

**Department of Education**  
**Integrated Education Private Member's Bill**  
**Written evidence to the Committee for Education**  
**22 September 2021**

The Department's overall position remains as stated by Michelle McIlveen MLA, Minister of Education in the second stage debate of 6 July 2021. Namely that, whilst we can all subscribe to the vision of children educated together, effective and lasting change must evolve. The forthcoming Independent Review of Education provides the opportunity to strategically assess education design and delivery, consider examples of best practice, gather evidence, and, importantly, listen carefully to the voices of all stakeholders. This is with a focus on securing greater efficiency in delivery costs, raising standards, access to the curriculum for all pupils, and the prospects of moving towards a single education system.

The Integrated Education Private Member's Bill – the Bill – pre-empts the Independent Review of Education. However, the Department's concerns with, the Bill are significant and widespread, even without the Independent Review of Education. These concerns include the drafting which is contradictory and would – if the Bill became law – only be capable of clarity through legal challenge i.e. Judicial Review. This would not only incur significant cost to the public purse, but also reduce the Department's ability to deliver its corporate and strategic objectives as staff time will be diverted, on a potentially large scale, to responding to such Judicial Reviews.

The Education budget is finite and is under continued pressure. Many specific aspects of this Bill require additional funding – and you are aware of the challenging budgetary position the Department faces. Many specific impacts of this Bill, whether intended or unintended, will make further additional and significant demands on this finite budget. It is difficult to ascertain where this additional funding will be found to meet these demands without potentially compromising other education priorities.

**Definitions of integrated education and integrated school**

The Bill seeks to redefine integrated education [clause 1], define the purpose of this [clause 2] and, provide a new definition for an integrated school [clause 1 (2)].

The Department has a range of concerns in relation to these matters.

The current legal definition of integrated education is set out in Article 64 of the Education Reform (Northern Ireland) Order 1989 – the 1989 Order. This states that integrated education is: “the education together at school of Protestant and Roman Catholic pupils.”

An integrated school has, until this point, been a specific legal entity i.e. one defined and constituted in law as a grant maintained or controlled integrated school under the 1989 Order. The Bill proposes to define an integrated school as one which

intentionally promotes, protects and improves an ethos of diversity, respect and understanding between those of different cultures and religious beliefs and of none, between those of different socio-economic backgrounds and between those of different abilities. This proposed change would allow any school to potentially meet the definition of an integrated school and reduces legal clarity in the definition of an integrated school.

The Bill is silent on the very real impact it would have on existing integrated schools. In reality it places a conflict between the definition in the Bill and the existing statutory requirements for controlled integrated schools in particular, of which there are 30. An integrated school has, until this point, been a specific legal entity i.e. one defined and constituted in law as a grant maintained or controlled integrated school. An “integrated school” for the purposes of the Bill has a definition that goes much wider than a grant-maintained or controlled integrated school. Additionally the Bill has the potential to mean that existing integrated schools will lose their integrated status as they may not meet the definitions it sets out. The Bill amends certain existing statutory provisions but not others, with a resultant impact of conflict with existing legislation, confusion for existing integrated schools, and schools that will be in a position to argue they meet the definitions of the Bill and are therefore integrated schools. Should the requirements to promote, plan for, and meet demand for a place in an integrated school also come into operation this has the logical potential for many schools to claim integrated status without changing any current practice. In effect, as the Minister clearly stated during the second stage debate, serving to dilute what integrated education has meant since its inception. Legally the Department will have no power to act to prevent this.

It is not clear from the drafting whether the impact of the Bill will be that any school which argues that it meets the proposed definition could ask to be re-designated as an integrated school without going through the current Transformation process that includes a Development Proposal. The Development Proposal process includes consultation with other affected schools in an area. Re-designation does not.

All schools have a mix of children from different socio-economic backgrounds and a great many schools of all types have a significant number of children on Free School Meals. Similarly, all primary schools are ‘all ability’. Consequently, these elements of the definition would potentially apply to a wide range of education. It seems that a school that is entirely single identity is capable of being an integrated school within the meaning of the Bill. Preliminary advice suggests that, one effect of the Bill could, for example, leave an integrated school which streams its pupils – common practice at post-primary level either before or after entry to the school– open to legal challenge from a parent on the basis it is not educating those of different abilities together. These types of impact will apply in law whether this is the intention of the Bill or not.

### **Requirement to consult**

The Bill seeks to require the Department to consult with “any body” which includes in its objectives the provision of support and advice to the Department in its promotion of integrated education when it is exercising **any function** [clause 3], **including in**

## **respect of decisions which have no bearing whatsoever on integrated education.**

This is of particular concern in relation to the appropriateness of this requirement regarding sensitive matters, issues of confidentiality, timeliness, conflicts of interest, lack of information about managing situations where e.g. such a body takes a different or opposing view to the Department.

The statutory Development Proposal process includes a statutory two-month objection period during which anyone can make their views known to the Department. The Department does not consult with any specific group in relation to Development Proposals in line with previous advice and judgements. However, the impact of the Bill places a wide consultative duty on the Department which, for the purposes of Development Proposals would result in the promotion of the views of that particular consultee over all others.

The Explanatory and Financial Memorandum sets out the view that this body could be the Northern Ireland Council for Integrated Education (NICIE). NICIE has 10 FTE staff with very committed work plans. In addition to concerns about the appropriateness of clause 3, the Department has significant concerns about NICIE's capacity to undertake this consultation role should such a requirement become law. This requirement is potentially open to challenge from other ALBs as it significantly elevates the role of NICIE.

## **Promotion of integrated education**

The Bill seeks to require the Department to promote integrated education [clause 4], defining what it means by this [clause 5]. This wording intentionally replicates the Shared Education (Northern Ireland) Act 2016. However Shared Education is a programme, open to all schools in all sectors. Integrated education is not a programme; it is a sector.

Currently the Department does not promote one sector over another. Encouragement and facilitation enable actions to be taken for the integrated sector that do not have to be taken for other sectors, and the [Education Order \(Northern Ireland\) 1997](#) provides that parents be allowed to express a preference for the school they wish their child to attend. Current policy and practice already facilitate increases e.g. through the temporary variation process, to integrated schools based on availability of alternative places **in the integrated sector only**.

The Bill is also silent on the current operation of the temporary variation process, whereby a school requests this for the pupil/s next in line for a place according to the admissions criteria determined by its Board of Governors. The Bill appears to require the Department to meet all parental demand for integrated education with no reference or definition as to what is meant by 'parental demand' and, furthermore, no recourse for the integrated school as to how it manages any increase in pupil numbers.

For the Department to invest in the promotion of integrated education in the way required by the Bill it is likely this will be at the expense of other sectors. Meeting the

demand for integrated education in the unfettered way required by the Bill will negate any considerations of:

- cost to the public purse;
- physical capacity of an integrated school to facilitate more pupils;
- associated capital demands;
- teaching complement of an integrated school;
- SEN provision;
- quality of education in an integrated school;
- timely implementation of the Sustainable Schools' Policy through the current Area Planning process, structures and guidance;
- addressing existing spare capacity across the education estate;
- transport provision;
- the effective and efficient provision of education to pupils;
- long-term impact on enrolment for other local schools; and
- high probability of sustained legal challenge.

From an Area Planning perspective, in particular, this suggestion would require the Area Planning process to be completely reviewed and existing area planning procedures and structures to be completely overhauled. If policy changed - and depending on timing - this would provide a major and unmanageable risk that the next Strategic Area Plan (SAP2) which is currently under development and due to commence in September 2022 would be derailed, as its underpinning priorities, processes and guidance would all need reviewed and revised.

The effect of change on this scale will be a major disruption to the provision on sustainable education provision, with children and young people continuing to be educated in unsustainable schools. It will also cut across the priorities set by the Minister in her written statement to the Assembly, curtailing the collaborative and innovative solutions she has tasked the managing authorities and sectoral body representatives to bring forward.

Area planning involves all bodies involved in planning for education provision here, good work has been done to make Area Planning more agile, flexible and responsive to create momentum in getting to the vision that all children have access to high quality education in a school which is sustainable. To elevate one sector above all others could be detrimental to the dedicated work by all bodies which serve in the best interests of children across all sectors.

### **Other education bodies**

The Bill seeks to require – specified – education bodies to include provision for integrated education when developing, adopting, implementing or revising policies, strategies and plans, as well as when designing and delivering public services [clause 6]. The specified education bodies [clause 13] are:

- The Department of Education;
- The Education Authority (EA);
- The Council for Catholic Maintained Schools (CCMS);

- The Northern Ireland Council for Curriculum, Examinations and Assessment (CCEA); and
- The Youth Council for Northern Ireland (YCNI).

CCMS is legally constituted to:

- “advise the Department - - on such matters relating to Catholic maintained schools as the Department - - may refer to the Council or as the Council may see fit;
- promote and co-ordinate, in consultation with the trustees of Catholic maintained schools, the planning of the effective provision of Catholic maintained schools;
- promote the effective management and control of Catholic maintained schools by the Boards of Governors of such schools; and
- with the approval of the Department, provide or secure the provision of such advice and information to the trustees, Boards of Governors, principals and staff of Catholic maintained schools as appears to the Council to be appropriate in connection with the Council's duty ---;”.

The Bill is silent on how CCMS is intended to deliver its core statutory functions for the maintained sector – for which it is funded – alongside a requirement to include provision for integrated education. This would include any Development Proposals CCMS sought to bring forward or comment on.

The Bill is silent on what impact it envisages having on e.g. curricular support documentation, examination specifications and regulatory functions, end of key stage assessment requirements in relation to CCEA including provision for integrated education.

The Bill is also silent on how the EA is meant to e.g. manage an open and transparent Area Planning process, provide SEN, newcomer, admissions, transport services whilst including provision for integrated education.

It should also be noted that YCNI is not currently operational.

### **Presumption of an integrated school**

Clause 7 is of significant concern. This seeks to require a presumption of an integrated school – within the meaning given by the Bill – being established in any situation where a new school is being planned. In preventing the Department from considering the religious demographics of an area or spare places in existing schools, the Bill prevents the Department from having any due regard to the choices made by the people living in an area - including those influencing their choice of school. The Development Proposal process allows for all voices to be heard and views to be expressed. The Bill serves to silence those voices by presuming that all new schools would be integrated. The logical impact of this will be increased Judicial Reviews reflecting the impact on all other sectors that are not integrated.

The Department does not at present have any specific duty to ensure that there are ‘sufficient places’ of any particular type of school (although a more specific duty applies to the Education Authority under Article 6 of the 1986 Order). This new duty,

applicable to both the Department and the EA, will undoubtedly have an impact in terms of both the development and consideration of Development Proposals for new or existing schools, as well as in respect of the wider, connected matter of Area Planning.

Currently any significant change in the characteristic of a school, or which would have a significant effect on another grant-aided school, requires a Development Proposal under [Article 14](#) of the Education and Libraries (Northern Ireland) Order 1986. The move to a presumption of integrated status is set out with no such requirements.

The Bill would require the EA to ensure that demand for integrated education is met. There is no equivalent duty, e.g., to ensure that there are sufficient places at Catholic maintained schools or controlled schools to actually meet the demand for such places. Again preliminary advice confirms that the duty to provide sufficient integrated schools to meet demand is not curtailed by considerations for public expenditure, unlike every other sector. It is also clear that this requirement to meet demand in this way could conceivably operate to the detriment of parental preference over time by reducing the availability of other types of school. The Bill is silent on the definition of parental demand.

### **Integrated education strategy**

The requirements underpinning the preparation and laying of an integrated education strategy [clause 8] and associated bi-annual reporting [clause 9] draw on the Shared Education (Northern Ireland) Act 2016 without recognising that integrated education is very different. These are all matters which will impact on Area Planning policy, and in Area Planning terms two years is a relatively short time. It is not therefore evident how these reports would be helpful in practice, or indeed how merely counting activity would provide evidence of robust policy making a difference to the educational experiences of children and young people.

Under the Draft Programme for Government and the New Decade, New Approach agreement there is a commitment to an outcomes based approach which (while recording quantity and quality of effort – how much did we do? How well did we do it?) has its main focus on quantity and quality of effect - is anyone better off? What is put forward here would focus minds on activities without looking to the ‘customer’ - i.e. children, parents, schools / staff and communities - outcomes.

### **Other clauses**

Clause 10 requires the Department to make Regulations and sets out requirements that may be included. These requirements reflect those that are already covered throughout the primary legislation. The Department sees no merit in having to make Regulations which may have little or no additional content or context to add. It should also be noted that this clause provides a power for primary legislation to be amended via subordinate legislation. The Department questions the rationale for such an approach.

Clause 11 contains an incorrect reference to the section under which Regulations would be made. The reference to any public authority with functions relating to

education creates a wide requirement for circulation of guidance – and has the potential to include, for example, health and social workers who are engaged with some of the most vulnerable children and young people in the education system.

Clause 12, for example, contains an incorrect reference to the section under which a presumption of a new school being an integrated school would be required.

### **Conclusion**

In conclusion, the Department has significant concerns about the impact of the Bill which it considers goes well beyond the remit of integrated education; considers such impact is magnified by drafting that serves to create conflict within its own clauses and with existing legislation; and reiterates the view that the Independent Review of Education is the appropriate means to consider and effect change in the education system.