The Exemption in the Equality Act

The 1918 Education (Scotland) Act, and subsequent related legislation, states that a teacher can only be appointed to a post within a denominational school provided they “satisfy the Secretary of State as to qualification, and are approved as regards their religious belief and character by representatives of the church or denominational body in whose interest the school has been conducted”

It is therefore a requirement that, prior to appointment, the Local Authority (the employer) ensures that the teacher is both qualified **AND** approved. An appointment to a post cannot be made if either of these provisions is not fulfilled.

Approval to teach in a denominational School must be obtained from the denominational body for “any post”.  This means that individuals gain approval for a post and need to gain approval for **every change** in post – this includes temporary and permanent appointments such as an acting promotion, secondment or any other change to the post.

The Roman Catholic diocese where a Catholic school is located is the denominational body in whose interest the Local Authority hold, maintain and manage Catholic schools in Scotland. Therefore, applicants for any post within a Catholic school must be approved by the Bishop of the Diocese in order to be appointed.

There are certain provisions within the Equality Act that allow exemptions, including ***Equality Act 2010, Schedule 9, Part 1, Section 3***

***Equality Act 2010, Schedule 9, Part 1, Section 3*** *Other requirements relating to religion or belief*

*3              A person (A) with an ethos based on religion or belief does not contravene a provision mentioned in paragraph 1(2) by applying in relation to work a requirement to be of a particular religion or belief if A shows that, having regard to that ethos and to the nature or context of the work—*

*(a)it is an occupational requirement,*

*(b)the application of the requirement is a proportionate means of achieving a legitimate aim, and*

*(c)the person to whom A applies the requirement does not meet it (or A has reasonable grounds for not being satisfied that the person meets it).*

This outlines circumstances when it is lawful in employment situations that posts be undertaken by people with a certain protected characteristic.  This is known as objective justification.  The [Instrument for Approval](https://sces.org.uk/download/instrument/) outlines the theological and doctrinal reasons/justification that belonging to the Catholic faith is essential for the posts of headteacher or principal, deputy headteacher or deputy principal and teacher of religious education.  These posts have been identified as those necessary for achieving the mission of the Catholic school.  Therefore, the identification of a limited number of posts within a Catholic school is a proportionate means of achieving this legitimate aim.  The Instrument also contains notes regarding the use of terminology:

*“Whilst these titles have traditionally been used in schools other senior leadership posts, and terminology, have come about in practice, often as a result of collaborative working arrangements between schools. Terms which are being used more frequently include: executive headteacher, associate headteacher and head of school. The principle to be applied is that this minimum requirement will apply to the most senior leadership post i.e., the person with overall responsibility for the day-to-day management of the school and the person who is the second most senior person in the leadership team and any post with responsibility for teaching Religious Education.” Pg 3 Instrument for Approval.*