

EXPLANATORY MEMORANDUM TO
THE EQUALITY ACT 2010 (DESIGNATION OF INSTITUTIONS WITH A
RELIGIOUS ETHOS) (ENGLAND AND WALES) ORDER 2010

2010 No. 1915

1. This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument designates certain sixth form colleges as being institutions with a religious ethos. Such a designation permits a college, in relation to the admission of students, to give preference to persons of a particular religion or belief in order to preserve the institution's religious ethos. Without a designation a college would be unlawfully discriminating if it made a decision to admit students based on their religion or belief.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 This instrument designates institutions with a religious ethos for the purposes of paragraph 5 of Schedule 12 of the Equality Act 2010. It replicates identical provision contained in Regulation 20(4A) and Schedule 1B of the Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660). The Employment Equality (Religion or Belief) Regulations 2003 will be repealed upon commencement of the relevant provisions of the Equality Act 2010, which come into force on 1st October 2010.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 When new legislative provisions implementing the EU Framework Directive by prohibiting discrimination on the grounds of religion or belief in Higher and Further Education came into effect in 2003, a designated group of Catholic Sixth Form Colleges within the FE sector were given an exemption allowing them to continue to discriminate on religious grounds when admitting students to non-vocational courses. (Discrimination in relation to admission to

courses of vocational training is not permitted by the Directive,). A similar exception was provided for admissions to faith schools when the 2006 Equality Act brought schools within the scope of the law against religious discrimination.

7.2 In order to maintain the existing position it is necessary to designate these colleges in a new instrument under the power contained in the Equality Act 2010, which consolidates in a single statute all UK discrimination law, including the relevant provisions on religious discrimination. It was made clear during the passage of the Act that the power in Schedule 12 was to be used for this purpose only, i.e. to replicate the existing provision.

8. Consultation outcome

8.1 There is no requirement for consultation for this instrument and none has been carried out.

9. Guidance

9.1 There is no requirement for guidance relating to this instrument and none has been prepared. However, comprehensive guidance and Codes of Practice are being prepared by the Equality and Human Rights Commission in relation to the parent Act, the Equality Act 2010.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has not been prepared for this instrument, which simply maintains the status quo.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Government Equalities Office is developing a project to establish an evaluation framework for the Equality Act 2010 as a whole, It is intended to complete a full evaluation 4-5 years following enactment. There are no specific plans for monitoring or reviewing this particular exception, which replicates the position which has existed since the original law on religious discrimination was introduced in 2003.

13. Contact

David Balloch at the Department for Education (Tel: 0207 340 7747 or email: david.balloch@education.gsi.gov.uk) can answer any queries regarding the instrument.