



Department of
Education
www.deni.gov.uk



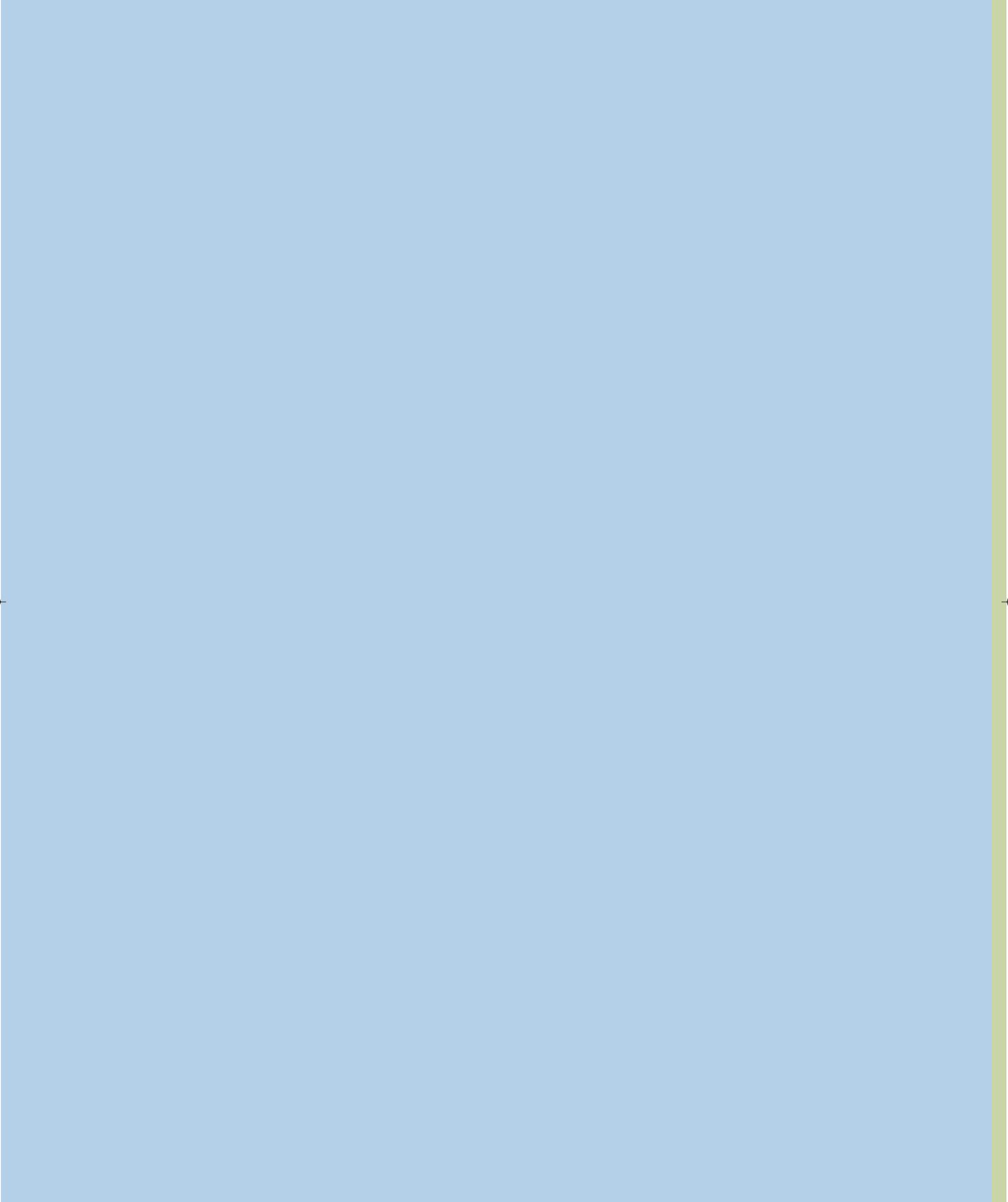
**NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION**

A Guide for School Management to the
Human Rights
ACT 1998

Written by the Northern Ireland Human Rights Commission
Temple Court, 39 North Street, BELFAST BT1 1NA
information@belfast.org.uk Web site: www.nihrc.org

Published by the Department of Education
Rathgael House, Balloo Road, BANGOR BT19 7PR
Web site: www.deni.gov.uk

OCTOBER 2003





Contents

		Page
Preface	Gerry McGinn, Permanent Secretary, Department of Education	05
Foreword	Professor Brice Dickson, Chief Commissioner, NI Human Rights Commission	07
Introduction		09
Chapter 1	The Human Rights Act 1998	11
Chapter 2	The European Convention on Human Rights	14
Chapter 3	The Right to Education	16
Chapter 4	Parental Rights	21
Chapter 5	Admission Policies, Discipline and Punishment	23
Chapter 6	Other Rights	28
Chapter 7	Human Rights, United Nations Convention and the Rights of the Child and Equality	30
Chapter 8	Key Steps for Compliance	33
Chapter 9	Useful Resources	36
Appendices 1.	Extracts from the United Nations Convention on the Rights of the Child of particular relevance to education	38
Appendices 2.	Statutory duty as public authorities	42
Index		46





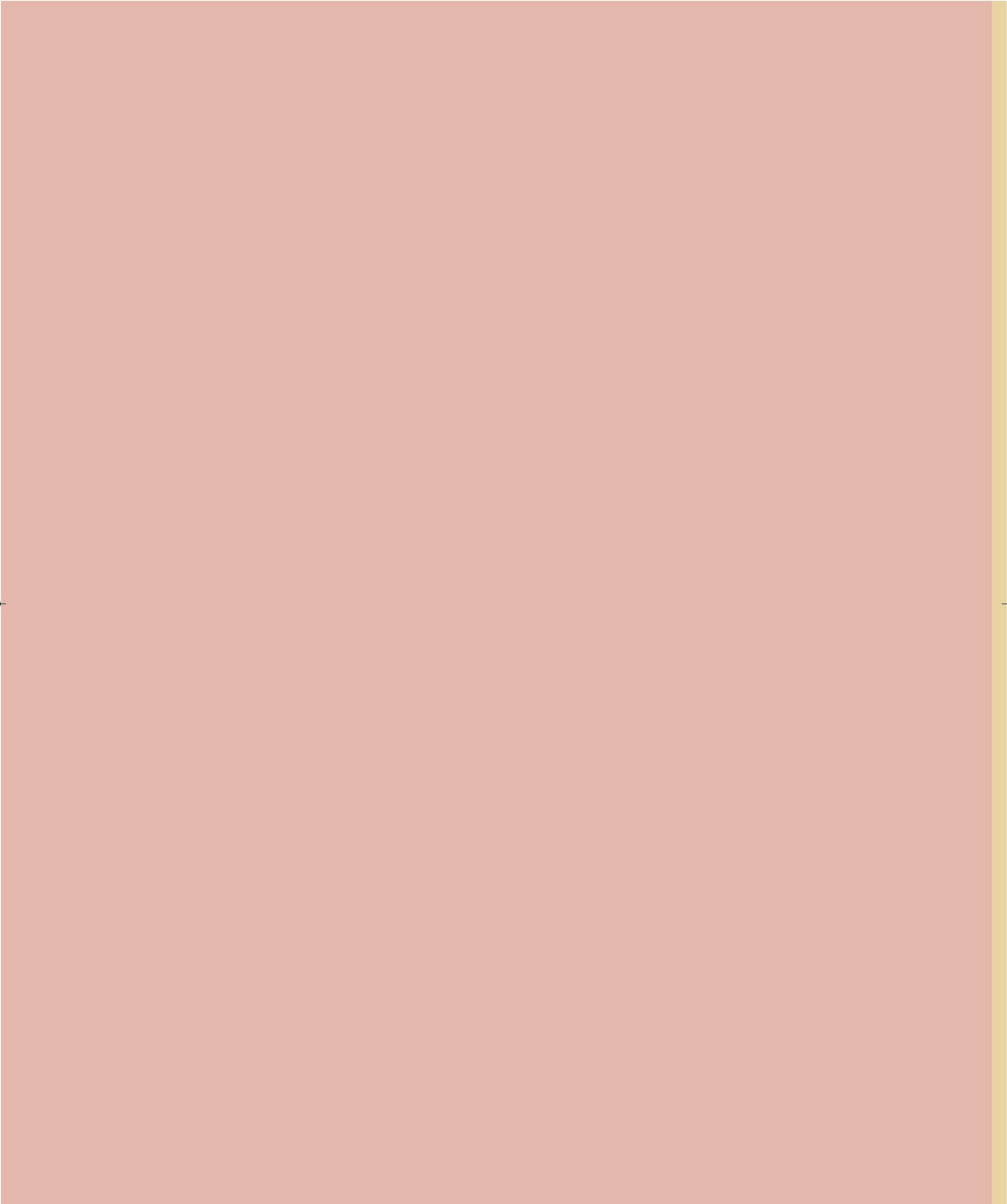


Preface

At the Human Rights in Education Conference, which was organised jointly by the Department of Education and the Human Rights Commission, there was widespread agreement about the need for clear guidance to be given to school managers about the implications for schools of the Human Rights Act 1998. I very much welcome, therefore, the production of this guide by the Human Rights Commission. I believe that this is a very practical document which will be of considerable assistance to school managers and will do much to raise awareness generally of human rights issues within the education sector in Northern Ireland.

Gerry McGinn
Permanent Secretary
Department of Education







Foreword

The Northern Ireland Human Rights Commission has a statutory duty to promote understanding and awareness of the importance of human rights in Northern Ireland. We must also keep under review the adequacy and effectiveness in Northern Ireland of law and practice relating to the protection of human rights.

It is with those responsibilities in mind that the Commission has produced this guide. Through our work with the Human Rights Education Forum (which we service), and with statutory bodies and individual schools, we are well aware that there is a need for clear and concise information to be provided about human rights to those who manage and work in or study in schools.

The main prompt for this thirst for information has been the Human Rights Act 1998. This Act came into force on 2 October 2000 and has the effect of making it possible for people in Northern Ireland to insist that public bodies here respect the human rights conferred on individuals by the European Convention on Human Rights. One of those rights is the right to education, but there are several other rights (such as the right not to be degradingly treated or the right not to be discriminated against) which are also relevant within a school environment.

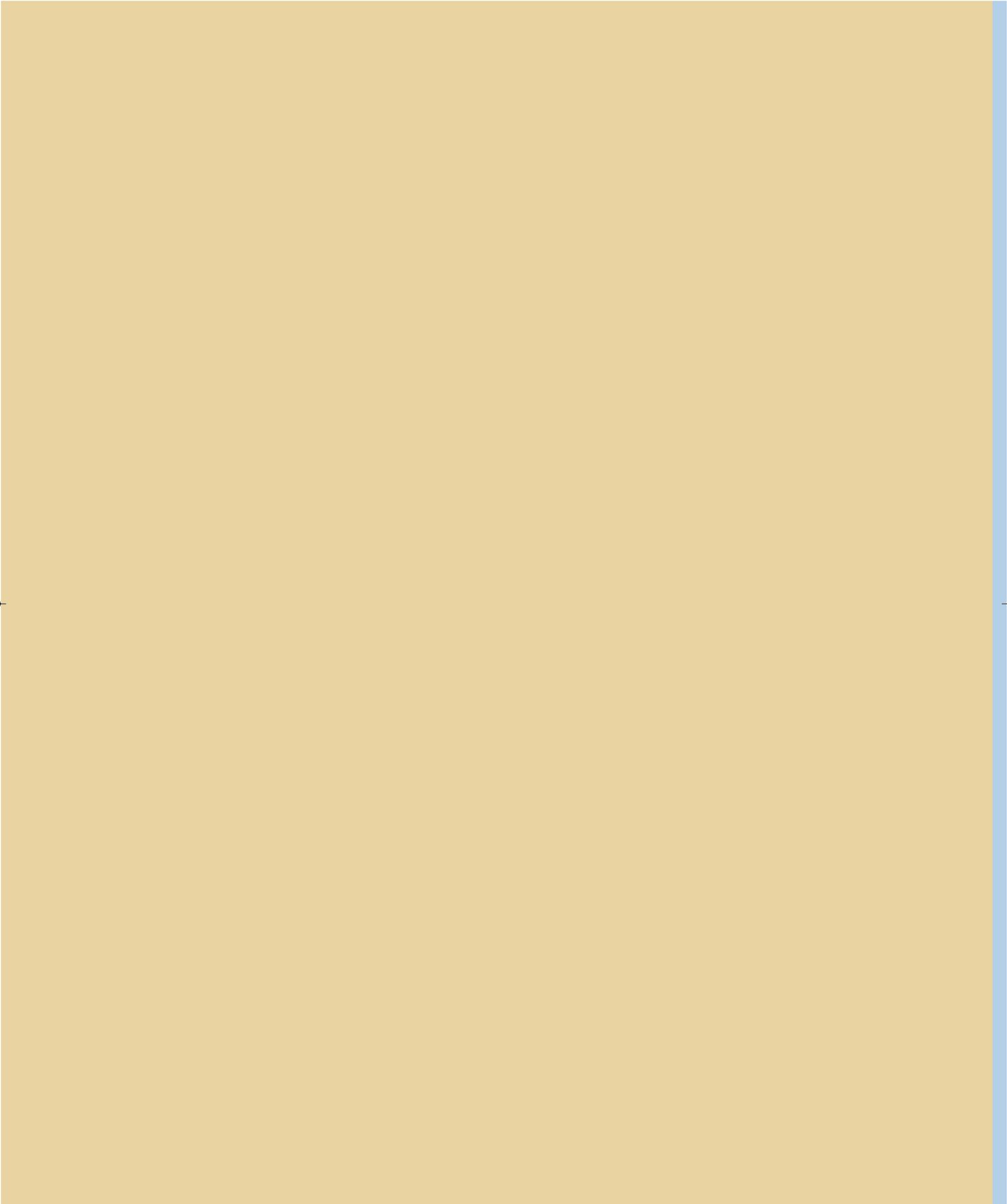
We hope this guide will prove to be of interest and use to a wide variety of readers.

Professor Brice Dickson

Chief Commissioner

Northern Ireland Human Rights Commission







Introduction

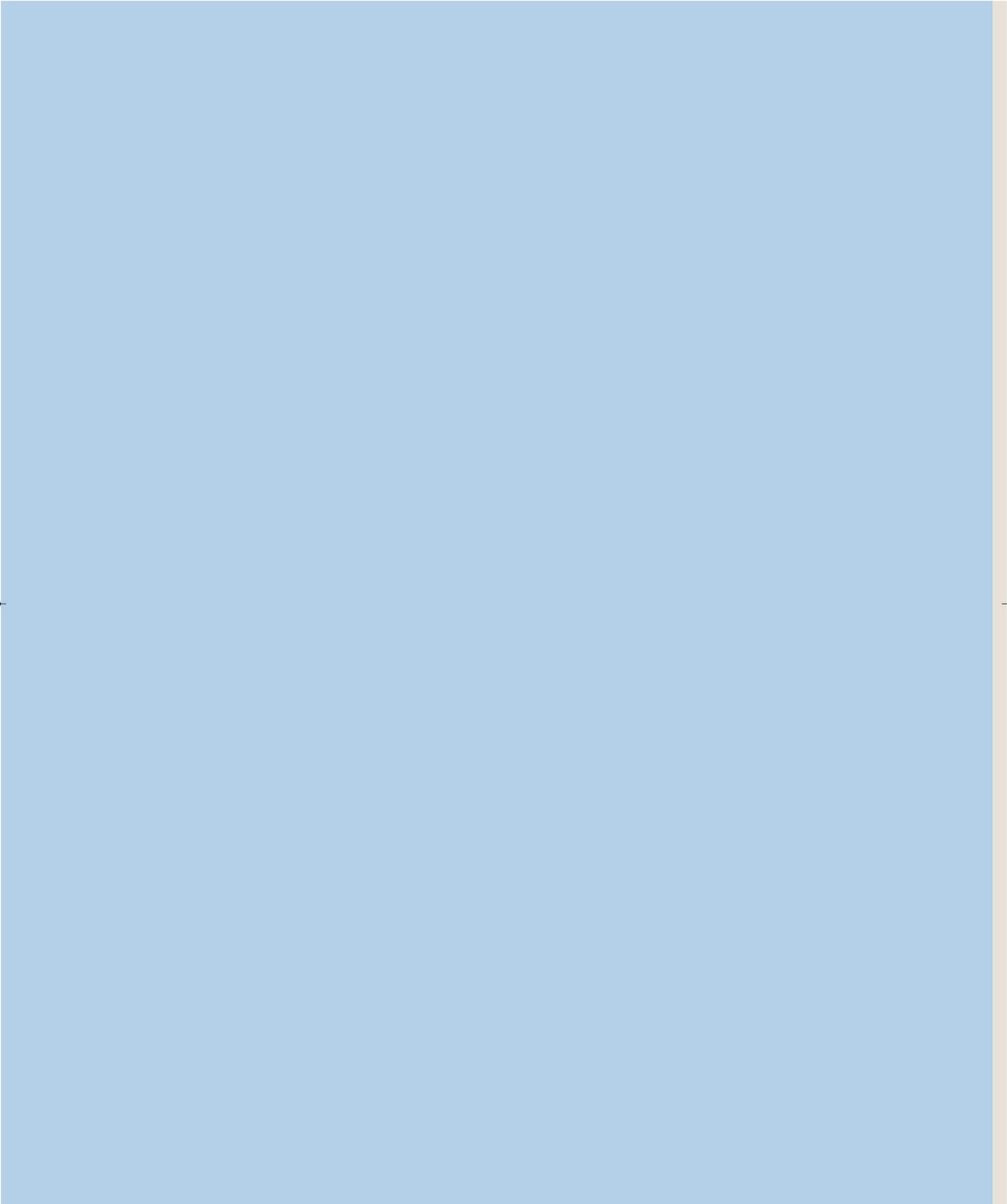
This guide is an explanation of the human rights principles that are relevant to schools and a summary of the key issues raised for schools by the European Convention on Human Rights, which is now incorporated into local law by the Human Rights Act 1998. It focuses largely on law, policy and procedures. It also contains guidance on how schools can use the framework of human rights generally in the school.

This guide was written by Dr Ursula Kilkelly of the Faculty of Law, University College Cork, with the assistance of staff from the Northern Ireland Human Rights Commission and staff from the Department of Education's Regional Training Unit. The document is published by the Department of Education.

This guide is also available on the NIHRC's web site: www.nihrc.org and on the Department of Education's web site: www.deni.gov.uk.

This document is a guide only and should not be taken as definitive legal advice. All schools should check specific legal queries with their professional legal advisor.







Chapter 1: The Human Rights Act 1998

- The human rights obligations on schools
- Complaints against schools

The Human Rights Act 1998

The Human Rights Act 1998 brought the European Convention on Human Rights into local law. It places obligations on public bodies to respect the rights contained in the Convention. Public authorities are organisations which are public in nature including the Department of Education (DE), the Education and Library Boards (ELBs), Council for Catholic Maintained Schools (CCMS), Northern Ireland Council for Curriculum and Assessment (CCEA) and schools themselves. This means in practice victims can take a Human Rights Act case to their local court or argue human rights points in other cases or hearings.

Human rights laws aim to protect human dignity and inherent in them are the values of fairness, tolerance and proportionality. Most rights are not absolute and respect for human rights will typically involve the search for a fair balance between the rights of individuals and the general interests of society as a whole or others affected. The exercise of rights also brings with it certain responsibilities, particularly to respect the rights of others. For example, the right to express one's views is to be balanced with respect for the reputation and privacy of others.

What obligations does the Human Rights Act 1998 place on schools?

The Act requires public bodies including schools to act in a manner that is compatible with human rights. If this does not occur, a person who is negatively affected can complain to the court that his or her rights have been breached. In order to avoid this, schools, are advised to review the consistency of their policies and procedures with human rights standards.





If a review of policies identifies that some policies and procedures are not compatible with human rights standards then the school should take the necessary action to bring the policy or procedure into line. In some cases the school will not be able to change a policy because the policy is strictly defined as a result of an Act of Parliament. In such cases the school must uphold the law as it is and it is up to the DE to seek to change the law.

Schools are encouraged to consider ways of putting human rights standards and values to positive use in the development of a human rights culture in their schools. In this regard, educationalists are encouraged to also consider the principles of more specific human rights treaties, particularly the United Nations Convention on the Rights of the Child (See Chapter 6).

How might a human rights point be raised with a school?

It is likely that human rights points will be raised in complaints being made about a school generally or in specific legal or administrative hearings.

What should a school do if a complaint is made concerning a human rights point?

When a complaint is made the school should examine the facts in light of the relevant law or policy which includes an examination of the human rights points raised. If the school is acting in accordance with the law, as defined by an Act of Parliament or an Order of the Northern Ireland Assembly, then the school is behaving correctly. This is the case even if there appears to be a clash with a human right. The school must always act in accordance with the law and in such a case a parent will have to go to court or a tribunal to challenge the law.

In matters where the school has a discretion a parent may make a claim that the way in which this discretion was exercised breached human rights law. In this case a school should examine its actions against the principles as laid out in Chapter 2. While there is limited potential for such challenges, it is recommended that schools and education authorities take a preventive approach.





Who can complain under the Act and what can a court or tribunal do?

Any person who has been negatively affected by the actions of a public authority is considered a victim under the Convention and can bring proceedings under the Human Rights Act 1998. If the court finds that a public body has acted in breach of a Convention Right, it may award a remedy. For example, courts can award compensation or order the suspension of the offending action.

How long does a person have to make a claim that his or her rights were breached?

A person has one year to lodge a case alleging breach of human rights. This period can be extended by the court if it considers it equitable to do so.





Chapter 2: The European Convention on Human Rights

- Rights that are protected by the European Convention on Human Rights
- How rights protections work

The following rights protected in the European Convention on Human Rights are relevant to education:

- The right to life (Article 2).
- Freedom from torture, inhuman or degrading treatment or punishment (Article 3).
- The right to liberty and security of the person (Article 5).
- The right to a fair trial (Article 6).
- The right to respect for private and family life, home and correspondence (Article 8).
- The right to freedom of thought, conscience and religion (Article 9).
- The right to freedom of expression (Article 10).
- The right to peaceful assembly and freedom of association (Article 11).
- The right to enjoy Convention rights without discrimination (Article 14).
- The right to education (Article 2, First Protocol).

There are several important principles which assist in understanding how the European Convention on Human Rights works in practice:

Is there a right in question? Applicability. A complaint under the Human Rights Act 1998 must be about one or more of the rights in the Act. For example, rules regarding dress code would fall within the scope of respect for private life or freedom of expression.





Has a right been interfered with? Interference. Next it is important to consider whether or not there has been an interference with the right concerned.

Can the interference be justified? Justification. Interferences with rights are allowed in certain circumstances. (Although there can be no interference with Article 3 ever). The questions that must be asked regarding an interference in a right are:

- **Does the law allow the school to interfere with the right?**
- **Is the school pursuing a legitimate aim in interfering with the right?**
- **Is the schools action proportionate?**

A fair balance has to be struck between the action taken and the aim being sought, such as school discipline. The law requires the public body should not go beyond what is strictly necessary to achieve the objective. A school makes its own decisions regarding proportionality which would be judged on by a court if their decision was being challenged legally.

Negative and Positive Duties

Many of the rights relating to schools are negative in that they describe what a school shouldn't do. However in some cases a school is required to take positive action. For example, if a school is aware that a student is at risk of bullying it is not enough that the school itself does not harm the child but school management are under a duty to ensure that reasonable steps are taken to prevent and tackle all forms of bullying behaviour.





Chapter 3: The Right to Education

- The regulation of education
- The curriculum
- Discrimination
- Denial of education
- School regulations
- Language

The European Convention on Human Rights states that no person shall be denied the right to education (Article 2 of Protocol 1).

The primary objective of this provision is to guarantee the right of access to existing educational facilities. The right to education must be secured in a practical and effective manner. The provision requires the government to take reasonable and proportionate action to remove any obstacles in the way of children accessing education. This clearly has particular significance for children with disabilities or special needs such as refugee children, Traveller children and teenage mothers.

The UK government has entered a reservation on the right to education which is a limitation on how the right is secured. The right has been accepted 'only in so far as it is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure'.

Does the government have the right to regulate education?

The government has a discretion as to how it organises its educational system and how best to secure for children their right to education. Education bodies may regulate the public and private school system, make schooling compulsory and impose sanctions on parents who refuse to comply with attendance obligations. Parents may be allowed to educate their children at home, but the government is allowed to assess the standard of education provided.





What about the curriculum?

It is the government's role to determine the content of the Northern Ireland Curriculum but schools enjoy some discretion in this area. To date, cases where parents objected to a particular focus of the curriculum have all been rejected in court. It is anticipated that in the future issues might arise with respect to the extent to which children in detention, children excluded from school, Traveller children, teenage mothers or children with disabilities enjoy the same range of subjects and educational facilities as their peers. Children who do not enjoy access to the curriculum in this way may be entitled to challenge their treatment under the Human Rights Act 1998.

Are alternative arrangements allowed by the Human Rights Act 1998?

Alternative arrangements are allowed, however in no circumstances should the substantive right to education be undermined. Inferior access to the curriculum or to the state examination system on any grounds, including gender or religion, will be extremely difficult to justify.

Is discrimination in education prohibited?

Different treatment regarding children's enjoyment of the right to education is allowed. For example, it will not always be possible to educate children alongside their peers within the formal education system and alternative provision may have to be made for children in certain circumstances.

The question of whether any difference in treatment will constitute discrimination will depend on whether the interference in the right can be justified (See Chapter 2). Ultimately, the test regarding discrimination is one of proportionality (balance). This involves weighing up whether a fair balance has been achieved between meeting the needs and rights of the individual on the one hand and the rights of others on the other.





This assessment regularly involves consideration of the following factors: the relevance and sufficiency of the reasons which have been advanced, whether there was a less restrictive alternative which could have been taken, and the nature and seriousness of the right at stake.

In no circumstances should a pupil's substantive right to education be undermined on any ground including gender, religion, disability or race.

Can education be legitimately denied?

The right to education is a fundamental right to which everyone is entitled. Denying a child the right to education is not permitted. For example, when a child is suspended alternative arrangements must be made.

The right to education is not absolute, however, and in certain circumstances, its exercise will have to be balanced with the rights of others. It may be a necessary interference with a pupil's right to education to suspend, or in extreme cases, to exclude that pupil from the school. The types of circumstances which constitute 'necessary' are if he or she poses a danger to other pupils or to teachers in a school or is negatively affecting others' right to education. It is important to keep an accurate record of all processes that the school engaged in whilst making decisions about a child's education. Such a record will assist the school in explaining the decision to parents and would assist the school in providing evidence if a decision were challenged at a later stage.

Given the importance of the right to education there is a need to examine the proportionality of the action - does the sanction fit the misdemeanour? The measure which interferes least with the child's right to education is to be preferred.

In addition, as a matter of best practice, the school should adhere to human rights principles in the procedures it adopts to oversee exclusions from school. For example, a governing body should seek to hear the views of the child in question when making decisions about the child's exclusion. (See Page 6.)





Children excluded from school retain their right to education. In such circumstances, this right is protected by the child being educated at another school or through other alternative educational arrangements.

Are school regulations compatible with the Human Rights Act 1998?

Rules are necessary to achieve the effective running of a school. Such regulations or their implementation must never constitute inhuman and degrading treatment or punishment (Article 3). Moreover, rules which interfere with aspects of the child's rights such as the right to education (Article 2 First Protocol) or respect for their private life (Article 8), should be proportionate to the aim which they seek to achieve. Again the question to be asked here is, does the punishment fit the misdemeanour and is it applied in a non-discriminatory manner?

For example, in certain circumstances it may be considered proportionate to confiscate prohibited jewellery but disproportionate to exclude a pupil from school for wearing jewellery. However in other circumstances if a pupil repeatedly disobeyed schools regulations in relation to this issue it may well be considered proportionate to exclude a pupil. Such rules will also be problematic if they discriminate on any grounds, including gender, without objective and reasonable justification.

Is a lack of resources a defense?

In principle, a lack of resources cannot be used as a defense to the failure to secure a right or a failure to secure rights without discrimination. However, resources may be relevant to how a right is secured or to determine whether efforts taken to secure the right to education have been sufficient. One case on this issue considered whether or not a school should install a lift for a wheelchair user to attend classes in the science laboratory. The court considered the actions of the schools carefully and decided that it would be disproportionate to expect the school to install a lift because of the expense and because the school had taken a range of actions to ensure the child was able to avail of teaching on the subject.





Is there a right to be educated in a particular language?

The right to education involves a right to be taught in the national language or one of the national languages but not the right to be educated in a particular language of one's choice. Moreover, the requirement to respect parents' philosophical convictions does not include their preferences regarding language. For this reason, as the law stands presently parents are unlikely to be able to challenge successfully either a school that does not offer Irish language tuition or one which provides compulsory Irish language instruction within the context of a broad curriculum.

Can schools still have dress codes?

Schools may consider dress codes to be a necessary part of maintaining school order. Schools should not distinguish in this regard between pupils of different gender, religion or race without objective or reasonable justification. For example, schools attended by both sexes should not have different compulsory dress codes for boys and girls. However single sex girls' schools can have a dress code which includes skirts. Schools should take all reasonable steps to enable children whose religion imposes requirements of dress or headwear to comply with their religious beliefs.





Chapter 4: Parental Rights

- Parental convictions
- What must be done to protect parental convictions?

Part of the right to education is written in terms of parental rights. The government has a duty to parents to ensure the education and teaching of their children respects their own religious and philosophical convictions. It does not prohibit conveying information of a religious or philosophical nature, but requires that such information be conveyed in an objective and pluralistic manner. Parents can choose to send their child to a school which has a particular religious ethos or ask for their child to be withdrawn from religious education classes.

However, if there is a conflict between the right of the child to education and the duty to respect parents' convictions in that education, it must be resolved in favour of the child's right to education. Thus, parents cannot demand to have their children educated or treated in school in a way which would conflict with respect for their right to education.

Which convictions require respect?

While the meaning of parents' religious convictions is clear, it is more difficult to determine what constitutes philosophical convictions. Opposition to physical punishment has been held to constitute a philosophical conviction. Only those convictions that are genuinely held, and which have been brought to the authorities' attention demand respect. In this regard, there is a distinction between parental preferences and seriously held views on the way their children are treated through the educational process. To date, neither parental views on the nature and content of the curriculum, nor their wishes as to whether their children with disabilities attend mainstream or segregated education have been found to amount to convictions which demand respect under the Convention.





What must the state do to respect parents' convictions?

Parents' religious convictions are 'respected' by providing them with the opportunity to withdraw their children from religious instruction. However, this may not be sufficient where broader school activities have a religious ethos which might present a conflict for the parents of a child of another religion. Here, schools should plan religious activities by having regard to the needs of all children at the school. For example, children should not be forced to attend or participate in school assemblies or other activities that have a religious element if they are not of the religion that is being celebrated.

Making certain subjects compulsory may create a clash with parents' philosophical convictions. However, if the information concerned is conveyed in an impartial and objective manner and there is a legitimate reason for making the subject compulsory then it is unlikely to require the exemption of the child.

Moreover, the decision to exempt a child from such instruction so as to respect the views of their parents should always be undertaken with caution and with reference to the child's right to receive information on the subject concerned. It is legitimate to have compulsory sex education notwithstanding parents' objections to it on philosophical and religious grounds. However, in Northern Ireland parents can withdraw their children from sex education classes.

In other areas it is normal practice for schools to have compulsory classes and to have guidelines in place that allow children not to attend compulsory classes, such as PE. Thus if a parent wishes to withdraw his or her child from PE, for example, they would need to satisfy the school guidelines. All schools should have guidelines on this issue which parents should be notified about. Care should be taken, when writing the guidelines, to the need to respect parents' religious and philosophical convictions.





Chapter 5: Admissions Policies, Discipline and Punishment

- Admissions Policies
- Discipline and Punishment
- After-School Detention
- Fair Hearing
- Searches
- Restraint
- CCTV
- Use of images

Admission Policies

Admissions quotas are necessary because schools cannot accept unlimited numbers of pupils and thus they are a basic part of administering the educational system. However, policy and decision-making regarding admissions must comply with the human rights standards of proportionality and non-discrimination. While it may be lawful to distinguish between pupils on the basis of ability or religious background caution should be exercised with regard to other criteria of eligibility. In particular, a policy which in some way prefers or rejects candidates on the grounds of their gender (unless the school itself is exclusive), economic background, disability, language or political opinion is only allowed where there are objective and reasonable justifications for the distinctions made.

Discipline and Punishment

Article 3 of the European Convention on Human Rights prohibits treatment or punishment that is inhuman or degrading. The test as to whether ill-treatment is severe enough to reach this standard is a relative one and it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim. Severe harassment, for example, of a racist nature may constitute inhuman or degrading treatment.





Treatment or punishment which falls within the scope of Article 3 can never be permitted or justified. Unlike any other provision, compliance with Article 3 is not a balancing exercise where an infringement can be balanced against a need, say, to impose discipline and order.

What does this mean for schools?

Schools must take measures to protect pupils from any ill-treatment which falls within the meaning of this definition, regardless of whether it is inflicted by teachers, other school staff, members of the Board of Governors or other pupils. Although corporal punishment is not permitted in schools, other practices which have the effect of degrading or humiliating a pupil may exist. Schools are thus under a duty to ensure at all times that practice is in line with policy in this area.

Article 3 may also require schools to take measures to protect children from abuse and bullying. Schools are required now to adopt measures to prevent child abuse and introduce schools discipline measures to prevent bullying. Any policies devised to prevent child abuse or bullying should have procedures that allow complaints to be addressed and brought to the attention of all pupils.

Protection of everyone in school

Article 3 also imposes positive obligations on the authorities with respect to protecting teachers and other staff from ill-treatment. For example, failure to take reasonable action against a potentially violent pupil, when the school is aware of the danger, may give rise to a human rights challenge if that pupil then injures someone. Schools must thus exercise caution when assessing such risks bearing in mind the nature of the right at stake. (Further advice should be sought from human resources advisers, the DE, Trade Unions, CCMS, etc.)





After-school detention

While arbitrary detention is prohibited by Article 5 of the Convention, it is unlikely that after-school disciplinary measures will constitute the deprivation of liberty necessary to bring it within the scope of this provision. This is supported by the fact that schools are normally unlocked on such occasions entitling a child to leave at any time. In addition it is a legislative requirement for a school to give notice of after-school detention.

Fair hearing

Article 6 of the Convention provides for the right to a fair hearing, which must have certain characteristics including participants' right to have a meaningful opportunity to state their case, a trial within a reasonable time and a reasoned decision on conclusion. At present, hearings associated with education cases are not bound by the strict requirements of Article 6, however, the scope of this right is constantly evolving. As a result, and in line with the principles of natural justice, schools are advised to adopt good practice guidelines in this area (It is to be noted that these are guidelines only and are not legal requirements). In particular, they should ensure that any hearings regarding a child's right to education are conducted in a manner consistent with respect for human rights principles. The persons in question should be:

- able to address the decision-making body themselves,
- allowed to bring someone along to the hearing - a parent, or their representative,
- entitled to access to all information in advance of the hearing,
- notified in good time of the time and place of the proceeding,
- entitled to question any information given to the hearing, and
- given a reasoned decision at the conclusion of the case.

The hearing should be:

- independent and seen to be independent,
- held within a reasonable length of time.





Can schools search a pupil or his or her belongings in school?

Searching a pupil or his or her belongings constitutes an interference with their right to private life (Article 8 of the ECHR). A policy which permits such searches to be carried out must identify the strict circumstances in which this is considered necessary and the conditions governing search procedures. For example, consent must be sought from the pupil if he or she is to be searched. If a pupil refuses to consent to a search of himself/herself or of his/her belongings the school may get parents involved. In exceptional circumstances the school may have to carry out a search of the pupil. Such a search can only be carried out in very strict circumstances, for example, if there is a reasonable suspicion that the pupil has a weapon or an illegal substance that could cause injury or damage to property.

Search policies should be brought to the attention of pupils in advance.

How should schools question pupils?

Schools should engage in the questioning of pupils with care. Attention should be paid to the age of the child and their level of maturity, as some children will require increased protection. They must uphold the dignity of the pupils and avoid any kind of ill-treatment. The questioning technique must not be threatening or manipulative. Students should only be questioned for a reasonable period.

If the student is being interviewed about an offence that is of a criminal nature the police and parents should be involved in the questioning as soon as is practicable. If it is a misdemeanor (non-criminal) that has very serious ramifications, such as the potential to lead to expulsion or long-term exclusion, parents or carers should be present during questioning. If it is a lesser misdemeanour then questioning without a parent or carer present may be appropriate. Notes should be taken of the interview.





Can a school restrain a child?

Restraint of a pupil is an interference in his or her right to liberty. School policies already have strict guidelines in how restraint can be used in schools, for example, a pupil may be restrained for the purposes of preventing the pupil from committing a crime. An absconding pupil may be restrained as well in strict circumstances such as in order to prevent personal injury to the pupil. The issue to be addressed in terms of human rights and the use of restraint is the question of proportionality. Once it has been established that the strict circumstances under which restraint can be used exist, then the school must only use such force that is reasonable and proportionate to the circumstances. The least invasive measures must be used.

Can schools use CCTV?

Schools can justify the use of CCTV in order to promote good order or to prevent crime. The guidelines for use of CCTV must be strictly adhered to, for example, CCTV must not be used in toilets or changing rooms and everyone should be notified of its location in the school. Schools are not allowed to use CCTV secretly unless the police are involved.

What about the use of photographic, video, CCTV or web cam images?

Guidelines need to be developed by schools for the use of any of the above images in subjects such as PE and Drama. For example, parental consent is required for the public use of any images of students emanating from these sources and all images should be destroyed within a set period.





Chapter 6: Other Rights

- Freedom of thought, conscience and religion
- Freedom of expression

How should schools protect the right to freedom of thought, conscience and religion (Article 9)?

Any pupil or teacher in a school has the right to freedom of thought, conscience and religion. It includes the right to manifest his or her religion or belief in worship, teaching, practice and observance. In addition this right is combined for pupils with the right to education which must be delivered in a manner that respects parent's religious and philosophical convictions (See Chapter 4).

The following are a list of the types of situations where Article 9 may be invoked

- the wearing of particular types of dress as part of religious observation,
- time and space for religious observation,
- attendance at religious classes, services and ceremonies with a religious element,
- and access to religious books.

Any interference in this right can only be justified on grounds such as "for the protection of public order, health or morals, or for the protection of the rights and freedoms of others". Any interference must be allowed by law and be proportionate to the aim being sought. Schools should consult with parents regarding matters of religious observation. It is probably legitimate to place the onus on parents to raise issues of religious observation with the school.





How can schools protect the right to freedom of expression (Article 10)?

Each pupil and worker in a school has the right to freedom of expression. This includes the right to hold opinions and to receive and impart information. Any interference in this right has to be allowed by law and must be on the grounds such as for the protection of the rights of others, for the prevention of disorder or crime or in the interests of public safety.





Chapter 7: Human Rights, the United Nations Convention on the Rights of the Child and Equality.

The United Nations Convention on the Rights of the Child

This convention does not create binding obligations in the same way as the Human Rights Act but it contains considerable best practice. The United Nations Convention on the Right of the Child (UNCRC) establishes the fundamental principles of the right of every child to be heard and to have his/her views given due weight (Article 12), the right to rights without discrimination (Article 2) and the right to have their best interests regarded as a primary consideration in all matters (Article 3), the Convention contains two provisions dedicated specifically to education. Article 28 provides for the right to education and Article 29 sets out the aims of such education. The text of these provisions is set out in Appendix 1.

What are the differences between the duties under the Human Rights Act 1998 and the duties under the UNCRC?

The Convention thus places a duty on Government to ensure law, policies and practices throughout the education sector reflect the standards of the UNCRC. It does this by making laws and policies that reflect the Convention. A person cannot go to court to claim their rights under the UNCRC but sometimes a court will use the UNCRC in a case to develop a point of human rights law.

Making a commitment to human rights

While many human rights principles are already reflected in the values that schools promote through their school ethos, schools are encouraged to use the potential of the European Convention on Human Rights and the United Nations Convention on the Rights of the Child as models for the promotion of the values of tolerance, fairness, respect and equality in the school. They might like to consider, for example, adding an express commitment to these principles to their motto or mission statement.





The curriculum and extra-curricular activities

Teaching human rights in schools is an important way of promoting human rights values among children and it is strongly encouraged as a means of advancing the goal of human rights protection. The diversity of human rights means that it can be taught as a subject in its own right or it can provide a framework for the discussion of subjects of current affairs and issues of international and national interest. It can also be integrated in a useful way into other mainstream subjects such as history, geography, politics, sociology, law, religious studies, citizenship and personal and social education. Moreover, a wide range of extra-curricular activities, possibly involving human rights groups in the community, can be undertaken in schools to promote further respect for human rights in both school and society.

Human rights complaints cases

Contrary to some expectations, the adoption of the new human rights law has not resulted in a flood of cases in the courts. Developments in this area are occurring in a gradual and progressive manner usually by changes to law and policy. Chapter 2 explains how the Human Rights Act works in practice and describes how human rights points may be raised with a school either by way of a complaint or through a legal case.

Employment law

Human rights law applies now to employment law as well as to all other areas of law. Any applicant can now raise in any employment law case or hearing, at any point in the proceedings. Human resource experts who normally advise schools on personnel matters should be consulted on the relevance of the Human Rights Act to employment issues.





Equality of Opportunity

Equality of opportunity is a key human right. There is a range of laws in Northern Ireland aimed at promoting equality of opportunity. Schools are governed by these through the various pieces of legislation that generally cover employment opportunities. However new legislation, which affects schools indirectly, have been introduced since the Belfast (Good Friday) Agreement. Section 75 and 76 of the Northern Ireland Act 1998 place three new duties on public authorities. The term public authorities in this case unlike the Human Rights Act does not include schools but those bodies which schools relate to, including the ELBs the DE, CCMS, and CCEA. Schools will have to implement any changes or developments in policy or legislation which occur as a result of sections 75 and 76.

These two sections place the following duties on public authorities (See Appendix 2 for details).

- (i) The duty to have due regard to the need to promote equality of opportunity between certain groups.
- (ii) The duty to have regard to the desirability of promoting good relations between persons of different religious beliefs, political opinion or racial group.
- (iii) It is now unlawful for public authorities to discriminate against a person on the ground of religious belief or political opinion.





Chapter 8: Key Steps for Compliance

In general, it is likely that a well-run school, which follows the DE's guidance on admissions, curriculum, special educational needs, discipline and exclusions, and the employing authorities' guidance on employment of staff, will already have policies and practices which are compatible with human rights legislation. However, the new human rights legislation means that schools and governors must now check to ensure that their policies are compliant with the Human Rights Act 1998. This also provides an opportunity for schools to consider whether they are honouring the principles espoused in the United Nations convention on the Rights of the Child.

While it is not possible to predict all areas where potential inconsistencies might arise, a general approach which involves integrating human rights principles into the way the school is managed and run will go a long way towards securing compatibility with the requirements of the Human Rights Act 1998.

There are at least 12 key steps, which school managers should take to ensure that human rights are being adhered to in their school.

Steps to be taken:

Step 1: All schools should use the Short Guide to the Human Rights Act 1998 (available from the DE) to educate staff about the importance of human rights obligations on schools.

Step 2: There should be a process established within schools for educating students about the Human Rights Act 1998.

Step 3: All schools should undertake the process of reviewing all policies and practices to ensure that they are compatible with obligations under the Human Rights Act 1998. The purpose of the review is to highlight any actually or potential incompatibilities that might exist in this regard, and to assess their impact.





Step 4: Before undertaking the review, all unwritten policies and practices should be set out in writing.

Step 5: Where the review identifies any actual or potential inconsistency between policy and practice and Convention rights, the necessity of such measures should be considered. Those incapable of reasonable justification should be amended or replaced while those deemed to constitute a legitimate interference with the rights of pupils or teachers should be reasoned in those terms.

Step 6: Throughout this process, guidance should be sought from the DE as well as more specialised human rights bodies dealing with human rights and education law generally.

Step 7: All policies, practices and procedures should be notified to people affected by them including pupils, teachers and parents. A mechanism for consulting parties affected by the relevant policies and procedures, such as pupils, teachers and parents, should be established and their views sought on how the policy or procedure may need to be changed.

Step 8: Once the review is complete, the policies should be brought to the attention of everyone affected by them, particularly where they justify interferences with Convention rights. This documentation should be made available to those affected by it in a format which they can understand to allow them to adjust their behaviour accordingly. As a matter of best practice, child-friendly versions of the school rules should be produced and made available widely to students.

Step 9: Procedures should be put in place to allow individuals to make complaints if policies or procedures conflict with human rights standards, and in particular to complain where infringements of individuals' rights occur.

Step 10: "Good practice" guidelines should be devised to ensure that any 'hearings' which may affect a child's right to education or a member of staff's employment rights should be conducted in a way that reflects respect for human rights principles.





Step 11: Boards of Governors should check their insurance to ensure that it would cover human rights litigation if necessary.

Step 12: Schools should integrate a commitment to the human rights principles set out in the European Convention on Human Rights and the United Nations Convention on the Rights of the Child into their mission statements, mottos, etc. All staff and pupils should be consulted about this.

In general, it is the approach taken to the development and articulation of policy and procedures, and their implementation, which must be compatible with the Human Rights Act 1998. This will be achieved through a thorough and meticulous review process which prioritises the Convention's principles of fairness, proportionality and reasonableness.

Further advice on these issues may be obtained through the Inter-Board Legal Service, the Human Resource Departments of CCMS and the ELBs, and the legal services of professional associations. Chapter 9 also contains a list of useful reference resources.





Chapter 9: Useful Resources

Reading Materials

- Laura Lundy, *Education Law, Policy and Practice in Northern Ireland*, SLS Legal Publications (NI) 2000.
- The Advisory Centre for Education, *Governors' Handbook*, Advisory Centre for Education, 1C Aberdeen Studios, 22 Highbury Grove, London.
- Ursula Kilkelly, *The Child and the European Convention on Human Rights*, Ashgate, 1999.
- NIHRC, Impact Leaflet, *A Guide to the Human Rights Act 1998*.
- Children's Law Centre, *Human Rights Awareness for School Managers*, available from the Department of Education.
- Human Rights Commission, *A short guide to the Human Rights Act 1998 for Schools* available from the Department of Education.

Websites

- The European Court of Human Rights website contains a database of all judgments (www.echr.coe.int). Search the HUDOC database using the simple search for a case name or subject.
- The United Nations Educational, Cultural and Scientific Organisation website (www.unesco.org) provides useful details of educational initiatives and projects ongoing worldwide as well as educational statistics, publications and links to the sites of other non-governmental agencies.





- The Department of Education website (www.deni.gov.uk) contains a large amount of statistical and other data on education in Northern Ireland. It also contains copies of recent reports and studies.
- The UK Government's Department for Education and Skills website (www.dfes.gov.uk/publications/guidanceonthelaw/dfeepub/) contains a useful guide to the Human Rights Act 1998.
- The Save the Children (UK) website (www.savethechildren.org.uk) has a section on Education, containing details of useful teaching resources and other projects.
- The Northern Ireland Human Rights Commission website (www.nihrc.org.uk) contains useful information on human rights developments and on-going projects of interest.
- The Children's Law Centre website (www.childrenslawcentre.org) contains information for children and adults on their rights, training and other initiatives.





APPENDIX 1

Extracts from the United Nations Convention on the Rights of the Child of particular relevance to education.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.





Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 28

1. States Parties recognise 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;
 - (c) make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) make educational and vocational information and guidance available and accessible to all children;
 - (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.
3. States Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agreed 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 rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - (c) the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
 - (e) 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;
 - (f) the development of respect for the natural environment.





2. No part of the present article or Article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.





APPENDIX 2

Statutory duty on public authorities.

5. - (1) A public authority shall in carrying out its functions relating to Northern Ireland have due regard to the need to promote equality of opportunity -
- (a) between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
 - (b) between men and women generally;
 - (c) between persons with a disability and persons without; and
 - (d) between persons with dependants and persons without.
- (2) Without prejudice to its obligations under subsection (1), a public authority shall in carrying out its functions relating to Northern Ireland have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.
- (3) In this section "public authority" means -
- (a) any department, corporation or body listed in Schedule 2 to the Parliamentary Commissioner Act 1967 (departments, corporations and bodies subject to investigation) and designated for the purposes of this section by order made by the Secretary of State;
 - (b) any body (other than the Equality Commission) listed in Schedule 2 to the Commissioner for Complaints (Northern Ireland) Order 1996 (bodies subject to investigation);





(c) any department or other authority listed in Schedule 2 to the Ombudsman (Northern Ireland) Order 1996 (departments and other authorities subject to investigation);

(d) any other person designated for the purposes of this section by order made by the Secretary of State.

(4) Schedule 9 (which makes provision for the enforcement of the duties under this section) shall have effect.

(5) In this section -
“disability” has the same meaning as in the Disability Discrimination Act 1995; and

“racial group” has the same meaning as in the Race Relations (Northern Ireland) Order 1997.
Discrimination by public authorities.

76. - (1) It shall be unlawful for a public authority carrying out functions relating to Northern Ireland to discriminate, or to aid or incite another person to discriminate, against a person or class of person on the ground of religious belief or political opinion.

(2) An act which contravenes this section is actionable in Northern Ireland at the instance of any person adversely affected by it; and the court may -

(a) grant damages;

(b) subject to subsection (3), grant an injunction restraining the defendant from committing, causing or permitting further contraventions of this section.





- (3) Without prejudice to any other power to grant an injunction, a court may grant an injunction under subsection (2) only if satisfied that the defendant -
 - (a) contravened this section on the occasion complained of and on more than one previous occasion; and
 - (b) is likely to contravene this section again unless restrained by an injunction.
- (4) This section does not apply in relation to any act or omission which is unlawful by virtue of the Fair Employment (Northern Ireland) Act 1976, or would be unlawful but for some exception made by virtue of Part V of that Act.
- (5) Subsection (1) applies to the making, confirmation or approval of subordinate legislation only if -
 - (a) the legislation contains a provision which discriminates against a person or class of person on the ground of religious belief or political opinion; and
 - (b) the provision extends only to the whole or any part of Northern Ireland.
- (6) Where it is alleged that subsection (1) applies to the making, confirmation or approval of subordinate legislation, subsection (2) shall not apply but the contravention may be relied upon in legal proceedings relating to the validity of the subordinate legislation.
- (7) The following are public authorities for the purposes of this section -
 - (a) a Minister of the Crown;
 - (b) any department, corporation or body listed in Schedule 2 to the Parliamentary Commissioner Act 1967 (departments, corporations and bodies subject to investigation);





- (c) any body listed in Schedule 2 to the Commissioner for Complaints (Northern Ireland) Order 1996 (bodies subject to investigation);
- (d) any authority (other than a Northern Ireland department) listed in Schedule 2 to the Ombudsman (Northern Ireland) Order 1996 (departments and other authorities subject to investigation);
- (e) the Police Authority for Northern Ireland, the Royal Ulster Constabulary and the Royal Ulster Constabulary Reserve;
- (f) the Probation Board for Northern Ireland; and
- (g) the Post Office.





Index

Admission policies:	23
Appendix 1:	38, 39, 40, 41
Appendix 2:	42, 43, 44, 45
CCTV:	27
Complaints cases:	31
Curriculum:	31
Curriculum and extra curricular activities:	31
Denial of education:	18
Detention:	25
Discipline and punishment:	23
Discrimination:	17
Dress-codes:	20
Employment law:	31
Equality of opportunity:	32
Fair hearing:	25
Freedom of expression:	28
Freedom of thought, conscience and religion:	28
Human Rights Act 1998:	11
Key Steps for Compliance:	33, 34





Lack of resources:	19
Language:	20
Obligations:	11
Parental convictions:	21
Protection measures:	24
Questioning of pupil:	26
Reading materials:	36
Regulation of education:	16
Restraining of pupil:	27
Rights protected by the European Convention on Human Rights:	14, 15
School ethos:	30
School regulations:	19
Searching of pupils:	26
Time limits:	13
United Nations Convention on the rights of the child and equality:	30
Values:	30
Victim definition:	13
Websites:	36, 37
Workings of rights protections:	31

