



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Shared Education Bill

Summary

The Northern Ireland Human Rights Commission ('the Commission'):

- **welcomes the Bill as it partly addresses concerns set out in the concluding observations of the UNCRC Committee in 2008 which noted that segregated education was still present in Northern Ireland. The UNCRC subsequently recommended that the State Party take measures to address segregation of education in Northern Ireland (para 7);**
- **advises that the justification set out in the Explanatory Memorandum for limiting the definition of shared education to two groups (referencing all the section 75 groups 'would set very challenging demands') may not be sufficient to meet the reasonable and objective justification test required by human rights standards (para 16);**

- **recommends that the Committee gives consideration to amending the definition in Clause 1 to include all the groups that are included in the stated aim of the policy underpinning the Bill (para 17);**
- **advises that Clause 2(1) of the Bill should be consistent with the existing legislative duty on the Education Authority 'to encourage, facilitate and promote shared education'(para 22).**
- **welcomes Clause 3 which commences the duty on the Education Authority to encourage, facilitate and promote shared education (para 24).**

Introduction

1. The Northern Ireland Human Rights Commission (the Commission) pursuant to Section 69 (1) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of Human Rights.¹ In accordance with this function the following statutory advice is submitted to the Committee for Education in response to a call for evidence on the Shared Education Bill.²
2. The Commission bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe (CoE) and United Nations (UN) systems. The relevant international treaties in this context include:
 - European Convention on Human Rights (ECHR);³
 - UN International Covenant on Economic, Social and Cultural Rights (ICESCR);⁴
 - UN Convention on the Rights of the Child (UNCRC);⁵
 - UN Convention on the Elimination of Discrimination against Women(CEDAW);⁶

¹ Northern Ireland Act 1998, Section 69(1)

² The Bill was introduced in the Northern Ireland Assembly on 2 November 2015

³ Ratified by the UK in 1951 and given further domestic effect by the Human Rights Act 1998

⁴ Ratified by the UK in 1976

⁵ Ratified by the UK in 1991

⁶ Ratified by the UK in 1986

- UN Convention on the Elimination of Racial Discrimination (ICERD);⁷
 - UN Convention on the Rights of Persons with Disabilities (UNCRPD);⁸
 - UN Educational, Scientific and Cultural Organisation (UNESCO) Convention on the Protection and Promotion of the Diversity of Cultural Expressions;⁹
 - Charter of the Fundamental Rights of the European Union (CRFEU);¹⁰
 - CoE Framework Convention for the Protection of National Minorities (FCNM).¹¹
3. The Northern Ireland Executive (NI Executive) is subject to the obligations contained within these international treaties by virtue of the United Kingdom (UK) Government's ratification and the provisions of the Northern Ireland Act 1998.¹²
4. In addition to the treaties, there exists a body of 'soft law' developed by the human rights bodies of the UN and CoE. These declarations and principles are non-binding but provide further guidance in respect of specific areas. The relevant standards in this context include:
- ICESCR General Comment No.13 on the Right to Education;
 - UNCRC General Comment No.1 on the Aims of Education;
 - UN Human Rights Council Resolution 6/37;
 - The Yogyakarta Principles 2006;
 - UN Educational, Scientific and Cultural Organisation (UNESCO) Convention against Discrimination in Education;¹³
 - ECRI General Policy Recommendation No.10 on Combating Racism and Racial Discrimination In and Through Education;
 - Committee of Ministers Recommendation to Member States on ensuring quality of education (CM/Rec (2012));
 - Committee of Ministers Recommendation to Member States on the Council of Europe Charter on Education for Democratic Citizenship and Human Rights Education (CM/Rec (2010)7);

⁷ Ratified by the UK in 1969

⁸ Ratified by the UK in 2009

⁹ Ratified by the UK in 2007

¹⁰ Charter of the Fundamental Rights of the European Union, (2000/C 364/01)

¹¹ Ratified by the UK in 1998

¹² In addition, Section 26 (1) of the Northern Ireland Act 1998 provides that 'if the Secretary of State considers that any action proposed be taken by a Minister or Northern Ireland department would be incompatible with any international obligations...he may by order direct that the proposed action shall not be taken.' Section 24(1) states that 'a Minister or Northern Ireland department has no power to make, confirm or approve any subordinate legislation, or to do any act, so far as the legislation or act – (a) is incompatible with any of the Convention rights'.

¹³ Accepted by the UK in 1962

- Faro Declaration on the Council of Europe’s Strategy for Developing Intercultural Dialogue 2005.
5. The Commission welcomes the opportunity to provide comment on the Bill. The Commission advises that it has engaged with the Department of Education and has raised a number of issues relating to the Bill. The Commission notes that these issues have not been either addressed or accepted in the Bill and will comment on them in the following sections.

Clause 1: Definition of Shared Education

6. Clause 1 of the Bill defines shared education as the education together of children and young people of different religious belief, including reasonable numbers of both Protestant and Catholic children and young persons and those experiencing socio-economic deprivation and those who are not, which is secured by the working together and co-operation of two or more relevant providers.
- 7. The Commission welcomes the Bill as it partly addresses concerns set out in the concluding observations of the UNCRC Committee in 2008 which noted that segregated education was still present in Northern Ireland. The UNCRC subsequently recommended that the State Party take measures to address segregation of education in Northern Ireland.¹⁴**
8. The Commission notes that the policy document underpinning the Bill sets out to some extent the purposes of shared education described as the organisation and delivery of education so that it:¹⁵
- meets the needs of, and provides education together of learners from all section 75 groups and socio-economic status;

¹⁴ UNCRC ‘Concluding Observations: United Kingdom of Great Britain and Northern Ireland’ CRC/C/GBR/CO/4, 20 October 2008, para 66 and 67

¹⁵ DENI ‘Sharing Works: A Policy for Shared Education’, p10.

- involves schools and other education providers of differing ownership, sectoral identity and ethos, management type or governance arrangements; and;
 - delivers educational benefits to learners, promotes the efficient and effective use of resources, and promotes equality of opportunity, good relations, equality of identity, respect for diversity and community cohesion.
9. Human rights law is not prescriptive about how this should be delivered, rather focusing primarily on outcomes. However, human rights law makes it clear that one of the purposes of education is the promotion of tolerance, respect, understanding, valuing diversity and friendship, and specifically among different racial, ethnic and religious groups.¹⁶
10. The Commission notes that the Clause 1 engages the right to education in Article 2 of Protocol 1 of the ECHR. It further notes that Clause 1 engages ECHR, Article 14, but is limited to two categories.¹⁷
11. The Policy which underpins the Bill refers to all section 75 grounds, and further indicates that shared education may be relevant to people of different racial groups, students with and without a disability, students with caring responsibilities and school age mothers.¹⁸ The Explanatory Memorandum to the Bill indicates that consideration was given in drafting the Bill to referencing all Section 75 groups, however the Department's rationale for the current approach was that 'this would set very challenging demands on the mix of children and young people that education settings would be required to meet' and furthermore 'there are practical implications for specifying all Section

¹⁶ Article 26(2) Universal Declaration of Human Rights 1948; Article 13(1), ICESCR; Article 29 (1)(c) of the UNCRC and UNCRC 'General Comment No.1(2001)- Article 29 (1) –The Aims of Education'; Article of the UNESCO Convention on Discrimination on Education; Article 10 of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions; Committee of Ministers Recommendation to Member States on the Council of Europe Charter on Education for Democratic Citizenship and Human Rights Education (CM/rec(2010)7).

¹⁷ Article 14 of the ECHR guarantees the enjoyment of the Convention rights free from discrimination 'on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'.

¹⁸ Department of Education 'Sharing works – A Policy for Shared Education' p 10.

75 groups.¹⁹ The Explanatory Memorandum sets out that including gender would have implications for partnerships of single gender schools and it is not practicable nor is it desirable for schools to identify the sexual orientation of pupils. Instead, the Department explains that the legislative definition is underpinned by the policy description to maximise the education together of those from section 75 groups as far as is practically possible.

12. In the case *Thlimmenos v Greece*, the ECtHR ruled that the right under Article 14 not to be discriminated against is violated when States without a reasonable and objective justification treats differently persons in analogous situations or fails to treat differently persons whose situations are significantly different.²⁰ The ECtHR has also ruled in *Stec and others v UK*, that for difference in treatment to be objective and reasonable, it must pursue a legitimate aim and there must be a proportionate relationship between the means employed and the aim sought to be realised.²¹ These principles have also been endorsed in cases concerning de facto ethnic segregation in education.²²

13. There are a number of other human rights instruments which provide guidance on non discrimination including the ICESCR Committee's General Comment No 13 on the right to education²³ and the Committee of Ministers Recommendation to Member States on ensuring quality of education (CM/Rec (2012)13).²⁴

14. Furthermore, a number of instruments specifically require Member States to take effective measures in education to combat

¹⁹ Explanatory Memorandum to the Shared Education Bill, para 14.

²⁰ *Thlimmenos v Greece*, 6 April 2000, Application No. 34369/97, para 44, 28 October, 1987.

²¹ *Stec and others v UK*, 12 April 2006, Application Nos. 65731/01 65900/01, para 5.

²² *DH v Czech Republic*, Grand Chamber, App no 57325/00, 13 Nov 2007; *Oršuš v Croatia*, Grand Chamber, App no 15766/03. These cases concerned practices which resulted in Roma children being educated either in largely Roma only schools (DH) or Roma only classrooms (*Oršuš*).

²³ ICESCR Committee's General Comment No 13 on the Right to Education provides that education institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State Party, see para 6(b).

²⁴ The Recommendation also stipulates that quality education must be ensured without discrimination on any ground.

discrimination in relation to specific groups, including racism and racial discrimination,²⁵ gender,²⁶ persons with disabilities,²⁷ and on the grounds of sexual orientation.²⁸

15. The Commission notes the legitimate aim of shared education set out in the policy underpinning the Bill is so that it meets the needs of, and provides education together of learners from all section 75 groups and socio-economic status. The Commission further notes that current Clause 1 engages ECHR Article 14, read in conjunction with Article 2 Protocol 1 of the ECHR and other relevant human rights law.
16. **The Commission advises that the justification set out in the Explanatory Memorandum for limiting the definition of shared education to two groups (referencing all the section 75 groups 'would set very challenging demands') may not be sufficient to meet the reasonable and objective justification test required by human rights standards.**
17. **The Commission recommends that the Committee gives consideration to amending the definition in Clause 1 to include all the groups that are included in the stated aim of the policy underpinning the Bill.**

Clause 2: Power to encourage and facilitate shared education

18. Clause 2 confers a power (rather than a duty) on a number of listed bodies to encourage and facilitate shared education in Northern

²⁵ ICERD Articles 5 and 7, UNCRC Article 29 (1) (d), UNCRC General Comment No 1 on the aims of education, FCNM Article 12 (3) and ECRI General Policy Recommendation No 10 on Combating Racism and Racial Discrimination In and Through Education.

²⁶ CEDAW Articles and 10

²⁷ UNCRPD Articles 7, 8 and 24 and the Council of Europe Action Plan to promote the rights and full participation of persons with disabilities in society: improving the quality of life of persons with disabilities 2006-2015.

²⁸ The Yogyakarta Principles 2006 provides that everyone has the right to education, without discrimination on the basis of, and taking into account, their sexual orientation and gender identity. Principle 16 provides that state parties shall take all necessary legislative, administrative and other measures to ensure equal access to education and equal treatment within the education system, without discrimination on the basis of sexual orientation or gender identity.

Ireland. The listed bodies include the Department of Education, the Council for Catholic Maintained Schools, the Youth Council for Northern Ireland and the Northern Ireland Council for Curriculum, Examinations and Assessment. The Explanatory Memorandum to the Bill argues that that a power is more appropriate, as it provides flexibility to further develop shared education across a wide range of areas.²⁹

19. A number of human rights treaties and standards place a duty on the State (and therefore the NI Executive) to promote tolerance and respect for diversity in education, including ICESCR, Article 13 (1),³⁰ UNCRC, Article 29(1)(c),³¹ FCNM, Article 6,³² UN Human Rights Council Resolution 6/37,³³ and the Council of Europe's Faro Declaration.³⁴

20. During the consideration stage of the Education Bill in 2014, an amendment was made to the Bill to place a statutory duty on the Education Authority when exercising its functions, to encourage, facilitate *and promote* shared education. The amendment was made without division and now stands as a provision in the Education Act 2014 which will be commenced by Clause 3 of this Bill.³⁵

²⁹ Explanatory Memorandum to the Shared Education Bill, para 16.

³⁰ Article 13(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) states that state parties shall to the Covenant a recognize the right of everyone to education... agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms... further agree that education shall enable all persons to participate effectively in a free society to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups.'

³¹ Article 29 (1)(c) of the UNCRC provides state parties agree that education shall be directed to respect for the child's parents, his or her own cultural identity, language and ...as well as civilizations different from his or her own.

³² Article 6 of the FCNM says parties to the convention shall encourage a spirit of tolerance and intercultural dialogue and take effective measures in education to promote mutual respect, understanding and co-operation among all the persons living in the territory, irrespective of a person's cultural, linguistic or religious identity.

³³ UN Human Rights Council Resolution 6/37 urges member states to design and implement policies whereby education systems promote principles of tolerance and respect for others and cultural diversity and the freedom of religion or belief.

³⁴ The Council of Europe's Faro Declaration by Culture Ministers in 2005 made commitments to translate political will shown at the summit into action including through developing human rights, democratic citizenship and civil education programmes, as well as intercultural exchanges at secondary school and youth level.

³⁵ Education Act 2014, section 2(2). The amendment was introduced by John McAllister, MLA, see Marshalled List of Amendments 21 October 2014, <http://www.niassembly.gov.uk/assembly-business/legislation/primary-legislation-current-bills/education-bill1/marshalled-list-of-amendments-consideration-stage-tuesday-21-october-2014/> . See also Official Report of the Northern Ireland Assembly 21 October 2014, p51

21. As a consequence of the above provision in the Education Act 2014, the duty imposed on the Education Authority is, so far as its powers extend, to encourage, facilitate and promote shared education. However under Clause 2(1) of the Bill, the Department's statutory power would be limited to a discretionary power 'to encourage and facilitate shared education'.
22. **The Commission advises that Clause 2(1) of the Bill should be consistent with the existing legislative duty on the Education Authority 'to encourage, facilitate and promote shared education'.**

Clause 3: Commencement of duty of Education Authority in relation to Shared Education

23. Clause 3 amends section 7 of the Education Act (Northern Ireland) 2014 to commence the duty of the Education Authority in relation to shared education. The Education Act (Northern Ireland) 2014 confers a duty on the Education Authority (so far as its powers extend) to encourage, facilitate and promote shared education.³⁶
24. **The Commission welcomes Clause 3 which commences the duty on the Education Authority to encourage, facilitate and promote shared education.**

<http://data.niassembly.gov.uk/HansardXml/plenary-21-10-2014.pdf> . The Minister subsequently tabled an amendment at Further Consideration stage to place a statutory duty on the Education Authority (as far as its powers extend) to encourage, facilitate and promote shared education, see <http://www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/session-2014-2015/education-bill/noa4--04-11-14.pdf>

³⁶ Section 2(3) of the Education Act (Northern Ireland) 2014