



Committee for Education

OFFICIAL REPORT (Hansard)

School Uniforms (Guidelines and
Allowances) Bill: Northern Ireland Human
Rights Commission

27 May 2025

NORTHERN IRELAND ASSEMBLY

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School Uniforms (Guidelines and Allowances) Bill: Northern Ireland Human Rights Commission

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Members present for all or part of the proceedings:

Mr Nick Mathison (Chairperson)
Mr Pat Sheehan (Deputy Chairperson)
Mr Danny Baker
Mr David Brooks
Mr Colin Crawford
Mrs Michelle Guy
Mr Peter Martin
Mrs Cathy Mason

Witnesses:

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| Ms Julia Buchanan | Northern Ireland Human Rights Commission |
| Dr Colin Caughey | Northern Ireland Human Rights Commission |
| Ms Alyson Kilpatrick | Northern Ireland Human Rights Commission |
| Ms Emily Mills | Northern Ireland Human Rights Commission |

[No recording available.]

The Chairperson (Mr Mathison): — perhaps you could share with the Committee what an inclusivity principle might include, the scope of that and how it might be brought forward.

Ms Alyson Kilpatrick (Northern Ireland Human Rights Commission): I will let Colin start, and then I will conclude on that point.

Dr Colin Caughey (Northern Ireland Human Rights Commission): Having a provision of inclusivity in clause 2, which sets out the principles around comfort, practicality and affordability, would go some way towards that. The impact of including that would be to reinforce the duties that are already on schools and a lot of other public authorities to act in ways that are compatible with the Human Rights Act in a non-discriminatory manner. There is a wealth of resources available to ensure that schools are inclusive and that school uniforms are inclusive. The inclusion of such a principle might provide a central focus and create a mindset such that a school moving towards establishing its school uniform policy would be thinking about that principle of inclusivity. It would copper-fasten the protections that are already in place and act as a reinforcer for decision makers to turn to that principle and look at the wealth of guidance that is out there.

Ms Kilpatrick: It is clear that the aim is that comfort is a factor. That is why you consult children and young people: it is their comfort that you are trying to ensure. Comfort encompasses so many other things than clothes not being uncomfortable to wear. Times have changed. Let us take the very simple

case of girls and boys. A lot of girls now will say that they are much more comfortable wearing a neutral uniform and not being required to wear skirts, for example. I am just using that as an example, and that falls under inclusivity. If you talk to children and young people and their parents at the school, you should start from that premise that all children should feel comfortable and that they should be able to express themselves, not just physically.

The Chairperson (Mr Mathison): I have one more question on that, and then I will open the discussion to other members. The Department, in its initial presentation on the Bill to the Committee, was very clear that it felt that it was not appropriate that the Bill be overly prescriptive on what a policy should include. Are there any specific areas where the Bill should explicitly reference particular equality or rights considerations, or should there be a broad principle around inclusivity that might highlight those considerations in more general terms? What is your view on how should that be framed in the legislation?

Ms Kilpatrick: My view is that, if you want something to change, there has to be specificity about what it is that you are trying to change and how you want public authorities to act differently from how they act currently. If you simply say, "This is our idea of what might be appropriate", you may be giving too much discretion and allowing for a continuation of what happened before. Once you have made the decision, as a Department or a Committee, that you want a change, you need to be prescriptive. Otherwise, nothing changes, things become inconsistent across schools, and it is difficult for the Education and Training Inspectorate and the Department to monitor what is happening in schools, because each school can say, "We used our best discretion and decided differently". Therefore, it should be prescriptive. When it comes to equality, the law is prescriptive: equality must be provided, and it must be secured by the state, state bodies and, therefore, schools.

The Chairperson (Mr Mathison): That is very helpful, thank you. I open the questioning to other members. Deputy Chair, do you want to come in?

Mr Sheehan: Thanks for that presentation. Alyson, you pre-empted the question that I was going to ask about inclusivity with your practical example of girls having the right to wear trousers. There has been some discussion in the media over the past number of days around that. An amendment has been put forward by another MLA on the basis that, because of the phenomenon of upskirting, girls should be allowed to wear trousers. On the radio today, the Minister said that he was going to ban mobile phones in schools. That is the first that I have heard of that, so it was an interesting discussion on the radio this morning.

From a human rights perspective, if there were to be a ban on mobile phones, would that satisfy the obligations on schools and the Department to ensure that the legislation is non-discriminatory?

Ms Kilpatrick: Upskirting can happen anywhere: outside the school or on the school bus, for example, so banning mobile phones inside schools may help to prevent it in a classroom or in common areas of the school, but that does not really address all the other issues related to school uniforms and inclusivity. The legislation on upskirting has not prevented it. What we are talking about here is what a child wears to be comfortable and feel included while at school. It is not simply a safeguarding issue, although you have to wonder about the safeguarding aspects. Therefore, if there is an opportunity to prevent upskirting, it should be taken.

Mr Sheehan: If we leave aside the issue of upskirting, should the right or option for girls to wear trousers instead of skirts be included in order that schools and the Department comply with human rights law?

Ms Kilpatrick: It is clear that requiring girls to wear skirts and boys to wear trousers or shorts distinguishes between boys and girls for a reason that is not easily justifiable any more. You ask children what they want to wear, and, if you decide that they must wear a certain uniform, it is for schools to decide that that uniform is inclusive and how to make it inclusive. It seems to me that, if the school wants to be inclusive, there should not be a requirement for boys and girls to dress differently. If the Department wants to require schools to be inclusive, that is exactly where it should start, but it should do so having discussed the matter with the children and young people themselves. It is not just a skirt or trousers. It applies across PE equipment. There are all sorts of reasons why a neutral uniform would be beneficial to everybody.

Julia would like to add something on that point.

Ms Julia Buchanan (Northern Ireland Human Rights Commission): In our response to the departmental consultation, we highlighted the point:

"governing bodies should ensure an inclusive uniform policy that does not directly or indirectly discriminate on the basis of gender or gender identity. This includes avoiding strict requirements for items of clothing to only be worn by pupils of a certain gender or gender identity, and by having a gender neutral uniform option available to all pupils."

Mr Sheehan: OK. Thank you.

The Chairperson (Mr Mathison): Do other members want to come in? Cathy has indicated. Are there other indications?

Mrs Mason: Apologies if I missed this at the very beginning, but you talked about the Bill's provision for comfort. Do you feel that the Bill as it stands is strong enough for children with special educational needs? Do you think that the provision for comfort is strong enough for children who might have sensory issues or children for whom wearing a school uniform of a certain material might cause distress?

Ms Kilpatrick: It certainly could be an issue. That may be something for the guidelines rather than the legislation, as long as it is made clear that "comfort" includes the comfort of an individual child in their particular circumstances. If you really want to afford equality to a child with special needs, you need to consider what that child needs, what special needs they have and make provision for those. If a school uniform policy were to allow for a different material or item in a particular circumstance, that would seem to give proper consideration to that child's special needs. Not to consider it would suggest that you were not very serious about including those children in mainstream education.

Dr Caughey: Your question underscores the value of including the principle of inclusivity in that clause, as it would ensure that schools were open to children with a range of disabilities and mindful of the fact that they may need a change in uniform and flexibility in what is and is not required. Including the principle of inclusivity would go some way to changing the thought processes so that schools are not rigid in what pupils should and should not wear and are open to any concerns and reasonable adjustments that could be made for a child.

Ms Kilpatrick: That takes us back to the general point that we make at the end of our submission and that I made at the end of my opening statement. If you start from the right position, which is to ask, "How do we make sure that the policy that we adopt is right for all our children regardless of their ability, needs, social status etc?", you will not go far wrong. A human rights impact assessment can, if carried out comprehensively, achieve that. It enables you to get the answers at the start of the process and not have to retrofit your legislation with guidance. The guidelines could give lots of practical illustrations, however, by giving examples of what constitutes or is included under "inclusivity" or "comfort" etc. That would help schools with what those terms mean. If you start from the right place of saying, "We have an obligation to provide for our pupils regardless of their special needs or their backgrounds," and work from there, you will probably get it right, rather than coming at it the other way around.

Mrs Mason: OK. Thank you very much.

Mrs Guy: Thank you so much for your time this morning. I was going to ask about SEN as well. I was hoping to get some clarity from you on another point. When we started looking at the Bill, the Department suggested that having guidance on a statutory footing would, on its own, effect the change that we want to see in affordability. This morning, I think that you are suggesting that your reading of the Bill is that, as is, it is, perhaps, not strong enough to ensure that kind of change.

The other aspect that I would like you to pick up on, if you do not mind, is the fact that the Department will, I think, say that the emphasis of the Bill is on affordability. There is provision for there to be a cost cap at some point. Do you feel that the Bill as it stands tackles affordability, or could it be strengthened to ensure that families feel its effect on the ground? If uniforms are prohibitively expensive, we will limit access to certain schools for certain kids.

Ms Kilpatrick: Yes, and there could even be a differentiation between children within a school, with some feeling that they cannot access some of the sports, for example, because the equipment is too

expensive. That is absolutely key, but it does not stand alone. I will address the general point and then ask my colleagues to deal specifically with the issue of affordability.

The guidelines help, but, if guidelines are to change anything, they must be statutory. There has to be either a statutory obligation to comply with the guidelines, in which case schools may say, "The guidelines are not sufficiently clear for me to be bound by statute", or it has to be in statute so that everybody knows exactly what is being asked of them. Something that is simply in guidelines will be treated as a guideline and not a requirement — that is just a general observation. While the Department may prefer more items to be left up to schools' discretion or left as a discretionary element, if you want to see change, you have to be a lot clearer and make it a requirement rather than simply guidance.

I will let my colleagues deal with the question about affordability.

Ms Emily Mills (Northern Ireland Human Rights Commission): We welcome the fact that the aim of the Bill is to tackle affordability. It is recognised that the overwhelming evidence is that school uniforms are creating a financial burden. In our response to the departmental consultation, we teased out some areas where further measures could be taken — we can provide the Committee with a copy of that, if you do not have it. It looked at whether further measures could be taken to ensure that uniform costs were as low as possible and whether policy could stipulate basic items and colours and state that high-cost items or items with unnecessary variations, such as school colours or variations for different year groups, could be avoided. The requirement for branded PE kit at any point of a child's involvement in extracurricular activities can have a prohibitive effect on their ability to fully participate.

We also tried to tease out some areas where schools and Departments could track the disproportionate impact that certain children or families can experience on the basis of school uniform policies. For example, we drew attention to asylum-seeking children and their families. An asylum-seeking child may be required to move schools. The school uniform grant is provided once, but the family might be required to pay for two different uniforms in the same year. It was about tracking areas where disproportionate impacts could be taken under the principle of affordability and drawing more emphasis on that. It is crucial to understand the potential impact of this law on the policy framework.

Mrs Guy: Thank you.

The Chairperson (Mr Mathison): Do any members want to come in? I might ask a final question, if no one else has one. I will pick up on the first point of the four that you raised in your submission. It is on the broader human rights-based approach that the Bill needs, you think, to have at its heart. How could that be incorporated into the legislation? Would it require a specific clause around guidelines that "must" direct that policies are set in keeping with the best interests of the child, or does a broader human rights lens need to be applied to the legislation to make that very clear?

Ms Kilpatrick: The most important thing is to take the aim of the legislation and start from the premise that you have to secure equality for all children. You therefore think about all of the children, their particular circumstances and the families whom you may encounter in schools. If you do that, you are not left without inclusivity in the legislation. It necessarily arises that inclusivity is a requirement that a school must ensure in its uniform policy. It is almost a mindset. Furthermore, if it is important, which it is, and if it is a human rights issue, which it is, you have to require compliance. It is not enough to say that you "should" or "could" do it a particular way. It is about sitting down at the start and asking, "What are we trying to achieve?". If your answer is that what we are trying to achieve is human rights compliance in relation to uniform policy for all children equally and for all parents and guardians to be able to send their children to their school of choice, you will end up with different legislation.

The Chairperson (Mr Mathison): If the Department were here, it may say that section 75 covers those considerations and that there is no need to add anything else. How would you respond to that in respect of the need to be more explicit?

Ms Kilpatrick: I am afraid that I would have to disagree quite strongly with the view that section 75 is sufficient. Section 75 is for a whole other purpose. It does not include much broader aspects, such as the inclusivity that we are talking about. It is much more about monitoring and recording. There is an equal opportunities duty at section 76, which should probably be used more often. You should not, however, have to go to different umbrella legislation to find those considerations. If you are putting together legislation that is for the benefit of children and their guardians and parents from a rights perspective, put them in that legislation. If you were to do that, you would not end up with the

provisions that we have here. That is my view. The Department might disagree, and it might be right, but, if your reason for having legislation is to ensure equality, you put those considerations in that legislation.

There is a general principle that human rights law must be clear and accessible so that anybody who has to comply with it can see exactly what they have to comply with. For example, a school manager should not have to go and find legislation and then look up on Google what else they might have to do. The legislation should be clear to the schools, the Department, the parents and the children.

The Chairperson (Mr Mathison): That is really helpful, because our concern, which has come up in a lot of our discussions, is that we are being asked to take quite a bit of the Bill on trust, given that we do not know what will be in the guidelines. It is about trying to find that balance in how prescriptive you want to be while making sure that what we consider necessary ends up in the guidelines, as you say, rather than schools having to cross-reference a number of different bits legislation to land on what might be the policy intent.

Ms Kilpatrick: Emily wanted to come in on a point.

Ms Mills: You had a question about where principles could be in the law that are consistent with a human rights-based approach. We support stronger wording in the legislation on consultation with children and young people, which is consistent with their participation. There is further scope for the Bill to set that out clearly. Similarly, it is critical that tracking, data collection, monitoring and review are in the Bill in order not only to ensure that the legislation is complied with but to identify discrimination or potential discrimination.

Ms Kilpatrick: Finally, I offer this comment not as the chief commissioner but as a practising barrister. If you want to enforce legislation, taking a "may" provision into court is a wholly different argument from taking a "must" provision into a court. There is no resemblance between the two. Your case is completely different. You might not even be able to take a "may" provision into court. The difference is not minor but fundamental. One is a requirement to act, and the other is that you simply have the power to behave in a certain way. The point about "may" versus "must" is very significant, and, if you want someone to be able to go into court and say, "This is what the school should have done", you need a "must" provision, not a "may" provision.

The Chairperson (Mr Mathison): That is very helpful. We have considered that in our discussions already. Peter, did you want to come in on that point?

Mr Martin: It is a slightly separate point, but it picks up on that discussion. A lot of our focus on the previous point was on consultation with children. The Committee will have a session on that, and, clearly, hearing the views of children is really important.

The Committee had a discussion about clothing last week. My children's view is that there should be no school uniform and that they should be allowed to wear whatever they want in school. Do you accept that legislating just on the basis of what children want, be they aged nine, 11 or 13, is not necessarily the best thing?

Ms Kilpatrick: Nobody is suggesting that children should get to dictate a school's policy. Children do not dictate school policy in any other remit, and they would not be allowed to do so here. However, if a school is to impose a policy in a way that complies with equality legislation and human rights law, it needs to consider equality, inclusivity and the rights of the child etc.

Absolutely no harm is done by consulting a child. You do not have to always agree with their views. There are many positive reasons why school uniforms are good and human rights-compliant. They can actually improve inclusivity: for example, children are not tasked with having to be fashionable, because they all wear the same uniform. To say that you do not have to listen to children because they do not get to decide is probably the wrong analysis. For example, you certainly want to ask children, "What is comfortable?". I think that some of the answers to the questions that you ask on the Bill will have to come from children.

Mr Martin: I agree. I did not make those arguments. I was making the point that simply accepting what children want because they are children is not necessarily the best thing. Of course, they should be consulted and their views taken on board, and the Committee will do that, but, sometimes, I hear in

the Committee that a particular youth forum has suggested something and that, perhaps, we should therefore do that. That is not a way to draft legislation, but I absolutely accept your point that those views are very important and should be taken into consideration when we consider the Bill.

In clause 2, there is clear reference to inclusion. Do you further accept that, in many ways, the purpose of primary legislation is not necessarily to close down everything? I will give you an example of that. The driver behind the legislation is to make things cheaper for parents, because we all accept that the school uniform, with explicit reference to sports, has got very expensive. That is key. There has been chat about putting a cost cap — a figure — in the primary legislation. That would be wrong on a whole range of levels, but I am worried that, when we take this sort of evidence, there is enthusiasm from witnesses or even members of the Committee to make the legislation incredibly prescriptive. That is not always a good thing. Do you accept that?

Ms Kilpatrick: You do not want the legislation to be so overly prescriptive as to remove all sense from its application. That is why we say that schools, children and young people need to be consulted, as do parents and guardians, but, if you take into account what everyone says, each school is able to then make an informed decision about its uniform policy. As long as it meets certain minimum standards, which should be set and prescribed by the legislation, you will get proper balance.

The cap is a very difficult one. It is beyond our scope to talk about the level of the cap, but it should be a consideration. I do not see inclusivity in clause 2 in relation to what the school, children and parents want, unless I have missed it. Maybe you could point it out.

Mr Martin: Maybe I got the wrong clause. There is reference to it. I was not trying to draw you into a discussion on cost.

The Chair will look at me in a second and say, "Right, that is you finished, Martin". I accept the Chair's point that it would be useful to see it in guidelines. We are dealing with schools and with boards of governors, who, I hope, we all accept are all very competent and have the best interests of children at heart.

My soft point is that primary legislation is not meant to close down every avenue in every situation. As we look at the Bill, the guidelines and so on that follow should be enough to inform schools of what they should be doing.

The Chairperson (Mr Mathison): You have taken a long time.

Mr Martin: I just wanted to make that point. Sorry.

The Chairperson (Mr Mathison): If you want to respond briefly to that, and then, in the interests of time, we will probably need to wrap the session up.

Ms Kilpatrick: I will respond. I am not levelling criticism at any particular school or board of governors, but, if we could simply rely on boards of governors in schools to comply with equality legislation and human rights law in every single case, there would not be a need for any regulation of schools.

Unfortunately, there are minimum standards that are not always being met. Therefore, the state has to make sure that there is a framework and a system in place to make sure that those standards will be met. I am afraid that it is not possible to leave it all to the schools and still comply with the Human Rights Act.

The Chairperson (Mr Mathison): Time is about to beat us. Thank you again for giving up your time this morning to provide evidence on the Bill. The Committee will factor all that into our ongoing consideration of the Bill as we go through Committee Stage. Thank you for your time this morning.

Ms Kilpatrick: If there is anything else that we can do to help, please just ask.

The Chairperson (Mr Mathison): Thank you.