



Department of
Education

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AN ROINN

Oideachais

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Your ref: 2406

7 December 2015

Dear Peter

SHARED EDUCATION BILL

Your correspondence of 2 December refers.

Compliance with Human Rights Legislation

The Department has extensively considered the practical implications in referencing all Section 75 groups in the legislative definition, including the significant additional administrative burden that this would place on schools, youth and early year's settings. At present, data on all S75 categories is not collected at an individual pupil level.

The Department's overriding concern relates to the potential exclusion of a number of schools, youth and early years settings, particularly those which are small and in rural areas, being able to satisfy the legislative definition if it referenced all S75 categories. Account has also been taken of the different starting points of educational settings and the Department wishes to ensure all relevant educational settings are able to deliver Shared Education in a way that broadens and deepens the learning opportunity. It is as a direct consequence of the challenging demands referencing all S75 categories would place on education settings which led to DE's determination that the legislative definition needed to be restricted to religious belief and socio-economic deprivation.

Consequently we have set out the Bill the minimum essential requirements for Shared Education. This does not prevent settings from educating together children and young people of different race, sexual orientation, disability, gender, etc through

Shared Education. Indeed the Sharing Works policy, supported by the continuum framework, sets out the Department's expectation that Shared Education will broaden and deepen to include other S75 groups relevant to the individual setting.

Case law quoted in the NIHRC's written evidence indicates that limiting the categories is acceptable providing there is "*reasonable and objective justification*". DE is of the view that such justification is applicable for the following reasons:

- Article 2 of the First Protocol of the European Convention on Human Rights guarantees a right to education. The legal definition of Shared Education places no limitation or restriction on that right;
- Shared Education reflects a particular mode of delivering education, it has its genesis in the historical divisions and conflict in the North of Ireland;
- the definition is evidence based;
- the legislative definition must reflect a workable, achievable and purposeful definition. There is little point in providing a legislative definition which would be non-viable or merely aspirational in practice. Accordingly, the legal definition represents minimum characteristics, "the core components";
- Shared Education is not denying any of the groups mentioned in S75 a right to Shared Education, those groups are not however being singled out for explicit mention. It is self evident that children and young people of different beliefs will additionally fall within at least two, (if not more), of the other S75 categories, e.g. age, gender etc;
- "Education at a grant-aided school" as outlined in clause 1(3)(b) of the Bill, includes education at a special school. The definition therefore includes within its sphere education together of "persons with a disability and those without";
- it would be neither suitable nor appropriate to include reference to the marital status, sexual orientation, dependents of children, who could be children as young as 2 years old, (as per the definition of pre-school education which is encompassed at clause 1(3)(b) of the Bill);
- schools do not collate or record information at pupil level regarding sexual orientation or political orientation of children. This is potentially sensitive information which parents and or children and young people do not want to be divulged. Similar considerations apply in relation to children and young people who have children. Children and young people, as well as parents/carers, may not wish such sensitive information to be widely disseminated.

The NIHRC's written evidence to the Committee makes clear that "*Human Rights law is not prescriptive about how this should be delivered rather it focuses on outcomes*". The outcome is to build upon solid foundations already established in NI, to raise educational standards and reduce underachievement.

The Committee may wish to note that the NIHRC did not respond to the public consultation but at their request, officials met with representatives after the consultation closed. At that stage they outlined concerns in respect of the Bill not referencing all S75 groups and at official's request agreed to detail these in writing. Despite a number of follow-up requests, the Department has not received any formal response from NIHRC. The Department remain open to engagement with NIHRC.

Further Education Colleges

Regarding Further Education Colleges, these are non-sectoral, attracting those of different religious belief and socio-economic status and are outside the scope of DE. Engagement is limited to schools, and almost exclusively post-primaries in respect of the entitlement framework. The Bill as currently drafted would not preclude an FE college engaging with schools in a partnership. Consequently there has not been any engagement with the Department of Employment and Learning. However, along with other Executive Ministers, the DEL Minister had early sight of both the policy and Bill.

Yours sincerely

Russell

RUSSELL WELSH
Departmental Assembly Liaison Officer



Northern Ireland
Assembly

Committee for Education

Russell Welsh
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2 December 2015

Our Ref:2406

Dear Russell

Shared Education Bill

At its meeting on 2 December 2015, the Committee for Education heard oral evidence from the Council for Catholic Maintained Schools; the Northern Ireland Human Rights Commission (NIHRC); the Equality Commission; the Northern Ireland Commissioner for Children and Young People (NICCY); the Rural Centre for Shared Education; and the Transferors' Representative Council as part of the Committee Stage of the Shared Education Bill.

In oral evidence, representatives from NIHRC indicated that they believed that as a consequence of the Department's decision to not include a wider range of Section 75 groups in the definition of Shared Education in the Shared Education Bill, the Bill was not compliant with human rights legislation.

The Committee agreed to write to the Department seeking commentary on the above.

Committee for Education

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The Committee also noted a suggestion by NICCY that the Department for Employment and Learning be included in the listed bodies in Clause 2 in order to ensure the participation of Further Education Colleges in Shared Education.

The Committee agreed to write to DE seeking information on any discussions that it has had with the Department for Employment and Learning in respect of the participation of Further Education Colleges in Shared Education and the inclusion of DEL in the listed bodies in the Bill.

A response at your earliest convenience and prior to the Departmental oral briefing on 9 December 2015 would be greatly appreciated.

Yours sincerely

Signed Peter McCallion

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Committee for Education

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