

Children and Young People's Commissioner Scotland submission of 1 November 2022

PE1937/C: To give children the respect they deserve by providing options for privacy when changing for P.E.

Introduction

We welcome the opportunity to respond to the above petition. In line with our response to the Scottish Government's Statutory School Uniform Guidance, we are of the view that primary schools should adopt a flexible approach to policies on changing for P.E. classes. These policies should be developed with the active participation of children, with the intention of realising children's human rights, including the right to an education and the right to privacy, and with consideration for their comfort and their wellbeing.

Human Rights Background

The UN Convention on the Rights of the Child (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 14 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 engaged when policies relating to P.E. kits and changing practices are developed. Such 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 UNCRC), the rights of children who are part of a linguistic or cultural minority group (Article 30 UNCRC) and to freedom of expression (Article 13 UNCRC). 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.

Children also have a right to physical privacy under both the UNCRC (Article 16) and the ECHR (Article 8). School policies relating to P.E. kits and changing practices must therefore respect children's rights to privacy and dignity, taking into account the needs of all children, including those with disabilities and those from different religions, beliefs and cultural backgrounds.

Our view

The SPICe briefing accompanying the petition notes that there is no current national legislation around safe P.E. changing practices in primary schools; it is up to individual local authorities and schools to write their own guidelines.¹

We are aware of concerns raised by children and their families regarding P.E. changing practices in primary schools. These concerns relate not only to issues around privacy when changing for P.E. class, but also to wider concerns around the adequacy and suitability of changing facilities in the school estate.

There are long-standing concerns regarding other parts of the learning estate, particularly school toilets. Many of the issues that affect the suitability of changing and toilet facilities, such as issues linked to safety and privacy, are linked. Our office's research found that many pupils avoid using toilets at schools because they do not feel safe in them, or because they are not private enough.² We continue to hear these concerns expressed by school pupils on a regular basis.

The absence of any national guidance relating to P.E. changing practices has resulted in inconsistency in approach across primary schools and local authorities in Scotland. In this regard, the petition

¹ SPICe Briefing for the Citizen Participation and Public Petitions Committee on petition PE1937. Available here: <https://www.parliament.scot/-/media/files/committees/citizen-participation-and-public-petitions-committee/spice-briefing-for-petition-pe1937.pdf>

² In September 2013, the former Commissioner for Children and Young People Tam Baillie launched the *Flushed with Success: Setting the Standard for Scotland's School Toilets* campaign. Press release available here: <https://cypcs.org.uk/wp-content/uploads/2020/02/Flushed-with-Success-release.pdf>. See also *Toilets Unblocked: A literature review of school toilets*, published September 2013. Available here: <https://www.cypcs.org.uk/resources/toilets-unblocked-a-literature-review-of-school-toilets/>

highlights that some primary schools have retained rules permitting children to wear their P.E. kit to school on the days they have P.E (as recommended under COVID-19 guidance for Physical Education), while other schools have returned to pre-pandemic positions.

Different P.E. changing practices between primary schools may be justified with reference to the needs and views of pupils in particular schools, including children with disabilities and those from different religions, beliefs and cultural backgrounds. The Scottish Government should however explore whether national guidance is required to create some degree of consistency and to ensure that P.E changing practices are rights-respecting and are developed in partnership with children and young people.

The Scottish Government has committed to schools delivering at least two hours of P.E. for all pupils in primary school.³ Changing time reduces the amount of available time children have for physical activity. Permitting children to wear their P.E. kit to school on days they have P.E. would promote children's health and wellbeing by maximising the time available for physical activity.

Finally, the Scottish Government, as part of its Learning Estate Strategy, must ensure that all schools have adequate and suitable changing facilities, which respect the rights and needs of children and young people. In order to promote inclusion and having regard to the requirement to comply with duties under the Equality Act 2010,⁴ facilities should be sensitive to the needs of all children, including those with disabilities and different religions, beliefs and cultural backgrounds. We consider that the Scottish Government should review and update their Learning Estate Strategy to ensure that children's rights are mainstreamed into decision making relating to suitability and condition of learning environments.

³ Scottish Government Website, Health and Wellbeing in Schools. Available here: <https://www.gov.scot/policies/schools/wellbeing-in-schools/>

⁴ Scottish public authorities (including the Scottish Ministers) are required to comply with the public sector equality duty (or general duty) set out in [Section 149](#) of the Equality Act 2010. This general duty requires Scottish public authorities to have 'due regard' to the need to: eliminate unlawful discrimination; advance equality of opportunity; and foster good relations. In 2012 Scottish Ministers made regulations that placed specific duties on listed Scottish public authorities (including Education Scotland, and all education authorities) to help them meet the general duty. These are also known as [the Scottish Specific Duties](#). Regulation 5 places a duty on listed Scottish public authorities to assess the impact of applying a proposed new or revised policy or practice against the public sector equality duty.