



Rights and legislation

Human rights

All children and adults have the right to opportunities that will enable them to reach their full potential, in areas such as education, employment and all other aspects of their lives. Everyone has the right to contribute towards pre-school life and society as a whole.

These principles are enshrined in legislation, policy and guidance at local, national and international level. The rights relate to standards for how we are treated by the state, the way we treat other people, and how we would wish and expect others to treat us.

Rights are enshrined in the following:

- United Nations Declaration of Human Rights (1948)
- European Convention on Human Rights (1950)
- The Human Rights Act 1998 (UK)

Human rights are as important for children as they are for adults for a number of reasons:

- Children are dependent on their parents and carers.
- Children's rights offer children particular protection.
- Children are, of course, individuals in their own right.
- Children's rights ensure that everybody knows and remembers this.

In addition, children are more likely to learn to respect the rights of others through the experience of having their own rights respected.

The United Nations Convention on the Rights of the Child (UNCRC) is the most comprehensive set of rights for children ever created. It can provide an excellent framework for creating a strategy for equality and inclusion in early years settings.

The UNCRC is an international statement, which has been signed by all but two members of the UN worldwide (the United States of America and Somalia). By agreeing to undertake the obligations of the UNCRC, signatories have committed themselves to protecting and ensuring children's rights and have agreed to hold themselves accountable for this commitment before the international community.

For more information on the UN Convention on the Rights of the Child contact the Children's Rights Alliance: www.crae.org.uk or telephone 020 7278 8222.

The UN Convention on the Rights of the Child can be found on the website of the Office of the High Commissioner for Human Rights: www.ohchr.org/english/law/crc.htm

The UN Universal Declaration of Human Rights can be found on the Human Rights section of the UN website: www.un.org/Overview/rights

Legislation

Everyone has the right to be treated with equal value and not be subjected to prejudice and discrimination. Over the last thirty years a raft of legislation has been introduced to address inequalities and discrimination in the UK and to support international and European directives on equality and human rights.

The Sex Discrimination Act (1975) and the Race Relations Act (1976) were viewed as milestones towards creating a just and equal society, making it unlawful to discriminate on grounds of sex, race, colour, nationality (including citizenship) or ethnic or national origin.

These two areas of legislation (with subsequent amendments) put in place statutory requirements to prevent discrimination, to promote equality and provide redress against discrimination. Further amendments, such as the Disability Discrimination Act (1995), the Race Relations Act (2000) and the Special Educational Needs & Disability Act (2001), have widened and built-on the anti-discrimination legislation.

The Children Act (2004) introduced the need for a Children's Commissioner for England with responsibilities for non-devolved matters relating to children in Wales, Scotland, and Northern Ireland. The Act states that the Commissioner "must have regard to the United Nations Convention of the Right of the Child.

The Equality Act (2006) introduced a new single equality body, the Equality and Human Rights Commission (EHRC): www.equalityhumanrights.com. This new equality body came into force on 1 October 2007 and replaces the Disability Rights Commission, the Equal Opportunities Commission and the Commission for Race Equality. The commission's functions relate to promoting and enforcing discrimination legislation under six strands: race, disability, gender, sexual orientation, religion or belief and age. The rights of the individual are also protected through legislation on Data Protection (1998), Human Rights (1998) and Freedom of Information (2000).

Disability discrimination

The Disability Discrimination Act 1995 defines a *disability* as either a physical or mental impairment, such as physical co-ordination or the ability to concentrate, learn or understand which has a substantial or long term effect on a person's ability to carry out everyday activities. These activities are defined according to what is considered 'normal' for a person of the same age, culture, gender and education.

The Act requires early years settings to 'make reasonable adjustments' and not to treat disabled children and adults 'less favourably' than their peers. The Special Education Needs and Disability Act 2001 removed the previous exemption for education

Further information is available in *Early years and the Disability Discrimination Act 1995: What service providers need to know* (2003) Council for Disabled Children, Sure Start and National Children's Bureau (NCB) booklet can be downloaded from Department for Children, Schools and Families

<http://www.dcsf.gov.uk/everychildmatters/publications/leaflets/757/>

Special Educational Needs (SEN)

The Special Education Needs and Disability Act 2001 introduced the Special Educational Needs Code of Practice 2001 which states that all education settings must have a SENCO (Special Educational Needs Co-ordinator) to meet the needs of children with special educational needs.

Under the terms of the 1993 Education Act, a child has a special educational need if he or she has a learning difficulty which calls for special educational provision. This means any children that:

- a) have a significantly greater difficulty in learning than the majority of children of the same age
- b) have a disability which prevents or hinders them from making use of educational facilities of a kind generally provided for children of the same age in schools within the area of the local authority
- c) are under compulsory school age and fall within the definitions at a) or b) above or would do so if special educational provision was not made for them

Racial discrimination

The 1976 Race Relations Act (RRA) outlawed racial discrimination and covered statutory and non-statutory early years organisations in the provision of education, employment, housing, goods, facilities and services. All early years settings in receipt of education funding also have responsibilities under the 2001 Race Relations (Amendment) Act.

The Race Relations (Amendment) Act made adjustment to the 1976 Act to include duties to:

- eliminate unlawful racial discrimination
- promote equality of opportunity
- promote good relations between people of different racial groups

In order to be covered by the Race Relations Act 1976 a person must be a member of a 'racial group'. A racial group means a group of persons defined by reference to colour, 'race', nationality or ethnic or national origins and discrimination on racial grounds also means discrimination based on these grounds. Case law has defined Sikhs, Gypsies, Irish Travellers and people of Jewish ethnicity as racial groups. Note that Muslims are not a racial group.

For a group to be an '*ethnic group*' it must regard itself, and be regarded by others, as a *distinct community* by virtue of *certain characteristics* including:

- a long shared history
- a cultural tradition of its own
- common geographical origin
- a common language
- a common literature
- a common religion
- a sense of being a minority, or being oppressed, within a larger community

Sex discrimination

The Sex Discrimination Act applies to men, women and gender reassignees and states that it is unlawful for an employer to discriminate or fail to prevent discrimination against a worker because of their gender, marital or gender reassignment status. This Act is applicable to early years settings in their role as an employer.

Discrimination on grounds of sex means:

- discrimination against a woman as compared to a man, where the circumstances are the same or not materially different
- discrimination against a man as compared to a woman
- discrimination against a married person or someone in a civil partnership as compared to a comparable single person of the same sex

Note:

- The Equal Pay Act 1970 makes it unlawful to offer different pay and conditions where men and women are doing the same or like work, or work of 'equal value'.
- The Sex Discrimination (Gender Reassignment) Regulations 1999 amended the Sex Discrimination Act to make it unlawful to discriminate against transgendered people (trans people) on grounds of gender reassignment in the fields of employment and training.

Discrimination on grounds of age, sexual orientation and religion or belief

The principles of all anti-discrimination legislation are largely the same. Legislation outlawing discrimination in the fields of age, sexual orientation and religion/belief has been introduced and has implications for early years settings. There are very limited exemptions which allow organisations (not individuals) practising, teaching or advancing a religion or belief to discriminate against someone on the grounds of their sexual orientation. These exemptions do not apply to educational establishments, organisations whose main purpose is commercial or to organisations providing services under contract to a public authority.

Equality Bill 2009

The current Equality Bill going through Parliament reduces nine major pieces of legislation, and around 100 statutory instruments into a single Act, making the law more accessible and easier to understand. However, this Bill does not include protection for children from age discrimination in goods, facilities and services and in public functions. Follow this link for more information on the progress of this bill www.commonleader.gov.uk

Further reading

All Together now? (Ref: A131) Pre-school Learning Alliance

Embracing Equality (Ref: A129) Pre-school Learning Alliance

To order Pre-school Learning Alliance publications please visit www.pre-school.org.uk/shop or call 0870 603 0062. To order a publications catalogue please contact Information Services, T. 020 7697 2595, E. info@pre-school.org.uk

The Pre-school School Learning Alliance is a leading education charity specialising in the early years. We provide practical support to over 15,000 early years settings and make a positive contribution to the care and education of over 8000,000 young children and their families each year. We actively involve parents and families in all aspects of our work. Our products and services include specialist publications, childcare services, quality assurance, campaigning, training and family programmes. We also offer a range of independent professional information, advice, support and guidance tailored especially to meet the need of young children and their families, students, early years practitioners and professionals.

If you would like to find out more about the work of the Alliance or ask about any of our products or services, please contact Information Services at:

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