

EDUCATION AND LIBRARIES (NORTHERN IRELAND) ORDER

EXPLANATORY MEMORANDUM

INTRODUCTION

1. This draft Education and Libraries (Northern Ireland) Order (“the Order”) will be made under Paragraph 1(1) to the Schedule to the Northern Ireland Act 2000 subject to the approval by each House of Parliament
2. Originally this legislation had been introduced as a Bill to the Northern Ireland Assembly on 24 June 2002 with the Second Stage on 2 July. The Bill was part way through the Committee stage when the Northern Ireland Assembly was suspended.

BACKGROUND AND POLICY OBJECTIVES

3. One of the main purposes of the Order is to provide the Department of Education with an enabling power to introduce a single common formula for the calculation of school budgets for all schools funded under Local Management of Schools (LMS) arrangements (*Articles 3-9*).
4. The Order also contains a range of other provisions on education matters which introduce technical or minor amendments to existing legislation. These provisions can be grouped under the following generic headings:-
 - a) Best Value in the delivery of ELB services (*Articles 13-16*);
 - b) Improve the operation of certain elements of the education system for the benefit of pupils/parents/ELBs/Department (*Articles 20, 21, 23-27, 31 and 37*);
 - c) Provide for the greater delegation of authority from the Department to ELBs (*Articles 29, 30 and 32*);
 - d) Strengthen elements of children’s rights (*Articles 17-19, 34 and 36*);
 - e) Access to the special education system for pupils from outside Northern Ireland (*Article 22*); and
 - f) Technical amendments (*Articles 10, 11, 12 and 38, 28, 33, 35 and Schedule 2, paragraphs 4 and 9*).

CONSULTATION

5. The provisions in the Order will provide the Department with an enabling power to allow it to require ELBs to adopt the single common formula (Para 3 above). The Order will not prescribe the formula itself. The principle of a single common formula had already been agreed and was an objective of the Executive's Programme for Government. The detailed proposals for the construction of the common formula were the subject of a detailed consultation process, including the Education Committee, and the comments received will help inform the ongoing discussion on the development of the formula.
6. One of the key issues raised by some members of the Northern Ireland Assembly Education Committee during the unfinished Committee stage was a proposal that the Bill should include a power for the Assembly as a whole to have the final say on the content of the LMS formula and scheme. The Department recognises the important role that the Assembly has played in advising the Department on a range of strategic issues but given the complexities in the LMS formula and scheme, a formal approval role would be impractical in these particular circumstances. The formula and scheme are complicated detailed documents all of whose separate elements are interdependent. Any change to a factor within the formula, either in the make-up of the factor or the values attached to it, will have knock-on effects elsewhere within the formula and it follows therefore that any changes have to be modelled and their impact assessed before they can be accepted. To try and make such changes the subject of a formal parliamentary process would be unwieldy and out of line with practice elsewhere in the UK. The formula will be subject to detailed consultation and will be fully discussed with education partner bodies before implementation as will any proposed changes post operation. It is anticipated that if the Assembly returns, the Department will seek to ensure that the Assembly's views will be considered in the calculation of the Common Formula Funding Scheme.
7. In the case of the Best Value provisions in *paragraph 4(a)*, the Department has had regard to the detailed consideration given to this issue in the context of the Department of the Environment (DOE) Local Government (Best Value) Act 2002 which was itself the subject of extensive consultation. The provisions proposed adopt a similar approach in providing a statutory underpinning for the work in progress by the ELBs on Best Value but without prescribing detailed procedural arrangements. In this respect the ELBs established a Best Value Project Board in 1999 on which the Department and Trade Union side are represented. The objective of the Board was the development of a Best Value regime on a voluntary basis pending the introduction of a legislative base. Within this forum there has been extensive discussion and consultation on the application of Best Value to ELB services. On implementation of the legislation the Department will continue to consult extensively with the ELBs on the practical outworking of the Best Value principles with the aim of ensuring that key services are subjected to a

value for money scrutiny, whilst avoiding the imposition of an unnecessary bureaucratic process.

8. As for consultations in relation to the other provisions contained in the proposed Bill:

- The provisions in *paragraph 4(b)* are designed to improve the operation of a number of aspects of the education system for the benefit of pupils, parents and schools. No consultation was considered necessary in respect of:-
 - the provisions relating to the operation of tribunals and appeals (which will either regularise or extend privacy arrangements for their conduct);
 - the provision relating to a single pre-school admissions form;
 - the widening of appointments to ELB Teaching Appointment Committees; and
 - the clarification of law relating to consultations on development proposals.
- As for the provisions relating to consultations with schools on (future) regulations about performance targets and information concerning pupil performance, this is designed to reduce the bureaucratic burden on schools, while the provision to extend the range of information to be supplied by schools is required to enable schools to comply with the legislation specified. Again no consultations were considered necessary on these aspects. The provision relating to the removal of school Boards of Governors will create a regulation making power and consultations will be undertaken on the regulations.
- In relation to the provisions in *paragraph 4(c)*, these will remove unnecessary control by the Department and reduce the bureaucratic burden on ELBs, and are welcomed by the ELBs.
- The provisions in *paragraph 4(d)* have a positive impact on children's rights. The provisions formally introducing the duty of care were the subject of full consultations with education authorities in the context of Governors' duties and responsibilities. The requirement for child protection policies was a commitment given by the Department, as a result of the Bangor Grammar School enquiry. The anti-bullying policy was also the subject of consultations with schools.
- In relation to the provision at *paragraph 4(e)*, this is being brought forward in response to a request from the ELBs and no wider consultations were considered necessary.
- The provisions in *paragraph 4(f)* are of a purely technical nature and no consultations were considered necessary.

THE PROVISIONS OF THE ORDER

9. The main provisions of the proposed draft Order are outlined below. Where an Article is straightforward, no comment has been included.

PART II: FUNDING OF GRANT-AIDED SCHOOLS

Article 3 - The common funding scheme for grant-aided schools

Article 3 provides for one common funding scheme for all grant-aided schools in Northern Ireland. The Department will have an overall duty to prepare and publish the common funding scheme after consultation with the Education and Library Boards (ELBs), the Council for Catholic Maintained Schools (CCMS) and such other bodies as it sees fit. The Article also places a duty on all ELBs to implement the common funding scheme.

Article 4 - Contents of the common funding scheme

Article 4 sets out what the common funding scheme is to cover, including details of the common funding formula to be applied in calculating the budget allocation to each relevant school. The Article also allows for a school's budget allocation to be revised in-year and for a common funding scheme to be applied to new schools.

Article 5 - Conditions as to financial delegation

Article 5 provides the power for ELBs to set separate delegation conditions, from the common funding scheme and for the Department to issue guidance on these conditions. It also provides for the common scheme to detail restrictions on the Board of Governors.

Article 6 - Effect of financial delegation

Article 6 provides for the common funding scheme to detail the arrangements for schools having the management of their budget allocation delegated to their Board of Governors by the ELB. It also ensures that members of a Board of Governors of a school will not incur any personal liability in respect of any action taken in good faith in the exercise or purported exercise of their delegated powers under the common funding scheme.

PART III: BOARDS: FINANCE AND THE DUTY OF BEST VALUE

Article 10 – Resource allocation plans

Article 11 – Funding of boards

Article 12 – Accounts of boards

These amendments are made in recognition of the move to resource accounting and budgeting and the fact that the ELBs are now funded by three Departments.

Article 13 – The duty of best value

Article 13 places a duty on ELBs to deliver Best Value in the execution of their services and to consult interested parties on how this should be done.

Article 14 – Contracts: exclusion of non-commercial considerations

Article 14 allows the Department to amend Article 20 of the Education and Libraries (Northern Ireland) Order 1993 which requires that an ELB does not take into account non-commercial matters when conducting a tender process for the supply of goods, materials or services to the ELB.

Article 16 – Repeal of competition provisions

Article 16 repeals Part II of, and Schedule 1 to, the Education and Libraries (Northern Ireland) Order 1993 which had placed certain compulsory competitive tendering requirements on ELBs in executing some of their activities.

PART IV: SCHOOLS

Article 17 - Duty on Boards of Governors to safeguard and promote the welfare of pupils

Article 18 – Child protection measures

These amendments impose a duty on the Board of Governors of all grant-aided schools to safeguard and promote the welfare of registered pupils while in the care of the school and to have a written child protection policy.

Article 19 - School discipline measures to prevent bullying

Article 19 amends Article 3 of the Education (Northern Ireland) Order 1998 on schools' discipline policies to require that prevention of bullying be specifically addressed and to ensure consultation with pupils.

Article 20 – Admission appeals: tribunal procedures and expenses

Article 20 allows for the provision in regulations for Independent Appeals Tribunals to continue to be heard in private.

Article 21 – Parental preferences for admission to nursery schools

Article 21 substitutes new *paragraphs (1) and (2)* for those in Article 23 of the Education (Northern Ireland) Order 1998 to provide for parents to express on a single application form, in order of preference, the schools in which they wish pre-school education to be provided for their child.

Article 22 - Admission to special schools of children resident outside Northern Ireland

Article 22 empowers an ELB to make arrangements for the admission of a child with special educational needs, from outside Northern Ireland, to a vacant place in a special school within its area and to charge for the place.

Article 23 – Removal of members of Boards of Governors

Article 23 gives the Department power to make regulations to remove from office all the voting and co-opted members of the Board of Governors of a school. This is designed to address weaknesses in the management of the school and is expected to be used only on rare occasions.

Article 24 - Development proposals for grant-aided schools

Article 24 substitutes new paragraphs for the existing paragraph (5) of Article 14 of the Education and Libraries (Northern Ireland) Order 1986 to impose an additional duty on a proposer of a development proposal to consult at an early stage with the Boards of Governors, teaching staff and parents of the relevant schools.

Article 27 – Consultation of schools by sampling

Article 27 amends Article 31 of the Education Reform (Northern Ireland) Order 1989 and Article 11 of the Education (Northern Ireland) Order 1998 to enable the Department to consult a sample of schools, instead of all schools likely to be affected, before making regulations relating to the provision of information about pupil performance and the setting of performance targets by schools.

Article 28 - Costs under approved contracts

Article 28 provides for a relevant authority entering into a Public Private Partnership (PPP) contract, with the power to make payments for legitimate contractual costs at any point during, or after, the end of the contract term

PART V: MISCELLANEOUS AND SUPPLEMENTARY

Article 29 - Determination of travelling and subsistence allowances

Article 30 – Officers of boards

Article 32 – Programme of training by boards

These amendments to existing legislation provide for greater delegation of authority from the Department to ELBs on determination of travel and subsistence allowances, appointment of officers and compilation of training programmes.

Article 31 - Principals on teaching appointments committee

Article 31 modifies Part 1 of Schedule 3 to the Education and Libraries (Northern Ireland) Order 1986 to enable an ELB to appoint one or two principals, from another ELB's panel, to its Teaching Appointments Committee, where it is not possible to do so from its own panel.

Article 33 – Terms of appointment of members of the Council for Catholic Maintained Schools

Article 33 removes the provision in paragraph 5 of Schedule 8 to the Education Reform (Northern Ireland) Order 1989 for certain members of CCMS to be appointed at a different time from the other members.

Article 34 - Provision of secondary education for pupils by institutions of further education

Article 34 and paragraph 7 of Schedule 2, extends the opportunity to have educational provision made in an institution of further education, to pupils who are over the age of 14 and not on the register of a school, for example pupils who have been expelled.

Article 35 - The General Teaching Council for Northern Ireland: fees and procedures

Article 35 amends certain powers in Chapter 1 of Part VI of the Education (Northern Ireland) Order 1998 regarding exemptions to the employment of unregistered teachers, regulations on the removal of teachers from the register and the determination of fees chargeable.

Article 36 - Abolition of corporal punishment

Article 36 consolidates existing legislation on corporal punishment and effectively extends the abolition to independent schools. This change is required to ensure compliance with a judgement of the European Court of Human Rights.

Article 37 – Reports and returns

Article 37 provides for specified bodies to give reports and returns and provide information to DE, DCAL and DEL and to ELBs, as the Departments and ELBs may reasonably require for the purposes of their functions under any statutory provision and not just under the Education Orders as at present.

FINANCIAL EFFECTS OF THE ORDER

10. The provisions in the Order are cost neutral and do not create any staffing implications nor are there any inherent costs to the public.

EUROPEAN CONVENTION ON HUMAN RIGHTS

11. The provisions of the Order are compatible with the Convention on Human Rights.

IMPACT ON EQUALITY OF OPPORTUNITY

Common Formula Funding

12. The introduction of a common formula, of necessity, involves a change in the level of funding allocated to individual schools and an Equality Impact Assessment (EIA) formed an integral part of a previous widespread consultation exercise carried out on the proposals for the common formula. The EIA may be viewed on the Department's website – www.deni.gov.uk.

Other Provisions

13. The Department considers that none of the remaining provisions in the Order will have any adverse differential application against any of the categories identified in Section 75 of the Northern Ireland Act 1998.

SUMMARY OF THE REGULATORY APPRAISAL

14. There are no costs to business associated with the Order.