

From Andrew Dismore MP, Chair

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**Equality Act Part 2 Guidance for Schools
School Admissions Code**

The Joint Committee on Human Rights is currently scrutinising for human rights compatibility two documents recently published by your predecessor Department, the Department for Education and Skills: *Guidance for Schools on the Equality Act 2006 Part 2: Discrimination on Grounds of Religion or Belief* and the *School Admissions Code*. I would be grateful for your answers to the following questions.

Equality Act Part 2 Guidance for Schools

In the Committee's scrutiny of the Equality Bill, it made clear that the content of the Guidance on Part 2 would be extremely important in making sure that the exemptions for schools do not lead in practice to breaches of Convention rights. The Committee expressed its concern about the breadth of the exceptions for schools from the duty not to discriminate on grounds of religion and belief, and drew attention to the risk that such broad exemptions would permit pupils to be subject to a range of detriments which might not be objectively and reasonably justified and might therefore be in breach of the right in Article 14 not to be discriminated against in the enjoyment of Convention rights. It expressed the hope that before Part 2 of the Equality Act comes into force the Government would produce guidance making clear that all schools which are public authorities under the Human Rights Act retain obligations to comply with ECHR rights of nondiscrimination, irrespective of the exceptions which apply under the Bill.

The Government, in its response to the Committee's Report on the Bill, said that it would be providing non-statutory guidance for schools "and this will make clear that exceptions under the Bill do not override rights of non-discrimination under the Human Rights Act."

The Guidance does not, however, with one exception, say anything at all about the right not to be discriminated against under Article 14 ECHR, let alone make clear that the statutory exceptions in the Equality Act do not override rights of non-discrimination under the Human Rights Act. The one exception is the specific exemption for the provision of home to school transport, in respect of which the Part 2 Guidance explains at LEAs are not exempt by the Equality Act provision from their Human Rights Act obligations. Those obligations are the subject of separate guidance contained in Home to School Travel and Transport Guidance, issued in May 2007 (see

Part 5, dealing with “Religion or Belief”).

The Committee is concerned that this omission from the guidance gives rise to a risk that in practice the exemptions in the Equality Act will lead to breaches of the Article 14 right of pupils not to be discriminated against in the enjoyment of Convention rights, as the Committee feared when it scrutinised Part 2 of the Equality Act itself.

1. Please explain why the Government has not kept its undertaking to make clear in this Guidance that the exceptions under the Equality Act Part 2 do not override rights of non-discrimination under the HRA.

2. Is other guidance in preparation which will fill this gap?

School Admissions Code

The Committee is considering whether the provisions of the Admissions Code and the Equality Act which permit schools to prefer one applicant for admission over another on grounds of their religion are compatible with Article 14 ECHR in conjunction with the right to education in Article 2 Protocol 1. To be compatible with Article 14, differential treatment on grounds of religion must have an objective and reasonable justification: it must have a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be achieved. The Committee is therefore considering whether the justifications offered by the Government for treating applicants for admission to schools differently on grounds of their religion amount to an objective and reasonable justification for such differential treatment.

One of the justifications offered by your predecessor, in his letter of 20 April 2007, is that allowing schools to treat applicants differently on grounds of their religion helps to secure a “plurality of provision” which satisfies parental demand for schools with a particular faith ethos. He acknowledged in his letter that “not all faith schools choose to give priority for admission to children of their own faith.”

3. Please provide more information about which faith schools do not give priority for admission to children of their own faith.

4. Please provide the evidence on which the Government bases its position that the plurality of provision will be undermined if faith schools are not allowed to give priority to faith applicants.

Your predecessor also relied on the fact that local authorities have a duty to ensure that all children of compulsory school age have access to education and powers to support them in meeting that duty, e.g. powers to direct the admission of a child to any school if they cannot otherwise secure a school place within a reasonable distance of their home.

5. How often is the statutory power to direct admission in fact used by LEAs?

6. What measures do you take to ensure that faith-based criteria do not operate in practice

in a way that discriminates directly or indirectly on racial grounds?

I would be grateful for your response by 21 September 2007.

Andrew Dismore MP
Chair, Joint Committee on Human Rights