

Addressing Bullying in Schools Bill (Bill 71/11-16)

Equality Commission Evidence Submission (Committee Stage)

Key point briefing:

We welcome progress in the implementation of the Bill, which has the potential to make significant improvements in preventing and addressing bullying in schools.

We are keen to ensure that the protection provided by the new legislation has an impact upon Section 75, groups including groups such as gay or lesbian pupils, Trans pupils, pupils with SEN or a disability and BME pupils including Irish Travellers

Definition

- We support the proposal to introduce a common definition of bullying as it will ensure a more consistent approach across schools to tackling bullying.
- We note however, the importance of provisions being made to take account of more than 'intentional' and 'repeated' acts, and note language from the anti-discrimination laws regarding any acts which have the "*purpose or effect of*".

Duty to Secure Measures to Prevent

- We welcome the duty on Boards of Governors to secure measures to prevent bullying.
- We suggest however that a focus on bullying "involving" pupils registered at a school may provide wider coverage (e.g. inter school) than the current focus on bullying "among pupils" registered at the school.
- We recommend that the provisions for review of measures include a provision for a review after a specified period, to ensure the effectiveness of measures.
- We stress the importance of Schools going beyond providing copies of a 'written statement of measures' to actually promoting awareness of the existence, content and intent of the policy and procedure within the schools; and respective roles, responsibilities and expected behaviours
- We recommend that in support of the policy-making role of Boards of Governors, that the Department provides guidance on this role and that school management bodies provide training to facilitate effective implementation.
- We recommend that the review of measures produced by Boards of Governors to tackle bullying, should be time bound, to provide certainty and support the effectiveness of the legislation.

Duty to Record Incidents

- The Commission supports the Department's proposal to introduce a requirement for all grant-aided schools to centrally record complaints of bullying behaviour, including motivating factors behind the bullying and outcomes.
- We suggest the recording of motivating factors should comprise a primary factor and associated ones, to allow coverage of multiple identities.
- We note that the list of 'Motivations' set out in 3(3) moves beyond the broader definition of bullying set out in 1(1). The Department may wish to explicitly clarify, via the Bill or associated Guidance, that the definition in 1(1) covers groups and motivations wider than the indicative list set out at 3(3).
- In relation to categorisation of the motivating factors, we suggest that consideration is given to the inclusion of:
 - Community background.
 - Dependents
 - Gender identity (rather than gender reassignment).
 - That the Race heading also explicitly includes Roma and Irish Travellers.
- We also note the potential to include wider categories such as: Asylum seeker; refugee; free school meal entitlement; and social class.
- Finally, we note that the Bill may benefit from the inclusion of review provisions to ensure the effectiveness of the legislation, with a review scheduled to occur after a fixed period (e.g. 5 years)



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Introduction

The Commission welcomes progress in the implementation of the Act, which has the potential to make significant improvements in preventing and addressing bullying in schools.

The need to tackle the high incidence of prejudice based bullying, both within schools and the wider community is a key challenge for Government and has been recognised as such by the international treaty bodies, such as UNCRC Committee, CEDAW Committee an CERD Committee and the Advisory Committee on the Framework Convention on National Minorities. Findings from 2012 research supported by the Commission noted that whilst all schools were required to have an anti-bullying policy in place, it appeared that information on the content of each policy (for example, the range and types of bullying covered) and the number of bullying incidents recorded under each policy was not routinely collected or considered.¹

As highlighted in our recent draft statement on Key Inequalities in Education², a number of equality groups are more vulnerable to bullying, or more likely to be bullied, in schools, including: Trans pupils, minority ethnic students, students with SEN or a disability, and students with same sex attraction. For example,

- the 2013 Grasping the Nettle³ report found that transphobic bullying is a significant problem in schools settings and: ‘such experiences left young people feeling profoundly isolated to the extent that they suffered depression, self harmed and had suicidal thoughts’. Research by Whittle et al (2007) on transphobic bullying in Great Britain found that 64% of young Trans men and 44% of young Trans women experience harassment or bullying at school.
- Minority ethnic students report racist bullying in school and research has noted the impacts on academic success⁴. Research from Queen’s University Belfast in 2013 found that the most negative experiences of education were encountered by Irish Traveller children⁵. Research by

¹ ECNI 2012 [Indicators of Equality and Good Relations in Education](#)

² [ECNI 2015 Draft Statement on Key Inequalities in Education](#)

³ McBride, RS 2013 [Grasping the Nettle: The Experiences of Gender Variant Children and Transgender Youth Living in Northern Ireland](#), Belfast: Institute for Conflict Research

⁴ RSM McClure Watters (2011) [The Nature and Extent of Pupil Bullying in Schools in the North of Ireland](#)

⁵ Biggart, A. et al. (2013) [A need to belong?: The prevalence of experiences of belonging and exclusion in school among minority ethnic children living in the 'White hinterlands'](#),

NICEM⁶ (2011) suggested that a barrier to addressing bullying in schools is that schools tend to lack knowledge of how to effectively confront the issue of racist bullying and may in some cases have difficulty acknowledging that a problem exists.

- DE research (2010) on the nature and extent of bullying in Northern Ireland Schools found that ‘there is evidence that disabled children and young people are more vulnerable to bullying’⁷. A report by the ELBs (2010) also indicates that there is a clear link between the incidence of bullying and SEN⁸.
- The limited quantitative data available, which reflects findings within literature, and from qualitative data, demonstrates that young people who report same sex attraction are more likely to be bullied in school than their peers who report opposite sex attraction only. Research by Queen’s University⁹ (2013) highlights that there appears to be reluctance by schools in Northern Ireland generally to address homophobic bullying with the same rigour as other forms of bullying.

We are keen to ensure that the protection provided by the new legislation has an impact upon Section 75, groups including groups such as gay or lesbian pupils, Trans pupils, pupils with SEN or a disability and BME pupils including Irish Travellers.¹⁰ Prejudice-based bullying at school can blight the lives of many young people, negatively affecting attendance, attainment and having a long-term impact on their life chances. We are of the view that identity based bullying will be most effective if it is dealt with in a range of ways throughout the school (‘a whole school approach’). This should include addressing and exploring prejudicial attitudes and identifying issues proactively through the curriculum in an age appropriate way.

Our comments below follow the order as set out in the Bill, and reaffirm where relevant our consultation response from February 2015¹¹. We note that a number of recommendations made in our response to the Consultation have not been adopted into the Bill and so include relevant comments here also.

⁶ NICEM (2011) [Promoting racial equality in NI post primary schools](#),

⁷ RSM McClure Watters (2011) [The Nature and Extent of Pupil Bullying in Schools in the North of Ireland](#)

⁸ Northern Ireland Education and Library Boards (2010) [It’s Good to Listen – Experiences of Pupils with Special Educational Needs](#)

⁹ Queen’s University Belfast (2013) [Education reform in Northern Ireland: A Human Rights Review](#)

¹⁰ [Burns et al 2015 Education Inequalities in Northern Ireland](#)

¹¹ [ECNI 2015 Response to Consultation on 'Addressing Bullying in Schools'](#)

<i>Text from the Bill</i>	<i>Equality Commission comment</i>
<p>Definition of “bullying”</p> <p>1.—(1) In this Act “bullying” includes—</p> <p>(a) the repeated use of a verbal, written or electronic communication or a physical act (or a combination of those),</p> <p>(b) by a pupil or a group of pupils,</p> <p>(c) against another pupil or group of pupils,</p> <p>(d) with the intention of causing physical or emotional harm to that pupil or group of pupils.</p> <p>(2) For the purposes of subsection (1), “act” includes “omission”</p>	<ol style="list-style-type: none"> 1. We support the proposal to introduce a common definition of bullying as it will ensure a more consistent approach across schools to tackling bullying. (Para 3.1 of ECNI response to consultation) 2. We note that it is proposed that bullying is to be defined as ‘repeated’ acts or omissions and therefore isolated incidents of aggressive behaviour would not meet the definition. Pupils can experience isolated incidents of prejudice-based aggressive behaviour that, although one-off incidents, can be demeaning, humiliating and very upsetting. It is important that, if dealt with these are also accurately recorded, including the nature, motivation and outcome. We recommend that provisions are made to ensure these are dealt with, either via this Bill, or via means such as the school’s discipline policy (as appropriate). (Para 3.9 and 3.10 of ECNI response to consultation) 3. Whilst we note that it is also proposed that the definition of bullying should only cover ‘intentional’ acts or omissions, consideration should be given to encouraging schools to proactively addressing wider acts that can cause harm, fear or distress to pupils covered by the Section 75 groups. For example, pupils may use homophobic or disabilist terms without the intention of causing harm or distress, or realising that their comments are inappropriate, but which cause distress to the recipient of the comments (Para 3.11 of ECNI response to consultation) 4. We draw attention to the approach used in anti-discrimination legislation (for example Article 6A of the Sex Discrimination (NI) Order 1976) which includes a focus on acts which have the “purpose or effect of” (our

	<p>emphasis) violating dignity.</p>
<p>Duty of Board of Governors to secure measures to prevent bullying</p> <p>2(1) The Board of Governors of a grant-aided school must —</p> <p>(a) ensure that policies designed to prevent bullying among pupils registered at the school are pursued at the school;</p> <p>(b) determine the measures to be taken at the school (whether by the Board of Governors, the staff of the school or other persons) with a view to preventing bullying involving registered pupils at the school—</p> <p>(i) on the premises of the school during the school day;</p> <p>(ii) while travelling to or from the school during the school term; or</p> <p>(iii) while the pupil is in the lawful control or charge of a member of the staff of the school;</p> <p>(c) review those measures—</p> <p>(i) from time to time; and</p> <p>(ii) (without prejudice to sub-paragraph (i)) at such times as the Department may direct;</p> <p>(d) before determining or revising those</p>	<p>5. We welcome the duty on the Board of Governors to secure measures to prevent bullying.</p> <p>6. We note that S2(1)(a) refers to bullying “<i>among</i> pupils” registered at the school (our emphasis). We suggest that the wording at S2(1)(b) bullying “<i>involving ...</i> pupils” registered at the school (our emphasis) is used to broaden the scope (and/or make clear the focus) of the legislation as including acts against pupils from other institutions.</p> <p>7. We recommend that a review also occurs after a specified period (either via specification in this Bill, or direction from the Department) to ensure the effectiveness of measures and support the implementation of the legislation</p>

<p>measures, consult (in such manner as appears to it to be appropriate) the principal and the registered pupils at the school and the parents of those pupils</p> <p>(e) in determining or reviewing those measures, have due regard to any guidance given by the Department;</p> <p>(f) prepare a written statement of such measures and secure that—</p> <p>(i) a copy of that statement is given or otherwise made available, free of charge and in such form as the Board of Governors considers appropriate, to the parents of all registered pupils at the school and to the staff of the school; and</p> <p>(ii) copies of the statement are available for</p>	<p>8. We suggest that Section 2(e) (or similar) could mirror the format of Section 3(4) in relation to conveying the power on the Department to publish guidance as to how a Board of Governors is to comply with the duties set out under this section of the Bill.</p> <p>9. It is recommended that the supplementary guidance which the Department intends to produce, provides specific guidance to schools, including Governors and the senior management team on the role they will play. (Para 5.4 of ECNI response to consultation)</p> <p>10. We also recommended that this guidance encourages schools to consider the views of pupils’ parents, carers and staff, as well as Section 75 groups, when implementing, monitoring and reviewing bullying policies and practices. (Para 4.12 of ECNI response to consultation)</p> <p>11. We recommend that in support of the policy making role of Boards of Governors, the Department provides guidance on this role and school management bodies provide training to facilitate effective implementation.</p> <p>12. We stress the importance of promoting awareness of the existence, content and intent of the policy and procedure within the schools; and respective roles, responsibilities and expected behaviours (Para 5.9 of ECNI response to consultation)</p>
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<p>inspection at the school at all reasonable times, free of charge and in such form as the Board of Governors considers appropriate; and</p> <p>(g) secure that such measures are taken</p> <p>(2) Directions under subsection (1)(c)(ii) may be given— (a) in relation to grant-aided schools generally; (b) in relation to a class or description of grant-aided school; or (c) in relation to any particular grant-aided school or schools.</p> <p>(3) In Article 3(3)(a)(ii) of the Education (Northern Ireland) Order 1998 (duty of the principal to determine measures) omit the words “and, in particular, preventing all forms of bullying among pupils”.</p>	<p>13. We are of the view that identity based bullying will be most effective if it is dealt with in a range of ways throughout the school (a ‘whole school approach’). This should include addressing and exploring prejudicial attitudes and identifying issues pro-actively through the curriculum in an age-appropriate way. (Para 5.11 of ECNI Response to consultation)</p>
<p>Duty to keep a record of incidents of bullying</p> <p>3.(1) The Board of Governors of a grant-aided school must ensure that a record is kept of all incidents or alleged incidents of bullying involving</p>	<p>14. The Commission supports the Department’s proposal to introduce a requirement for all grant-aided schools to centrally record complaints of bullying behaviour, including motivating factors behind the bullying and outcomes. (Para 4.1 of ECNI response to consultation)</p>

<p>a registered pupil at the school that occur —</p> <ul style="list-style-type: none"> (a) on the premises of the school during the school day; (b) while travelling to or from the school during the school term; or (c) while the pupil is in the lawful control or charge of a member of the staff of the school. <p>(2) A record under subsection (1) must—</p> <ul style="list-style-type: none"> (a) state what, from all of the circumstances, appears to be the motivation of the incident; and (b) include information about how the incident was addressed. <p>(3) For the purposes of subsection (2)(a), motivation may include—</p> <ul style="list-style-type: none"> (a) age; (b) disability; (c) gender reassignment; (d) marriage; (e) political opinion; (f) pregnancy; (g) race; (h) religion or belief; (i) sex; (j) sexual orientation. 	<p>15. The Commission is of the view that recording incidents of bullying will assist the Department and schools in understanding the magnitude, motivations and impact of bullying and to track trends over time and design interventions and policies. (Para 4.12 of ECNI response to consultation)</p> <p>16. At Section 3(2)(a) we suggest the recording should comprise a primary motivating factor and any other associated motivating factors, to ensure consideration of multiple identities.</p> <p>17. The Commission welcomes Section 3(3) which lists the motivating basis for prejudice-based bullying. The Commission has to date, for example advocated that the 'Department considers placing a duty on schools to record disaggregated data on incidents of racist bullying in order to improve their understanding of, and responses to it.¹² The Commission considers that such information is crucial since without this baseline data it is impossible for schools to either know the extent of prejudice-based bullying or be able to monitor the impact of their interventions.</p> <p>18. We note that the Categories set out in 3(3) moves beyond the broader definition of bullying set out in 1(1). The Department may wish to explicitly clarify, via the Bill or associated Guidance, that the definition in 1(1) covers groups and motivations wider than the indicative list set out at 3(3).</p>
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¹² ECNI, May 2014, [Promoting Racial Equality – Priorities and Recommendations](#),

	<p>19. We note that the motivations set out in 3(3) approximate, but do not replicate Section 75 categories. We make the following comments:</p> <p>20. Consideration could be given to the inclusion of ‘community background’ in the list of motivations. Firstly, the motivation may not be expressly linked to an actual ‘religious belief’ or ‘political opinion’, but actually the community background of the individual. Secondly, in some cases, there may be potential difficulties in ascribing a religious belief or political opinion to children and young people. Further, in light of the increasing numbers of people from a Protestant community background describing themselves as having no religious belief, this terminology may be more reflective of identity in our society¹³.</p> <p>21. We note the inclusion of pregnancy, but not of having ‘dependents’. This would ensure coverage of young parents and carers.</p> <p>22. In light of the potentially early stage of transition of pupils, it is suggested that the term ‘gender identity’ may be more fitting than ‘gender reassignment’. Gender reassignment is defined in the Sex Discrimination (NI) Order 1976, as amended as: ‘<i>a process which is undertaken under medical supervision for the purpose of reassigning a person's sex by changing physiological or other characteristics of sex, and includes any part of such a process.</i>’¹⁴ This definition may not include Trans pupils who may be subject to bullying as a result of their gender identity.</p> <p>23. We recommended that the race category is further broken down by Roma and Irish Traveller. Consideration could also be given to further breakdowns as appropriate.</p> <p>24. Although the list at Section 3(3) is not exhaustive, we suggest that this is made clearer. We further suggest that the list of motivations could include</p>
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¹³ [Shuttleworth and Doebler \(2014\) Religion and national identity in Northern Ireland.](#)

¹⁴ Article 2(2)

<p>(4)The Department may from time to time publish guidance as to how a Board of Governors is to comply with the duty to keep a record under this section; and in complying with the duty under this section a Board of Governors must have due regard to any guidance for the time being published under this subsection.</p> <p>(5) In subsection (3)— “disability” has the same meaning as in the Disability Discrimination Act 1995; “gender reassignment” has the same meaning as in the Sex Discrimination (Northern Ireland) Order 1976.</p>	<p>a wider set of indicative motivations, such as asylum seeker; refugee; free school meal entitlement; and social class.</p> <p>25. We reiterate our recommendation that any duty placed on schools should include appropriate safeguards to encourage schools to be open about reporting incidents of bullying. (Para 4.12 of ECNI response to consultation)</p> <p>26. We note that the Bill does not explicitly include detail as to how schools report to the Department on the incidents of bullying that they have recorded (or how they will use the information generated from the IT system), or how their anti-bullying policy has been implemented. Guidance as to how this is intended to operate, how the Department will ensure compliance and publish the information would be welcome.</p>
<p>Interpretation</p> <p>4.(1) In this Act— “the Department” means the Department of Education;</p> <p>“pupil”, when used without qualification, means a person of any age for whom education is provided under the Education Orders except a</p>	

<p>person for whom education is provided by a nursery school.</p> <p>(2) Other words or expressions which are defined in Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986 have the same meaning in this Act as in that Order.</p> <p>Short title and commencement</p> <p>5.—(1) This Act may be cited as the Addressing Bullying in Schools Act (Northern Ireland) 2015.</p> <p>(2) This section comes into operation on the day after this Act receives Royal Assent.</p> <p>(3) The other provisions of this Act come into operation on such day or days as the Department may by order appoint.</p>	<p>27. The Bill may benefit from the inclusion of review provisions to ensure the effectiveness of the legislation, with a review scheduled to occur after a fixed period (e.g. 5 years)</p>
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