

The Educational Institute of Scotland

EIS EQUALITY

**LGBT
GUIDELINES**

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Background

Employment, equality and discrimination legislation is a reserved area. **The Scotland Act, 1998**, however, commits the Scottish Parliament to support the European Convention on Human Rights. Also, the Scottish Parliament is able to pass legislation which promotes equality within Scottish life and institutions.

A Scottish Human Rights Commission (SHRC), created by the Scottish Human Rights Commission Act 2006, was established in 2008. Its mandate is to promote all human rights i.e. civil, political, economic, social and cultural as they pertain to Scotland. It can monitor law and policy, identify and promote best practice in public authorities and, where necessary, recommend changes. It can also conduct legal enquiries, enter places of detention and intervene in legal proceedings.

It differs from the Equality and Human Rights Commission (Scotland) which was created by the Equality Act 2006 and established in 2007. This Commission brings together the Commission for Racial Equality, the Equal Opportunities Commission and the Disability Rights Commission. In addition, it takes responsibility for other areas of equality - age, sexual orientation and religion or belief, as well as human rights. It has extensive legal powers and powers of enforcement, including launching official inquiries and formal investigations.

The Equality and Human Rights Commission (Scotland) is part of the UK Equality and Human Rights Commission with a remit to promote equality and human rights, eliminate discrimination and build good relations within Scotland so that everyone has a “fair chance to participate in society.”

The Scottish Human Rights Commission and the Equality and Human Rights Commission (Scotland) intend to work closely together to promote equality and human rights.

Employment Rights

The **Employment Equality (Sexual Orientation) Regulations 2003** came into force on 1 December 2003. They make it unlawful to discriminate in employment and vocational training. They give protection from direct and indirect discrimination, harassment and victimisation. The areas covered by the regulations are:-

- recruitment
- pay
- terms and conditions of employment
- training
- promotion
- transfer
- dismissal

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The Sexual Orientation Regulations apply to discrimination and harassment on grounds of orientation towards persons of the same sex (lesbians and gay men), the opposite sex (heterosexuals) and the same and opposite sex (bisexuals). They cover discrimination and harassment on grounds of perceived orientation (i.e. assuming – correctly or incorrectly – that someone is lesbian, gay, heterosexual or bisexual) as well as actual sexual orientation.

The Regulations also cover association, i.e. being discriminated against on grounds of the sexual orientation of those with whom you associate (for example, friends and/or family).

Discrimination on the grounds of Gender reassignment is covered by the Sex Discrimination Act 1975.

As in other areas of discrimination, protection begins from the first day of appointment to a job and in the recruitment, selection and interview process. Protection continues throughout the employment period. There should be no detriment on the grounds of sexual orientation in access to and procedures for promotions or transfers, training or receiving any other benefit.

An employer may argue that an employee must be of a particular sexual orientation if it can be shown that this is a genuine and determining occupational requirement of the post to be filled. It is envisioned that the circumstances where this will happen will be rare.

It is unlawful in certain circumstances to discriminate against a former employee after the employment relationship has ended e.g. by not providing a reference.

Once an employment tribunal or court is satisfied from the facts that there is a case to answer, the burden of proof is on the employer to show that the difference in treatment was justified.

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Working in Faith schools

EIS guidance is available relating to Scottish legislation about faith schools. Members should seek advice from local association secretaries if they have any questions about this.

Teachers working in denominational schools in Scotland require 'approval' by the church in whose name the school is run. The relevant legislation is the **Education (Scotland) Act 1980 -**

"Management of denominational schools

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2 A "A teacher appointed to any post on the staff of any such school by the education authority.. shall be required to be approved as regards religious belief and character by representatives of the church or denominational body in whose interest the school has been conducted".

The General Teaching Council Scotland

A person's sexual orientation is irrelevant for the purposes of GTCS registration.

The General Teaching Council Scotland has a Code of Professionalism and Conduct which is a useful guide for teachers. The following quotation provides advice about discrimination and harassment towards colleagues.

"Everyone in the workplace should be able to work in an environment which is free from discrimination and harassment. A teacher should work in a collegiate way, treating all colleagues professionally.

As a teacher you should:

- not allow professional relationships with colleagues to be prejudiced by views about their lifestyle, culture, disability, beliefs, colour, gender, language, sexuality or age"

(http://www.gtcs.org.uk/Publications/StandardsandRegulations/code_professionalism_conduct.aspx December 2008)

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Definitions

Direct Discrimination

The employer will be liable where a person discriminates against an employee on the grounds of their actual sexual orientation or perceived sexual orientation or association.

Indirect Discrimination

Employers must not have practices or procedures relating to employment which apply to everyone but disadvantage employees of a particular sexual orientation.

Victimisation

An employer cannot treat an employee less favourably because the employee has taken action under the Regulations or if the employer knows or believes that the employee might do so.

Harassment

If a person's, or persons', conduct violates the dignity of others or creates an intimidating, hostile, degrading, humiliating, or offensive environment for him or her, on the grounds of sexual orientation, the employer will be liable.

Other Legislation

The **Health and Safety at Work Act 1974** makes employers responsible for the health, safety and welfare at work of all employees. This covers the effects of bullying and harassment.

Employment Equality (Religion or Belief) Regulations (2003) cover discrimination, harassment and victimisation in work and vocational training on grounds of perceived (i.e. assuming - correctly or incorrectly - that someone has a particular religion or belief) as well as actual religion or belief. The Regulations also cover association, i.e. being discriminated against on grounds of the religion or belief of those with whom you associate (for example, friends and/or family).

The **Civil Partnership Act 2004** (effective from December 2005) gave lesbian and gay people the same rights and responsibilities as married heterosexual people.

The **Equality Act 2006** made it illegal to discriminate on grounds of sexual orientation in the provision of goods or services.

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Trade Unions

Trade Unions are covered by the regulations.

Despite many years of campaigning against discrimination and homophobia, and changes in attitude of government, society and employers towards LGBT people, fears and myths are still all too easily exploited.

Trade unions have represented members experiencing discrimination and harassment, and have negotiated with employers to develop anti-discrimination and bullying and harassment policies which include reference to LGBT people. They have developed education programmes and training for their own membership.

The STUC and TUC have been prominent in campaigning for improved rights for LGBT employees and an end to unjustifiable and discriminatory legislation. The STUC has established a network of LGBT trade unionists representing many trade unions in Scotland.

It is important that the EIS provides support and representation for teachers who experience discrimination, and works with members and employers to ensure safe and secure working environments.

The EIS has a network for teachers who identify as LGBT;
The STUC has a network for workers who identify as LGBT;
The TUC website is a useful resource for advice and legislation on a range of equality issues.

Advice to EIS members

Unfortunately, discrimination does happen in workplaces. It can be as a result of the action or behaviour of pupils/students and/or colleagues and can lead to isolation, harassment or violence. It is the responsibility of teachers and management to challenge such behaviour.

The EIS has a bullying and harassment policy. It states clearly that bullying and harassment directly by pupils/students and/or colleagues or by the use of technology such as mobile phones and internet sites is unacceptable. As an employee you have certain rights and entitlements to work in a safe and secure environment.

If you believe you have been discriminated against on grounds of sexual orientation contact your EIS representative in the first instance or your local association.

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There is also protection from harassment legislation which may be appropriate to the workplace.

If you do decide to pursue a case, you must follow the appropriate protocols about which you will be advised. As in all areas of discrimination the pursuit of cases may be complex and require professional advice.

Advice to EIS Representatives

The EIS believes discrimination and harassment on the grounds of sexual orientation is unacceptable and constitutes professional misconduct. Any LGBT member who experiences harassment or discrimination has the right to contact her/his representative or her/his local association secretary for advice. All enquiries must be treated confidentially.

All representatives should treat cases of harassment or discrimination very seriously and sensitively. If assistance is required advise the member that you need to seek additional advice in the first instance from the local association secretary.

Equality policies must exist in all educational establishments. They are required to cover all aspects of working life and education, and must be accompanied by procedures which assist in ensuring fair appointments and promotions as well as dealing with complaints.

Advice for head teachers and other members with personnel or management responsibility

Head teachers or members with responsibility for management and personnel matters such as discipline and grievance procedures must ensure that equality policies reflect best practice and current legislation. They must include reference to sexual orientation.

Establishing an ethos where people can openly discuss problems or potential areas of conflict is conducive to good employee relationships.

Unfortunately, there may be occasions when formal procedures will be used. It is essential that such procedures are followed fairly and competently.

Education

The Standards in Scotland's Schools Act, 2000, places a requirement on local authorities to include equality for all pupils as part of the aims of their education development plans. It includes also reference to the duties of local authorities to pay due regard to advice from the Scottish Government.

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The Scottish Government has an Equality Unit which provides guidance to the Government on equality issues and it plans strategically how to ensure equality is mainstreamed into the workings of the Parliament. The Equality Strategy provides guidance to the Government and Parliament on the structures, planning and processes required to ensure equality of opportunity is mainstreamed into all activity.

The Additional Support for Learning Act, 2004.

'Additional support needs' refers to any child or young person who, for whatever reason, requires additional support for learning. Additional support needs can arise from any factor which causes a barrier to learning, whether that factor relates to social, emotional, cognitive, linguistic, disability, or family and care circumstances. For instance, additional support may be required for a child or young person who is LGBT or is experiencing homophobic bullying.

Education Policy

Education for equality prepares young people to live in a society which includes LGBT people. The EIS recognises that it is essential to address issues of gender, sexuality and sexual orientation positively and sensitively. Teachers must be supported in providing a safe, secure learning environment. Teachers, schools, external agencies and parents should work co-operatively to ensure accurate information is given to young people about sexuality and sexual orientation.

Many young people go through puberty and adolescence with few problems; for others it is a time of uncertainty and anxiety. Teachers should be able to support young people through difficult periods in their lives. It is important that there is a framework of support for professionals to do this. There are national, local guidelines and other national documents which contain advice and support material.

Children and young people acquire knowledge about LGBT people from a variety of sources, with varying quality of information. It is far better they learn accurate information in the classroom than inaccurate information in the playground or from the media. Often young people have a sense of fairness that is underestimated and which can lead to valuable discussion about how people treat each other. Pupils and students can discuss complex questions such as prejudice, discrimination, racism, sexism and homophobia. Attitudes about LGBT people say a great deal about attitudes towards men and women and the various stereotypical gender roles. This may form part of personal and social development programmes but can also be addressed in other areas of the curriculum. It always must be addressed in a non-discriminatory way.

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It is the responsibility of all involved in education to ensure that all learners are provided with a safe and secure environment. However, the school experience of many LGBT people can be particularly unhappy and stressful. Surveys conducted by Stonewall and LGBT Youth Scotland consistently find that young people who identify themselves as LGBT face homophobic bullying. Homophobic bullying is also experienced by many young people, including primary-aged children, as a form of general abuse. This is unacceptable. It can lead to serious mental health issues, low self esteem, truancy and self harm. It is the responsibility of the school to protect young people's health and well-being and safeguard them from the impact of homophobic bullying.

Homophobic bullying should be included in bullying and harassment policies. It is important that it is dealt with as seriously as other forms of bullying and verbal abuse.

Dealing with Homophobia and Homophobic Bullying in Scottish Schools - Teachers Toolkit

This is an extensive and effective resource for teachers to use to tackle homophobia and homophobic bullying. It is available on the Learning and Teaching Scotland website to download. Its aim is to provide confidence and skills for teachers and school staff to recognise, prevent and deal with homophobia and homophobic bullying in schools. It has been developed by LGBT Youth Scotland, the national youth organisation for LGBT young people, in partnership with Learning and Teaching Scotland and funded by the Scottish Government.

The strength of this resource is that it is based on research with teachers, education authority staff and young people.

Contained within this toolkit are materials designed to build confidence in the following areas:

- challenging homophobia and homophobic bullying
- supporting LGBT young people in school
- including homophobia and homophobic bullying in the school's policy
- Including LGBT issues and anti-homophobia work in the curriculum through lesson plans that support *Curriculum for Excellence* experiences and outcomes and around the four capacities of education (successful learners, confident individuals, responsible citizens, effective contributors).

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Advice to EIS members

Where a young person seeks advice on sexuality, the role of the teacher must be confined to educational/pastoral responsibilities. This applies to all pupils, regardless of their sexual orientation.

It is important to distinguish between advice to individuals and teaching in class. Providing general and factual information about sexuality is an important part of a school's sex education programme but is quite different from giving advice on an individual basis.

If in any doubt, seek advice or assistance. There is legislation on education and children's rights. Local authorities have policies and guidance to schools on legal issues such as children's rights, care and welfare which you are required to follow.

In offering advice to young people:-

- ensure training is provided before counselling young people about sexuality
- ensure your advice is appropriate; some advice should be given by health professionals, or other appropriate personnel
- seek advice about recommended external agencies
- use the appropriate school support system to assist
- ensure all advice is sensitively handled and confidentiality maintained where appropriate.

It is important that teachers are aware of their responsibilities under legislation and their employer's policies, advice and codes of conduct. They should also be aware of their duties under the Standards for Full Registration.

If you require further assistance please contact your local association secretary in the first instance.

Further advice is available from the following sources.

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Website Sources

www.eis.org.uk – EIS policy and advice

www.ltscotland.org.uk/homophobicbullyingtoolkit - toolkit is available to download. The site also provides information on GLOW, and other teaching resources

www.tuc.org.uk – for general trade union policy and advice

www.hmie.gov.uk – for HMIE policy and practice papers including ‘A Route to Equality and Fairness’.

www.scotland.gov.uk – for access to education and life long learning departments as well as the Equality Unit

www.berr.gov.uk – for detailed information on employment legislation

www.acas.org.uk – for advice to employers and employees on policy, legislation, codes of practice on employment and discrimination

www.equalityhumanrights.com – for all information on equality and human rights legislation, enforcement, codes of practice, guidance on all aspects of equality and discrimination

www.lgbtyouthscotland.org.uk – for advice, support and information for young people relating to rights in employment and education

www.stonewall.org.uk – for advice, policy, support for LGBT people

www.equality-network.org - for news, updates, support, advice, links for LGBT issues

www.gtcs.org.uk – for information about standards and registration in the teaching profession in Scotland

www.enquire.org.uk - for information about the Additional Support for Learning Act

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This document is also available by request in Braille, large print, various computer formats and in community language translations.

Please contact EIS Equality Department on 0131 225 6244.

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