

SHARED EDUCATION

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

This Explanatory and Financial memorandum has been prepared by the Department of Education (DE) 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.

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 a clause or part of a clause or schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

This Bill is intended to provide a legislative definition of shared education, confer a duty on the DE to encourage, facilitate and promote shared education and to confer a power on relevant arms-length bodies of the department to encourage and facilitate shared education. The Bill will at the same time commence the duty specified in the Education Act (NI) 2014 for the Education Authority to encourage, facilitate and promote shared education.

“Building a Strong and Shared Community” has been recognised by the Executive both as the key priority within its Programme for Government 2011-15 (PfG) and as essential to the growth of a strong, modern economy and society.

The PfG set out three specific objectives for the Department of Education relating to shared education to:

- establish a Ministerial Advisory Group to explore and bring forward recommendations to the Minister of Education to advance shared education;
- ensure all children have the opportunity to participate in shared education programmes by 2015; and
- substantially increase the number of schools sharing facilities by 2015.

The Ministerial Advisory Group was appointed in July 2012 and published their report in April 2013. Following a period of civic debate, the Minister accepted their recommendations in a statement to the Assembly on 22 October 2013. One of the recommendations accepted by the Minister was to bring forward legislation on shared education.

Shared education aims to encourage, facilitate and promote collaborative working across educational providers, on a cross sectoral basis, to deliver educational and social benefits to learners including equality of opportunity, good relations and respect for identity, diversity and community cohesion.

The Education Act 2014 sets out a duty for the Education Authority to encourage, facilitate and promote shared education. The Act provides for commencement of this duty on a date as the DE may appoint (paragraph 7(2)(a)). The Shared Education Bill will provide for commencement of this duty.

The Bill will further build on the commitment to enshrine shared education in legislation by extending a duty to encourage, facilitate and promote shared education to DE and to confer a power to encourage and facilitate shared education to relevant arms-length bodies of the department.

The Bill provides a consistent definition of shared education, setting out the core components that are regarded as the minimum essential for the delivery of shared education.

The Bill is underpinned by “Sharing Works – A Policy for Shared Education”, which includes a description of how shared education is expected to work in practice. Together, the Bill and the policy will provide a framework for the advancement of shared education. The shared education policy sits within a broader education policy framework designed to improve educational outcomes for young people and tackle the significant tail of educational under-achievement that has characterised our education system by breaking the cycle of social disadvantage, educational failure and restricted life chances.

Shared education covers a broad spectrum of structures and activities, including joint curricular delivery, joint extra-curricular activities and shared campuses.

By its nature shared education requires two or more educational establishments to work collaboratively to benefit the children and young people enrolled in these establishments. This will include two or more schools, two or more early years settings, two or more youth work settings or any combination of two or more of these settings working collaboratively (for example, a pre-school setting with a primary school; a youth group with a post-primary) subject to the partnership satisfying the minimum requirements in respect of religious belief and socio-economic status.

A single educational establishment that can demonstrate a mix of religious belief and socio-economic status would not satisfy the definition of shared education.

CONSULTATION

DE sought the views of all interested parties on the main policy proposals for advancing shared education together with the draft Bill via a public consultation which ran from 5 January 2015 to 5 March 2015.

The public consultation was largely supportive of both the policy and Bill and did not raise significant objections or major issues in respect of either.

A report on the responses to and outcome of the public consultation can be accessed on the DE website at:

<https://www.deni.gov.uk/publications/shared-education-consultation-responses>

OPTIONS CONSIDERED

The legislative definition references the core components for shared education - that is “the education together of those of different religious belief, including reasonable numbers of both Protestant and Roman Catholic children and young persons and those experiencing socio-economic deprivation and those who are not, which is secured by the working together and co-operation of two or more relevant providers”.

Section 75 considerations

In drafting the Bill, consideration was given to referencing all Section 75 groups (s.75); however this would set very challenging demands on the mix of children and young people that education settings would be required to meet and would exclude some educational settings from shared education. Consequently, at clause 1(2) of the Bill, the definition of shared education, sets out the core components for shared education i.e. the minimum essential requirements.

Consequently, the legislative definition, which is evidence based, reflects a workable, achievable and purposeful definition. Importantly, the definition of shared education which appears in the Bill does not in any way prevent schools, youth or early years settings from educating together, children and young people of different political opinion, race, age, sexual orientation, gender, disability or those with or without dependents.

Article 2 of the First Protocol of the European Convention on Human Rights guarantees a right to education. The definition of shared education in the Bill places no limitation or restriction on that right. If each of the categories listed in s.75 of the Northern Ireland Act 1998 were included in the definition of shared education, which appears at clause 1(2) of the Bill, the consequence would be the exclusion of a number of schools, youth and early years settings from shared education. That is neither the policy objective nor the intention of the Bill.

To include all of the s.75 categories within the definition of shared education would impose challenging demands for education settings. For example, in 2014/15, around 20% of schools did not have enrolment from different ‘racial groups’; an early years partnership where the age range may be 3-4 would find it difficult to satisfy the ‘age’ category; while inclusion of ‘men and women generally’ would preclude partnerships between single gender schools

As a direct consequence of these challenging demands, DE has determined that the legislative definition of shared education needs to be restricted to religious belief and socio-economic deprivation (i.e. the core components).

It is important to note that the legislative definition does not deny any of the s.75 groups a right to shared education, those groups however are not being singled out for explicit mention. It is self-evident that children and young people of different religious beliefs will additionally fall within at least two if not more of the other s.75 categories for example age and gender. Education at a grant aided school as outlined in clause 1(3)(a) of the Bill includes education at a special school. The definition therefore includes within its sphere, the education together ‘of persons with a disability and those without.

Equally, DE is of the view that it would be neither suitable nor appropriate to include reference to all of the s.75 categories. In particular it is not appropriate to reference the marital status, sexual orientation or dependents of those 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 may not want to be divulged – a position recognised in Equality Commission guidance on monitoring of s75. 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.

Account has also been taken of the different starting points of educational settings (for example, some have had no or little engagement in shared education, while others are at a more advanced stage having previously delivered shared education).

The Department wishes to ensure all relevant educational settings are encouraged and facilitated to deliver shared education in a way that broadens and deepens the learning opportunity.

The DE's 'Sharing Works' policy sets out the expectation that shared education will broaden and deepen to include other s.75 groups relevant to the particular type of setting.

The policy describes the practical implementation of shared education as the organisation and delivery of education so that it:

- meets the needs of, and provides for the education together of learners from all s.75 categories and socio-economic status;
- involves schools and other education providers of differing ownership, sectoral identity and ethos, management type or governance arrangements; and
- delivers educational benefits to learners, promotes the efficient and effective use of resources, and promotes equality of opportunity, good relations, equality of identity, respect for diversity and community cohesion.

Shared education involves the provision of opportunities for children and young people from different community backgrounds to learn together.

To ensure the legacy of the past remains integral to the contribution shared education can have in building a Shared Future, reference has been made to '*including reasonable numbers of both Protestant and Roman Catholic children and young people*'. Given the wide variation in the religious profile of the local community which schools working in partnership serve, there is no 'one size fits all' definition of '*reasonable numbers*'. Shared education partnerships should be reflective of the profile of the local community. Each partnership will be considered on a case by case basis. Importantly, the precise numbers of Protestant and Roman Catholic children and young people involved in any shared education partnership should be acceptable to the local communities that the partnership serves. It is for

partnerships where the one community dominates to demonstrate how they plan to manage shared activities to avoid pupils from the minority community feeling in any way threatened.

OVERVIEW

The Bill has 4 clauses.

COMMENTARY ON CLAUSES

Clause 1: “Shared Education”

Clause 1 provides a common definition and sets out the purpose of shared education.

Clause 2: ‘Duty of Department of Education to encourage, facilitate and promote shared education’

Clause 2 confers on DE a duty to promote, encourage and facilitate shared education.

Clause 3: ‘Power of other bodies to encourage and facilitate shared education’

Clause 3 confers on the listed bodies (the Department of Education; the Council for Catholic Maintained Schools; the Youth Council for Northern Ireland; and the Northern Ireland Council for the Curriculum, Examinations and any sectoral body) a power to encourage and facilitate shared education.

Clause 4: ‘Power of Department of Education and Education Authority to form company for purposes connected with shared education’

Clause 4 provides the Department of Education (DE) and the Education Authority with the power to form or participate in a company formed under the Companies Act 2006 in respect of the advancement of shared education. This clause is intended to facilitate the ownership and management of shared education campuses.

Shared education campuses are a headline action in the OFMDFM *Together: Building a United Community* strategy – specifically, the commencement of 10 new shared education campuses by 2018. The Strule Campus will also be a shared education Campus. Examples would include, but are not restricted to, a Controlled and a Catholic Maintained school coming together within a shared campus; or two schools from different management sectors sharing facilities.

While there will be no change in the character, identity or ethos of schools involved in a shared education campus, they will be engaged in shared education and sharing facilities or buildings. Schools will continue to operate as separate institutions with their own individual Board of Governors. An important factor is that schools consider themselves to be partners in their project irrespective of current or future enrolment changes.

As work has progressed with the initial group of schools that successfully applied for capital investment in a shared campus or facilities, new issues in terms of the purchase/ownership of land and management/governance arrangements have emerged for both DE and the

Managing Authorities. The key emerging issue is the purchase and ownership of the land which is to be jointly occupied by two or more schools from two or more separate school management sectors. Purchase of the land by either ‘owner’ (i.e. the Education Authority or Catholic Trustees) is not considered to be a viable option.

The establishment of a company, formed equally by the Education Authority (EA) and the school Trustees, has emerged as a possible option for the purchase/ownership of land and management of shared education campuses. While it is envisaged that the EA will primarily form and participate in any such companies, the clause also applies to DE in the event the EA and School Trustees agree this is preferable. School Trustees in the Catholic maintained sector have been using the framework of a charitable company limited by guarantee for ownership of Catholic maintained schools in particular Dioceses for several years. However there is currently no specific legislation that allows the DE or Education Authority to establish or participate in a company. Clause 4 provides the legislative provision for this.

As this provision is within the scope of the Shared Education Bill, the ability to form such a company is restricted to shared education purposes only.

Clause 5: ‘Duty of education bodies to consider shared education’

Clause 5 requires DE and relevant arms length bodies to consider shared education when developing or amending policies, strategies and plans as well as the design and delivery of educational services.

Clause 6: ‘Review of shared education’

Clause 6 places a requirement on DE to lay a report before the Assembly, no more than two years after the Bill receives Royal Assent and on a biennial basis thereafter which details the extent to which DE and EA have exercised their duty and the extent to which relevant arms length bodies have exercised their power as well as levels of participation, efficiency in use of shared education resources and the impact on educational attainment and good relations. In reporting, DE will seek to assess the impact across s.75 groups and not just the core components as set out in the legislative definition.

Clause 7: ‘Commencement of duty of Education Authority in relation to shared education’

Clause 7 amends Section 7 of the Education Act (Northern Ireland) 2014 to provide for the commencement of the duty on the Education Authority to encourage, facilitate and promote shared education. That duty will come into operation on the day after the day on which the Shared Education Bill receives Royal Assent.

Clause 8: ‘Short title and commencement’

Clause 8 cites the short title of the Act.

FINANCIAL EFFECTS OF THE BILL

It is acknowledged that there may be additional financial implications to schools working in partnership particularly in relation to transport and substitute teacher costs. The provision of

advice and support to facilitate the advancement of shared education will have financial implications. Provision has been made for funding to support the implementation of shared education up to June 2018. Peace IV funding for shared education will be available up to at least 2020. The Minister has committed to mainstream funding related to the additional costs involved in shared education in the longer term using the experience gained during the initial implementation period to determine the best mechanism for doing so.

HUMAN RIGHTS ISSUES

The Department considers that the provisions in the Bill are in compliance with Human Rights legislation. In developing the Bill the Department carried out a Human Rights screening exercise which indicated that shared education would have a positive impact on Human Rights, in particular with respect to the freedom of thought, conscience & religion (convention article 9); freedom of expression (convention article 10); prohibition of discrimination (convention article 14); and the right of parents to ensure education in conformity with their own religious and philosophical convictions (first protocol article 2).

EQUALITY IMPACT ASSESSMENT

No adverse equality issues have been identified. Shared education is specifically intended to increase equality of opportunity and good relations. In the development of the policy and Bill the Department carried out an equality screening exercise, no equality issues were identified and it was deemed unnecessary to conduct a full equality impact assessment. It is expected that shared education will be organised and delivered in such a way that promotes equality of opportunity and social inclusion by providing opportunities for children from differing Section 75 groups (*i.e. between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; between men and women generally; between persons with a disability and persons without; and between persons with dependants and persons without*) and from differing socio-economic backgrounds to learn together at school and in less formal education.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

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

LEGISLATIVE COMPETENCE

The Minister of, the Department of Education had made the following statement under section 9 of the Northern Ireland Act 1998:

“In my view the Shared Education Bill would be within the legislative competence of the Northern Ireland Assembly.”