permitted under Article 4(2).
(p96 Legislative Scrutiny: Equality Bill. Twenty-sixth Report of Session 2008-09)

In committee, Vera Baird argued that the Schedule 22 exemption of the School Standards and Framework Act will not allow discrimination on grounds of sexual orientation because that “would be unlawful in employment law”. However, Schedule 22 exempts *all* acts permitted for the purposes of the relevant sections of the SSFA, leaving the door open for discrimination not simply on the grounds of religion or belief, but also in cases where discrimination by other strands (especially sex and sexual orientation) could be justified by a religious motive.

Amendments at Report Stage

The amendments below have been tabled for report stage.

If the following two amendments are passed then the School Standards and Framework Act 1998 will have to be read in light of Schedule 9 (3), which details the extent of discrimination allowed in organisations with a religious ethos:

Dr Evan Harris	14
Lynne Featherstone	
Page 210 , line 42 [Schedule 22], leave out sub-sub-paragraphs (a) and (b).	

Dr Evan Harris	15
Lynne Featherstone	
Page 211 , line 2 [Schedule 22], at end insert 'except in relation to academy schools'.	

If this third amendment is passed then the relevant sections of the School Standards and Framework Act dealing with religious beliefs and employment will be repealed:

Dr Evan Harris	31
Lynne Featherstone	
Page 223, line 32 [Schedule 27], at end insert—	
'School Standards and Framework Act 1998:	
Section 58(6) and (7); Section 60(4) and (5).'	

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