

Children's Law Centre

CONSULTATION RESPONSE

SCHOOL UNIFORMS

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children's law centre



This response was drafted by the Children's Law Centre in response to the Department of Education's consultation on school uniform policy.

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Children's Rights
Change Children's Lives

CONTENTS

INTRODUCTION	4
INTERNATIONAL HUMAN RIGHTS STANDARDS	5
PROPOSALS	7
CONCLUSION	15
REFERENCES	16

INTRODUCTION

The Children's Law Centre (CLC) is an independent charitable organisation which works towards a society where all children can participate, are valued, have their rights respected and guaranteed without discrimination and where every child can achieve their full potential.

We offer training and research on children's rights, we make submissions on law, policy and practice affecting children and young people and we run a free legal advice, information and representation service. We have a dedicated free phone legal advice line for children and young people and their parents and carers called CHALKY as well as a Live Chat service for young people through REE Rights Responder and a youth advisory group called Youth@clc. Within our policy, legal, advice and representation services we deal with a range of issues in relation to children and the law, including the law with regard to some of our most vulnerable children and young people, such as looked after children, children who come into conflict with the law, children with special educational needs, children living in poverty, children with disabilities, children with mental health problems and complex physical health needs and children and young people from ethnic minority backgrounds.

Our organisation is founded on the principles enshrined in the United Nations Convention on the Rights of the Child (UNCRC), in particular:

- Children shall not be discriminated against and shall have equal access to protection.
- All decisions taken which affect children's lives should be taken in the child's best interests.
- Children have the right to have their voices heard in all matters concerning them.

From its perspective as a children's rights organisation working with and on behalf of children, CLC is grateful for the opportunity to make a submission to the consultation on School Uniform Policy.

In this submission we have not addressed every area or issue listed within the consultation document. We have instead responded to areas which we can contribute with a strong human rights lens.

INTERNATIONAL HUMAN RIGHTS STANDARDS

There are a number of articles of the United Nations Convention on the Rights of the Child (UNCRC) that are relevant to this consultation on School Uniform Policy.

Article 2 (non-discrimination) and Article 3 (best interests of the child) need to be core considerations of a School Uniform Policy, alongside Article 12 (the right to be heard, and listened to) and Article 31 (the right to play and recreation). Articles 28 and 29 of the UNCRC relating to the right to education should be regarded as the lynchpins to the development of this policy, and read as follows:

Article 28

"1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

...

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention....

Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental

freedoms, and for the principles enshrined in the Charter of the United Nations;

...

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin..."

Article 28 outlines clearly that State Parties not only have a duty to guarantee every child's right to an education, but also to do so in a way which does not discriminate against any child and which does not create unreasonable barriers to that education.

The right to an education is also enshrined in Article 2 of the First Protocol to the European Convention on Human Rights (ECHR) which sets out that:

"No person shall be denied a right to an education."

All of the rights of disabled children under the UN Convention on the Rights of People with Disability, in particular Article 24 (Inclusive Education) and the rights of girls under the UN Convention on the Elimination of Discrimination Against Women are also engaged when school dress codes are formulated.

PROPOSALS

Statutory footing

CLC welcome the proposal that schools should be legally required to comply with Departmental uniform guidance. CLC would seek clarification that the guidance proposed to be placed in law will be the strengthened guidance following the outcome of this consultation, rather than the current non-statutory guidance.

Key Principles

CLC agree with the key principles that school uniforms should be affordable, comfortable and sustainable. We would suggest that a further principle is included that school uniforms are part of the creation of an inclusive school environment, to take into consideration all protected equality characteristics including children with physical disabilities, sensory needs and respecting the identity of the young person.

It is essential that school leaders have a firm understanding that uniform policies and practices connected to these should not have an unlawfully discriminatory impact e.g. upon disabled pupils. CLC agree that School Uniform policies should be developed in partnership with pupils and their parents/ carers, as per Articles 12 and 29 (c) of the UN Convention on the Rights of the Child. CLC further agree that these should be published and regularly reviewed to ensure that guidance is contemporary and reflective of modern society.

Affordability

CLC agree that it should be compulsory for schools to demonstrate how they have taken costs into account when designing their uniform, and should include demonstrating that school uniforms can be purchased from more than one supplier and that certain items can be purchased from a variety of suppliers, including supermarkets or department stores.

In August 2023, Save the Children (NI) commissioned LucidTalk to run a poll around the issue. The results showed that 1 in 3 parents have had to borrow money to cover the costs of school uniforms and 6 in 10 find the costs of school uniforms and PE kits financially challenging.¹

Research from the Child Poverty Action Group (CPAG)² estimates that it costs

families across the UK £864.87 per year to send a child to primary school and £1,755.97 for a post-primary pupil. School uniforms are one of the most expensive elements at an estimated annual cost of £352.86 for a primary school child and £481.77 for a post-primary child.

CLC would suggest that to ensure that all children can access their right to an education fully and freely, that an approach is taken, whereby a dress code is introduced, consisting of basic items in standard colours, that are widely available at a low cost which would mitigate the costs of the school day, align more closely to the School Uniform Grant and reduce costs for all families.

CLC agree that it should be compulsory for schools to demonstrate how they have taken costs into account when designing their uniform and agree that it should be compulsory for schools to publish details of the costs of their uniform. CLC would also suggest that the guidance includes a direction that school uniform, including PE uniform, does not change from one year to the next unnecessarily.

Young people that we have engaged with directly report changes in design of uniform items on a regular basis. One young person, for example, told us about their school, where one item of the school uniform has changed 4 times in the last 5 years. While the school is not insisting that the new part of the uniform is compulsory, children want to be seen in the newest item to fit in with their peers. This results in further expense, as well as siblings not being able to share or pass down uniform, or for school uniform items not being able to be shared via school uniform recycling schemes.

CLC agree with the proposals that items of school uniform should be generic, that schools should consider if unusual colours and designs are necessary and that an option to purchase the school crest for jumpers or blazers should be available.

CLC further agree that PE uniform should be generic and that branded sports kits should not be compulsory elements of a school PE kit. Children and young people that we have spoken to directly have reported that, in some schools, there are different training tops for each sport available in the school, and that pupils have been excluded from taking part in PE lessons when they don't have the correct kit.

CLC are aware, through our advice line and direct engagement with children and young people, of children being sent home or restricted from school activities or school trips if correct uniform is not worn. In our view these are potentially unlawful exclusions as well as a breach of the child's right to an education. No child should be denied an education, even temporarily, for not having a single item of clothing such as a blazer, standard issue socks or a tie.

CLC would suggest that the guidance explicitly outlines a presumption against different training tops for different sports, and that schools should

have team kits available for loan for those representing the school in matches or competitions. There should also be a clear message within the Guidance that outlines that children and young people should not be excluded from lessons, trips or other educational opportunities for not having all the correct uniform items.

Single supplier arrangements

CLC agree that schools should be required to list more than one supplier and that any financial or in-kind benefits to schools from arrangements with suppliers or manufacturers should be published.

Cost Control on Uniforms

CLC endorse the recommendation put forward by Save the Children (NI) which calls for the introduction of statutory guidance for school uniform policies with an embedded price cap.

The price cap should be informed by an independent advice panel which includes children, young people, and parents. This will ensure all families in Northern Ireland are protected from unaffordable and unreasonable demands on their finances.³

Comfortable

CLC agree that school uniforms should be comfortable, flexible and safe, and welcome proposals for full and meaningful engagement with children and young people in designing a uniform that caters to their needs, particularly children and young people that have sensory issues or a disability, especially concerning clothing texture, the ease of use of zips/ buttons and general comfort.

CLC agree that schools should demonstrate how their uniform fulfils the conditions of comfort, flexibility and safety and that engagement with pupils and parents on uniform policy should be mandatory.

Uniform Banks

Whilst CLC agree that all policies should have sustainability at the centre, Uniform Banks should not be used as a solution for the high cost of uniforms. Instead, the approach should be that uniforms are low cost and affordable for all from the outset.

Published school uniform policy

CLC agree that it should become a legal requirement to publish details on the development of the school uniform policy, and that schools should be required to publish:

- Details of all stakeholders consulted.
- Response to issues raised by stakeholders.
- Rationale for a specific design or colour, if not standardised colour.
- List of compulsory and optional items.
- Estimated costs.
- List of suppliers.

CLC also agree that schools should review their uniform policy every 3 years.

School Uniform Grant

CLC welcome the proposal in relation to providing additional grants for families at key transition points when children are changing schools or entering sixth form, however, the Department of Education must urgently review the grant threshold to ensure all children in poverty are receiving support with costs. CLC have recent experience with a statemented child who was not enabled to start secondary school at the beginning of term and who was then unable to access second hand uniform items through school or local charity shops as items had all been taken up by those who had a school place in September. The uniform grant does not cover the cost of a full uniform. When they eventually were able to go to a school, the delay in getting a uniform also impacted upon the child's inclusion as a member of the school community, highlighting their "difference" further.

Monitoring and Next Steps

CLC note that schools will have to complete a return every 3 years demonstrating how they have followed the guidance, and that it is suggested that ETI may have a role in identifying effective practices and/or specific areas for action in relation to the implementation of the statutory guidance.

CLC welcome the commitment to commission a specific independent evaluation into the effectiveness of the statutory guidance within 3 years of its implementation, however we would query how the Department will enforce non-compliance or low compliance with the guidance, as experience

in Wales shows that despite the introduction of statutory school uniform guidance, many schools are not adhering to the policy and monitoring is poor.

CLC would also query how the Department will analyse returns from schools, i.e. will there be any robust examination of the rationale that schools give, with feedback provided from the Department on how a school must do better in order to implement the guidance properly.

Equality Screening

CLC would be grateful if the Department of Education could clarify how it has or intends to fulfil its statutory equality obligations under section 75 of the Northern Ireland Act 1998 in respect of this consultation. This is clearly an amended policy and therefore subject to section 75 statutory equality obligations.

CLC is disappointed and concerned to note that there is no evidence that these proposals have been assessed for their impact on the promotion of equality of opportunity through equality screening and equality impact assessment (EQIA).

Section 75 of the Northern Ireland Act 1998 applies to the 'policies' of designated public authorities, including the Department of Education. The Equality Commission has stated that the term 'policies' covers all the ways in which an authority carries out or proposes to carry out its functions relating to Northern Ireland.⁴ This definition is intentionally very wide and in practice "policy" has tended to cover most, if not all work undertaken by designated public authorities including high level policies.

It is CLC's opinion that this consultation clearly falls within the Equality Commission's definition of a 'policy' for the purposes of section 75 of the Northern Ireland Act 1998 and as such should have been assessed for its impact on the promotion of equality of opportunity through carrying out equality screening. Equality screening should be carried out at the earliest possible stage of policy development. As far as we can ascertain, there has been no screening or EQIA of the policy to date.

The Equality Commission for NI, in their Guidance for Implementing Section 75 of the Northern Ireland Act 1998 clearly states that:

"Whatever status or label is accorded to an amended or new policy... The equality and good relations implications must be considered in terms of assessing the likely impact of a policy and the Commission recommends applying the screening procedure and, if necessary, subjecting the policy to an equality impact assessment."⁵

The Department of Education are clearly required to assess and consult on the likely impact of new and amended policies on the promotion of equality of opportunity.

In order to assess the impact of a new policy on the promotion of equality of opportunity among members of the nine section 75 categories, public authorities must firstly screen the policy to determine whether there is potential for adverse impact on any members of the nine groups and where there is potential for adverse impact, an EQIA should be carried out.

Furthermore, central to compliance with the statutory duties imposed under section 75 is the concept of increased participation in policy making and development. The Equality Commission's guidance⁶ states that consultation must be meaningful and inclusive, in that all persons likely to be affected by a policy should have the opportunity to engage with the public authority. It also states that targeting consultation at those most affected by particular policies is also beneficial, in terms of identifying any adverse impact of policies or proposed policies at the earliest possible stage.⁷

Furthermore, the Equality Commission's Guidance for public authorities on implementing Section 75 of the Northern Ireland Act 1998 states that:

“The new statutory duties make equality and good relations central to the whole range of public policy decision-making. This approach is often referred to as “mainstreaming”.

It is clear from this that the intention of section 75 is to mainstream equality, making it central to policy decision making. In order for an equality perspective to be central to policy making, it needs to be incorporated in all policies at all levels and stages. This would unequivocally involve incorporation of the principles of equality of opportunity from the beginning of the process and throughout the development and implementation of the policy, not merely at the end of the process when decisions have been taken in relation to the policy with no regard shown to section 75.

The Equality Commission's Guidance for public authorities on implementing Section 75 of the Northern Ireland Act 1998 is very clear with regard to the need for designated public authorities to carry out screening and EQIA's on all policies. It states that:

“...effective assessment of the equality implications of a policy includes screening of all policies (see Annex 1 of this Guide) and consideration of undertaking an equality impact assessment...

Section 75 is important to policy formulation (new or proposed policies) and policy review (existing policies). It is important that public authorities use the assessment of policies for impact on equality of opportunity, including screening and equality impact assessment,

as part of their policy development process, rather than as an afterthought when the policy has been established.”⁸

As age is one of the nine categories specified in the legislation, there is a need to consult directly with children and young people in policy formulation and developments on matters which affect their lives. The Equality Commission's Guidance states that consultation must be meaningful and inclusive, in that all persons likely to be affected by a policy should have the opportunity to engage with the public authority. It also states that targeting consultation at those most affected by particular policies is also beneficial, in terms of identifying any adverse impact of policies or proposed policies at the earliest possible stage.

The Equality Commission's Guidance for public authorities on implementing Section 75 of the Northern Ireland Act 1998 states that as part of consultation:

“...specific consideration is given to how best to communicate information to children and young people...”⁹

CLC note that the Department of Education has committed to engaging with children and young people on the development of a School Uniform policy and would therefore seek details in terms of the level of engagement that has taken place to date. CLC would also ask for sight of the child friendly version of the consultation document.

The United Nations Committee on the Rights of the Child in their examination of the UK government's implementation of the UNCRC in 2023 stated that:

23. Noting with concern that children's views are not systematically taken into account in decisions affecting them and in national and local decision-making, and underscoring the importance of the availability of age-appropriate information to facilitate child participation, the Committee recommends that the State party:

(a) Ensure the right of all children, including younger children, children with disabilities and children in care, to express their views and to have them taken into account in all decisions affecting them, including in courts and relevant judicial proceedings and regarding domestic violence, custody, placement in alternative care, health care, including mental health treatment, education, justice, migration and asylum;

(b) Strengthen measures to promote the meaningful participation of children in family, community and school settings and in policymaking at the local and national levels, including on so-called reserved matters, and develop mechanisms to ensure that the outcomes of children's and youth parliaments are systematically fed into public decision-making.”¹⁰

These proposals directly affect children and young people and so children and young people must be consulted in relation to them. Failure to consult properly with children and young people in a breach of section 75 of the Northern Ireland Act 1998, Article 12 of the UNCRC and the Department's Equality Scheme.

Direct consultation should involve not only the routine production of child accessible documentation, but also face to face engagement. We also suggest that in carrying out any direct consultation with children and young people in compliance with section 75 of the Northern Ireland Act 1998, the Department of Education should take cognisance of the Equality Commission's Guidance for Consulting with Children and Young People, "Let's Talk, Let's Listen"¹¹ which provides that:

"Children and young people have particular needs concerning information and to take part in consultation and decision-making processes, especially on issues that affect them. It is particularly important that you consider which methods are most appropriate for consulting children and young people. You should also make sure that you provide information which is clear, easy to understand and in an appropriate format, to make sure there are no problems preventing you from consulting children and young people."¹²

We wish to impress on the Department of Education both the obligation to carry out consultation and the fundamental importance of direct consultation with children and young people, at each stage of the policy development process.

CLC would also recommend that in line with good practice, that the Department of Education should also undertake a Child Rights Impact Assessment (CRIA) on the proposals contained within the consultation document.

CONCLUSION

The Children's Law Centre is grateful to have the opportunity to provide a response to the Department of Education's public consultation on School Uniform Policy.

We hope that our comments have been constructive and useful to the Department of Education and we are more than happy to meet with officials to discuss our response.

We would be grateful if you would provide by return details of the system which you intend to use to analyse responses to this consultation process including the degree of weight which will be attributed to individual and organisational responses. This is a vital element to drawing conclusions from responses and progressing with identified areas for immediate action. For this reason, we would appreciate information both on the system itself and on its operation for the purposes of analysis by return.

We wish to be kept informed of progress and look forward to the issues raised and recommendations made in this response taken forward.

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