

Legislation on Equality and Diversity

A guide for the action that maintained schools need to take to comply with equality and diversity legislation

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THIS GUIDANCE

Schools have a number of responsibilities and duties under legislation relating to equality and diversity. Recent and forthcoming legislation covers equality issues in relation to gender, age, race, disability, religion or belief, sexual orientation and gender reassignment.

This guidance provides an overview of that legislation and what it means for schools, as well as advice on where to obtain more information. It recognises that most schools are firmly committed to equality and diversity, and offers advice on practical steps needed to comply with legislation and work through the existing framework established through the New Relationship With Schools.

Annexes A and B respectively provide links to relevant legislation and to more detailed guidance on the issues covered in this document. Annex C summarises the obligations on schools arising from the legislation

BACKGROUND

1. Schools, as a matter of course, do a great deal to promote a positive and welcoming culture and ensure that all children and young people in their care are safe and are supported to fulfil their potential. There is now a significant amount of legislation relating to equality, ranging from the Sex Discrimination Act 1975 to the Equality Act 2006. Schools, like any other organisation, need to ensure they comply with this legislation.
2. Legislation requires schools both to avoid discrimination and to promote equality for pupils, staff and others using school facilities. This guidance sets out as simply as possible what schools need to do to ensure compliance. It suggests steps schools can take to minimise the additional work required to demonstrate they are meeting their legal obligations in respect of equal opportunities.

DEFINITIONS OF DISCRIMINATION

3. Under the law, there are different categories of discrimination, with differences in the legal framework surrounding them. These are:
 - **Direct discrimination:** Is unlawful for all protected grounds except, in some circumstances, age and disability in schools. Direct Discrimination is when a person is treated less favourably than others in comparable circumstances because of a special characteristic such as sex, race or a disability. In the case of direct age discrimination, this is unlawful only if it cannot be objectively justified.
 - **Indirect Discrimination:** In essence occurs when a provision, criterion or practice is applied equally to all but has a different impact on members of one or more protected groups, of which the complainant is one, and is

placed at a disadvantage as a result. Indirect discrimination is unlawful unless it can be justified for reasons unrelated to the characteristic in question. (An example might be a physical strength test, which would discriminate against women, and which might be justified in relation to a job necessitating heavy lifting, but not in relation to teaching.)

- Victimisation – treating a person less favourably because they have taken action in respect of discrimination, e.g. by bringing a complaint or giving evidence for a colleague – is also unlawful.
- Harassment – unwanted conduct which violates a person’s dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for them, on grounds of one of the relevant characteristics such as sex or race – is also unlawful in many of the situations covered by discrimination law.

ACTION SCHOOLS NEED TO TAKE - EMPLOYMENT

4. Taken together, the collective effect of legislation relating to equality is that schools must not discriminate in the employment of staff on grounds of gender, transsexual status¹, race, disability, sexual orientation², religion or belief³ or age⁴. With regard to disability, schools must make such reasonable adjustments as are necessary to prevent a disabled person being at a substantial disadvantage in comparison with people who are not disabled.

5. This includes discrimination in relation to recruitment, terms and conditions, promotions, transfers, dismissals, training and employment practices such as dress codes and disciplinary procedures.

ACTION SCHOOLS NEED TO TAKE – DISCRIMINATION WITH REGARD TO PUPILS

6. Schools must not discriminate against children seeking admission or with regard to how pupils are treated, on grounds of sex, race, disability, religion or belief⁵. This includes discrimination in provision of teaching or allocating the pupil to certain classes, applying different standards of

¹ Including people who have expressed an intention to undergo, are undergoing or have completed a process of gender reassignment.

²Discrimination on grounds of perceived as well as actual sexual orientation, and/or that of friends or associates of the person discriminated against is also unlawful.

³ There are some limited exceptions for staff in faith schools, guidance regarding which is available in the Governors’ Guide to the Law (see annex B). Briefly at foundation and voluntary controlled schools with a religious character, the governing body may take into account any candidate’s suitability and ability to preserve and develop the religious character of the school. At voluntary aided schools with a religious character, the governing body may give preference to any candidate whose religious opinions and worship are in accordance with the tenets of the religious denomination of the school.

⁴ In some cases, direct or indirect discrimination on grounds of age may be lawful if it can be shown to be objectively justified.

⁵ The requirement not to discriminate on grounds of religion or belief is expected to come into effect from April 2007. Regulations are also planned which will prohibit discrimination against pupils or potential pupils on grounds of sexual orientation (and see footnote 2 above).

behaviour, dress and appearance, excluding pupils or subjecting them to any other detriment, and conferring benefits, facilities or services.

7. There are some limited exceptions to this.

- Single sex schools may of course discriminate on grounds of sex with regard to admissions, and schools with a religious character may give priority in admissions to applicants who are of their faith.
- School curriculum and collective worship are not covered by the requirements on schools not to discriminate on grounds of religion or belief.
- With regard to disability, schools must make such reasonable adjustments as are necessary to prevent disabled pupils being at a substantial disadvantage in comparison with people who are not disabled, even if it means treating them more favourably.
- Schools must not discriminate on grounds of sexual orientation in terms of employment of staff. Regulations are expected to be made shortly which will cover discrimination against pupils or potential pupils on the grounds of their sexual orientation or that of their parents, carers or other associates.
- Schools must not discriminate on grounds of age in terms of employment of staff but age discrimination legislation does not apply to the treatment of pupils or the delivery of education.

DUTY TO PROMOTE EQUALITY

Race

8. Schools are under a duty to promote equality of opportunity and to promote good relations between persons of a different race and nationality. This will be through a written race equality policy, which should identify action to be taken to tackle discrimination and to promote equality and good race relations across the whole area of school activity.

9. There is also a duty to assess and monitor the impact of policies on pupils, staff and parents, in particular the attainment levels of pupils from different racial groups. Such steps as are reasonably practicable should be taken to publish annually the results of the monitoring. Ofsted will inspect and report on whether schools are meeting the general and specific duties.

10. All schools and educational establishments are required to record racist incidents and to report them to the local authority on a regular basis.

Disability

11. Schools are under a duty, when carrying out their functions, to have regard to the need to:

- a. Promote equality of opportunity between disabled and other people;
- b. Eliminate discrimination and harassment; promote positive attitudes to disabled people;
- c. Encourage participation by disabled people in public life; and
- d. Take steps to meet disabled people's needs, even if this requires more favourable treatment.

12. Secondary schools are also required to publish a disability equality scheme (this requirement came into force in December 2006), and primary and special schools must do this by December 2007. The scheme is required to show how the school is meeting its general duty to promote disability equality across all of its areas of responsibility.

Gender (sex)

13. From April 2007, schools will have a general duty to promote equality of opportunity between men and women (including boys and girls) and a specific duty to publish a Gender Equality Scheme showing how the school intends to fulfil the general and specific duties. Schools must revise and review the plan every 3 years and report on progress annually.

14. There are no specific duties or requirements on schools in relation to gender reassignment, beyond the requirement not to discriminate in terms of employment of staff (see section on employment above).

ACTION SCHOOLS NEED TO TAKE – PROMOTION AND MONITORING

15. As set out briefly above, schools are under a number of duties through legislation on equality to promote and monitor equality and discrimination, including gathering specified evidence and publishing plans. Taken together, the requirements are to:

- a. Produce a written race equality policy identifying action to be taken to tackle discrimination and promote equality and good race relations across school activity. More detailed guidance for schools on how to produce such a policy is available from the Commission for Racial Equality (see annex B).
- b. Assess and monitor the impact of race equality policies on pupils, staff, and parents, in particular the attainment levels of pupils from different racial groups, and take such steps as are reasonably practical to publish the results of this monitoring annually (see the Commission for Racial Equality's guidance for further detail on this).
- c. Record racist incidents and report them to the local authority on a regular basis. Schools should contact their local authority for

advice on the format, process and frequency of reporting that is required. Further guidance on this is available from the Department for Education and Skills (see annex B).

- d. Publish a disability equality scheme (from December 2006 in secondary schools and December 2007 for primary and special schools) showing how the school is meeting its general duty to promote disability equality across all its areas of responsibility. Advice on what should be contained in this scheme, and outline plans, can be found in the guidance *Promoting Disability Equality in Schools* (see annex B).
- e. Publish a Gender Equality Scheme showing how the school intends to fulfil its general and specific duties, such as setting out gender equality objectives. Schools must revise and review this plan every 3 years and report on progress annually. More detailed guidance and advice to schools on this will be issued shortly. In the meantime, further advice and information can be obtained from the Equal Opportunities Commission (see annex B).

16. To minimise the burden created by the need to complete these important plans, we recommend that schools produce a single 'equality plan' covering all of the plans set out above.

17. There is no need to repeat any of the content of this equality plan in the broader school plan, though it may be helpful to cross-refer to make clear how equality is embedded in all of the school's policies and practices.

KEY LEGISLATION

(Please note legislation made prior to 1988 is not available online)

Area	Legislation
Gender (sex)	Sex Discrimination Act 1975, as amended Equality Act 2006
Gender (reassignment)	Sex Discrimination (Gender Reassignment) Regulations 1999
Race	Race Relations Act 1976, as amended Race Relations (Amendment) Act 2000
Disability	Disability Discrimination Act 1995 , as amended Special Educational Needs and Disability Act 2001 Disability Discrimination Act 2005
Sexual orientation	Employment Equality (Sexual Orientation) Regulations 2003 , as amended
Religion or belief	Employment Equality (Religion or Belief) Regulations 2003 , as amended Equality Act 2006
Age	Employment Equality (Age) Regulations 2006

WHERE TO FIND MORE DETAILED GUIDANCE

Cross-cutting

- [Governors Guide to the Law \(chapter 11\)](#)
- [Teachernet – information and advice on equality issues](#)

Gender (sex)

- [The Equal Opportunities Commission – advice on the Gender Equality Duty](#)
- [The Women and Equality Unit](#)

Gender reassignment

- [A Guide to the Sex Discrimination \(Gender Reassignment\) Regulations 1999](#)

Race

- [Commission for Racial Equality – guidance for schools on the race equality duty](#)
- [Recording and Reporting Racist Incidents Guidance](#)

Disability

- [Promoting Disability Equality in Schools](#)
- [Disability Rights Commission](#)

Sexual orientation

- [Advisory, Conciliation and Arbitration Service \(ACAS\)](#)

Religion or belief

- [Advisory, Conciliation and Arbitration Service \(ACAS\)](#)

Age

- [Advisory, Conciliation and Arbitration Service \(ACAS\)](#)
- [Age Positive](#)

OVERVIEW OF SCHOOLS' RESPONSIBILITIES

	Illegal: - discrimination - harassment - victimisation	Duty to promote	Applies to:			Duty to monitor	
			Staff	Pupils	Curriculum	Overall	Specific incidents
Gender (sex)	✓ Since 1975	✓	✓	✓	✓		X
Gender (reassignment)	✓ Covered by 1975 Act	X	✓	X	X	X	X
Race	✓ Since 1976	✓	✓	✓	✓	✓	✓
Disability	✓ Since 1995	✓	✓	✓	✓	✓	X (except bullying incidents)
Sexual orientation	✓ Since 2003	X	✓	X	X	X	X
Religion or belief	✓ Since 2003	X	✓	✓	X	X	X
Age	✓ Since 2006	X	✓ Unless 'objectively justified'	X	X	X	X