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Assembly

Research and Information Service Bill Paper

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Addressing Bullying in Schools Bill

NIAR 612-15

This Bill Paper is prepared to support the Committee for Education in its scrutiny of the Addressing Bullying in Schools Bill. It provides background information on the prevalence of bullying and current practice in schools in Northern Ireland, and considers a number of issues arising from the Bill's individual clauses. A further Research and Information Service (RaISe) paper (NIAR 632-15; dated 3rd December 2015) provides a *Review of Bill Costs* to supplement this Paper.

This information is provided to MLAs in support of their Assembly duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as professional legal advice or as a substitute for it.

Executive Summary

Introduction

This Bill Paper is produced to support the Committee for Education in its scrutiny of the Addressing Bullying in Schools Bill (the Bill). It provides some contextual information on the Bill and highlights a number of key policy issues. A further RaISe paper provides a *Review of Bill Costs* (NIAR 632-15, dated 3rd December 2015). All references to “the Bill” are to the Bill as introduced.

Prevalence of bullying in Northern Ireland

In 2011, research commissioned by the Department of Education (DE) found that 39% of Year 6 pupils and 29% of Year 9 pupils had been bullied in the past two months. The research indicates that males were more likely to experience physical bullying, while female pupils were more likely to be bullied in other ways, including electronically.

Addressing Bullying in Schools Bill

In a 2013 review, the Northern Ireland Anti-Bullying Forum (NIABF) highlighted wide variation in policy and practice in addressing bullying in schools. It found that existing legislation and guidance was inadequate, and called for an agreed bullying definition.

In January 2015 the DE consulted on the main policy proposals for addressing bullying in schools. Subsequently, the Minister for Education introduced the Bill to the Assembly on the 30th November 2015.

Clause 1: Definition of “bullying”

There is currently no statutory definition for the term “bullying” in schools in Northern Ireland. The Bill provides such a definition, noting that bullying is a repeated verbal, written or electronic act or acts (or omission of an act), between pupils, with the intention of causing physical or emotional harm.

In many jurisdictions bullying definitions are not statutory. However, following the 1999 Columbine High School shooting, American state legislatures introduced a wave of anti-bullying legislation. A majority of states include a statutory definition of bullying.

There is wide variation across jurisdictions and organisations in regard to how they define bullying. However, there is broad agreement in the literature on three defining criteria:

- **Intent:** the perpetrator intended to cause harm;
- **Repetition:** the behaviour must be repeated; and,
- **Power imbalance:** there is an imbalance of power between the perpetrator and the victim.

The Bill includes the elements of repetition and intent, but does not refer to a power imbalance. While repetition is a well-established criterion for bullying, it presents challenges in the cyberbullying context, as it may not be clear where responsibility lies for the redistribution of the original act. In addition, the large potential audience may result in greater harm to the victim.

Over half (57%) of respondents to the DE consultation did not agree that the definition should apply only to bullying between pupils, and not include staff.

Further consideration could be given to the following in relation to the Bill's definition:

- The rationale for excluding a power imbalance between perpetrator and victim in the definition proposed under Clause 1;
- How the term "repetition" would be defined within the context of cyberbullying, for example, where an electronic act is distributed by someone other than the original perpetrator; and,
- The rationale for excluding school staff from the definition.

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

This Clause places a number of duties on Boards of Governors to prevent bullying. Under existing legislation, principals are responsible for determining measures to prevent bullying; the Bill removes this duty. Clause 2 states that Boards of Governors must develop and implement policies applying to pupils:

- On school premises during the school day;
- While travelling to or from the school during the school term; and,
- While in the lawful control or charge of a member of school staff.

However, research in Northern Ireland suggests that cyberbullying is four times more likely to occur outside school hours, with incidents often "spilling over" into the school day. Teachers and principals have reported a lack of clarity around when they are responsible for addressing bullying.

Indeed, the evidence emphasises the importance of teacher education in preventing bullying. Research has identified a need for a review of teacher education and resources in Northern Ireland, particularly in relation to cyberbullying.

In addition, many respondents to the NIABF review suggested that school policies should refer to specific types of bullying, including cyberbullying and bullying due to race, disability and sexual orientation. Wider research suggests, for example, that homophobic bullying is less likely to occur where schools publicly acknowledge and condemn it.

Further consideration could be given to the following areas:

Boundaries between home and school

- The rationale for limiting the scope of policies to school hours; and,
- The implications of this for cyberbullying incidents.

Consultation and Board of Governor duties

- The potential implications of affording Boards of Governors wide discretionary powers concerning consultation; and,
- The implications of the duties for Boards of Governors, for example on workload and recruitment.

Policy

- The rationale for not requiring schools to ensure that their anti-bullying policies refer to specific types of bullying.

Training and guidance

- Whether the DE has conducted a training needs analysis around bullying;
- Whether the DE has reviewed ITE and CPD courses in this regard; and,
- Whether the DE would produce specific guidance on addressing cyberbullying, and on other forms of bullying.

Clause 3: Recording incidents

This Clause requires Boards of Governors to ensure that a record of all incidents or alleged incidents of bullying is kept within the school. The record must include the perceived motivation behind the incident and state how the school addressed it.

While there was much support for recording incidents among respondents to the DE consultation, there was less support for reporting through a common IT system (85% compared to 65% who supported recording centrally).

It is important to note that many pupils do not report experiences of bullying, and that those who do are more likely to tell a friend or parent than a teacher. There is also evidence that teachers do not always take sufficient action to address bullying.

It is likely that records of bullying would include sensitive personal data, as defined under the Data Protection Act 1998. Some respondents to the DE consultation highlighted concerns in this regard.

The Freedom of Information Act 2000 provides a general right of access to recorded information held by public authorities (including schools). While it includes a number of exemptions, there remains the potential for schools to release sensitive personal information about pupils, which could have human rights and equality implications.

Further consideration could be given to the following areas:

Guidance

- The rationale for stating that the DE “*may*” produce guidance (instead of “*shall*”).

Recording incidents

- How the DE would ensure that schools properly adjudicate information recorded on bullying incidents, ensuring due process;
- The purpose of including bystanders or witnesses in records of bullying incidents and how this would be addressed in relation to cyberbullying; and,
- Whether records of bystanders to a bullying incident would include school staff.

Data storage and protection

- The length of time records of bullying incidents would be maintained;
- The potential for schools to release sensitive personal information;
- The extent to which the DE has considered human rights and equality standards and law in relation to the potential release of sensitive information; and,
- The potential for third parties to produce “league tables” of bullying prevalence.

Under-reporting and actions to address bullying

- The potential implications of the duties to record incidents on the willingness of pupils and teachers to report and record bullying;
- How, if at all, the DE would monitor and address potential underreporting by pupils and teachers; and,
- The perception that many teachers take insufficient action in addressing bullying.

Motivation

- The motivations for bullying provided in the Bill, including the rationale for excluding looked after children and persons with dependents;
- The rationale for not including other motivating factors, such as appearance; and,
- The capacity of teachers to determine the motivation for bullying incidents.

Conclusion

This Bill Paper has considered a number of potential issues that could be given further consideration. These include the extent to which the Bill addresses issues such as cyberbullying and bullying due to race, faith, disability, gender reassignment and sexual orientation. It has also highlighted concerns around teacher education and capacity in relation to bullying, in addition to data protection issues.

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Introduction

The Education Minister introduced the Addressing Bullying in Schools Bill (the Bill) in the Assembly on the 30th November 2015. This Bill Paper is prepared to support the Committee for Education in its scrutiny of the introduced Bill, and focuses on the policy implications. A further Research and Information Service (RaISe) paper (NIAR 632-15, dated 3rd December 2015) provides a *Review of Bill Costs* to supplement this Paper.

To contextualise an examination of the key Bill clauses, this Bill Paper first provides background information on the prevalence of bullying and current practice in schools in Northern Ireland.

Thereafter, it considers a number of issues arising from the Bill's individual clauses, drawing on relevant sources, including the Department of Education's (DE) consultation on the Bill proposals in 2015. The Paper highlights issues for consideration throughout.

Please note: this information is provided to MLAs in support of their Assembly duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as professional legal advice or as a substitute for it.

All references in this Paper to "the Bill" are to the Bill as introduced.

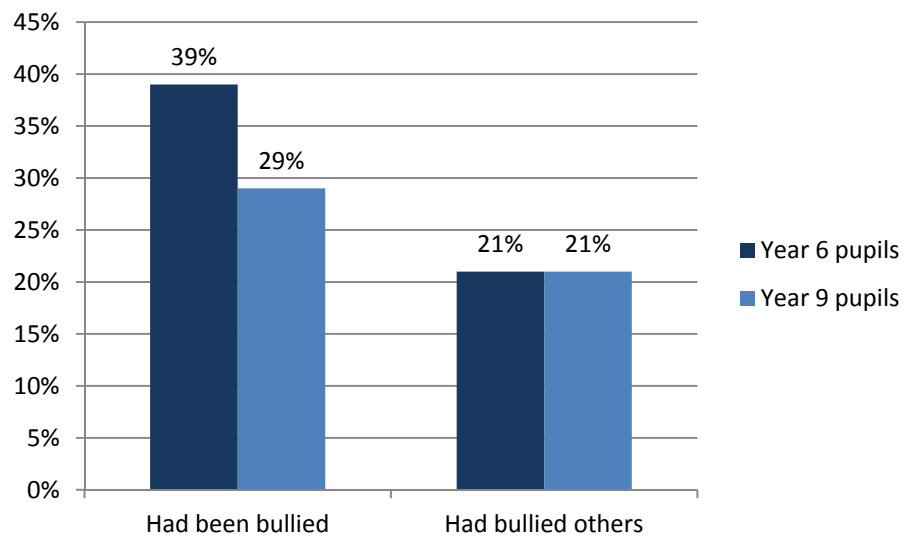
1 Prevalence of bullying in Northern Ireland

While bullying has reduced in prevalence in most countries,¹ the DE states that it has not declined in Northern Ireland.² Research commissioned by the DE and published by RSM McClure Watters in 2011 highlighted the number of pupils involved in bullying incidents within the past two months, as illustrated in Figure 1 overleaf.

¹ Currie, C., Zanotti, C., Morgan, A., Currie, D., de Looze, M. (2012) *Social determinants of health and well-being among young people: Health Behaviour in School-aged Children (HBSC) study: international report from the 2009/2010 survey* Copenhagen: WHO Regional Office for Europe

² Department of Education (2015) *Addressing Bullying in Schools: Consultation document* Bangor: DE

Figure 1: Prevalence of bullying in the past two months among Year 6 and Year 9 pupils in Northern Ireland in 2011³



The report found that boys were more likely than girls to be the victim of physical bullying. It noted that the most common types of bullying were:⁴

- Being called names or teased in a hurtful manner;
- Being left out and ignored (more prevalent among girls); and,
- Spreading false information about a pupil and trying to make others dislike them.

1.1 Trends

The Kids' Life and Times survey, conducted annually by the Economic and Social Research Council since 2008, asks Primary 7 pupils about their experiences of bullying. As illustrated overleaf in Figure 2, 22% of Primary 7 pupil respondents in 2014 stated that they had experienced physical bullying in the past two months, while 31% stated that they had been bullied in other ways.⁵

³ RSM McClure Watters (2011) *The Nature and Extent of Pupil Bullying in Schools in the North of Ireland* Bangor: DE

⁴ RSM McClure Watters (2011) *The Nature and Extent of Pupil Bullying in Schools in the North of Ireland* Bangor: DE

⁵ Economic and Social Research Council (2014) *Kids' Life and Times* [online] Available at: <http://www.ark.ac.uk/klf/results/Bullying.html>

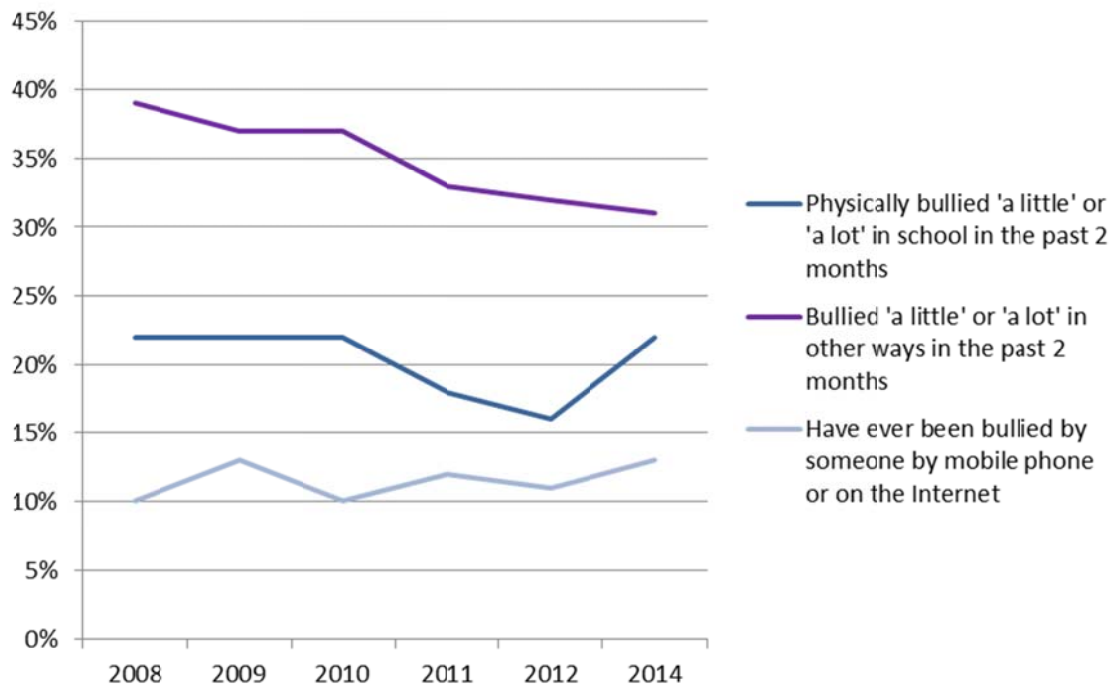
Figure 2: Extent of bullying experienced by Primary 7 pupils in Northern Ireland⁶

Figure 2 shows that physical bullying decreased between 2010 and 2012, but increased back to previous levels (22% of pupils) in 2014. However, between 2008 and 2014 bullying in other ways decreased from 39% to 31%.

Over each of the past six years a slightly higher proportion of male pupils reported physical bullying than their female counterparts. However, a greater percentage of female pupils stated that they were bullied in other ways, and that they had experienced cyberbullying, than male pupils.⁷

1.2 International comparison

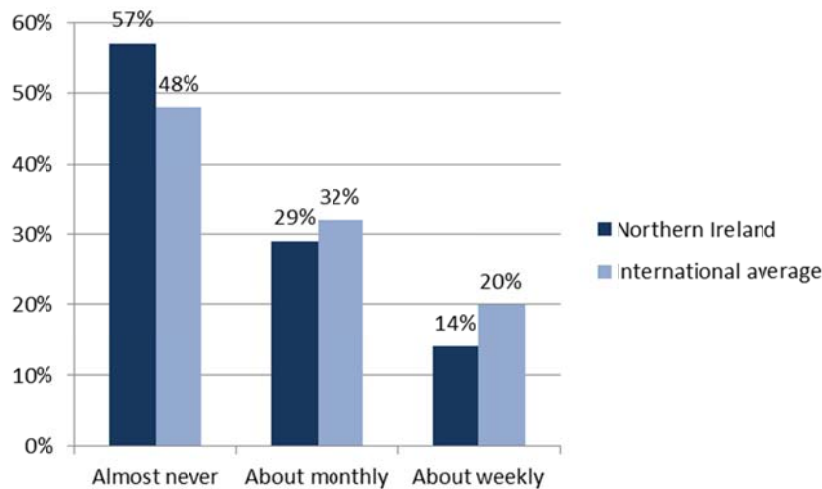
Evidence from the 2011 Trends in International Maths and Science Study (TIMSS) suggests that primary pupils in Northern Ireland experienced bullying less frequently than those in most other participating countries, as illustrated in Figure 3 overleaf. Only the Republic of Ireland and Finland reported lower levels of bullying.⁸

⁶ Economic and Social Research Council (2014) *Kids' Life and Times* [online] Available at: <http://www.ark.ac.uk/kit/results/Bullying.html> (Data not available for 2013)

⁷ Economic and Social Research Council (2014) *Kids' Life and Times* [online] Available at: <http://www.ark.ac.uk/kit/results/Bullying.html>

⁸ Sturman, L., Twist, L., Burge, B., Sizmur, J., Bartlett, S., Cook, R., Lynn, L., Weaving, H. (2012) *PIRLS and TIMSS 2011 in Northern Ireland: Reading, Mathematics and Science* Slough: NFER

Figure 3: Extent to which nine and ten year old pupils were bullied at school (2011)⁹



2 Policy and practice in schools

The commitment to bring forward legislation was based on research evidence and on a review of anti-bullying policies and practice in schools by the Northern Ireland Anti-Bullying Forum (NIABF).¹⁰ The review was commissioned by the Minister for Education in 2013.¹¹

It found that while schools were aware of their responsibilities to tackle bullying, there was wide variation in policy and practice. It noted that a lack of consistency in recording bullying incidents limits a school's ability to assess the scale of the problem, identify motivating factors and monitor the effectiveness of the policy's implementation. The review's other findings included:¹²

- Current legislation is inadequate, resulting in inconsistency between schools;
- Stakeholders called for an agreed definition of bullying;
- There should be a school requirement to centrally record details of bullying complaints; and,
- The DE should provide updated guidance on anti-bullying policies to schools.

⁹ Sturman, L., Twist, L., Burge, B., Sizmur, J., Bartlett, S., Cook, R., Lynn, L., Weaving, H. (2012) *PIRLS and TIMSS 2011 in Northern Ireland: Reading, Mathematics and Science* Slough: NFER

¹⁰ Department of Education (2015) *Addressing Bullying in Schools: Consultation document* Bangor: DE

¹¹ Northern Ireland Anti-Bullying Forum (2013) *High level review of anti-bullying legislation, existing guidance to schools, effectiveness of current anti-bullying policies and practices within schools and support available to schools via the Education and Library Boards* NIABF

¹² Northern Ireland Anti-Bullying Forum (2013) *High level review of anti-bullying legislation, existing guidance to schools, effectiveness of current anti-bullying policies and practices within schools and support available to schools via the Education and Library Boards* NIABF

3 Addressing Bullying in Schools Bill

The DE held a consultation between the 5th January and the 27th February 2015 on the main policy proposals for addressing bullying in schools, receiving 4,939 responses. Of these, pupils submitted 4,221 questionnaires while the remainder came from teachers, parents and other stakeholders.¹³ It also conducted an equality and human rights policy screening which did not identify any adverse equality issues.¹⁴

Following the consultation, the Minister for Education introduced the Addressing Bullying in Schools Bill to the Assembly on the 30th November 2015.

4 Clause 1: Definition of “bullying”

There currently is no statutory definition for the term “bullying” in schools in Northern Ireland. Clause 1 of the Bill provides such a definition of bullying, as outlined below.

1 (1) “In this Act “bullying” includes-

- (a) the **repeated** use of a verbal, written or electronic communication or a physical act (or a combination of those).
- (b) by a pupil or group of pupils,
- (c) against another pupil or group of pupils,
- (d) **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”**.

4.1 Consultation responses

There was limited agreement among respondents to the DE's consultation regarding the proposed definition. Some suggested that its scope was too limited, and there were mixed views on the extent to which it was easy to understand.¹⁵

The Bill's consultation document recognises that the impact of the definition will depend on its interpretation when applied by schools and their willingness to implement related guidance. It notes that the Education and Training Inspectorate (ETI) will continue to monitor this.¹⁶

¹³ Department of Education (2015) *Addressing Bullying in Schools: Summary Report of Responses to the Consultation* Bangor: DE

¹⁴ Department of Education (2014) *Equality and Human Rights Policy Screening for Addressing Bullying in Schools Policy* Bangor: DE

¹⁵ Department of Education (2015) *Addressing Bullying in Schools: Summary Report of Responses to the Consultation* Bangor: DE

¹⁶ Department of Education (2015) *Addressing Bullying in Schools: Consultation document* Bangor: DE

4.2 Bullying definitions

The literature highlights a range of definitions of bullying, with variation across jurisdictions and organisations. However, there is broad consensus in the literature around three key defining criteria for bullying,¹⁷ first defined by Olweus in 1993¹⁸ and illustrated by Figure 4 below.

Figure 4: Key criteria for defining bullying according to the academic literature

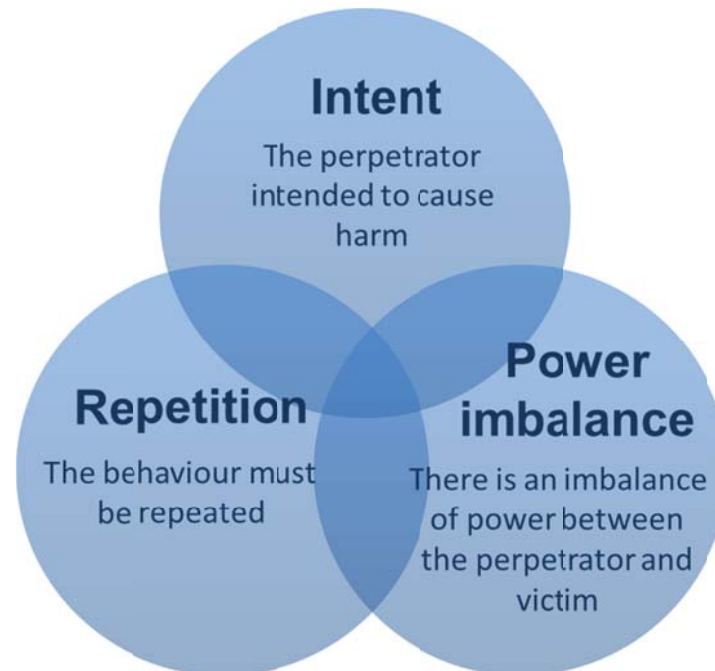


Table 1 overleaf considers a range of bullying definitions and highlights whether they include words around intent, repetition and a power imbalance between the perpetrator and the bullied person. The Annex specifies the definitions in full.

Table 1 further shows that definitions of bullying are not statutory in many jurisdictions. However, since 1999 American state legislatures have introduced many anti-bullying laws.¹⁹ The table also highlights variation in definitions of bullying across jurisdictions and organisations. Subsequent paragraphs consider these differences in more detail.

¹⁷ Corcorran, L., McGuckin, C., Prentice, G. (2015) "Cyberbullying or Cyber Aggression?: A Review of Existing Definitions of Cyber-Based Peer-to-Peer Aggression" *Societies* Vol. 5 pp. 245-255

¹⁸ Olweus, D. (1993) *Bullying at School: What We Know and What We Can Do* Oxford: Blackwell

¹⁹ Hatzenbuehler, M.L., Schwab-Reese, L., Ranapurwala, S.I., Hertz, M.F., Ramirez, M.Z. (2015) "Associations Between Antibullying Policies and Bullying in 25 States" *Jama Pediatrics* Vol. 169, No. 10

Table 1: Examples of bullying definitions²⁰

| | Legislative | Intent | Repetition | Power balance |
|-------------------------------------|----------------|----------------|--|---------------|
| Addressing Bullying in Schools Bill | Yes | Yes | Yes | No |
| England | No | Yes | Yes | No |
| Finland | No | No | Yes | Yes |
| Republic of Ireland | No | No | Yes, although a single act on a public forum is included | No |
| Scotland | No | No | No | No |
| American states | Yes (majority) | Yes (majority) | No (included in fewer than half) | No (none) |
| Oxford Dictionary | - | No | No | Yes |
| NIABF | - | Yes | Yes | Yes |
| World Health Organisation | - | Yes | Yes | Yes |

4.3 Intent

The Bill prescribes a definition that emphasises that bullying communications or acts are carried out with the intention of causing harm to others. As Table 1 above highlights, England and the majority of American states include intent within their bullying definition, while Finland, the Republic of Ireland and Scotland do not.

For example, the Scottish Government's definition emphasises the victim's feelings, rather than the perpetrator's intent. Indeed, the guidance notes that some bullying can be unintentional, stating that bullying can be defined as:²¹

“Behaviour which leaves people feeling helpless, frightened, anxious, depressed or humiliated”.

4.4 Repetition

The Bill defines bullying as a repeated communication or act, in line with many definitions,²² including those in England and Finland. The evidence suggests that

²⁰ See Annex for further information and citations

²¹ Scottish Government (2010) *A National Approach to Anti-Bullying for Scotland's Children and Young People* Edinburgh: the Scottish Government

repetition is a well-established criterion for bullying.²³ However, cyberbullying may present challenges in relation to this term.

For example, a single act through electronic communication could be viewed or distributed repeatedly by others,²⁴ and the perpetrator may anticipate this.²⁵ In addition, the victim may have greater feelings of embarrassment or shame, due to the large potential audience.²⁶

Indeed, while the Republic of Ireland defines bullying as acts repeated over time, it makes an exception where a single offensive or hurtful act takes place on social media or other public forum, which may be viewed or repeated by others.²⁷ A majority of American states do not include repetition within statutory bullying definitions.²⁸

Two thirds (66%) of respondents to the DE's consultation agreed that bullying behaviour is repetitive, while 22% disagreed. There was variation by type of respondents, with a higher proportion of teachers (83%) in agreement than pupils or parents (65%).²⁹

A recent article suggests that excluding repetition from bullying definitions could have important implications for mental health. It notes that removing repetition would mean that a young person would not have to experience multiple incidents before they are found to amount to bullying.³⁰

4.5 Power imbalance

There is agreement across much of the literature that power imbalance is a key criterion in bullying definitions. A power imbalance can relate to factors such as physical strength, virtue of numbers, socio-economic background or popularity within a peer group.³¹

²² Smith, P.K. (2015) "The nature of cyberbullying and what we can do about it" *Journal of Research in Special Educational Needs* Vol. 15 No. 3, pp. 176-184

²³ Langos, M.A. (2012) "Cyberbullying: The Challenge to Define" *Cyberpsychology, Behavior, and Social Networking* Vol. 15, No. 6 pp. 285-289

²⁴ Corcorran, L., McGuckin, C., Prentice, G. (2015) "Cyberbullying or Cyber Aggression?: A Review of Existing Definitions of Cyber-Based Peer-to-Peer Aggression" *Societies* Vol. 5 pp. 245-255

²⁵ Smith, P.K. (2015) "The nature of cyberbullying and what we can do about it" *Journal of Research in Special Educational Needs* Vol. 15 No. 3, pp. 176-184

²⁶ Slonje, R., Smith, P.K., Frisén, A. (2012) "The nature of cyberbullying, and strategies for prevention" *Computers in Human Behaviour* Vol. 29 pp. 26-32

²⁷ Department of Education and Skills (2013) *Anti-bullying Procedures for Primary and Post-primary schools*

²⁸ Stuart-Cassel, V., Bell, A., Springer, J.F. (2011) *Analysis of State Bullying Laws and Policies* California: U.S. Department of Education

²⁹ Department of Education (2015) *Addressing Bullying in Schools: Summary Report of Responses to the Consultation* Bangor: DE

³⁰ Corcorran, L., McGuckin, C., Prentice, G. (2015) "Cyberbullying or Cyber Aggression?: A Review of Existing Definitions of Cyber-Based Peer-to-Peer Aggression" *Societies* Vol. 5 pp. 245-255

³¹ Purdy, N., McGuckin, C. (2013) *Cyberbullying and the Law: A Report for the Standing Conference on Teacher Education North and South SCoTENS*

However, the evidence suggests that an imbalance in power in relation to cyberbullying may be more difficult to determine, and may relate to factors such as Information and Communications Technology (ICT) ability and anonymity.³²

The definition set out within the Bill does not refer to an imbalance of power between the perpetrator and victim. This is in line with statutory definitions across the United States, and non-statutory guidance in England, the Republic of Ireland and Scotland.

However, many other definitions include words reflecting an imbalance of power.³³ For example, the World Health Organisation (WHO) states:³⁴

*“Bullying is the **assertion of interpersonal power** through aggression... It is defined as negative physical or verbal actions that have hostile intent, cause distress to victims, are repeated and **involve a power differential** between perpetrators and victims.”*

A 2012 study assessing young people’s views from six European countries³⁵ found that they were most likely to define a scenario as bullying where there was an imbalance of power between the perpetrator and the victim.³⁶

4.6 Staff involvement

The definition within the Bill applies only to bullying between pupils and does not include interactions between pupils and staff. However, in the consultation, 57% of all respondents disagreed that the legislation should only apply between pupils, compared to 24% who agreed.³⁷

Further consideration could be given to the following in relation to the Bill’s definition:

- The rationale for excluding a power imbalance between perpetrator and victim in the definition proposed under Clause 1;
- How the term “repetition” would be defined within the context of cyberbullying, for example, where an electronic act is distributed by someone other than the original perpetrator; and,
- The rationale for excluding school staff from the definition.

³² Slonje, R., Smith, P.K., Frisé, A. (2012) “The nature of cyberbullying, and strategies for prevention” *Computers in Human Behaviour* Vol. 29 pp. 26-32

³³ Smith, P.K. (2015) “The nature of cyberbullying and what we can do about it” *Journal of Research in Special Educational Needs* Vol. 15 No. 3, pp. 176-184

³⁴ Currie, C., Zanotti, C., Morgan, A., Currie, D., de Looze, M. (2012) *Social determinants of health and well-being among young people: Health Behaviour in School-aged Children (HBSC) study: international report from the 2009/2010 survey* Copenhagen: WHO Regional Office for Europe

³⁵ Italy, Spain, Germany, Sweden, Estonia and France

³⁶ Menesini, E., Nocentini, A., Palladino, B.E., Frisé, A. (2012) “Cyberbullying Definition Among Adolescents: A Comparison Across Six European Countries” *Cyberpsychology, Behavior and Social Networking* Vol. 15 No. 9 pp. 455-463

³⁷ Department of Education (2015) *Addressing Bullying in Schools: Summary Report of Responses to the Consultation* Bangor: DE

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

Clause 2 places a number of affirmative duties on Boards of Governors to prevent bullying. Clause 2 (1) requires Boards of Governors to develop and implement policies to prevent bullying among pupils. Included within the scope of these policies (including measures) are pupils:

- On school premises during the school day;
- While travelling to or from the school during the school term; and,
- While in the lawful control or charge of a member of school staff.

Clause 2 (1) places further duties on Boards of Governors in relation to the design and review of the measures. It states that they must:

- Review the measures from time to time and when the DE directs;
- Consult the principal, pupils and parents before determining or revising the measures (in a way that seems appropriate to them);
- Have due regard to the DE guidance when determining or reviewing the measures;
- Prepare a written statement of the measures, ensuring that copies are available to parents, staff and for inspection; and,
- Ensure that such measures are taken.

5.1 Current civil and criminal legislation

This sub-section outlines prevailing civil and criminal legislation in Northern Ireland which is relevant in the context of school bullying.

5.1.1 Civil legislation

The Education and Libraries (Northern Ireland) Order 2003 amends the Education (Northern Ireland) Order 1998,³⁸ prescribing a number of duties relating to bullying; in particular:³⁹

- Article 17 requires Boards of Governors to **safeguard and promote the welfare of pupils** when they are on school premises or in the lawful charge of a staff member;

³⁸ Purdy, N., McGuckin, C. (2013) *Cyberbullying and the Law: A Report for the Standing Conference on Teacher Education North and South SCoTENS*

³⁹ Legislation.gov.uk *Education and Libraries (Northern Ireland) Order 2003* [online] Available at: <http://www.legislation.gov.uk/nisi/2003/424/article/17/made>

- Article 18 places a duty on Boards of Governors to ensure that they have a **written child protection policy** in place, determining the measures the school will take to protect children from abuse, including abuse causing physical and mental harm;
- Article 19 requires Boards of Governors to **consult with pupils and parents** before making or changing the disciplinary policy; and,
- It also states that it is the **principal's responsibility to determine measures** to be taken for **preventing all forms of bullying** among pupils.

Clause 2 of the Bill removes the duty on the principal to determine measures that seek to prevent bullying, in order to “*prevent any conflict*”.⁴⁰

In 2014 a former pupil brought a legal claim against his post-primary school under the Education and Libraries (Northern Ireland) Order 2003 and the Education (Northern Ireland) Order 1998. The pupil claimed that the school had breached its statutory duty to protect him from bullying.⁴¹

The District Court found that in the end the school had taken adequate action, but that prompt intervention could have prevented the bullying. It consequently awarded the pupil (the applicant) £10,000. Qualifying its decision, it further noted that courts generally should be reluctant to award damages in similar cases.⁴²

5.1.2 Criminal legislation

Under criminal law, it appears that three pieces of legislation may be applicable where cyberbullying is at issue:⁴³

- The Protection from Harassment (Northern Ireland) Order 1997, which states that it is **unlawful to cause harassment, alarm or distress** by a course of conduct;⁴⁴
- The Malicious Communications (Northern Ireland) Order 1988: which makes it an offence to send an indecent, offensive or threatening letter or electronic communication, or a communication known or believed to be false, **which intends to cause distress or anxiety**;⁴⁵ and,

⁴⁰ The Addressing Bullying in Schools Bill: Explanatory and Financial Memorandum

⁴¹ NI Courts and Tribunals – Judicial Decisions (2014) *In the County Court for the Division of Armagh and South Down by the County Court Judge Between: Ryan Collins and Trustees for the Time Being of Abbey Christian Brothers Grammar School*

⁴² NI Courts and Tribunals – Judicial Decisions (2014) *In the County Court for the Division of Armagh and South Down by the County Court Judge Between: Ryan Collins and Trustees for the Time Being of Abbey Christian Brothers Grammar School*

⁴³ Purdy, N., McGuckin, C. (2013) *Cyberbullying and the Law: A Report for the Standing Conference on Teacher Education North and South* SCoTENS

⁴⁴ Legislation.gov.uk *The Protection from Harassment (Northern Ireland) Order 1997* [online] Available at: <http://www.legislation.gov.uk/nisi/1997/1180/contents>

⁴⁵ Legislation.gov.uk *Malicious Communications (Northern Ireland) Order 1988: Article 3* [online] Available at: <http://www.legislation.gov.uk/nisi/1988/1849/article/3>

- The Communications Act 2003: which states that a person is guilty of an offence if he sends, or causes to be sent, an indecent, obscene, menacing, or grossly offensive message, or a message known to be false, **through a public electronic communications network**.⁴⁶

5.2 Practice in schools

Research conducted by the National Children's Bureau Northern Ireland (NCB NI) for the 2013 NIABF review found that schools' anti-bullying policies tend to contain a number of key elements. These include procedures for dealing with incidents; preventing bullying; staff responsibilities; and a definition of bullying. The research identified a number of common deficiencies in existing policy, including:⁴⁷

- References to types of bullying motivated by specific differences, particularly homophobic, transphobic, sectarian bullying and bullying of people with disabilities (many refer in general to bullying on the basis of background, opinions, religion or tradition);
- Details of the consultation undertaken to develop the policy; and,
- Details of training available for staff and governors.

5.3 Boundaries between school and home

As outlined above, the Bill requires that schools record all incidents during the school day. However research in Northern Ireland suggests that cyberbullying was almost four times more likely to take place outside school hours.⁴⁸

In the 2013 NCB NI research, 65% of principals surveyed agreed that understanding the school's responsibility in tackling bullying occurring outside school is a significant challenge.⁴⁹

This finding is supported by a 2013 study conducted by Stranmillis University College and Trinity College Dublin for the Standing Conference on Teacher Education, North and South (SCoTENS). The study identified a perceived lack of clarity for schools in determining when they are responsible for preventing bullying.⁵⁰

Many participants in the SCoTENS research believed that cyberbullying presented particular challenges in this regard. Frequently incidents begin outside school hours,

⁴⁶ Legislation.gov.uk *The Communications Act 2003: Section 127* [online] Available at: <http://www.legislation.gov.uk/ukpga/2003/21/section/127>

⁴⁷ Northern Ireland Anti-Bullying Forum (2013) *High level review of anti-bullying legislation, existing guidance to schools, effectiveness of current anti-bullying policies and practices within schools and support available to schools via the Education and Library Boards* NIABF

⁴⁸ RSM McClure Watters (2011) *The Nature and Extent of Pupil Bullying in Schools in the North of Ireland* Bangor: DE

⁴⁹ Northern Ireland Anti-Bullying Forum (2013) *High level review of anti-bullying legislation, existing guidance to schools, effectiveness of current anti-bullying policies and practices within schools and support available to schools via the Education and Library Boards* NIABF

⁵⁰ Purdy, N., McGuckin, C. (2013) *Cyberbullying and the Law: A Report for the Standing Conference on Teacher Education North and South* SCoTENS

but involve pupils and “*often spill over*” into the school the following day. In addition, many parents approach the school to deal with incidents of cyberbullying that have occurred outside of school hours.⁵¹

In the US, 13 out of 46 states with anti-bullying legislation in 2011 (all 50 states now have such legislation) stated that schools are responsible for out-of-school bullying where it creates a hostile school environment.⁵²

There were mixed views among respondents to the DE’s consultation on the Bill about schools’ responsibility for cyberbullying. Over half (54%) said schools should not be responsible during term time even outside school hours, while 46% believed they should have a duty to address cyberbullying during such times. A much larger proportion of teachers (80%) thought that schools should not be responsible outside school hours, than pupils (52%).⁵³

5.4 Teacher education

The NIABF review in 2013 suggested that teacher education is of “*paramount importance*” in addressing bullying. In particular, it suggested that Initial Teacher Education (ITE) should include mandatory content on bullying, and that Continuing Professional Development (CPD) should provide greater opportunities and funding for training on bullying.⁵⁴

In 2011 RSM McClure Watters suggested that the DE carry out a training needs analysis of all school staff in relation to their ability to identify and address bullying. It also recommended a review of ITE and CPD courses to ensure they reflect current trends in bullying. Similarly, the 2013 NIABF review identified an “urgent need” for additional training and resources to support schools in light of new and complex types of bullying.⁵⁵

Research also suggests that staff require training to enable them to recognise the signs of cyberbullying.⁵⁶ Teachers participating in the SCoTENS study expressed a range of levels of knowledge and confidence in relation to cyberbullying, with over two thirds (67.6%) calling for more CPD.⁵⁷

⁵¹ Purdy, N., McGuckin, C. (2013) *Cyberbullying and the Law: A Report for the Standing Conference on Teacher Education North and South* SCoTENS

⁵² Stuart-Cassel, V., Bell, A., Springer, J.F. (2011) *Analysis of State Bullying Laws and Policies* California: U.S. Department of Education

⁵³ Department of Education (2015) *Addressing Bullying in Schools: Summary Report of Responses to the Consultation* Bangor: DE

⁵⁴ Northern Ireland Anti-Bullying Forum (2013) *High level review of anti-bullying legislation, existing guidance to schools, effectiveness of current anti-bullying policies and practices within schools and support available to schools via the Education and Library Boards* NIABF

⁵⁵ RSM McClure Watters (2011) *The Nature and Extent of Pupil Bullying in Schools in the North of Ireland* Bangor: DE

⁵⁶ Chisholm, J.F. (2014) “Review of the Status of Cyberbullying and Cyberbullying Prevention” *Journal of Information Systems Education*, Vol. 25 (1) Spring 2014 pp. 77-87

⁵⁷ Purdy, N., McGuckin, C. (2013) *Cyberbullying and the Law: A Report for the Standing Conference on Teacher Education North and South* SCoTENS

5.5 Reference to specific types of bullying

Respondents to the 2013 review by the NIABF called for school policies to refer to a wide range of types of bullying, including cyberbullying; bullying due to race, faith, culture or disability; homophobic bullying; sectarian bullying and bullying of looked after children.⁵⁸

For example, research suggests that LGBT pupils are less likely to experience bullying when their school acknowledges and publicly condemns homophobic bullying.⁵⁹ In addition, evidence indicates that where schools do not use anti-bullying and anti-racism procedures to address the bullying of Traveller children, they are less likely to attend school.⁶⁰

5.6 Governor responsibilities

Research conducted by PricewaterhouseCoopers (PwC) and commissioned by the DE in 2010 found that 59% of school governors in Northern Ireland thought that the role was time-consuming, and half believed that there is a high level of bureaucracy.⁶¹

Some respondents to the DE consultation highlighted concerns around the additional responsibilities for governors contained within the Bill. They suggested that governors may not have time to fulfil their new duties, particularly smaller Boards of Governors, and that this could have an impact on governor recruitment.⁶²

In addition, the Special Educational Needs and Disability Bill currently at the Further Consideration Stage in the Assembly, places a number of new statutory duties on Boards of Governors.⁶³

⁵⁸ Northern Ireland Anti-Bullying Forum (2013) *High level review of anti-bullying legislation, existing guidance to schools, effectiveness of current anti-bullying policies and practices within schools and support available to schools via the Education and Library Boards* NIABF

⁵⁹ Cowley, J. (2012) "Homophobic Bullying in Northern Ireland's Schools: Perspectives from Young People" *Youth Voice Journal*, February 6, 2012 pp. 77-84

⁶⁰ Deuchar, R., Bhopal, K. (2013) "'We're still human beings: we're not aliens': promoting the citizenship rights and cultural diversity of Traveler children in schools: Scottish and English perspectives" *British Educational Research Journal* Vol. 39, No. 4, pp. 733-750

⁶¹ PricewaterhouseCoopers (2010) *School Governors: The Guardians of our Schools* Bangor: DE

⁶² Department of Education (2015) *Addressing Bullying in Schools: Summary Report of Responses to the Consultation* Bangor: DE

⁶³ See: Perry, C (2015) *Special Educational Needs and Disability (SEND) Bill* Belfast: Northern Ireland Assembly

Further consideration could be given to the following areas:

Boundaries between home and school

- The rationale for limiting the scope of policies for preventing bullying to school hours; and,
- The implications of this for cyberbullying incidents; for example, when bullying begins outside school hours but affects pupils during school.

Consultation and Board of Governor duties

- The potential implications of affording Boards of Governors wide discretionary powers concerning consultation, for example, whether such power could result in arbitrary, unfair or inconsistent decision-making; and,
- The implications of the duties for Boards of Governors, for example, on workload and recruitment.

Policy

- The rationale for not requiring schools to ensure that their anti-bullying policies refer to specific types of bullying (e.g. cyberbullying, racist and homophobic bullying).

Training and guidance

- Whether the DE has conducted a training needs analysis regarding identifying and addressing bullying;
- Whether the DE has reviewed ITE and CPD courses regarding the extent to which they reflect current developments in bullying; and,
- Whether the DE would produce specific guidance on addressing cyberbullying, and on other forms of bullying.

6 Clause 3: Recording incidents

Clause 3 places a duty on Boards of Governors to ensure that a record is kept of all incidents or alleged incidents of bullying involving a registered pupil at the school occurring:

- When the pupil is on school premises during the school day;
- While the pupil is travelling to or from the school during the school term; and,
- While the pupil is in the lawful control or charge of a member of school staff.

The record must include information on how the incident was addressed and the perceived motivation behind it. Clause 3(4) also states that the DE “may” publish guidance on the recording of bullying incidents, and further requires Boards of

Governors to afford “due regard” to such guidance. It is worth noting that the Clause does not *require* the DE to produce guidance in this area.

A large proportion (85%) of respondents to the DE consultation on the Bill agreed that schools should have to record the motivation, response and outcomes of bullying incidents. Of the different respondent types, there was greatest support from pupils (85%), followed by teachers (74%) and parents or the public (63%).⁶⁴

However, there was less support from respondents for recording incidents on a common IT system (65% overall). Teachers were least supportive, with 59% agreeing that incidents should be recorded on a common system, compared to 72% of pupils and 82% of parents or the public.

While some respondents to the DE’s consultation suggested that recording incidents would help to prevent bullying, others highlighted concerns, including:⁶⁵

- Staff and pupils were concerned about data storage, access and confidentiality;
- Monitoring alone would not bring about change: schools must act robustly in response;
- Determining the motivation for a bullying incident could be difficult.

Of 46 states in the US with anti-bullying legislation in 2011, 18 (or 39%) required schools to record incidents of bullying. Indeed, record keeping is more commonly addressed through policy than legislation in the US.⁶⁶

6.1 Current practice

Departmental guidance highlights variation in the recording of bullying incidents across schools. It notes that some schools electronically record incidents on an internal computer database, while others keep a hard copy register. The only data currently available to the DE in this regard are statistics on the number of suspensions or expulsions due to bullying behaviour.⁶⁷

6.2 Under-reporting of bullying incidents

The evidence indicates that many pupils do not report bullying incidents.⁶⁸ The 2011 survey on the nature and extent of bullying in Northern Ireland found that Year 6 pupils

⁶⁴ Department of Education (2015) *Addressing Bullying in Schools: Summary Report of Responses to the Consultation* Bangor: DE

⁶⁵ Department of Education (2015) *Addressing Bullying in Schools: Summary Report of Responses to the Consultation* Bangor: DE

⁶⁶ Stuart-Cassel, V., Bell, A., Springer, J.F. (2011) *Analysis of State Bullying Laws and Policies* California: U.S. Department of Education

⁶⁷ Department of Education (2015) *Addressing Bullying in Schools: Consultation document* Bangor: DE

⁶⁸ Smith, P.K. (2015) “The nature of cyberbullying and what we can do about it” *Journal of Research in Special Educational Needs* Vol. 15 No. 3, pp. 176-184

who do report incidents of bullying are more likely to tell their parents (34%) or their friends (25%), than their class teacher (18%) or another staff member (11%).⁶⁹

This is supported by wider research that suggests that young people are much more likely to report cyberbullying to a friend or parent than a teacher.⁷⁰ A 2015 UK survey highlighted a number of reasons why pupils chose not to report bullying, including that they:⁷¹

- Felt like they could deal with it alone (40%);
- Said it did not affect them enough (40%);
- Felt like it would not be taken seriously (33%);
- Were too embarrassed to tell anyone (32%);
- Were scared of it getting worse (26%); and,
- Have reported bullying in the past and nothing happened (18%).

In addition, the evidence indicates that many young people do not report their experiences of cyberbullying, instead coping with the experience on their own.⁷² Young people often perceive that adults lack the specific knowledge to help them, or are concerned that they will restrict access to devices.⁷³

The evidence also suggests that a large proportion of LGBT pupils do not report their experiences of bullying.⁷⁴

6.3 Action taken

The research highlights a perception that teachers do not always take sufficient action in response to bullying incidents. In a 2011 survey in Northern Ireland, over a third (35%) of pupils at both primary and post-primary stated that teachers or other adults try to stop bullying incidents at their school only “sometimes”, “once in a while” or “almost never”.⁷⁵

In the same survey almost a third (31%) of Year 6 pupils who had bullied others reported that teachers had not spoken to them about it. At post-primary the proportion

⁶⁹ RSM McClure Watters (2011) *The Nature and Extent of Pupil Bullying in Schools in the North of Ireland* Bangor: DE

⁷⁰ Smith, P.K. (2015) “The nature of cyberbullying and what we can do about it” *Journal of Research in Special Educational Needs* Vol. 15 No. 3, pp. 176-184

⁷¹ Ditch the Label (2015) *The Annual Bullying Survey 2015* Ditch the Label

⁷² Chisholm, J.F. (2014) “Review of the Status of Cyberbullying and Cyberbullying Prevention” *Journal of Information Systems Education*, Vol. 25 (1) Spring 2014 pp. 77-87

⁷³ Sticca, F., Perren, S. (2012) “Is Cyberbullying Worse than Traditional Bullying? Examining the Differential Roles of Medium, Publicity and Anonymity for the Perceived Severity of Bullying” *Journal of Youth Adolescence* Vol. 42 pp. 739-750

⁷⁴ Cowley, J. (2012) “Homophobic Bullying in Northern Ireland’s Schools: Perspectives from Young People” *Youth Voice Journal*, February 6, 2012 pp. 77-84

⁷⁵ RSM McClure Watters (2011) *The Nature and Extent of Pupil Bullying in Schools in the North of Ireland* Bangor: DE

of pupils was higher; with 45% of those involved in bullying others stating that teachers had not discussed their bullying with them.⁷⁶

In a 2015 UK survey, of the 92% of pupils who stated that they had told a teacher after being bullied, just over half (51%) were dissatisfied with the support they received.⁷⁷

6.4 Bystanders

The DE has indicated that witnesses or bystanders to a bullying incident would be included within the record.⁷⁸

However, the evidence indicates that the variety of bystander roles in cyberbullying is more complex than in traditional bullying,⁷⁹ and that there is a lack of clarity regarding whether responsibility for repeated views of content lies with the perpetrator or the victim.⁸⁰

6.5 Data protection

The DE's consultation document acknowledges the "sensitivities" in recording and sharing information on bullying, but asserts that comprehensive records would support the provision of guidance and promote best practice.⁸¹

However, some school staff and pupils responding to the DE's consultation expressed concerns around data storage and use, including that:⁸²

- Recording incidents may lead to unofficial league tables of bullying;
- Some schools may not keep accurate records in order to avoid negative publicity; and,
- Some schools may ignore incidents to avoid the additional administrative burden.

The sharing of data on bullying with other bodies must be undertaken with due regard to the Data Protection Act 1998. This Act requires bodies to gather and process data fairly, hold it securely and use it only for the purpose for which it was collected. The Act defines sensitive personal data, including data around racial or ethnic origin, political opinion or religious belief.⁸³

⁷⁶ RSM McClure Watters (2011) *The Nature and Extent of Pupil Bullying in Schools in the North of Ireland* Bangor: DE

⁷⁷ Ditch the Label (2015) *The Annual Bullying Survey 2015* Ditch the Label

⁷⁸ Northern Ireland Assembly (2015) *Official Report: Minutes of Evidence Report Committee for Education, meeting on Wednesday, 4 November 2015* [online] Available at: <http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=15678&evidID=8740>

⁷⁹ Smith, P.K. (2015) "The nature of cyberbullying and what we can do about it" *Journal of Research in Special Educational Needs* Vol. 15 No. 3 pp. 176-184

⁸⁰ Corcorran, L., McGuckin, C., Prentice, G. (2015) "Cyberbullying or Cyber Aggression?: A Review of Existing Definitions of Cyber-Based Peer-to-Peer Aggression" *Societies* Vol. 5 pp. 245-255

⁸¹ Department of Education (2015) *Addressing Bullying in Schools: Consultation document* Bangor: DE

⁸² Department of Education (2015) *Addressing Bullying in Schools: Summary Report of Responses to the Consultation* Bangor: DE

⁸³ Legislation.gov.uk *Data Protection Act 1998* [online] Available at: <http://www.legislation.gov.uk/ukpga/1998/29>

The DE advised RalSe that it would collect data (excluding personal data) on bullying incidents annually, probably through the School Census. It is likely to publish a summary of the statistics.⁸⁴

The Freedom of Information Act 2000 provides a general right of access to recorded information held by public authorities. The Act includes a number of exemptions, including Section 40 which relates to personal information. For example, personal information whose disclosure would contravene the Data Protection Act 1998 is exempt. This includes where disclosure would:⁸⁵

- Be unfair;
- Be incompatible with the purpose for which it was obtained; or,
- Where the individual concerned had served notice that disclosure of the information would cause unwarranted substantial damage or distress.

The DE advised RalSe that schools would have to consider any requests under the Freedom of Information Act 2000 on a case by case basis, in accordance with the legislation. The DE would consider requests for data it holds in the same manner.⁸⁶

It also notes that, due to the personal nature of the information held within the records, exemptions may be relevant and that information may not be released, or released in redacted form.⁸⁷

However, there remains the potential for schools to release sensitive personal information about pupils. In this context it is important to note that the inappropriate release or redaction of information may subsequently raise issues regarding human rights and equality. Relevant standards and law should therefore be considered when deliberating on information release or redaction.

6.6 IT system for recording incidents

The DE has indicated that it will use the C2k system for schools to record bullying incidents, although it has not yet developed the module or system.⁸⁸ Schools and organisations responding to the DE's consultation on the Bill emphasised the need to ensure that any recording mechanism must be appropriately developed and piloted.⁸⁹

⁸⁴ Information provided by the Department of Education, November 2015

⁸⁵ Legislation.gov.uk *Freedom of Information Act 2000* [online] Available at: <http://www.legislation.gov.uk/ukpga/2000/36/contents>

⁸⁶ Information provided by the Department of Education, November 2015

⁸⁷ Information provided by the Department of Education, November 2015

⁸⁸ Northern Ireland Assembly (2015) *Official Report (Hansard) Anti-bullying Bill: Department of Education* Belfast: NI Assembly

⁸⁹ Department of Education (2015) *Addressing Bullying in Schools: Summary Report of Responses to the Consultation* Bangor: DE

6.7 Motivation

The Bill sets out a number of potential motivations for bullying; including categories set out within Section 75 of the Northern Ireland Act 1998 (although it does not include Section 75's "*persons with dependents and persons without*") (see Figure 5 overleaf).⁹⁰

However, some schools responding to the DE's consultation felt they were not equipped to make a "*difficult and subjective*" judgement determining the motivation for a bullying incident.⁹¹

The 2013 report of the NIABF highlighted the changing nature of bullying in recent times, including homophobic, transphobic and sectarian bullying, bullying of people with disabilities, and bullying due to race, faith and culture. It also noted bullying of looked after children.⁹²

Indeed, the evidence in Northern Ireland suggests that the following pupils are more likely to experience bullying: LGBT pupils;⁹³ Black and Minority Ethnic children (particularly Traveller children);⁹⁴ and children with Special Educational Needs.⁹⁵ In this context it is important to ensure that due consideration is afforded to human rights standards and law, as well as those relating to equality.

While the groups discussed above are disproportionately more likely to experience bullying, research points to a range of other common motivations behind bullying incidents.

A 2015 survey across the UK, including a small sample from Northern Ireland, suggests that motivations for bullying vary widely. It found that a much greater proportion of young people perceived attitudes to appearance and interests as the main motivation for the bullying they had experienced; with smaller proportions stating that attitudes to disability, race or sexual orientation motivated the perpetrator.⁹⁶

⁹⁰ Legislation.gov.uk *Northern Ireland Act 1998* [online] Available at: <http://www.legislation.gov.uk/ukpga/1998/47/section/75>

⁹¹ Department of Education (2015) *Addressing Bullying in Schools: Summary Report of Responses to the Consultation* Bangor: DE

⁹² Northern Ireland Anti-Bullying Forum (2013) *High level review of anti-bullying legislation, existing guidance to schools, effectiveness of current anti-bullying policies and practices within schools and support available to schools via the Education and Library Boards* NIABF

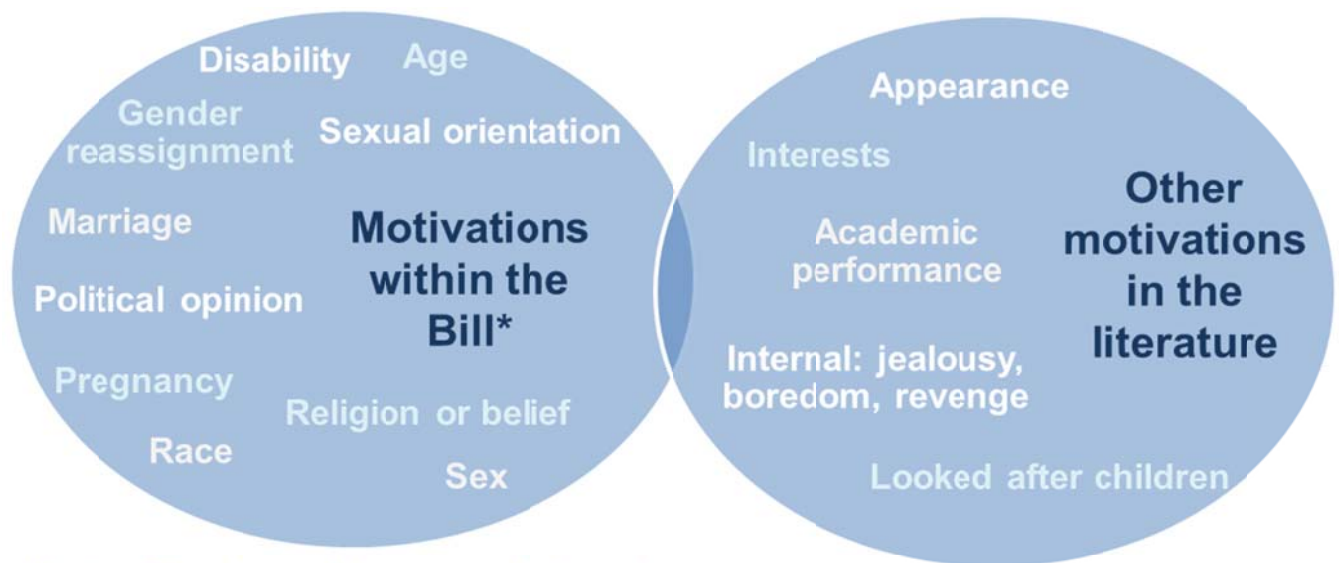
⁹³ Cowley, J. (2012) "Homophobic Bullying in Northern Ireland's Schools: Perspectives from Young People" *Youth Voice Journal*, February 6, 2012 pp. 77-84

⁹⁴ Biggart, A., O'Hare, L., Connolly, P. (2008) *A Need to Belong* Queen's University Belfast and NfER

⁹⁵ Purdy, N., McGuckin, C (2011) *Disablist Bullying: An investigation of student teachers' knowledge and confidence* SCoTENS

⁹⁶ Ditch the Label (2015) *The Annual Bullying Survey 2015* Ditch the Label

Figure 5: Motivations of bullying in the Addressing Bullying in Schools Bill and the wider literature⁹⁷



*Section 75 category of “persons with dependents and persons without” not included

6.8 Monitoring

In evidence to the Committee for Education in November 2014, the DE indicated that it would use the C2k system to provide information on the prevalence of bullying, rather than commissioning periodic research as it had done previously.⁹⁸

It noted that this would allow for greater analysis of bullying issues, as well as supporting policy development and monitoring.⁹⁹ However, this approach does not appear to take account of the potential for underreporting by pupils and/ or school staff.

⁹⁷ Ditch the Label (2015) *The Annual Bullying Survey 2015* Ditch the Label; Northern Ireland Anti-Bullying Forum (2013) *High level review of anti-bullying legislation, existing guidance to schools, effectiveness of current anti-bullying policies and practices within schools and support available to schools via the Education and Library Boards* NIABF; Varjas, K., Talley, J., Meyers, J., Parris, L., Cutts, H. (2010) “High school students’ perceptions of motivations for cyberbullying: An exploratory study” *Western Journal of Emergency Medicine*, Vol. 3 pp. 269-273

⁹⁸ Northern Ireland Assembly (2015) *Official Report (Hansard) Anti-bullying Bill: Department of Education* Belfast: NI Assembly

⁹⁹ Northern Ireland Assembly (2015) *Official Report (Hansard) Anti-bullying Bill: Department of Education* Belfast: NI Assembly

Further consideration could be given to the following areas:

Guidance

- The rationale for stating that the DE “*may*” produce guidance (instead of “*shall*”).

Recording incidents

- How the DE would ensure that schools properly adjudicate information recorded on bullying incidents, ensuring due process;
- The purpose of including bystanders or witnesses in records of bullying incidents and how this would be addressed in relation to cyberbullying; and,
- Whether records of witnesses or bystanders to a bullying incident would include school staff.

Data storage and protection

- The length of time records of bullying incidents would be maintained;
- The potential for schools to release personal information, including that of a sensitive nature, under the Freedom of Information Act 2000;
- The extent to which the DE has considered human rights and equality standards and law in relation to the potential release of sensitive information; and,
- The potential for third parties to produce “league tables” of bullying prevalence in schools.

Under-reporting and actions to address bullying

- The potential implications of the duties to record incidents on the willingness of pupils and teachers to report and record bullying;
- How, if at all, the DE would monitor and address potential underreporting of bullying by pupils and teachers; and,
- The perception that many teachers take insufficient action in addressing bullying.

Motivation

- The motivations for bullying provided in the Bill, including the rationale for excluding looked after children and persons with dependents;
- The rationale for not including other motivating factors, such as appearance; and,
- The capacity of teachers to determine the motivation for bullying incidents.

7 Comparison to anti-bullying legislation in the US

The US provides a useful comparison in terms of anti-bullying legislation. Following the 1999 shooting at Columbine High School, and a number of suicides linked to bullying,

American state legislatures passed a wave of legislation on bullying.¹⁰⁰ All 50 states now have anti-bullying laws in place.¹⁰¹

A recent review of these laws found that their effectiveness was positively associated with the inclusion of three key components. States whose laws included at least one of these elements reduced the likelihood of reported bullying by almost a quarter (24%), and the likelihood of cyberbullying by 20%, compared to states whose laws did not include them. The components are:¹⁰²

- A **statement of scope**: describing where the legislation applies and when the school is responsible for preventing bullying;
- A **definition** of behaviours that are considered bullying;
- **Requirements for districts to develop and implement local policy**, offering clarity for schools around their responsibilities.

The Bill includes a statement of scope, stating when Board of Governors are responsible for preventing bullying, and provides a bullying definition, in line with effective US legislation.

While the Bill does not require anti-bullying policies to be in place on a regional basis, as in the American state legislation, it does place a duty on individual schools to each develop their own anti-bullying policy. This difference is likely to be related to the very different school systems in place, whereby the US operates a system of school districts within individual states: these are locally administered public school systems.¹⁰³

The Bill differs from much of the American state legislation in regard to the duty to record incidents of bullying. Generally, states more frequently address the issue of recording bullying through policy, not legislation.¹⁰⁴

8 Conclusion

This Bill Paper has considered a number of potential issues arising from the Bill that could be given further consideration. These include the extent to which the Bill addresses issues such as cyberbullying and bullying due to race, faith, disability, gender reassignment and sexual orientation.

¹⁰⁰ Stuart-Cassel, V., Bell, A., Springer, J.F. (2011) *Analysis of State Bullying Laws and Policies* California: U.S. Department of Education

¹⁰¹ Baumann, L. (2015) *Gov. Bullock signs Montana anti-bullying bill into law* Great Falls Tribune [online] Available at: <http://www.greatfalls Tribune.com/story/news/local/2015/04/21/gov-bullock-signs-montana-anti-bullying-bill-law/26145567/>

¹⁰² Hatzenbuehler, M.L., Schwab-Reese, L., Ranapurwala, S.I., Hertz, M.F., Ramirez, M.Z. (2015) "Associations Between Antibullying Policies and Bullying in 25 States" *Jama Pediatrics* Vol. 169, No. 10

¹⁰³ United States Census *School Districts* [online] Available at: <http://www.census.gov/did/www/schooldistricts/>

¹⁰⁴ Stuart-Cassel, V., Bell, A., Springer, J.F. (2011) *Analysis of State Bullying Laws and Policies* California: U.S. Department of Education

It has also highlighted concerns around teacher education and capacity in relation to bullying. The Bill Paper has noted potential issues relating to human rights standards and law, and well as those relating to equality and data protection.

Annex: Definitions of bullying internationally

England

The Department for Education states that there is no legal definition and that schools should have their own definition. However, it notes that it is usually defined as behaviour that is:¹⁰⁵

- *“Repeated;*
- *Intended to hurt someone either physically or emotionally; and*
- *Often aimed at certain groups, e.g. because of race, religion, gender or sexual orientation.*

It takes many forms and can include physical assault, teasing, making threats, name calling and cyberbullying - bullying via mobile phone or online”.

Republic of Ireland

In guidance for schools on anti-bullying procedures, the Department of Education and Skills defines bullying as:¹⁰⁶

*“**Unwanted** negative behaviour, verbal, psychological or physical conducted by an individual or group against another person (or persons) and which is **repeated over time**. The following types of bullying behaviour are included in this non-exhaustive definition:*

- *Deliberate exclusion, malicious gossip and other forms of relational bullying;*
- *Cyberbullying; and*
- *Identity-based bullying such as homophobic bullying, racist bullying, bullying based on a person’s membership of the Traveller community and bullying of those with disabilities or special educational needs.*

*In addition, in the context of these procedures, **placing a once-off offensive or hurtful public message, image or statement on a social network site or other public forum where that message, image or statement can be viewed and/or repeated by other people will be regarded as bullying** behaviour.*

Isolated or once-off incidents of intentional negative behaviour including a once-off offensive or hurtful text message or other private messaging do not fall within this definition of bullying and should be dealt with, as appropriate, in accordance with the school’s code of behaviour”.

¹⁰⁵ Gov.uk (2015) *Bullying at school* [online] Available at: <https://www.gov.uk/bullying-at-school/bullying-a-definition>

¹⁰⁶ Department of Education and Skills (2013) *Anti-bullying Procedures for Primary and Post-primary schools*

Scotland

The Scottish Government's approach to preventing bullying provides a definition of bullying that focuses on the victim's feelings, noting that some bullying can be unintentional. In addition, it does not refer to bullying behaviour being repeated, and the guidance states that bullying can involve a single act. It states that bullying can be understood as:¹⁰⁷

“Behaviour which leaves people feeling helpless, frightened, anxious, depressed or humiliated. Bullying behaviours may include:

- *Name calling, teasing, putting down or threatening;*
- *Ignoring, leaving out or spreading rumours;*
- *Hitting, tripping, kicking;*
- *Stealing and damaging belongings;*
- *Sending abusive text, email or instant messages;*
- *Making people feel like they are being bullied or fearful of being bullied; and*
- *Targeting someone because of who they are or are perceived to be”.*

Finland

The Finnish Ministry of Culture and Education introduced a national anti-bullying programme, KiVa, in 2006. The programme has been successful, with the majority of schools taking part and reduction in bullying rates across schools.¹⁰⁸

Its innovative approach emphasises influencing bystanders, encouraging them to demonstrate that they are against bullying in order to support the victim, rather than the perpetrator.¹⁰⁹ This programme defines bullying as:¹¹⁰

“Systematic aggressive behaviour against a person who finds it difficult to defend him/herself against the perpetrator(s)”.

United States

The Columbine High School shooting in 1999, and a number of suicides linked to chronic bullying, prompted a wave of legislation across state legislatures defining acts of bullying and requiring schools to establish policies to address bullying behaviour. Of

¹⁰⁷ Scottish Government (2010) *A National Approach to Anti-Bullying for Scotland's Children and Young People* Edinburgh: the Scottish Government

¹⁰⁸ Eurydice (2012) *Strategies to counter bullying* Eurydice at NFER

¹⁰⁹ Eurydice (2012) *Strategies to counter bullying* Eurydice at NFER

¹¹⁰ Salmivalli, C. *KiVa: A research-based anti-bullying program* University of Turku, Finland

46 states that had bullying laws in 2011 (all states have such laws now), 29 included bullying definitions.¹¹¹

There is substantial variation in definitions used across states, although a number of terms are shared in many state definitions. Fewer than half of states define bullying as an act or acts repeated over time. No states require an imbalance of power between the perpetrator and victim for an act to be defined as bullying. Most note that bullying is intentional in nature, and emphasise harm to the victim.¹¹²

Colorado provides an example of a bullying definition reflecting practice in a majority of states, although all definitions differ slightly.¹¹³

*“Bullying’ means **any** written or verbal expression, or physical act or gesture, **or a pattern thereof**, that is **intended to cause distress** upon one or more students in the school, on school grounds, in school vehicles, at a designated school bus stop, or at school activities or sanctioned events. The school district’s policy shall include a reasonable balance between the pattern and the severity of such bullying behaviour”.*

Oxford Dictionary

The Oxford Dictionary defines bullying as:¹¹⁴

“[Using] strength or influence to harm or intimidate those who are weaker”.

Northern Ireland Anti-Bullying Forum (NIABF)

The NIABF states that bullying is the:¹¹⁵

“Repeated use of power by one or more persons intentionally to hurt, harm or adversely affect the rights and needs of another or others”.

World Health Organisation

The World Health Organisation (WHO) provides the following definition of bullying:¹¹⁶

*“Bullying is the **assertion of interpersonal power** through aggression. It is defined as negative physical or verbal actions that have **hostile intent**, cause distress to victims, **are repeated and involve a power differential** between perpetrators and victims.”*

¹¹¹ Stuart-Cassel, V., Bell, A., Springer, J.F. (2011) *Analysis of State Bullying Laws and Policies* California: U.S. Department of Education

¹¹² Stuart-Cassel, V., Bell, A., Springer, J.F. (2011) *Analysis of State Bullying Laws and Policies* California: U.S. Department of Education

¹¹³ Stuart-Cassel, V., Bell, A., Springer, J.F. (2011) *Analysis of State Bullying Laws and Policies* California: U.S. Department of Education

¹¹⁴ Oxford Dictionaries (2015) *Bully* [online] Available at: http://www.oxforddictionaries.com/definition/english/bully?q=BULLYING#bully_6

¹¹⁵ NIABF (2015) *What is bullying* [online] Available at: <http://www.endbullying.org.uk/what-is-bullying/>

¹¹⁶ Currie, C., Zanotti, C., Morgan, A., Currie, D., de Looze, M. (2012) *Social determinants of health and well-being among young people: Health Behaviour in School-aged Children (HBSC) study: international report from the 2009/2010 survey* Copenhagen: WHO Regional Office for Europe