

## **Statutory School Uniform Guidance Scottish Government Consultation**

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Established by the Commissioner for Children and Young People (Scotland) Act 2003, the Commissioner is responsible for promoting and safeguarding the rights of all children and young people in Scotland, giving particular attention to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner has powers to review law, policy and practice and to take action to promote and protect rights.

The Commissioner is fully independent of the Scottish Government.

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We welcome the proposal for statutory guidance on school uniform in Scotland. Our view is that the current situation, where schools and local authorities set uniform policies without clear national guidance has resulted in some situations where uniform or dress code policies are applied in ways which breach children's rights.

Our response to this consultation includes a section with the views and experiences of members of our Young Advisers Group.

### **Human Rights Background**

The UNCRC outlines children's right to an education in Articles 28 and 29 and the right to an education is also enshrined in Article 2 of the First Protocol to the European Convention on Human Rights (ECHR).

Article 28 places a number of duties on States Parties, who 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 (Article 2 UNCRC and Article 8 ECHR) and which does not create unreasonable barriers to that education. Article 29 provides an outline of what that education should look like: it should be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential; it should develop respect for human rights and fundamental freedoms; and should prepare the child for responsible life in a free society, in a spirit of understanding, peace, tolerance, equality of the sexes and friendship amongst all peoples, ethnic national and religious groups.

Children's right to participate in decisions which are made about them (Article 12 UNCRC), to non-discrimination (Article 2) and for decisions to be made in their best interests (Article 3 UNCRC) are at the centre of school uniform policies. School uniform policies may also affect other rights, including the right to play and recreation (Article 31 UNCRC), the right to health (Article 24 UNCRC), the right to religious and other beliefs (Article 14), the rights of children who are part of a linguistic or cultural minority group (Article 30) and to freedom of expression (Article 13). The rights of disabled children under the UN Convention on the Rights of People with Disability 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.

## Current Position

In their briefing regarding Petition PE1914 to the Scottish Parliament, the Scottish Parliament Information Centre (SPICE) highlight that “pupils are not legally obliged to wear uniform in Scotland”<sup>1</sup>. Yet there appears to be a trend, particularly in secondary schools, to take an increasingly strict approach to school uniform. Rather than a dress code, focussing on ensuring that clothing is suitable and safe for children’s activities throughout the school day (including play and recreation during breaks, in line with Article 31 of the UNCRC), there appears to be increasing emphasis on a very formal style of school uniform which includes a tie (94% of secondary schools with a school uniform) and blazer (68%)<sup>2</sup>. There is evidence from CPAG that not having correct uniform is a barrier to children in poverty attending school<sup>3</sup>.

We are aware, through our advice line and other work, of children being sent home or restricted from school activities 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 or tie.

Such an approach is at odds with the absence of any power, as Janys Scott KC notes, to compel parents to send children to school in any particular clothing<sup>4</sup> and with Article 28(2) which states that “States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity.” Many of the sanctions we have heard about from children and young people do not meet this standard and young people tell us they can be applied for anything less than perfect uniform.

In some cases, restrictive uniform practices have meant children were unable to keep warm enough in school – this was particularly the case over the last two winters when windows were kept open to improve ventilation. It seems common for children not to be allowed to wear their outdoor jackets in school, even when moving between classes or when they are cold. Some report that they are also not allowed to take their blazers off in hot weather.

It is particularly concerning that inflexible school uniform policies are often a factor when we are asked for advice regarding the rights of disabled children. Restrictive clothing (such as ties and blazers) and inflexibility over materials or styles of clothing (i.e a requirement for trousers rather than plain jogging bottoms, or shoes instead of trainers) are common issues. Even where exceptions are made, the lack of flexibility is stigmatising and these children are at risk of being singled out or punished by members of staff, especially in secondary schools.

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<sup>1</sup> SPICE, 2022. *Briefing for the Citizen Participation and Public Petitions Committee on petition PE1914: Ban school uniforms in secondary schools, lodged by Matthew Lewis Simpson*. Scottish Parliament.

<https://www.parliament.scot/-/media/files/committees/citizen-participation-and-public-petitions-committee/spice-briefing-for-petition-pe1914.pdf>

<sup>2</sup> Shanks, R, 2020. *Affordability of secondary school uniform in Scotland: Policy briefing*.

[https://aura.abdn.ac.uk/bitstream/handle/2164/15388/Shanks\\_ABDN\\_AffordabilityOfSecondary\\_VoR.pdf;jsessionid=52509997CC88E348B546F6E544EC6F62?sequence=1](https://aura.abdn.ac.uk/bitstream/handle/2164/15388/Shanks_ABDN_AffordabilityOfSecondary_VoR.pdf;jsessionid=52509997CC88E348B546F6E544EC6F62?sequence=1)

<sup>3</sup> CPAG, 2021. *Reducing the Cost of School Uniforms in Scotland*.

<https://cpag.org.uk/sites/default/files/files/post/CPAG%20in%20Scotland%20national%20uniform%20policy%20guidance%20briefing%20.pdf>

<sup>4</sup> Janys Scott. *Education Law in Scotland*. [Greens Practice Library, 2016]. 218

## Cost of the School Day

The Child Poverty Action Group (CPAG) have done extensive work on the Cost of the School Day, including engagement with children and young people across Scotland. They have prepared a briefing<sup>5</sup> on the issue of uniform which can be found on their website and features the views of children and their families on the impact school uniform policies can have.

Whilst the increased minimum School Clothing Grant is intended to help mitigate the cost of school uniform (including footwear), uniform policies which require the purchase of high-cost items reduce its effectiveness. In addition to blazers, requiring or encouraging items with the school logo, or in a specific colour not widely available and requiring separate indoor and outdoor shoes, significantly increase the cost of uniform for families. A dress code consisting of basic items in standard colours, widely available at low cost at supermarkets and other retailers would allow the School Clothing Grant to be a more effective mitigation of the cost of the school day as well as reducing costs for all families.

## Ethos and culture

In General Comment 1 on the Aims of Education<sup>6</sup>, the Committee on the Rights of the Child elaborates on children's right to an education as described in Article 29 of the UNCRC. Such an education should be "child centred, child-friendly and empowering" – this includes the school culture and environment. The committee also states "Children do not lose their human rights by virtue of passing through the school gates... education must be provided in a way that respects the inherent dignity of the child..." Schools, therefore, should be environments in which the ethos is founded on respect for children's rights.

## A school dress code

Our view is that evidence suggests there may be some benefit in schools having a dress code (rather than a strict uniform policy) which is flexible and affordable whilst ensuring children's safety, for example specifying appropriate clothing for PE and technical subjects.

In the Welsh statutory guidance<sup>7</sup>, it is recommended that schools should only stipulate basic items and colours and avoid high cost items such as blazers and caps. They also recommend minimal use of logo items. The New Zealand Human Rights Commission has recently issued guidance on rights based school uniform<sup>8</sup> and they highlight the disproportionate impact that rules on hairstyles, jewellery and other personal items can have – both in allowing children to express their cultural

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<sup>5</sup>CPAG, 2022. *Reducing the Cost of School Uniforms in Scotland – How the Right National Guidance Can Help*. <https://cpag.org.uk/news-blogs/news-listings/reducing-cost-school-uniforms-scotland-how-right-national-guidance-can-help>

<sup>6</sup> UN Committee on the Rights of the Child, 2001. *General Comment no. 1: Article 29(1) the aims of education*. [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2001%2f1&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2001%2f1&Lang=en)

<sup>7</sup> Welsh Government, 2022. *Statutory guidance for school governing bodies on school uniform and appearance policies*. <https://gov.wales/sites/default/files/publications/2019-07/statutory-guidance-for-school-governing-bodies-on-school-uniform-and-appearance-policies.pdf>

<sup>8</sup> New Zealand Human Rights Commission, 2022. *School uniform guidelines*.

[https://www.hrc.co.nz/files/5916/5344/0946/School\\_uniform\\_guidelines\\_WEB\\_VERSION.pdf](https://www.hrc.co.nz/files/5916/5344/0946/School_uniform_guidelines_WEB_VERSION.pdf)

and religious identity as well as the importance of restricting items which cause offence (i.e. hate symbols).

We note that whilst uniform is the norm in Scotland and in many Commonwealth countries, this is not the case elsewhere in Europe. In a case in Sweden, the School Inspectorate found that compulsory school uniform (in this case a polo shirt and cardigan) violated the Swedish Education Act, which requires education to be delivered in accordance with human rights, including freedom and integrity of the individual<sup>9</sup>.

### **Views of our Young Advisers**

Our young advisers agreed with the Draft Principles included with the consultation, however they noted that their own experiences at school were not in line with these principles.

Our young advisers shared that:

- they thought that most people were unaware that there is no legal power to compel them to wear uniform and that schools “probably take advantage of the lack of knowledge”.
- their schools have uniform policies which were “super restrictive” and allowed “no freedom”.
- they felt that uniforms should allow children to function, they need to be practical and that means comfortable: they thought it was harder to concentrate when they were uncomfortable.
- they were aware of children being placed on internal exclusion for wearing the wrong uniform.
- the cost of blazers particularly concerned our young advisers, being up to £50 (more for prefects). Where children grow quickly, more than one may need to be bought each year.

Our young advisers reported that rules were not always consistently applied. Girls reported that they felt they were subject to more rules than boys – with checks on shoe heel height and skirt length. One reported that girls were not allowed to wear sleeveless tops in PE, but boys were. They also felt it was unfair that boys are not allowed to wear shorts in hot weather.

Which pupils were punished, and how, was also inconsistent – our young advisers reported that it depended on who you were: good students were let off, while those who were struggling are sent home or made fun of by the teacher. In one case, a child had been humiliated by having to wear an old football strip as they did not have a clean school shirt.

On uniform creating a sense of community, there were mixed views among our young advisers. Some felt that looking alike did help but that this could be achieved through school colours, not necessarily items like ties and blazers. In the case of senior pupils attending another school for certain subjects, uniform could have a negative impact as it singled out pupils who were from a different school.

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<sup>9</sup> Library of Congress. 2018. Sweden: School Inspectorate Says School Uniforms Are Human Rights Violation. <https://www.loc.gov/item/global-legal-monitor/2018-02-01/sweden-school-inspectorate-says-school-uniforms-are-human-rights-violation/>

## **Conclusion**

While it is not clear whether school uniforms are beneficial or not in terms of raising attainment, it is clear that strict uniform policies, enforced through school disciplinary processes, are not compatible with the realisation of children's human rights.

Where dress codes work best, they are developed with the active participation of children and young people, with the intention of realising children's human rights, including the right to an education and with consideration for their comfort and their wellbeing, where they allow them to express their identity and are worn voluntarily, with pride.

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