

EDUCATION AND INSPECTIONS BILL 2006
BRIEFING ON CHANGES TO SS&F ACT SS 58 & 60
26 OCTOBER 2006

Major threat to jobs in “faith” schools

The Government has quietly tabled amendments to the Education and Inspections Bill that have hugely adverse implications for staff in schools designated as having a religious character. We understand that there are around 80,000 teachers in such schools. I urge you to raise this issue immediately with your parliamentary affairs advisors and alert your executive and as many senior figures in your own and other unions as possible. I suggest that you raise objections speedily with Education Ministers Alan Johnson and (as this was tabled in the Lords) Lord Adonis, and inform as many parliamentarians as possible. Time is very short. The next and last debate, third reading, is scheduled in the Lords for 30 October.

The amendments run contrary to the spirit, if not the letter, of the EU Employment Anti-discrimination Directive brought into law in the Employment Regulations 2003.

The amendments introduce the possibility of religious discrimination or preconditions in the appointment of (a) teaching assistants and some other non-teacher jobs in the four thousand Voluntary Aided religious schools that are not controlled by local authorities and (b) headteachers in the nearly three thousand Voluntary Controlled religious schools that are controlled by local authorities.

The latter change is likely to have much more far-reaching and adverse knock on effect for other staff, especially teachers in such schools. The amendment will permit the headteacher in a VC school to be appointed as a “Reserved Teacher”. This means it could in future be required that such headteachers could only be appointed if they were able to teach RE relevant to the school, and conformed to various faith tests. Their job security as a Reserved Teacher would be less than if they were not one. Opening up the possibility that employers could require VC headteachers to be Reserved Teachers raises questions as to whether appointing “Reserved” headteachers might adversely impinge on non-religiously-minded teachers and other staff in their schools.

Lord Adonis identifies the amendments as having “ their genesis with the Church of England” and refers to “constructive dialogue that we have had with faith communities”. As far as we are aware, the only consultation there has been over these changes has been with religious bodies, those with a vested interest in them being introduced. We are not aware of any Government announcement of any intention to pursue this route. The measures were introduced quietly at a late stage in the Bill’s passage. We do not believe that those likely to be adversely affected have been consulted. We hope you will complain forcibly about this curtailment of rights and the introduction of state-sponsored discrimination by stealth.

Most of the schools affected are church schools. Church attendance has been in decline for sixty years and this is projected to continue. Currently, less than 7% of the population attends church on an average Sunday and this is projected by Christian Research to decline to 2% by 2040. Church schools, especially Catholic ones are already having huge difficulty recruiting anyone of their faith.

The Government’s amendments will increasingly privilege a diminishing group of religious teachers while making the discrimination against the increasing number of non-religious

teachers progressively more acute. Those who are prepared to pretend they believe will not only be under no threat, but will do far better than those non-religious who are not prepared to play the system.

We make the following specific points:

Both cases

1. We believe it is unfair and discriminatory for the possibility of religious tests to be introduced by the Government for either headteacher posts in VC schools or non-teaching jobs in the thousands of VA schools.
2. The person to be appointed should be the best person for the job, not one who happens to be (or is prepared to pretend they are) religious.
3. There is no need for people to be religious to do these jobs, and there has not been a problem that we are aware of in the eight years since these provisions were introduced.
4. To introduce discrimination when there was none before is totally unacceptable.
5. If the proposals were to become law, we are not aware of any thought being given to transitional provisions, not only for existing staff, but those already employed in respect of transfers or promotion.
6. The school is often the only local employer of any size and those losing their jobs or unable to obtain jobs will suffer severely.
7. The entire running costs of both VC and VA schools are paid for from public funds.

In the case of non-teaching staff in VA schools, additionally:

1. Currently under the School Standards and Framework Act section 60(6) there is a prohibition of disqualifying staff other than teachers on religious grounds. The ingeniously worded amendment would lift this prohibition for England. In practice the “Genuine Occupational Requirement” test in the Employment Regulations would limit the scope for discrimination, and is unlikely to apply to caretakers or catering staff. Lord Adonis used the example of “pastoral assistants”, in the debate. It was only given as an example and may have been selected because it was an ostensibly innocuous one.
2. When the Church of England first sought to introduce this it gave the example of teaching assistants and some secretarial jobs. We fear teaching assistant jobs will be reclassified as “pastoral assistants” with unnecessary duties such as conducting prayers in order to make them more likely to pass the “Genuine Occupational Requirement” test. Such abuse will permit even more discrimination.
3. The way in which the amendment is worded appears to give entire freedom to discriminate in England in VA schools for non-teacher posts. Very few people know about the “Genuine Occupational Requirement” test and it will be widely misunderstood leading to a far wider extent of de facto discrimination than is permissible under the Employment Regulations.
4. The extent of posts for which discrimination is permitted by the “Genuine Occupational Requirement” is largely untested, which means that even those poorly paid staff who are aware of it will be hesitant to challenge over-zealous discrimination because of the huge costs of doing so in this uncertain area of law.
5. Most of these jobs are poorly paid so the hardship will be very acute as alternative jobs could be far away and the absence of transport or its high cost may lead to unemployment.

In the case of the change relating to headteachers in VC schools, additionally:

1. Currently under the School Standards and Framework Act section 60 (4) “The head teacher of such a school shall not, while holding the post of head teacher of the school, be a reserved teacher.” [The amendment deletes this subsection thus opening up the possibility of an employer requiring this.]

2. The amendment appears to be a body blow to the thousands of non-religious headteachers and teachers in VC schools. Even assuming headteachers' security is not threatened in their current appointment, their career progression will be blighted irreparably, and in a way they had no reason to realise when they started their careers.
3. Headteachers' ability to obtain satisfactory transfers and promotion would be seriously limited.
4. It would be possible for employers to require them to be reserved teachers and therefore have to guide religious education in accordance with the tenets of the school's specified religion, be exempted from the protections in Section 59(2-4) on their own belief and adherence, and be more easily dismissed than if they were not reserved teachers.

The appendices below show quotes from the Minister, the amendments, and their result.

Baroness Turner of Camden is tabling an amendment to reverse these amendments but her chances of success will entirely depend on the degree of opposition generated by the time of the debate on 30th October.

Please let me know if I can be of further assistance, or you may wish to contact Keith Porteous Wood Executive Director of the National Secular Society on 020 8997 8371 or 07810 224380 kpw@secularism.org.uk.

APPENDIX 1

Education Minister Lord Adonis' words when introducing the amendments in the Lords (Hansard 17 Oct 2006 : Column 737, part)

On staffing, government [these amendments] follow the constructive dialogue that we have had with faith communities. First, they allow the head teacher of a religious foundation or voluntary controlled school in England and Wales to be a reserved teacher, appointed specifically to guide religious education in accordance with the tenets of the school's specified religion. Almost all voluntary-controlled schools are Church of England schools, and we agree with the Church of England that it should not be necessary for a voluntary-controlled school or a foundation school to convert to voluntary-aided status simply to ensure that its head teacher is appointed with a view to promoting the ethos of the school. We have therefore tabled these amendments, which have their genesis with the Church of England.

Secondly, the amendments allow voluntary-aided faith schools in England to make a case for extending the faith requirement to the appointment of any employee who is not a teacher, where there is a genuine occupational requirement. This, again, is a beneficial flexibility to reflect the changes brought about by workforce reform, particularly the much wider use of support staff in schools. It would be perverse if faith schools were discouraged from appointing pastoral assistants rather than fully qualified teachers, for example, simply because they cannot extend the existing power in respect of a faith commitment for that particular post.

APPENDIX 2

GOVERNMENT AMENDMENT as it appears in the new version of the Bill after Report.
(and each subsection reversed by an amendment by Lady Turner)

37 Staff at foundation or voluntary schools with religious character

(1) In section 58 of SSFA 1998 (appointment and dismissal of certain teachers at schools with a religious character), omit subsection (4) (which prevents the head teacher of a foundation or voluntary controlled school being a reserved teacher).

(2) In section 60 of SSFA 1998 (staff at foundation or voluntary school with religious character)—
(a) in subsection (4), after “(whether foundation or voluntary controlled)” insert “in a case where the head teacher is not to be a reserved teacher”,

and

(b) in subsection (6), after “voluntary aided school” insert “in Wales”.

Synopsis of School Standards & Framework Act 1998:

Section 58

Applies essentially to Voluntary Controlled (LEA controlled) schools with a religious character. Broadly allows the appointment of up to a fifth of teachers as “reserved teachers” with “fitness and competence” to give (=teach?) RE of the school’s type. Reserved teachers can be sacked if unsatisfactory on faith grounds by governing body without LEA approval. They can be disqualified under 60 (2) and (3) simply because of what they believe/don’t believe or what worship they do or don’t engage in. Currently under subsection (4):

“The head teacher of such a school shall not, while holding the post of head teacher of the school, be a reserved teacher.”

(This is the sub-clause Lord Adonis is seeking to remove, laying the way open for employers to insist that such teachers are qualified to reserved teachers.)

Section 60

Applies essentially to Voluntary Aided (not LEA controlled) schools with a religious character.

It allows preference for teachers on basis of religious belief, practice/non-practice and willingness to teach RE. Can be dismissed if conduct incompatible with religious tenets. In subsection (6) exception to above made for non-teachers. But Lord Adonis’s ingenious amendment ‘after “voluntary aided school” insert “in Wales”.’ means it becomes this exception would no longer apply in England.

RELEVANT PROVISIONS OF SCHOOL STANDARDS AND FRAMEWORK ACT 1998, SHOWING EFFECT OF LORD ADONIS 17/10/06 AMENDMENT

Appointment and dismissal of teachers of religious education

Appointment and dismissal of certain teachers at schools with a religious character.

58. - (1) In this section-

(a) subsections (2) to (6) apply to a foundation or voluntary controlled school which has a religious character; and

(b) subsection (7) applies (subject to subsection (8)) to a voluntary aided school which has a religious character;

and references in this Chapter to a school which has (or does not have) a religious character shall be construed in accordance with section 69(3).

(2) Where the number of the teaching staff of a school to which this subsection applies is more than two, the teaching staff shall include persons who-

(a) are selected for their fitness and competence to give such religious education as is required in accordance with arrangements under paragraph 3(3) of Schedule 19 (arrangements for

religious education in accordance with the school's trust deed or with the tenets of the school's specified religion or religious denomination), and

(b) are specifically appointed to do so.

(3) The number of reserved teachers in such a school shall not exceed one-fifth of the number of the teaching staff, including the head teacher (and for this purpose, where the number of the teaching staff is not a multiple of five, it shall be treated as if it were the next higher multiple of five).

~~(4) The head teacher of such a school shall not, while holding the post of head teacher of the school, be a reserved teacher. [Government amendment deletes this subsection.]~~

(5) Where the appropriate body propose to appoint a person to be a reserved teacher in such a school, that body-

(a) shall consult the foundation governors, and

(b) shall not so appoint that person unless the foundation governors are satisfied as to his fitness and competence to give such religious education as is mentioned in subsection (2)(a).

(6) If the foundation governors of such a school consider that a reserved teacher has failed to give such religious education efficiently and suitably, they may require the appropriate body to dismiss him from employment as a reserved teacher in the school.

(7) If a teacher appointed to give religious education in a school to which this subsection applies fails to give such education efficiently and suitably, he may be dismissed on that ground by the governing body without the consent of the local education authority.

(8) Subsection (7) does not apply-

(a) where the school has a delegated budget, or

(b) to religious education in accordance with an agreed syllabus.

(9) In this section-

"the appropriate body" means-

(a) in relation to a foundation school, the governing body, and

(b) in relation to a voluntary controlled school, the local education authority;

"reserved teacher", in relation to a foundation or voluntary controlled school, means a person employed at the school in pursuance of subsection (2).

Religious opinions etc. of staff

Staff at community, secular foundation or voluntary, or special school.

59. - (1) This section applies to-

(a) a community school or a community or foundation special school, or

(b) a foundation or voluntary school which does not have a religious character.

(2) No person shall be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship-

(a) from being a teacher at the school, or

(b) from being employed for the purposes of the school otherwise than as a teacher.

(3) No teacher at the school shall be required to give religious education.

(4) No teacher at the school shall receive any less remuneration or be deprived of, or disqualified for, any promotion or other advantage-

(a) by reason of the fact that he does or does not give religious education, or

(b) by reason of his religious opinions or of his attending or omitting to attend religious worship.

60. - (1) This section applies to a foundation or voluntary school which has a religious character.

(2) If the school is a foundation or voluntary controlled school, then (subject to subsections (3) and (4) below) section 59(2) to (4) shall apply to the school as they apply to a foundation or voluntary controlled school which does not have a religious character.

(3) Section 59(2) to (4) shall not so apply in relation to a reserved teacher at the school; and instead subsection (5) below shall apply in relation to such a teacher as it applies in relation to a teacher at a voluntary aided school.

(4) In connection with the appointment of a person to be head teacher of the school (whether foundation or voluntary controlled) in a case where the head teacher is not to be a reserved teacher regard may be had to that person's ability and fitness to preserve and develop the religious character of the school.

(5) If the school is a voluntary aided school-

(a) preference may be given, in connection with the appointment, remuneration or promotion of teachers at the school, to persons-

(i) whose religious opinions are in accordance with the tenets of the religion or religious denomination specified in relation to the school under section 69(4), or

(ii) who attend religious worship in accordance with those tenets, or

(iii) who give, or are willing to give, religious education at the school in accordance with those tenets; and

(b) regard may be had, in connection with the termination of the employment of any teacher at the school, to any conduct on his part which is incompatible with the precepts, or with the upholding of the tenets, of the religion or religious denomination so specified.

(6) If the school is a voluntary aided school **in Wales**, no person shall be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship, from being employed for the purposes of the school otherwise than as a teacher. **[Government amendment adds "in Wales" which negates the protection in England.]**

(7) Where immediately before the appointed day a teacher at a school which on that day becomes a school to which this section applies enjoyed, by virtue of section 304 or 305 of the Education Act 1996 (religious opinions of staff etc.), any rights not conferred on him by this section as a teacher at a school to which it applies, he shall continue to enjoy those rights (in addition to those conferred by this section) until he ceases to be employed as a teacher at the school.

(8) In this section "reserved teacher", in relation to a foundation or voluntary controlled school, means a person employed at the school in pursuance of section 58(2).