

Consultation on a draft Code of Practice for Schools in England and Wales



**Equality and
Human Rights
Commission**

In line with our statutory powers, the Equality and Human Rights Commission (the Commission) is producing statutory codes to cover all aspects of the new Equality Act. The purpose of the draft Code of Practice for schools in England and Wales is to explain the new statutory provisions to providers to ensure that the law is applied consistently by lower courts and tribunals, and to make the law accessible to a wider audience, such as those who have obligations and those who have rights or their representatives.

This consultation is being carried out to give you the opportunity to consider and comment on whether:

- The structure of the draft code is helpful in guiding providers on which parts of the Act covers different areas of activity.
- The code provides the right amount of explanation of the new provisions and the harmonised provisions of the Act.
- There any sections of the Code that are particularly unclear or hard to follow.
- The balance between explanatory text and examples is about right.

The consultation opens on **31 January 2011**. A questionnaire is included in this document but we are also happy to accept submissions in other formats.

Please send your response to us by **22 April 2011** when the consultation period closes. **If you need copies in accessible formats, please contact one of our helplines to discuss your requirements (contact details at the end of this document).**

Once the consultation period has concluded we will use submissions to inform the final drafting of the code before it is laid before Parliament.

A consultation report and a list of those responding to this consultation will be available on our website following the consultation. The information you send us may need to be passed to colleagues within the Government Equalities Office, and/or it may be used in published outcomes of the consultation. We will assume that you are content for us to do this and that, if you reply by email, your consent overrides any confidentiality disclaimer that is generated by your organisation's Information Technology system, unless you specifically include a request to the contrary in the main text of your response to the Commission.

Please ensure that if you want your name and/or response to be kept confidential, you state this clearly in your response. Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.

If you have any queries about this consultation, please contact:

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Because of the Freedom of Information Act (2000), all information contained in your response, including personal information, may be subject to publication or disclosure. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information which is provided, or remove it completely.

If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee that the information will not be disclosed to comply with the law including our obligations under the FOIA. **We cannot guarantee confidentiality** even if your IT system claims it automatically. The contact point to discuss this is Finola Kelly. More information about the Freedom of Information Act can be found on the [Ministry of Justice's website](#), or on the [Information Commissioner's website](#).

If you have declared information as confidential information and we have been asked for this information under the FOIA or otherwise, we will endeavour to consult you prior to disclosure, although this may not always be possible or necessary.

Even if you declare that information you provide is confidential, such information may nevertheless be disclosed, without prior consultation: (i) to Commission staff, agents and contractors involved with the consultation and/or codes of practice drafting process, or who need to know the information for any other purposes related to carrying out the

business of the Commission; (ii) to GEO and any other government department who need know to know the information.

In this consultation exercise, we are asking you to answer a number of questions and respond on issues. Please reply to as many as possible.

The address to return your reply to is:

Schools in England and Wales - Draft codes of practice consultation
Equality and Human Rights Commission
FREEPOST RRLG-GHUX-CTR
Arndale House, Arndale Centre,
Manchester
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Responses can also be sent via email to:

SchEngWales@equalityhumanrights.com

You can respond using a different format, such as audio tape, but if you do, please include all of the following information

Name: Martin Ward

Address: Association of School and College Leaders, 130 Regent Road, Leicester, LE1 7PG.

Are you responding as an individual or on behalf of an organisation?
(Please tick as appropriate)

Organisation

If on behalf of an organisation, would you describe it as a:

(Please tick as appropriate)

Employer

Professional body

Trade Union

(All of the above)

If you are a professional or advisory body, or a voluntary organisation, how many members do you have: 15000

Confidentiality

Unless you specifically request that your reply is treated in confidence, it will be treated as public. Confidential replies will still be included in a statistical summary of numbers of comments received and views expressed. Please ensure that if you want your name or response to be kept confidential you state this clearly in your response. Please note above on page 4, that even if information is provided on the basis that it is confidential, there may be circumstances when that information may be disclosed to others.

Do you want us to consider whether this reply can be treated as confidential? (Please tick as appropriate)

No

If YES, please explain why:

In the following pages there is a series of questions on which we would appreciate your views. In answering the questions please bear in mind that the primary users of the code are adjudicating bodies such as courts and tribunals.

General Questions

1. Is the structure of the draft code helpful in guiding users on which parts of the Act covers different areas of activity?

No, the document is too long, and is not laid out in a way that will enable hard-pressed school leaders to quickly obtain a view about how they should deal with particular issues that arise. It is assumed (for example by leaving the exceptions to the end) that it will be read in its entirety, but it is far too long for that to be the likely outcome in all but a small minority of cases. The more likely effect is that it will be ignored by the great majority of schools. A short version, aimed specifically at helping schools to discharge their duties without excessive cost or bureaucracy, would be more useful. This might be an amended version of the DfE guidance.

2. Does the code provide the right amount of explanation of the new provisions and the harmonised provisions of the Act?

Including interpretation of the law and guidance on good practice is potentially confusing, even misleading. It would be helpful to adopt a clear distinction between the two by a consistent use of language.

3. Are there any sections of the Code that are particularly unclear or hard to follow?

No, but the style could be improved to make the whole document more readable. (And please proof-read it again with an eye to grammar, for example the placement of apostrophes).

4. Is the balance between explanatory text and examples about right?

The inclusion of examples is helpful, but some are misplaced and the choice is one-sided. For example, the case pertaining to the wearing of the Kara listed under religious discrimination was decided under racial discrimination legislation. And the impression given by the selection of examples is that religious arguments will always take precedence over other considerations in setting school rules, which is not the intention of the legislation or the effect of earlier cases. It would be helpful to refer to the jilbab case in Luton in which the school was found to have behaved quite properly in setting a school rule that a particular student argued interfered with her religious scruples.

Likewise the selection of examples in some other sections has the effect of overstating the constraints on schools decisions and underplaying the discretion that they retain.

Other documents produced by the EHRC have included more positive examples that show successful navigation through difficult decisions; that would be helpful here.

Chapter evaluation

This section of the questionnaire covers the individual chapters within the draft code.

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Chapter 1: Introduction

Q1. Does this chapter clearly explain the status and scope of the code? If not, please tell us where it is unclear and / or how it could be improved.

Yes

Q2. Does this chapter clearly explain the purpose of the code? If not, please tell us where it is unclear and / or how it could be improved.

No, even after reading it the code's purpose remains confused.

Chapter 2: Protected Characteristics

Q1. Does this chapter clearly explain the relevant law? If not, please tell us where it is unclear and how it could be improved.

Yes, with the general concern about excessive length.

Q2. Are the examples helpful in adding to an understanding of the text? If not, please tell us where they could be improved.

Yes

Q3. Are there particular points where additional examples would be helpful?

2.52 – an illustration of the difference between belief and opinion or viewpoint

Q4. Any other comments on Chapter Two?

It is very lengthy, which may be a deterrent from reading it fully: but it may be a useful reference document

Chapter 3: Overview of schools duties

Q1. Does this chapter clearly explain the relevant law? If not, please tell us where it is unclear and how it could be improved?

Yes

Q2. Are the examples helpful in adding to an understanding of the text? If not, please tell us where they could be improved.

Yes, though the approach set out is very heavy-handed, and the expectations of what schools can actually achieve with their limited resources, especially of time, are here as elsewhere unrealistic.

Q3. Are there particular points where additional examples would be helpful?

3.48 unenforceable terms

Q4. Any other comments on Chapter Three?

Chapter 4: Direct Discrimination

Q1. Does this chapter clearly explain the relevant law? If not, please tell us where it is unclear and how it could be improved.

As noted above, it would be helpful to put the exceptions alongside the relevant sections, rather than leaving them to the end.

Q2. Are the examples helpful in adding to an understanding of the text? If not, please tell us where they could be improved.

Yes: they are particularly helpful in this chapter

Q3. Are there particular points where additional examples would be helpful?

No

Q4. Any other comments on Chapter Four?

No

Chapter 5: Indirect Discrimination

Q1. Does this chapter clearly explain the relevant law? If not, please tell us where it is unclear and how it could be improved.

Some of the statements in this chapter in particular seem to go beyond the actual law, for example the statement that a mere preference rather than any actual disadvantage is sufficient for discrimination to have taken place.

Q2. Are the examples helpful in adding to an understanding of the text? If not, please tell us where they could be improved.

Mostly – the “ballet” example could be changed, as it is highly unlikely that many schools would offer ballet lessons

Q3. Are there particular points where additional examples would be helpful?

No

Q4. Any other comments on Chapter Five?

No

Chapter 6: Discrimination arising from disability

Q1. Does this chapter clearly explain the relevant law? If not, please tell us where it is unclear and how it could be improved.

Yes

Q2. Are the examples helpful in adding to an understanding of the text? If not, please tell us where they could be improved.

No, the examples are simplistic and one-sided. For example, schools should (and do) make allowances for bad behaviour of students with particular difficulties, including disabilities, when it is reasonable to do so; but they cannot exempt any student from all their rules without putting the safety and education of the particular student and their other students at risk. Other documents produced by the EHRC have included more positive examples that show successful navigation through difficult decisions; that would be helpful here.

Q3. Are there particular points where additional examples would be helpful?

No

Q4. Any other comments on Chapter Six?

No

Chapter 7: Reasonable adjustments

This chapter explains the duty to make reasonable adjustments for disabled pupils, including the duty to change a provision, criterion or practice; the new duty to provide auxiliary aids or services; and the duty to make reasonable adjustments to physical features. The interpretation of the new auxiliary aids and services duty in this chapter is based on an approach that is being consulted on by DfE in a similar time frame to this consultation. This Chapter is subject to change in line with the outcome of the DfE consultation as appropriate.

Q1. Does this chapter clearly explain the relevant law, especially the new duties in respect of Auxiliary Aids and Services? If not, please tell us where it is unclear and how it could be improved?

The treatment of auxiliary aids and services seems to be based on provisions that have not yet been enacted.

Some of the statements again seem to go beyond the law as on the statute book to try to encourage 'best practice' solutions, when conflicting duties and other calls upon scarce resources may mean that a lesser adjustment, whilst not perhaps ideal, is still reasonable.

7.46 is duplicated.

An end of a sentence is missing in 7.57

Q2. Are the examples used in this chapter, especially in relation to the new Auxiliary Aids and Services duties, helpful in understanding the text, identifying what schools already do and what else they may need to do to discharge these duties? If not, please tell us where examples could be improved or particular points where additional examples would be helpful?

To some degree.

It should be borne in mind that school staff cannot be required to administer medicines (a sore point for the unions representing support staff). This could well affect what would be a reasonable adjustment in different contexts according to whether a school has, or can recruit staff who are willing to discharge this function.

Approaches that rely on the good will of other students, whilst they are often valuable for all concerned cannot be relied upon to last as long as the need.

Q3. Do you think there is anything else that should be done which would also assist schools to discharge these duties?

No

Q4. Do you have any other further suggestions or comments on chapter seven?

No

Chapter 8: Harassment

Q1. Does this chapter clearly explain the relevant law? If not, please tell us where it is unclear and how it could be improved.

Most harassment in schools is committed by other pupils, not by the school itself or its agents. It has a duty to protect its students and staff from harassment, as far as it can. The examples could therefore be better chosen.

Q2. Are the examples helpful in adding to an understanding of the text? If not, please tell us where they could be improved.

Yes mostly: the example of the search is a very improbable scenario.

Q3. Are there particular points where additional examples would be helpful?

No

Q4. Any other comments on Chapter Eight?

No

Chapter 9: Victimisation

Q1. Does this chapter clearly explain the relevant law? If not, please tell us where it is unclear and how it could be improved.

Yes

Q2. Are the examples helpful in adding to an understanding of the text? If not, please tell us where they could be improved.

Yes

Q3. Are there particular points where additional examples would be helpful?

No

Q4. Any other comments on Chapter Nine?

No

Chapter 10: Schools admissions

Q1. Does this chapter clearly explain the relevant law? If not, please tell us where it is unclear and how it could be improved.

Yes

Q2. Are the examples helpful in adding to an understanding of the text? If not, please tell us where they could be improved.

Yes

Q3. Are there particular points where additional examples would be helpful?

No

Q4. Any other comments on Chapter Ten?

No

Chapter 11: Schools provision of education and access to benefits, facilities and services

Q1. Does this chapter clearly explain the relevant law? If not, please tell us where it is unclear and how it could be improved.

Yes

Q2. Are the examples helpful in adding to an understanding of the text? If not, please tell us where they could be improved.

Yes

Q3. Are there particular points where additional examples would be helpful?

No

Q4. Any other comments on Chapter Eleven?

No

Chapter 12: Schools exclusions

Q1. Does this chapter clearly explain the relevant law? If not, please tell us where it is unclear and how it could be improved.

Yes

Q2. Are the examples helpful in adding to an understanding of the text? If not, please tell us where they could be improved.

Yes: 12.14 would be helpful to have clarification in an example of a pupil in a single sex school undergoing gender reassignment

Q3. Are there particular points where additional examples would be helpful?

See above

Q4. Any other comments on Chapter Twelve?

No

Chapter 13: Positive Action

This chapter explains new measures the Act permits schools to take which may involve treating groups differently to address disadvantage, meeting different needs or improving low levels of participation.

Q1. Does this chapter clearly explain the relevant law? If not, please tell us where it is unclear and how it could be improved.

Yes

Q2. Are the examples helpful in adding to an understanding of the text? If not, please tell us where they could be improved.

Yes

Q3. Are there particular points where additional examples would be helpful?

No

Q4. Any other comments on Chapter Thirteen?

No

Chapter 14: Exceptions

Q1. Does this chapter clearly explain the relevant law? If not, please tell us where it is unclear and how it could be improved?

Yes

Q2. Are the examples helpful in adding to an understanding of the text? If not, please tell us where they could be improved.

Yes

Q3. Are there particular points where additional examples would be helpful?

No

Q4. Any other comments on Chapter Fourteen?

As mentioned above, the exceptions would be better placed in the main chapter to which they relate, rather than leaving them to this chapter at the end of the document.

Chapter 15: Enforcement

Q1. Does this chapter clearly explain the relevant law? If not, please tell us where it is unclear and how it could be improved.

Yes. This section would be greatly improved by frequent references to first seeking to resolve disputes at a local level without recourse to law. It reads as an encouragement to litigation, indeed the whole document falls into this trap.

Q2. Are the examples helpful in adding to an understanding of the text? If not, please tell us where they could be improved.

Yes

Q3. Are there particular points where additional examples would be helpful?

No

Q4. Any other comments on Chapter Fifteen?

No

Appendix 1: An overview of Qualifications Bodies' duties

A separate Code will be written setting out in detail the duties of Qualification Bodies. The summary in Appendix 1 is intended to give an overview of the duties only.

Q Do you think that this overview is helpful and should be included in this Code?

It is probably no necessary to have it included

Appendix 2: The meaning of disability

This appendix provides an in-depth explanation of the meaning of disability, expanding on the definition within the protected characteristics section in Chapter 2.

Q Do you find this additional detail helpful?

Yes, and it could usefully include the distinction between, and sometimes overlap of, disability and SEN.

Thank you for completing the questionnaire.

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Calls from BT landlines are charged at local rates, but calls from mobiles and other providers may vary.

Calls may be monitored for training and quality purposes.

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www.equalityhumanrights.com