



Northern Ireland  
Assembly

Committee for Education

# Report on the Addressing Bullying in Schools Bill

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# Remit, Powers and Membership

The Committee for Education is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, Section 29 of the Northern Ireland Act 1998 and, under Standing Order 48.

Statutory Committees have been established to advise and assist the appropriate Minister on the formation of policy in relation to matters within his/her responsibilities. Specifically, the Committee has power to:

- consider and advise on departmental budgets and annual plans in the context of the overall budget allocation;
- consider relevant secondary legislation and take the committee stage of primary legislation;
- call for persons and papers;
- initiate inquiries and make reports; and
- consider and advise on matters brought to the Committee by the Minister for Education.

The Committee has 11 members, including a Chairperson and Deputy Chairperson, and a quorum of 5. The membership of the Committee is as follows:

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Peter Weir (Chairperson)

Sandra Overend (Deputy Chairperson)<sup>1</sup>

Maeve McLaughlin

Jonathan Craig

Danny Kennedy<sup>2,3</sup>

Nelson McCausland

Chris Hazzard

Trevor Lunn

Robin Newton

Pat Sheehan

Dolores Kelly<sup>4</sup>

<sup>1</sup> With effect from 15 June 2015 Mrs Sandra Overend replaced Mr Danny Kinahan as Deputy Chairperson

<sup>2</sup> With effect from 23 June 2015 Mr Ross Hussey replaced Mrs Sandra Overend

<sup>3</sup> With effect from 14 September 2015 Mr Danny Kennedy replaced Mr Ross Hussey

<sup>4</sup> With effect from 8 February 2016, Mrs Dolores Kelly replaced Mr Sean Rogers

# Executive Summary

The Addressing Bullying in Schools Bill includes a definition of bullying and places duties on Boards of Governors of grant-aided schools in respect of devising and implementing measures to prevent bullying and to keep records of incidents of bullying.

During the Committee Stage, Members considered written evidence from 16 organisations and undertook 2 oral evidence sessions and 6 formal meetings. The Committee was also informed by the findings of school focus groups undertaken by Assembly Research Services.

The Committee agreed to recommend a number of amendments to the Addressing Bullying in Schools Bill including:

- an alteration to the wording of the definition of bullying, designed to provide schools with the discretion to include one-off events or acts and omissions targeted at particular groups;
- a new order-making power designed to ensure the capture of changing motivations underpinning bullying;
- a new obligation on Boards of Governors to review their school's anti-bullying measures at least once every 4 years; and
- a new power to permit Boards of Governors to consider measures to tackle cyberbullying, in certain circumstances.

The Committee also agreed to seek a Ministerial assurance in respect of the development of guidance and support for Special Schools and Learning Support Units regarding the application of the provisions of the Bill to children with Special Educational Needs.

The Committee also agreed to support Departmental technical or correcting amendments to Clauses 1 and 3 of the Bill.

# Introduction

1. The Addressing Bullying in Schools Bill (NIA 71/11-16) (the Bill) was introduced to the Assembly on 30 November 2015 and referred to the Committee for Education for consideration on completion of the Second Stage of the Bill on 8 December 2015 in accordance with Standing Order 33(1).
2. At introduction, the Minister for Education (the Minister) made the following statement under Section 9 of the Northern Ireland Act 1998:

*“In my view the Addressing Bullying in Schools Bill would be within the legislative competence of the Northern Ireland Assembly.”*

3. The Bill’s Explanatory and Financial Memorandum (EFM) sets out a summary of the Bill’s main provisions. The Bill and the EFM can be viewed at the following link:

<http://www.niassembly.gov.uk/assembly-business/legislation/primary-legislation-current-bills/addressing-bullying-in-schools-bill/>

4. The Bill is described as:

- providing an inclusive definition of bullying;
- requiring the Board of Governors of each grant-aided school to determine and review measures to prevent bullying involving registered pupils at their school whilst: on school premises during the school day; travelling to or from school during the school term; or whilst the pupil is in the lawful control or charge of a member of school staff; and to ensure the policies designed to prevent bullying among pupils registered at the school are pursued; and
- requiring the Board of Governors of grant-aided schools to ensure that a record is kept of all incidents or alleged incidents of bullying which involve a registered pupil whilst: on school premises during the school day; travelling to or from school during the school term; or whilst the pupil is in the lawful control or charge of a member of school staff. The perceived motivation and the manner in which the incident was addressed are also to be recorded.

5. The Bill does not contain provisions relating to delegated powers.

## Committee's Approach

6. The Committee had before it the Addressing Bullying in Schools Bill (NIA 71/11-16) and the Explanatory and Financial Memorandum that accompanied the Bill.
7. The Committee received a Departmental briefing on the Addressing Bullying in Schools Bill, at its meeting on 4 November 2015, in advance of the Committee's formal consideration of the Bill at Committee Stage.
8. Following introduction of the Bill to the Assembly, the Committee wrote on 30 November 2015 to key education stakeholders. The Committee also inserted notices in the Belfast Telegraph, Irish News and News Letter seeking written evidence on the Bill by 5 January 2016. The Committee also highlighted its call for evidence via social media.
9. Owing to the extensive nature of the Executive's general legislative programme and the introduction of a number of Education Bills during the final session of the mandate, the Committee agreed to undertake its scrutiny of the Bill over a much shorter timescale than is usual. Consequently, at its meeting on 27 January 2016, the Committee agreed to only seek a very short extension to the Committee Stage of the Bill.
10. Around 16 organisations and individuals responded to the request for written evidence. Copies of these submissions received by the Committee are included at Appendix 3.
11. During the period covered by this Committee Stage Report, the Committee considered the Bill and related issues at 6 of its meetings. The relevant Minutes of Proceedings are included at Appendix 1. From 13 January 2016 to 20 January 2016, the Committee took oral evidence from selected stakeholders who had submitted written evidence. These included:

Northern Ireland Anti-Bullying Forum (13 January 2016);

Children's Law Centre (13 January 2016);

Tor Bank Special School and the National Association of Head Teachers (13 January 2016);

Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission (20 January 2016);

Northern Ireland Commissioner for Children and Young People (20 January 2016); and

Ulster Teachers' Union (20 January 2016).

12. Both stakeholders and Departmental officials answered Members' questions after their individual sessions, as reflected in the Minutes of Evidence - extracts of which are reproduced at Appendix 2. Departmental officials were requested to provide specific follow-up information to the Committee - this is reproduced at Appendix 4.
13. The Committee commenced its informal deliberations on the clauses of the Bill on 27 January 2016 and completed its formal clause by clause scrutiny at its meeting on 3 February 2016.
14. In order to assist the Committee in determining the views of children and young people on the provisions of the Bill, the Committee commissioned Assembly Research Services and Assembly Education Services to undertake focus group surveys with representative groups of school pupils. A report on the findings from these focus groups was presented to the Committee, at its meeting on 20 January 2016, and is appended at Appendix 5. Assembly Research Services also provided the Committee with research papers on the Bill itself which are also included at Appendix 5.
15. Additionally, Members of the Committee met informally with young people participating in the Assembly's Erasmus+ Connections project and considered their report on mental health issues in education and the linkage with bullying in schools. The relevant Assembly Erasmus+ Connections report is included at Appendix 6.

#### **Report on the Committee Stage of the Addressing Bullying in Schools Bill**

16. At its meeting on 8 February 2016, the Committee agreed that its Report on the Addressing Bullying in Schools Bill - this Report - would be the 8<sup>th</sup> Report of the Committee for the 2011-16 mandate. The Committee also agreed that this Report should be printed.

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# Consideration of the Bill

## Clause 1: Definition of “bullying”

17. Clause 1 is described as providing an inclusive definition of bullying.
18. Some stakeholders indicated in written and oral submissions to the Committee that schools currently employ differing definitions of bullying, leading to varying disciplinary practices and inconsistent record-keeping. Stakeholders therefore generally welcomed the introduction of a statutory definition, as the basis for the development of both a robust Departmental policy and a coherent anti-bullying culture in schools. That said, most stakeholders also suggested changes to the definition of bullying or its application. These are discussed below.

## Definition of Bullying: Repeated Acts

19. A number of stakeholders including the Northern Ireland Commissioner for Children and Young People (NICCY); the National Association of Head Teachers (NAHT); and the Children’s Law Centre (CLC) argued that the definition of bullying in Clause 1 as a repeated act, could wrongly lead to significant one-off events (including single, distressing electronic communications which are shared repeatedly) being treated by schools as less serious than repeated less consequential actions. These stakeholders suggested that the definition be altered in order to include single acts etc. of bullying. The Equality Commission for Northern Ireland (EC) also argued that statutory provision should be made in order to require schools to address one-off actions or instances in school disciplinary policies.
20. CLC also highlighted concerns that schools may wrongly distinguish repeated actions associated with a single perpetrator, from a series of single actions directed at a sole victim (or set of victims) but undertaken by different individuals - the former being defined in the Bill as “bullying”; the latter apparently defined in the Bill as “not bullying”. CLC also contended that the definition should be altered in order to recognise the reasonable expectation of a victim (of a single event) that they may experience repeated unwanted acts or omissions even if these have not actually yet occurred. CLC argued that such an amendment would avoid incorrect classification of bullying actions and extend to bullying victims the current protections available to victims of harassment.



21. The Department clarified that the Bill was designed to provide a legal minimum definition of bullying and an obligation on schools to produce related measures and undertake relevant action. The Department advised that schools are currently obliged to have disciplinary (or positive behaviour etc.) policies and will ordinarily take action in respect of one-off events. The Department further advised that schools may, following the passage of the Bill, if they choose, continue to interpret one-off events or a sequence of events perpetrated by different individuals against a sole victim or number of victims, as bullying. Thus, it was contended that explicit amendments in respect of one-off events were unnecessary. It was further argued that the inclusion of such events in the definition of bullying might unreasonably require schools to record a very large number of incidents which were not part of a pattern of bullying behaviour. This, it was suggested might lead to important bullying trends not being identified and focused on by schools.
22. In respect of widening obligations on schools in order to include those protections available to victims of harassment, the Department argued that this was beyond the policy intention of the Bill and would lead to a significant and undefinable change to the disciplinary culture in schools.
23. The Committee noted with interest the arguments made by stakeholders in respect of strengthening the obligations on schools and extending harassment protections to victims of bullying. However, the Committee felt that the proposed harassment amendment would substantially (and not necessarily beneficially) alter the culture of school discipline. It was also felt that this suggested change might potentially lead to confusion in schools while obscuring the anti-bullying policy objectives of the Bill. The Committee therefore agreed not to pursue a related amendment
24. In respect of the treatment of one-off events, the Committee noted that the statutory definition of bullying in the Bill would not prevent schools from treating these as bullying incidents and applying the appropriate counter measures. The Committee agreed that including related explicit measures in the Bill might present a significant additional bureaucratic challenge for schools. In order to ensure a consistent response in respect of the treatment of serious one-off events, the Committee agreed that further guidance was required for Boards of Governors in order to make clear the appropriate interpretation of the provisions of the Bill and the relationship between anti-bullying measures and school disciplinary policies.
25. Notwithstanding the above, the Committee also felt that there may be some merit

in generally redrafting the definition of bullying in order to emphasise that schools can choose to classify one-off or unrepeated events as bullying. The Committee felt that such an approach might be more efficacious than simply referencing this explicitly in the Bill. This is discussed further below.

### **Definition of Bullying: Imbalance of Power**

26. CLC, the Northern Ireland Anti-Bullying Forum (NIABF), NAHT and other stakeholders raised concerns regarding the absence in the bullying definition of any reference to the imbalance of power between bullying perpetrator and victim.
27. NIABF contended that an imbalance of power was a key defining characteristic of bullying which was recognised internationally by academics and by at least one other legislature. NIABF suggested that a power imbalance might be based on: size, strength, age, intelligence, peer group power, economic status, social status, religion, ethnic origin, sexual orientation, family circumstances, gender, gender identity, gender expression, race, disability or the receipt of Special Education. NIABF argued that a related amendment incorporating the above would strengthen the bullying definition and help schools to focus on those incidents and patterns of conduct which include power imbalance and which typify bullying behaviour.
28. NICCY, CLC, the Black and Minority Ethnic Women's Network (BMEWN) and the School Focus Groups highlighted the absence of provisions relating to the bullying of pupils by teachers or other educational staff. CLC and BMEWN also argued that the Bill should include reference to bullying of teachers by pupils.
29. The Department argued that the absence of the "imbalance of power" wording would have no adverse impact on the identification, actioning or recording of bullying incidents but that schools would retain the discretion to record details of an imbalance of power between those involved in a bullying incident. The Department also contended that schools might struggle to define the nature of an imbalance of power and that the associated confusion might in turn lead to schools becoming liable to vexatious litigation. The Department also indicated that further qualifying criteria for bullying - including the "imbalance of power" wording - might lead to incorrect under-reporting of bullying behaviours.
30. In respect of the bullying of pupils by teachers or other educational staff. The Department argued that teachers and other educational staff are subject to their school's code of conduct which proscribes the bullying of pupils by staff and sets

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out complaints procedures and redress mechanisms for parents. It was indicated that bullying of teachers by pupils should be more appropriately managed by teaching professionals applying a school's disciplinary or positive behaviour policy. The Department contended that consequently, the inclusion of bullying by teachers of pupils or bullying by pupils of teachers in the Bill was unnecessary and might serve to inappropriately shift the focus of the provisions from the important policy area of addressing pupil-on-pupil bullying.

31. Members accepted the assertions from stakeholders that bullying in schools is typified by an imbalance of power. The Committee felt however that a widely drawn definition of bullying accompanied by guidance for schools would, in the absence of the wording proposed by NIABF, be unlikely to lead to under-reporting or inappropriate reporting of bullying incidents in schools. The Committee therefore agreed that it would not pursue a related amendment.
32. The Committee accepted that the focus of the Bill should be on addressing pupil-on-pupil bullying and that given the existence of other protections, provisions relating to other forms of bullying should not be included in the Bill. The Committee therefore agreed that it would not pursue a related amendment.

### **Definition of Bullying: Intention**

33. NICCY, CLC, BMEWN and others commented on the reference in the definition of bullying to the need to establish that the perpetrator had an "intention of causing emotional or physical harm". CLC argued that it could be difficult for schools to determine intention, particularly in the case of younger children. It was suggested that the 'intention' provision would present a significant obstacle to the classification of unacceptable, repeated behaviours as bullying - leading to under-reporting and failure by schools to address related problems where intention can not easily be established.
34. Some stakeholders argued that more recognition should be given in the Bill to the effect caused by the bullying activity rather than simply determining if there was an intention to harm. BMEWN argued that the Bill should refer to the effect of causing physical or emotional harm or creating an intimidating, hostile, degrading or offensive environment. CLC argued that the reference to intention to cause harm should be augmented with references to the effect of causing adverse consequences including (but not limited to) distress, alarm, hurt, fear, exclusion and harassment. NICCY argued that the definition should reference the perception

of the victim in respect of the harm that was caused or intended. EC argued that the definition should refer to acts or omissions which have “the purpose or effect of violating dignity”.

33. The Department contended that the reference to the “intention of causing physical or emotional harm” was based on well understood legal and academic definitions of bullying and that other wording was unnecessary and would add nothing to the efficacy of the related provisions. The Department further contended that the absence of the ‘intention’ wording and the inclusion of either a number of specific effects or a catch-all term covering the “violation of dignity” or a reference to the perception of the victim would lead to schools making difficult judgments regarding the effect of bullying. The Department asserted that this would lead to confusion and inconsistency in schools while leaving Boards of Governors liable to vexatious legal challenge.
35. The Committee noted the clarification and explanation provided by the Department. The Committee felt that although schools should always take into account the perception of the victim and the effect of bullying in applying counter measures and recording key information, this would be difficult to incorporate into the Bill. The Committee agreed that appropriate guidance including relevant case studies was essential in order to ensure the development of the anti-bullying culture and consistent robust responses to bullying, which are the objectives of the Bill. The Committee agreed that it would not pursue related amendments.

### **Definition of Bullying: Acts and Omissions**

36. NICCY and the Ulster Teacher’s Union (UTU) sought clarity in respect of the reference in the definition of bullying to acts being equivalent to omissions. UTU felt that clarity was required in order to ensure consistent interpretation by schools.
37. The Department clarified that the ‘omissions’ reference was designed to ensure that schools capture the deliberate exclusion of pupils (where this is intended to cause emotional or physical harm) as bullying. The Department advised that any potential ambiguity on this matter would be addressed through guidance which it was developing in order to support and underpin the legislation. The Department provided an assurance that the guidance would include case studies which would clearly explain how omissions could be assessed by schools when considering bullying incidents.

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38. The Committee noted the clarification and assurance provided by the Department and consequently agreed not to pursue related amendments.

### **Definition of Bullying: Section 75**

39. EC, BMEWN and Mencap argued that the definition of bullying should make explicit reference to groups referred to in Section 75 of the Northern Ireland Act (1998) including those of different races and those with disability including particularly learning difficulty. It was argued that these groups are particularly susceptible to incidents of bullying at school and that explicit protections were required in the Bill. EC argued that schools should be either encouraged or statutorily obliged to follow equality guidelines and include reference to Section 75 groups in their disciplinary, anti-bullying and other policies.
40. The Department argued that children from Section 75 groups currently enjoy important protections through existing legislation. The Department advised that it encourages schools to adopt policies and practices designed to enhance the inclusion of children from these groups. It was indicated that the addition of amendments, singling out particular groups in the Bill, would not provide any material benefit for these children and young people and may even possibly undermine some of the relevant existing protections.
41. The Committee noted the concerns raised by stakeholders and the Department's evidence. As indicated above, the Committee felt that a general inclusive redrafting of the definition of bullying might serve to emphasise that the provisions represent a legal minimum and that schools would be free to identify different kinds of events, directed at different groups and for a variety of reasons, as bullying. The Committee felt that such an approach might be more efficacious than simply and explicitly referencing certain groups etc. in the Bill. This is discussed further below.

### **Definition of Bullying: Discretion and Exemptions**

42. Representatives from NAHT and Tor Bank Special School expressed concerns that the statutory definition of bullying would not allow a sufficient level of teaching staff discretion in the management of incidents involving children with Special Educational Needs (SEN) - in Special or mainstream schools - or children whose unacceptable behaviour can be linked to exceptional circumstances including a significant trauma. Both organisations suggested that Special Schools or Learning Support Units in mainstream schools should be the subject of a variation to the

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bullying definition in order to allow teachers to exempt or apply discretion in respect of repeated unacceptable behaviours in exceptional circumstances.

43. CLC, on the other hand, argued that the statutory definition of bullying should be amended in order to allow teachers wider discretion in order to include other forms of unacceptable behaviour which were not explicitly referenced in the Bill e.g. non-verbal actions e.g. gestures etc..
44. The Department argued that the exemption of Special Schools or Learning Support Units from the provisions of the Bill would wrongly exclude a key part of the school system from an important policy which is designed to generate an anti-bullying culture by providing sensible protections for children and reasonable obligations for schools. The Department contended that the inclusion in the bullying definition of a reference to the intention to cause physical or emotional harm would preclude the wrongful identification of children with SEN, (in Special or mainstream schools) whose behavioural conditions drive their inappropriate conduct, as exhibiting bullying.
45. The Department clarified that although the Bill would require the bullying definition to be applied consistently by all schools, Boards of Governors would retain the ability to devise their own measures in order to prevent bullying. Thus, it was argued, that this could afford teaching staff a sufficient level of discretion in the treatment of pupils in exceptional circumstances or who have SEN and related behavioural conditions.
46. Members noted the convincing evidence and the genuine concerns set out by dedicated professionals working with children with SEN, in respect of the Bill. The Committee recognised the unique demands and distinct circumstances which can exist in Special Schools and Learning Support Units. The majority of Committee Members felt that the overall drive for inclusion of Special Schools and children with SEN may be better served by the extension of the provisions of the Bill to all children in all grant-aided schools rather than by a series of exemptions. The majority of Committee Members also accepted the Department's argument that the 'intention' provisions and the flexibility afforded to schools in respect of anti-bullying measures would allow a necessary and appropriate level of discretion for teachers in dealing with bullying involving children in exceptional circumstances or children with SEN. The Committee strongly felt that the Department should consult widely with the SEN sector - both Special Schools and LSUs - in the

development of appropriate guidance for teachers and principals regarding the treatment of children with SEN and those in exceptional circumstances, under the provisions of the Bill. The Committee agreed to seek a Ministerial assurance in this regard at Consideration Stage.

47. The Committee noted the suggestions made by CLC and other stakeholders that a widely drawn definition would be required in order to encourage schools to address the many different forms of pupil-on-pupil bullying. In order to provide for this and for the Section 75 and other concerns set out above including the treatment of one-off events, the Committee agreed to support a limited change to the wording of the Bill which would indicate that the definition of bullying would not be limited to the provisions that had been explicitly set out in the Clause. Members felt that this approach would better support inclusion of marginalised groups and allow schools the discretion to identify different forms of unacceptable conduct, including one-off events, as bullying.
48. The Committee agreed to combine this amendment with a technical amendment proposed by the Department.

### **Cyberbullying**

49. The Committee noted extensive commentary from the School Focus Groups and other stakeholders in respect of cyberbullying i.e. bullying related to the use of electronic communication, social media or the internet. These stakeholders contended that this form of bullying could have a very substantial impact on its victims and was significantly under-reported by schools. Other stakeholders advised that cyberbullying accounted for only a small fraction of all bullying incidents and was the subject of a disproportionate level of exposure by the news media.
50. Some stakeholders called for wide-ranging measures to address cyberbullying - arguing that although the definition, as drafted, referred to repeated acts of electronic communication, the Bill required these to be committed when the perpetrator is under the lawful control of the school. These stakeholders indicated that the provisions could be easily evaded by a would-be cyberbully and thus cyberbullying would go unrecorded and would continue to be actioned inconsistently by schools. Some of these stakeholders suggested widening the scope of schools' responsibility in order to capture out-of-hours cyberbullying (and other bullying) events.

51. Other stakeholders highlighted the considerable complex technological and legal challenges that cyberbullying presents and the undefined consequences of legislation. It was argued that ill-considered legislation, at this time, might undermine actions currently taken by schools in respect of cyberbullying, leading to confusion and possible legal challenges.
52. The Northern Ireland Human Rights Commission (NIHRC) advised the Committee of the issues presented by legislating for, or the regulation of, school anti-cyberbullying activities including the securing of electronic communication information - highlighting considerations including the violation of the human rights of the originator of the communication.
53. The Department indicated that other jurisdictions had yet to devise legislation which fully met the technological and complex legal challenges presented by cyberbullying, including the difficulty associated with regulating, while not criminalizing, the actions of young people using electronic communication. The Department also advised that NIABF had been tasked with producing guidance for schools on this issue, in the current school year, which would: provide case studies for schools; reflect current best practice; and suggest how cyberbullying incidents might be most effectively managed. Furthermore, the Department advised that the Safeguarding Board for Northern Ireland was to produce e-safety guidance, for publication in February 2017.
54. The Department strongly advised that the introduction of further provisions, at this time, in respect of cyberbullying would be very ill-advised. The Department indicated that such provisions should at the very least be informed by extensive consultation with schools (and other stakeholders) and should be accompanied by serious and detailed consideration of the associated legal implications. In the absence of the above and pending further legal clarity, the Department advised that guidance would provide the necessary direction for school, in respect of this important issue.
55. The Committee noted with concern recent high profile cyberbullying incidents and the devastating consequences for victims and their families. Members indicated that they believed that cyberbullying was an issue of significant importance which required immediate action and support for schools. The Committee also noted the complexity presented by a wide-ranging legislative solution and the potential for conflict between e.g. the rights of the victim and the rights of others to privacy.



56. The majority of Committee Members felt that in order to ensure support for current best practice in respect of the management of cyberbullying in schools, Boards of Governors should be empowered, in certain circumstances, to develop anti-cyberbullying measures. The Committee accepted that this must be achieved without burdening schools with an unreasonable set of obligations.
57. Following a division, the Committee agreed to support relevant amendments which are discussed below.

## **Clause 2: Duty of Board of Governors to secure measures to prevent bullying**

58. Clause 2 is described as requiring the Board of Governors of each grant-aided school to determine and review measures to prevent bullying involving registered pupils at their school whilst: on school premises during the school day; travelling to or from school during the school term; or whilst the pupil is in the lawful control or charge of a member of school staff; and to ensure the policies designed to prevent bullying among pupils registered at the school are pursued.

## **Anti-Bullying Obligations**

59. Stakeholders wrote to the Committee commenting on the relevant obligations on Boards of Governors and the drafting of the related provisions. NIABF, Stranmillis University College, the Rainbow Project and CLC suggested that Clause 2 be redrafted in order to require schools to have an anti-bullying policy and to be obliged to implement it and/or for there to be explicit obligations on schools to refer to particular forms of bullying including e.g. homophobic and transphobic bullying etc., in their anti-bullying policies.
60. The Department contended that the Bill as drafted requires Boards of Governors to have anti-bullying measures in place and to ensure that they are implemented. The Department also advised that the drafting of the Bill included well understood terminology designed to provide legal certainty for schools - thus it was contended that amendments in respect of anti-bullying obligations for schools were unnecessary.
61. The Department also argued that it was inappropriate to specify in primary legislation various forms of bullying or measures to secure the inclusion of particular groups. The Department assured the Committee that guidance would be provided to schools and Boards of Governors highlighting best practice in respect

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of anti-bullying measures and the inclusion of marginalised groups.

62. The Committee noted the Department's explanation and assurances and agreed that it would not pursue related amendments.
63. Some stakeholders including NIHRC, Playboard and the Early Years organisation suggested that responsibilities in respect of anti-bullying measures and their implementation should be extended beyond grant-aided schools in order to include e.g. independent schools, Early Years settings and Education Other Than At School (EOTAS) providers.
64. The Department argued that the inclusion of independent schools and Early Years settings within the remit of the Bill would be inconsistent with the treatment of these sectors in respect of other educational policies and legislation. The Department also advised the Committee that both independent schools and Early Years settings are already subject to inspection by the Education and Training Inspectorate (ETI).
65. The Department indicated that EOTAS settings are subject to guidance from the Department which requires them to maintain anti-bullying; positive behaviour and related policies. The Department contended that, as EOTAS settings are effectively subject to the same obligations as grant-aided schools, it would be unnecessary to include these settings explicitly within the provisions of the Bill
66. The Committee noted the Department's explanations and clarifications and agreed that it would not pursue related amendments.

### **Review of Anti-Bullying Measures**

67. A number of stakeholders - including NICCY, NIABF and CLC - suggested that Clause 2 should be amended in order to specify a time period during which schools would be obliged to review and update their anti-bullying policies. NICCY, the Council for Catholic Maintained Schools (CCMS), EC etc. also suggested that an explicit obligation was required in respect of consultation by schools with pupils in the development of anti-bullying policies. CLC and NICCY also argued that ETI and/or the Education Authority (EA) should be identified in the Bill as being responsible for monitoring Boards of Governors' compliance with the provisions in the clause.
68. The Department initially argued that a formal time period for the review of anti-bullying measures was unnecessary, as schools will ordinarily review their policies

regularly as part of the self-evaluation process which is monitored by ETI. The Department clarified that the Bill, as drafted, includes provisions requiring consultation and publication of a school's anti-bullying measures. The Department also clarified that additional explicit obligations relating to the review of Boards of Governors by ETI or EA were unnecessary, as these functions were covered by existing statutory Departmental duties, relating to inspection and compliance.

69. The Committee felt that it was reasonable to expect Boards of Governors to review and update their school's anti-bullying (or other) policies during the period of office of school governors - this is typically 4 years. The Committee therefore agreed to support an amendment to this effect. The Department subsequently advised that it expected the Minister to support such an amendment.
70. The Committee noted and welcomed the Departmental clarification in respect of consultation and communication relating to anti-bullying policies. The Committee therefore agreed that it would not pursue related amendments.
71. The Committee noted Departmental clarification in respect of inspection and monitoring by ETI or EA. The Committee therefore also agreed that it would not pursue related amendments.

### **Scope of School Responsibility - Cyberbullying**

73. Stakeholders commented at some length on the extent or scope of schools' responsibilities in respect of bullying. Some stakeholders - including CLC, NICCY and the Schools Focus Groups - argued that in order to give effect to existing good school practices designed to tackle cyberbullying, amendments were required so as to extend school responsibility for the actions of pupils beyond the times specified in the Clause. These stakeholders suggested various options including references to acts committed when pupils were "using school equipment" or "engaged in education" etc. or acts committed at any time which have an impact on pupils in school. EC suggested that school responsibility should include acts involving pupils from other schools.
72. Other stakeholders - including the Ulster Teachers Union (UTU), NAHT and Tor Bank Special School - highlighted concerns that the existing provisions would effectively and unreasonably make schools responsible for acts and omissions which do not occur in school and over which they could not possibly have any control. These stakeholders also felt that Clause 2(b)(ii), which refers to the pupil

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journey to and from school, represented a significant departure from current practices and schools' understanding of their obligations. These stakeholders: recognised the challenge presented by cyberbullying; shared examples of common sense, good practice interventions by teachers and principals with the Committee; and called for clear guidance and leadership on this issue from the Department. They expressed considerable concerns and urged the Committee to set aside proposed amendments which might unreasonably widen school responsibilities and expose Boards of Governors to undefined legal liabilities.

73. As indicated above, the Department advised of the considerable legal challenges associated with developing legislation designed to tackle cyberbullying. The Department also strongly advised against the introduction of provisions which generally broadened the scope of schools' responsibility beyond that set out in the Bill. The Department contended that such measures would, at best, simply replicate existing duties relating to the safeguarding of children. Officials also advised that such provisions might serve to obscure schools' important safeguarding and welfare duties while also, over-burdening Boards of Governors with obligations which they could not reasonably meet and generating new, substantial and undefined legal liabilities.
74. The Committee noted concerns relating to cyberbullying and the evidence from teaching professionals and the important perspectives that they provided to the cogent consideration of the implications of the Addressing Bullying in Schools Bill. It was in this context that the Committee considered possible amendments which would extend the scope of the responsibilities of Boards of Governors. These amendments sought to take into account unacceptable conduct originating with registered pupils at the school, which might occur outside the formal school day or the other parameters set out in Clause 2, but which would reasonably be expected to impact upon the victim's participation in school.
75. The Committee noted that such amendments would indeed capture cyberbullying practices, apparently without setting legal precedents (in this regard) with undefined consequences. Notwithstanding the above, the majority of Committee Members felt that, however well-intentioned such an approach might be, it would have other, wide-ranging and unknown corollaries for schools. Some Members indicated, in particular, that the amendment might be exploited in support of vexatious legal challenges brought against schools and was so widely drawn that it may generate absurd parental expectations and additional bureaucratic duties for

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Boards of Governors.

76. The Committee also felt that it could not support amendments which would require Boards of Governors to be responsible for bullying events involving pupils at other schools. Members indicated their belief that schools will ordinarily take appropriate action in respect of such circumstances and that it would be difficult to draft amendments and impossible to determine the full ramifications of such legislation.
77. As indicated above, the majority of Committee Members felt that in order to ensure support for current best practice in respect of the management of cyberbullying in schools, Boards of Governors should be empowered to develop anti-cyberbullying measures. Following a division, the Committee therefore agreed to put down an amendment to Clause 2 which would extend the powers of Boards of Governors to develop measures in order to tackle electronic communication (which meets the bullying definition in Clause 1 and which originates with registered pupils of the school and) which may have been devised or sent when the perpetrator is not within the parameters set out in Clause 2 (that is to say when the pupil perpetrator is not within the lawful control of school staff) but is likely to have an impact on the victim's participation in their education.
78. The Committee felt that this approach would not unreasonably extend the responsibilities of Boards of Governors, while addressing an important and growing concern for pupils, parents and schools. The Committee also believed that this approach would avoid setting precedents with undetermined consequences in respect of the complex legal arguments relating to criminalisation and competing privacy and other human rights. The Committee re-emphasised its support for the early production of up-to-date and useful guidance for schools on the subject of cyberbullying and e-safety.

### **Scope of School Responsibility - Other Issues**

79. Playboard in its written submission sought clarity as to whether the scope of the responsibility set out in Clause 2 would automatically include the playground as a 'safe place' and cover activities such as wrap-around childcare; homework clubs; and extra-curricular activities etc..
80. The Department clarified that the reference in the Bill to the "lawful control or charge of a member of the staff of the school" provided certainty for schools that the provisions applied to playgrounds and the relevant extra-curricular activities.
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81. NIHRC suggested that an amendment was required in order to oblige schools to report instances of criminal activity or human rights abuses that fall outside of Clause 2(b) to other public authorities. NICCY and EC also argued that a mandatory obligation should be placed on all school staff to report acts of bullying.
82. The Department advised that it understood that existing and well-understood obligations on schools, in respect of the safeguarding of children, should be interpreted by schools as an obligation to report criminal acts etc. as appropriate. The Department also confirmed that its anti-bullying guidance would provide direction for school staff in respect of the reporting of bullying in line with the provisions of the Bill. The Department therefore contended that changes to the Bill in this regard were not required.
83. NAHT and UTU called for greater clarity, including possible amendments, in respect of the important role for parents in tackling bullying in schools.
84. The Department argued that schools will ordinarily involve parents in the resolution of bullying incidents and that an attempt to define the role of parents in legislation would be difficult, contentious and likely to restrict schools' discretion to follow best practice in the resolution of bullying issues.
85. The Committee noted the Department's clarification in respect of the above and agreed that it would not bring forward related amendments.

### **Principal's Responsibilities**

86. Stakeholders commented on Clause 2(3) which includes provisions which will transfer the responsibility for anti-bullying measures from the school principal to the Board of Governors of a grant-aided school.
87. NICCY indicated its support for the provision but called on the Department to provide guidance and training for governors in order to allow them to effectively discharge their new obligations.
88. The Transferors' Representative Council (TRC), CLC and NAHT argued for further discussions or indicated opposition in respect of the transfer of responsibilities from principals to Boards of Governors. NAHT argued that regardless of the passage of the legislation, principals would continue to have operational responsibility for anti-bullying processes and that it was unreasonable to expect volunteer governors to be available or sufficiently experienced in order to manage the associated complexities. CLC highlighted concerns in respect of limited

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redress mechanisms associated with school processes including the resolution of bullying incidents.

89. The Department contended that the relevant provisions are required in order to correct a legal anomaly and ensure that there is a single body - the Board of Governors - which has legal responsibility for anti-bullying measures in the school. The Department accepted that additional responsibilities for school governors should be underpinned by appropriate guidance and training - which was to be developed following consultation with schools - and assured the Committee that the relevant provisions would not be commenced until this was in place. The Department also advised that additional redress mechanisms in respect of school processes were expected to become available following the passage of the Public Services Ombudsman Bill.
90. The Department also confirmed in evidence to the Committee that the directions which are to be issued under Clause 2(1)(e) and 2(2) would be to all schools or individual schools and would relate to policy and not individual bullying cases.
91. The Committee noted Departmental clarifications and assurances and agreed that it would not pursue related amendments.

### **Clause 3: Duty to keep a record of incidents of bullying**

92. Clause 3 is described as requiring the Board of Governors of grant-aided schools to ensure that a record is kept of all incidents or alleged incidents of bullying which involve a registered pupil whilst: on school premises during the school day; travelling to or from school during the school term; or whilst the pupil is in the lawful control or charge of a member of school staff. The perceived motivation and the manner in which the incident was addressed must also be recorded.

### **Record-Keeping**

93. A number of stakeholders gave evidence to the Committee in respect of the nature of the records which are to be kept by schools.
94. NIABF, CLC and BMEWN contended that the Bill should specify in greater detail the information that is to be recorded. NIABF called for the recording of the method of bullying. CLC argued that schools should record facts; circumstances; the nature of the incident; conclusions; and activities associated with a bullying

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incident. BMEWN argued that the school should keep details of social media bullying, including screen shots and the identity of the bully. These stakeholders generally felt that records should either be retained centrally or at the very least maintained in an agreed format and made available for inspection to ETI.

95. UTU and NAHT expressed reservations in respect of the additional bureaucratic and inspection burden which the record-keeping obligation would present to schools. NAHT argued that the requirement to record could undermine the ability of school principals to use discretion in how they resolve bullying incidents. NAHT also expressed considerable concern that the production and retention of standardised bullying records would generate mischievous Freedom of Information requests and lead to the unhelpful development of unofficial league tables of bullying.
96. The School Focus Groups suggested that bullying records should not be produced or retained unless the agreement of the victim had been secured.
97. The Department asserted that the application of a consistent and robust anti-bullying policy across schools was designed to tackle an existing and important problem which adversely and seriously affected the lives of some pupils. The Department advised that the vitally important objectives of the Bill required uniform and reliable record-keeping in schools. The Department also indicated that recent case law appeared to suggest that where schools fail to keep good records in respect of their existing disciplinary policies, this may increase the likelihood of possible civil legal liability. The Department therefore argued that the provisions of the Bill generally and in respect of record-keeping were reasonable, logical and consistent with good practice.
98. The Department: highlighted the safeguards for personal information provided by existing data protection legislation; confirmed that personal information would be held at school level; and advised that guidance - produced in consultation with schools - would ensure functionality and minimize bureaucracy while also setting out how the records would be used by ETI in school inspections.
99. The Department asserted that its primary concern was the well-being of pupils and that its policy would generate an appropriate anti-bullying culture in schools. The Department indicated that it believed that the record-keeping arrangements for schools would be unlikely to lead to the development of unofficial league tables. In any event, the Department contended that the possibility of reputational damage to



schools was of secondary consideration compared to the need to address bullying in schools robustly.

100. The Department also advised that, consistent with other policies, it would not require schools to seek the consent of the victim when producing or maintaining bullying records. As indicated above, the Department referred to existing data protection legislation and also assured the Committee that following consultation with schools it would revisit the relevant school record retention and disposal schedules so as to ensure the appropriate treatment of sensitive bullying information.
101. The Committee noted particularly the concerns of teaching professionals but agreed that the protections and mitigations set out above were sufficient. The Committee therefore agreed that it would not pursue related amendments.

### **Motivation**

102. As indicated above, the Clause requires schools to record the perceived motivation of a bullying incident. Stakeholders commented at some length on this provision. EC, Rainbow Project, CLC and BMEWN called for the list of motivations to be amended or augmented in order to include better definition of particular groups or explicit reference to: children with dependents; socio-economic background; community background; ethnicity; language; asylum seekers; Roma and Irish Travellers; gender identity; and care status etc.. NAHT suggested that the list of motivations should include reference to the power imbalance between perpetrator and victim including physical strength, virtue of numbers, appearance, academic performance and popularity etc..
103. Despite suggesting additions to the list of motivations (above), CLC also suggested that it was questionable whether the proposed collection of motivating factors would generate useful data which could inform policy development. UTU also argued that the requirement to record motivations would make for difficult value judgements and additional bureaucratic tasks for teachers. UTU suggested that the recording of motivations might be simply limited to the intention to cause physical or emotional harm.
104. The Department advised that guidance to schools would provide clarification on the recording of information, including perceived motivations, relating to bullying incidents. The Department assured the Committee that all of the guidance relating to the anti-bullying policy would be informed by good practice in other jurisdictions.

The Department contended that the motivations listed in the Bill were designed to be consistent with the Department's policy in respect of the inclusion of Section 75 groups. However, the Department conceded that in order to achieve this, a correcting amendment would be required in order to include reference to "children with dependents". The Department asserted that when the information specified in the Bill is recorded by schools and subject to aggregation, it would usefully inform relevant Departmental policies.

105. The Department also advised that the wording of the Clause indicated that the list of motivations was not exhaustive and, as would be set out in guidance, schools would have the discretion to record a greater level of granularity in this regard. The Department thus contended that further amendments to these provisions were not required. The Department assured the Committee that the relevant provisions would not be commenced until guidance and relevant support for schools was in place.
106. The Committee agreed that the recording of bullying motivations by schools was an important feature of the anti-bullying policy. The Committee felt that aggregated information could usefully inform Departmental policy and ultimately help schools deal consistently with unwanted conduct and behaviours. The Committee felt that the list of motivations in the Bill required improvement. The Committee considered a number of approaches.
107. Some Members favoured amendments which would remove the list from the Bill and include an regulation-making power under which the Department would consult on and generate a more representative list of motivations. These Members dismissed the Department's contention that such an approach would be wasteful of school, Departmental and Assembly time and resources. These Members argued that this represented a sensible method of dealing with changing school demographics and responding to differing social pressures in schools.
108. Other Members felt that the list should be retained but that an order-making power should be included which would allow the Department to amend the list of motivations. It was argued that this would permit the Department to aggregate data and subsequently revise the list of motivations, as appropriate.
109. The Committee divided and agreed to support the latter approach. The Committee also subsequently agreed to support the Departmental correcting amendment to add "children with dependents" to the list of motivations.

#### **Clause 4: Interpretation**

110. This Clause contains information on the interpretation of key terminology which is used in the Bill.
111. Stakeholders did not comment on the Clause. The Committee agreed that it was content with the Clause as drafted.

#### **Clause 5: Short title and commencement**

112. This Clause contains the short title of the Act - Addressing Bullying in Schools Act (Northern Ireland) 2015.
113. EC recommended that a provision should be added to the Bill which would require a review to take place after a fixed period, e.g. five years, in order to ensure the effectiveness of the legislation. UTU also suggested that the title of the Bill should be changed in order to reflect the Department's objective of seeking to eradicate bullying in schools.
114. The Department indicated that it ordinarily and regularly reviews the effectiveness of policy and legislation. The Department indicated that the title of the Bill accurately reflected its objective of helping schools to address bullying. The Department therefore advised that further substantive amendments were not required.
115. The Committee agreed that it would not pursue related amendments.

#### **Other Issues**

116. Stakeholders made a number of other suggestions, not necessarily related to the clauses of the Bill.
117. NIABF suggested that the Department's anti-bullying research instrument - a regular survey of single year groups in primary and post-primary schools - should be adapted in order to include children in different year groups, non-mainstream settings and should be based on a rights-based framework and focus on building resilience in children.

118. The Department assured the Committee that it was to revise its research instrument in order to facilitate the evaluation of the effectiveness of the anti-bullying policy.
119. NICCY suggested that the Bill should create a statutory duty on educational bodies to support young and student carers.
120. The Department advised that such a duty was outwith the scope of the Bill.
121. NIHRC argued that other policies such as child protection and safeguarding policies should be amended in order to align their provisions with the Addressing Bullying in Schools Bill.
122. The Department assured the Committee that it was to review and revise its safeguarding and other relevant policies follow the passage of the Bill.
123. The Erasmus+ Connections group suggested that the Bill should be amended in order to enhance and ensure consistency of mental health support for pupils in schools and to increase the awareness of teachers on this issue during training provided during Initial Teacher Education.
124. The Department undertook to respond to the Committee on this issue as part of the Committee's consideration of pastoral care matters and the implementation of the Marshall Report Action Plan.
125. The Committee accepted the clarifications and assurances set out above and agreed that it would not pursue related amendments.

## Clause by Clause Scrutiny

126. This section gives the decisions on the Committee’s scrutiny of the clauses of the Addressing Bullying in Schools Bill. Members and other readers of this report may wish to refer to the previous section so as gain a full understanding of the Committee’s consideration and deliberations on the individual clauses, alongside the decisions set out below.

### Clause 1: Definition of “bullying”

127. The Committee noted a Departmental assurance that forthcoming anti-bullying guidance would clarify the treatment of unrepeated or one-off events.
128. The Committee agreed to seek a Ministerial assurance, at Consideration Stage of the Bill, in respect of the development of appropriate guidance for Special Schools and Learning Support Units in relation to the identification and recording of bullying involving children with Special Educational Needs.
129. The Committee agreed to recommend an amendment to the Assembly, as indicated below, which would clarify that acts or omissions which do not meet the specification in Clause 1(1) may also be classified as bullying.

Clause 1, page 1, line 2  
At end insert ‘(but is not limited to)’

130. The Committee agreed that it would reconsider its position in respect of the above, in the event of an alternative Departmental approach or upon receipt of revised Departmental wording.
131. The Committee agreed to recommend to the Assembly, in line with a Departmental suggestion, that Clause 1 be subject to a technical amendment set out below.

Replace Clause 1 with the following:

‘Definition of “bullying” [j1]

1.–(1) In this Act “bullying” includes the repeated use of–

(a) a verbal, written or electronic communication,

(b) a physical act, or

(c) a combination of those,

by a pupil or a group of pupils against another pupil or group of pupils, with the intention of causing physical or emotional harm to that pupil or group of pupils.

(2) For the purposes of subsection (1), “act” includes “omission”.’

132. The Committee agreed that in order to give effect to the specification amendment above, it would recommend to the Assembly an amendment to the previous Departmental amendment to Clause 1.

133. The Committee agreed that it was content with Clause 1, subject to the proposed amendments.

**Clause 2: Duty of Board of Governors to secure measures to prevent bullying**

134. The Committee agreed to recommend an amendment to the Assembly, as indicated below, which would require schools to review their anti-bullying measures within a period not exceeding 4 years.

Clause 2, page 1  
Leave out line 22 and insert-  
'(i) at intervals of no more than 4 years; and'

135. The Committee agreed to recommend an amendment to the Assembly, as indicated below, to enable Boards of Governors to consider measures to address bullying by means of electronic communication regardless of when it occurs where it is likely to have a negative impact on the pupil’s education. The Committee’s agreement was on a without prejudice basis and subject to consideration of revised wording.

The Committee divided.

<p>Ayes Peter Weir Jonathan Craig Trevor Lunn Robin Newton Nelson McCausland Seán Rogers</p>	<p>Noes Chris Hazzard Maeve McLaughlin</p>	<p>Abstained Sandra Overend</p>	<p>Not voting</p>
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Clause 2, page 2, line 16

At end insert –

‘(1A) The Board of Governors of a grant-aided school may, to such an extent as is reasonable, consider measures to be taken by the school (whether by the Board of Governors, the staff of the school or other persons) with a view to preventing bullying by means of electronic communication, in circumstances other than those listed in section 2(1)(b), where that bullying is likely to have a detrimental effect on a registered pupil’s education.’

136. The Committee agreed to write to the Department seeking sight of its pastoral care

guidance and any other relevant policies relating to the well-being and safeguarding of pupils.

137. The Committee agreed that it was content with Clause 2, subject to the proposed amendments.

**Clause 3: Duty to keep a record of incidents of bullying**

138. The Committee agreed that it would not recommend an amendment to the Assembly, as indicated below, to replace the list of bullying motivation factors in Clause 3 with a relevant Departmental regulation-making power.

The Committee divided.

Ayes	Noes	Abstained	Not voting
Peter Weir	Chris Hazzard	Sandra Overend	
Jonathan Craig	Maeve McLaughlin		
Robin Newton	Trevor Lunn		
Nelson McCausland	Seán Rogers		

Clause 3, page 2, line 37  
 Leave out from line 37 to line 4 on page 3 and insert - 'any one or more factors prescribed in regulations to be made by the Department, subject to the draft affirmative procedure.'

139. The Committee agreed that it would recommend an amendment to the Assembly, as indicated below, to provide an order-making power to the Department to amend the list of bullying motivation factors in Clause 3.

The Committee divided.

Ayes	Noes	Abstained	Not voting
Peter Weir	Chris Hazzard	Trevor Lunn	
Jonathan Craig	Maeve McLaughlin	Seán Rogers	
Robin Newton			
Nelson McCausland			
Sandra Overend			

Clause 3, page 3, line 4  
 At end insert '( ) The Department may by order subject to negative resolution amend subsection (3).'

140. The Committee agreed to recommend an amendment to the Assembly, in line with a Departmental suggestion, which will add a reference to children and young people with dependents in the list of motivation factors in Clause 3(3).

Clause 3, page 3, line 4  
 At end insert '( ) having, or not having, dependants'

141. The Committee agreed that it was content with Clause 3, subject to the proposed amendments.

**Clause 4: Interpretation**

142. The Committee agreed that it was content with Clause 4, as drafted.

**Clause 5: Short title and commencement**

143. The Committee agreed that it was content with Clause 5, as drafted.

**Long Title**

144. The Committee agreed that it was content with the Long Title of the Bill, as drafted.



# Links to Appendices

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