

ANGUS COUNCIL

EDUCATION COMMITTEE

23 JANUARY 2001

HUMAN RIGHTS ACT 1998

REPORT BY THE DIRECTOR OF EDUCATION

ABSTRACT

This report alerts the Education Committee to aspects of Human Rights legislation which are of most relevance to the education service here in Angus.

1 RECOMMENDATION

It is recommended that the Education Committee notes the terms of this report.

2 BACKGROUND

- 2.1 On 2 October 2000 the Human Rights Act 1998 came into force. From that date all public authorities in Scotland, including Angus Council, have been bound to comply with the rights set out in the European Convention on Human Rights, as incorporated by the Human Rights Act 1998.
- 2.2 As far as the education service is concerned, many of the rights now enshrined in the 1998 Act are almost identical in both wording and intent to the UN Convention on the Rights of the Child, a Convention to which this Council has already fully committed itself (Education Committee 26 January 1999, Article 12 refers).
- 2.3 While it is right and proper that the Council should consider the detailed impact of new legislation on its activities, it is believed that current practices have evolved from very similar thinking to that which has informed the European Convention and it is therefore unlikely that this new legislation will result in any significant changes to the general approach taken to delivery of the education service here in Angus. However, there may be very specific procedural details which do require careful consideration and it is hoped that this report will be helpful in highlighting as many of these issues as possible.

3 DETAILED IMPLICATIONS FOR THE EDUCATION SERVICE

3.1 Article 3 – Prohibition of Torture

A complete ban on corporal punishment of children has long been established in Scottish schools which clearly ought to ensure that no direct breach of this Article can occur. However, “inhuman and degrading treatment” could certainly be extended to apply to bullying; in continuing to concentrate efforts on identifying and addressing bullying in schools, it will be useful therefore to be aware of this Article which offers one obvious framework within which any alleged victim of bullying can seek legal redress.

It is also possible that future court cases could find that the naming of individual pupils in front of their peers, with the ridicule attached to such an approach, is deemed in certain circumstances to amount to a breach of this Article.

3.2 Article 5 – Right to Liberty and Security

It should be noted that the detention of pupils within the school day for the purpose of educational supervision would not normally breach the terms of this particular Article.

3.3 Article 6 – Right to a Fair Trial

All appeal hearings (eg for exclusions or for unsuccessful Placing Requests) will have to comply with the terms of this particular Article. Similarly, the business of the Attendance Sub-Committee and the Special Cases Sub-Committee of the Education Committee will be governed by the requirements of this Article.

3.4 Article 8 – Right to Respect for Private and Family Life

This Article may have an impact on the way in which applications from parents to educate their children at home are treated. Further consideration is already being given to this both locally and in terms of the implementation of Section 14 of the Standards in Scotland's Schools etc Act 2000. This Article may also have an impact on disclosure issues, especially where older children are concerned.

3.5 Article 9 – Right to Freedom of Thought, Conscience and Religion

This Article protects the rights of religious believers in worship, teaching, practice and observance. There must be a balance between the rights of those who want to convert others and the rights of those who do not want to be subjected to this. As far as religious beliefs are concerned, there has for many years been provision in Scottish schools for parents to enable their children to opt out of religious observance should they so wish; current curricular guidelines on Religious and Moral Education appear to be consistent with the terms of Article 9. Consultation is currently taking place on the contents of guidance for parents, schools and education authorities on Sex Education and it is hoped that this particular guidance will help schools and education authorities to comply with the terms of Article 9 in this context also.

3.6 Article 10 – Freedom of Expression

This Article guarantees the right to receive and impart information and as such may require to be interpreted also in the context of Article 9. It seems possible that some parents in future may wish to found on this Article in the context of any disagreement with a school on dress codes for pupils.

3.7 Article 14 – Prohibition of Discrimination

This is clearly an important Article, but one which should have been fully encompassed by the Council's approaches to Equal Opportunities.

3.8 Protocol 1 – Article 1 – Protection of Property

This Article may be quoted in any disagreement about the right of school staff to confiscate pupils' property; however, provided such confiscation can be demonstrated to be in the interests of Health & Safety for all pupils and provided also that normally any confiscation is for the duration of a school day, it seems unlikely that this issue will pose any major difficulty.

3.9 Protocol 1 – Article 2 – Right to Education

Clearly this basic right is at the very heart of the education service for which Angus Council is responsible. Section 1 of the Standards in Scotland's Schools etc Act 2000 also covers this point and goes on to develop further the duties of education authorities.

4 STEPS TAKEN TO DATE

- 4.1 A briefing note has been prepared and circulated to all head teachers and heads of support services, with a request that a copy is issued to each member of staff and that the briefing note features as an item for discussion on a staff meeting, or staff meetings (see Appendix 1 for a copy of this Briefing Note).
- 4.2 Seminars for head teachers were arranged in November, led by Kathleen Marshall from Glasgow University's Centre for the Child and Family. Although the principal focus of these seminars was the UN Convention on the Rights of the Child, the issues raised were entirely relevant to the 1998 Human Rights Act.
- 4.3 An internal audit was conducted recently with the intention of identifying within a register those procedures and practices currently being implemented which may be influenced by the new legislation. A copy of that register is appended (Appendix 2).

5 CONCLUSION

- 5.1 The Human Rights Act 1998 has considerable relevance for much of the work of the education service here in Angus.
- 5.2 Work which has been undertaken suggests that our current procedures and practices comply with the requirements of this legislation, and also with the spirit of the UN Convention on the Rights of the Child. Nonetheless, the existence of this legislation on the statute book should prove helpful in guarding against undue complacency and in ensuring that all our procedures and practices continue to comply in detail with this legislation.

6 CONSULTATION

- 6.1 In accordance with the Standing Orders of the Council, this report has been the subject of consultation with the Chief Executive, the Director of Finance and the Director of Law & Administration.

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No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above report.

APPENDICES

JAA/CJ