

# **SCHOOL AGE BILL**

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## **EXPLANATORY AND FINANCIAL MEMORANDUM**

### **INTRODUCTION**

1. This Explanatory and Financial Memorandum has been prepared by the Department for Education (“the Department”) in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. So where part of a clause does not seem to require an explanation or comment, none is given.
3. This Bill would amend the statutory definition of “compulsory school age” in Article 46 of the Education and Libraries (Northern Ireland) Order 1986 in order to permit, on the basis of parental<sup>1</sup> preference, children born between 1 April and 1 July to defer entry to primary school until they are five years old.

### **BACKGROUND AND POLICY OBJECTIVES**

4. Parents have a legal duty to educate their children and there is a legal requirement on parents to ensure that any child of compulsory school age receives full-time education. These requirements are set out in Articles 45 and 46 of the Education and Libraries (Northern Ireland) Order 1986.
5. Currently, children who turn 4 on or before 1 July will reach compulsory school age on 1 August that year. Children turning 4 between 2 July and 31 August do not reach compulsory school age until the following year when they are 5 years old.
6. This means that the youngest children in the year start primary school aged 4 years and 2 months, while the oldest start aged 5 years and almost 2 months. Children born in July, August and September are the oldest in the year group whereas those born in April, May and June are the youngest. Children who are the youngest in the class are sometimes called ‘Young for Year’ children.
7. There are, however, some parents who feel that starting school shortly after the fourth birthday is not appropriate for their child’s needs. Parents have voiced particular concerns about issues such as social skills, emotional readiness, the longer school day and

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<sup>1</sup> The term parent in this context is taken to mean a parent, guardian or carer.

independence in personal care. Parents of children born prematurely, who are also Young for Year, have raised particular concerns.

8. The law states that the parent of every child of compulsory school age must cause them to receive full-time education suitable to their age, ability, aptitude and to any Special Educational Needs (“SEN”) they may have, either by regular attendance at school or otherwise.
9. This means that if a parent chooses not to send a child to school when they reach compulsory school age, they have to make their own education arrangements outside the formal school system – for example, by home educating. This is a very important legal provision as it ensures that all children of compulsory school age receive full-time education.
10. The current law also means, however, that if parents do not wish their Young for Year child to start primary school until they are older, they have a duty to ensure the child receives a full-time education outside school. A small number of parents currently decide to home educate for one year in order to defer entry to primary school. For many families, however, home educating is not a realistic or practical option, particularly if both parents are working.
11. The Education Minister’s policy is to change the law to allow flexibility in school starting age for children in the year group born between 1 April and 1 July. Most children born between 1 April and 1 July will continue to start pre-school education in September following their third birthday and Year 1 of primary school in September following their fourth birthday.
12. However, should they wish to do so, parents of children born between 1 April and 1 July will be able to defer their entry to pre-school education and in turn primary school by 12 months. This means they would then start pre-school in September following their 4th birthday and primary school in September following their 5th birthday. This approach means children who defer will receive one year of pre-school education immediately prior to starting primary school. This provides continuity of Early Years education.
13. The School Age Bill has four main policy objectives:
  - (a) to provide flexibility so that children born between 1 April and 1 July will be able to commence primary education in September following their fourth birthday, or to defer entry to primary school until September following their fifth birthday;
  - (b) to ensure that children who defer do not reach the lower limit of compulsory school age until after their fifth birthday;
  - (c) to change the definition of the upper limit of compulsory school age for those children who defer entry to primary school so that these children will receive 12 years of compulsory education, like all other children;

- (d) to amend the regulations for pre-school admissions to facilitate deferral of pre-school education, so that children born between 1 April and 1 July are prioritised for admission to pre-school either in the year after their third birthday (as now) or, alternatively, if their parents chose to defer pre-school admission, in the school year following their fourth birthday. This will mean that children who defer have continuity of Early Years education.

## **OPTIONS CONSIDERED**

14. The Department has consulted on a range of options for how flexibility could operate. These options broadly fall into three main categories:
- Option 1: Permit an automatic right of deferral for defined groups of children who are not necessarily Young for Year but for whom it might be considered beneficial, for example, premature babies, multiple births, Children Looked After.
- Option 2: Permit discretionary deferral based on assessment of individual needs or ‘exceptional’ circumstances for any child who, in the opinion of a panel of suitable experts, would benefit from a 12-month deferral of their school enrolment.
- Option 3: Permit automatic right of deferral for all Young for Year children born between 1 April and 1 July which might also include those children listed in Option 1 whose date of birth falls within this range.
15. There were also potential hybrid options combining these options. For example, permitting an automatic right of deferral for Young for Year children, whilst allowing older children in the year group to defer based on assessment of individual need or ‘exceptional’ circumstances. Alternatively, deferral could be permitted only for certain groups of children such as premature children who are also Young for Year.
16. There is, however, no strong evidence base in support of deferral of school starting age as an effective educational intervention for children who are not necessarily Young for Year but may have additional developmental needs or SEN. The Department’s policy approach has been to ensure that all children receive support during the early years and those children at greatest risk of poor longer term outcomes with additional needs and/or SEN and/or disabilities receive additional support from the earliest possible opportunity.
17. By contrast, a policy of automatic deferral for certain identified categories of children regardless of their age within the cohort (premature, multiple births etc.), or based on an educational assessment of need, could potentially delay identification and support of additional needs or SEN. There are already arrangements in place for greater flexibility for children with statements of SEN once they are within the education system.

## **CONSULTATION**

18. The Department carried out wide-ranging engagement with key stakeholders and subsequently sought the views of all interested parties on its proposed policy for Deferral of School Starting Age through a public consultation which ran from 9 November 2021 to 4 January 2022.
19. There was a large degree of support from respondents both for more flexibility with regard to school starting age in Northern Ireland and the Department's proposals to permit deferral for Young for Year children born 1 April to 1 July. Notably, 93% of respondents strongly agreed or agreed that there should be more flexibility within the Northern Ireland education system for some children to defer school starting age. Further, 90% strongly agreed or agreed that deferral should be available on parental request to any Young for Year child born between 1 April and 1 July.
20. A copy of the Consultation Report is available at <https://www.education-ni.gov.uk/publications/deferral-school-starting-age-report-outcome-public-consultation-0>

## **FINAL POLICY**

21. Having considered the range of information and views provided through the public consultation, the Department published its final policy on Deferral of School Starting Age on 31 January 2022.
22. The Department's final policy proposals may be summarized as follows:
  - Flexibility with regard to school starting age will be available on parental request to any child born between 1 April and 1 July. This will not involve an educational assessment.
  - Children who defer will not reach compulsory school age until 1 September after their 5<sup>th</sup> birthday. This means that there would be no legal requirement for parents to provide full-time education prior to a child starting school should they choose to defer entry to Year 1.
  - Most children born between 1 April and 1 July will continue to start pre-school education in September following their third birthday and Year 1 of primary school in September following their fourth birthday.
  - However, should they wish to do so, parents of children born between 1 April and 1 July will be able to defer their entry to pre-school and in turn primary school by 12 months. This means they would then start pre-school education in September following their fourth birthday and primary school in September following their fifth birthday.

- This approach means children who defer will receive one year of pre-school education immediately prior to starting primary school. This provides continuity of Early Years education. It also means that all children, including those whose parents choose to defer, will continue to receive one year of government funded pre-school provision in their immediate pre-school year.
- Parents who wish their child to defer would usually apply to do so instead of applying for pre-school at the usual time.
- Children who defer will be treated as normal members of the school year group below their original school year and will apply for pre-school and Year 1 through the normal admissions process. They will usually remain part of their new year group throughout their time at school.
- A parent of a child born between 1 April and 1 July may also choose to decide to defer entry to primary school at a later stage – at any point prior to the child commencing Year 1. If, in such circumstances, the child has already held a government funded pre-school education place, they will **not** be prohibited from applying or obtaining a second year of pre-school education but they will not be prioritised as a child in their final pre-school year twice.
- All children in Northern Ireland currently receive 12 years of compulsory education and are permitted to leave school on 30 June following their 16<sup>th</sup> birthday. Deferred children will also receive 12 years of compulsory education and will remain of compulsory school age until the end of the academic year when they turn 17. This means they will not be permitted to leave school at the end of Year 11 mid-way through their qualification courses.

## **OVERVIEW**

23. The Bill has four clauses.

## **COMMENTARY ON CLAUSES**

### **Clause 1: Meaning of “compulsory school age”**

Clause 1 amends the definition of “compulsory school age” as set out in Article 46 of the Education and Libraries (Northern Ireland) Order 1986.

*Subsection (2)* defines “deferred case” so as to refer to a person born between 1 April and 1 July who does not begin to receive full-time education until they are five.

*Subsection (4)* provides that, in a deferred case, the child will not reach compulsory school age until 1 August after their fifth birthday. This provides the legal flexibility to permit children born between 1 April and 1 July to defer entry to primary school until the September following their fifth birthday.

*Subsection (6)* amends the upper limit of compulsory school age so that a child in a deferred case will remain of compulsory school age until the end of the academic year when they turn 17 and, therefore, will receive 12 years of compulsory education in the same way as all other children.

### **Clause 2: Consequential amendments**

*Subsection (2)* amends Article 46A of the Education and Libraries (Northern Ireland) Order 1986 so that, in a deferred case, a child will normally begin secondary education following their 12<sup>th</sup> birthday.

*Subsection (5)* amends the definition of “final pre-school year” in the Pre-School Education in Schools (Admissions Criteria) Regulations (Northern Ireland) 1999 (S.R. 1999/419) so as to enable children born between 1 April and 1 July to have the option to defer entry to a government funded pre-school education place and receive priority in the school year after their fourth birthday. The position of all other children is unchanged.

### **Clause 3: Review**

This clause requires the Department to carry out a review and prepare a report on the effectiveness of the definition of “deferred case” provided by clause 1(2). The review and report must be done within five years of the Bill coming into operation and a copy of the report must be laid before the Assembly.

### **Clause 4: Commencement and short title**

This clause provides that the School Age Bill will come into operation on the day after it receives Royal Assent.

## **FINANCIAL EFFECTS OF THE BILL**

24. There may be some very limited financial implications arising from the legislation. These will include funding for administrative costs to update the school admissions process; provision of support materials for parents to inform decision making on deferral; and commissioning academic research into the impact of deferral.

## **HUMAN RIGHTS ISSUES**

25. The Department considers that the provisions in the Bill are compatible with the European Convention on Human Rights. In developing the Bill, the Department noted that changing compulsory school age would have a positive impact on the Convention rights, in particular with respect to the right to respect for private and family life (see Article 8) and the right of parents to ensure education in conformity with their own religious and philosophical convictions (see First Protocol Article 2).

## **EQUALITY IMPACT ASSESSMENT**

26. In developing the policy and the Bill, the Department carried out an equality screening exercise. No equality issues were identified and it was thought unnecessary to conduct a full equality impact assessment. The Department is satisfied that the provisions in the Bill will not lead to discriminatory or negative differential impact on any of the section 75 groups.
27. It is expected that the changes to compulsory school age will be delivered in line with existing admissions processes and in such a way that supports equality of opportunity and social inclusion.

## **SUMMARY OF THE REGULATORY IMPACT ASSESSMENT**

28. The effects of the Bill have been assessed and it has been concluded that its provisions will not result in savings for, or costs to, businesses, charities, social economy enterprises or voluntary bodies.

## **LEGISLATIVE COMPETENCE**

29. At Introduction the Minister for Education, Michele McIlveen, had made the following statement under section 9 of the Northern Ireland Act 1998:

*“In my view the School Age Bill would be within the legislative competence of the Northern Ireland Assembly.”*