

# **Children in Northern Ireland (CiNI)**

## **Response to Department of Education Consultation**

### **New Post Primary Arrangements and Proposal for a draft Education (Northern Ireland) Order**

## **Introduction**

Children in Northern Ireland (CiNI) is the umbrella body for the voluntary child care sector in Northern Ireland. CiNI provides policy, information and training services to 90 member organisations to meet their needs as they work with and for children and young people.

CiNI welcomes this opportunity to respond to the Department of Education's Consultation on New Post-Primary Arrangements and the Proposal for a draft Education (Northern Ireland) Order.

CiNI supports the overall thrust of the New Post-Primary Arrangements and Proposals for a draft Education Order which will introduce greater choice and the necessary degree of flexibility to the curriculum, particularly with a greater recognition and emphasis on the role of vocational education for children and young people.

## **United Nations Convention on the Rights of the Child (UNCRC) - The Child's Right to be Heard**

CiNI believes that many of the proposed changes relating to the curriculum are very positive from a child's rights perspective and are consistent with the aims of education as defined in Article 29 of the United Nations Convention on the Rights of the Child (UNCRC) and elaborated in the Committee's General Comment No. 1, in particular that : 'Essential life skills are learnt by every child and that no child leaves school without being equipped to face the challenges that he or she can expect to be confronted with in life and that education should be child-friendly, inspiring and motivating for the individual child' (CRC/GC/2001/para. 9-12).

CiNI is particularly concerned at the weak provision made throughout the order to hear the views of children and give their views due weight and consideration. The failure to involve children in decision making in schools is an ongoing concern raised in research, mostly recently in research carried out by QUB on behalf of NICCY on Children's Rights in Northern Ireland (NICCY, 2004).

CiNI would highlight that the UK Government, by virtue of it being a signatory to the UNCRC, are obliged to comply with all of the Convention's minimum standards including ensuring the right of the child to be heard under Article 12. CiNI would strongly advocate that Article 12 should underpin the draft education order, ensuring express provision is made across all of the draft order's core articles to both hear the views of children and give their views due weight in accordance with their age and maturity. CiNI would advocate strongly that legislation should provide for mechanisms, such as schools councils, to be uniformly established in all schools in Northern Ireland. This legislative provision should be supported by regulations providing for best practice in the provision of schools councils to hear the views of children on their schooling and education policy. The UN Committee's General Comment No. 1 provides that the participation of children in school life, through mechanisms including student councils, should be promoted as part of the process of learning and experiencing the realisation of their rights.

CiNI believes that the absence of an unequivocal recognition of the child's right to be heard in fundamental aspects of his/her school life indicates the necessity for child

impact analysis of the draft order to ensure its compliance overall with child rights principles and provisions. CiNI would highlight that this is required in light of the UN Committee's General Comment No 5 which states that in order to ensure that the provisions of the UNCRC are being fully implemented in law, policy and practice there is a need for a process of continuous child impact assessment and child impact evaluation (CRC/GC/2003/5 para.45). In this context, this involves carrying out a child impact assessment on the draft education order to ensure that it aligns with the provisions of the UNCRC and that the UNCRC is a fundamental, underpinning component of the draft education order.

CiNI believes that this weak provision to hear the views of children again highlights the urgent requirement to designate schools under Section 75 of the Northern Ireland Act 1998. CiNI believes that it is fundamental that children and young people and those representing their interests, are given a consultative role in the development and review of school policies.

### **Consultation with Children and Young People**

In regard to consultation CiNI would also urge that the Department in issuing regulations flowing from the draft order ensure that these are subject to full public consultation in compliance with the Department's statutory obligation to consult under section 75 of the Northern Ireland Act 1998. CiNI would emphasize that to comply with section 75 consultation must go beyond consultation 'with persons with whom consultation appears to be desirable' as is indicated on a number of occasions in the draft order and must explicitly include consultation with children and young people.

CiNI would request information on the method and extent of the Department's consultation with children and young people as part of this current consultation process. We would be keen to view the outcome of any such consultation. CiNI would also request a copy of the Department's child accessible version of the consultation pack.

### **Proposal for a draft Education (Northern Ireland) Order**

#### **Part II – The Curriculum**

In reference to Schedule 1 Areas of Learning and the Contributory Elements: Part I Foundation Stage and Part II Key Stages 1 and 2, CiNI notes the absence of Learning for Life and Work as an area of learning. CiNI believes that particularly in relation to local and global citizenship this is an area of learning which can be commenced, in age appropriate formats, from the Foundation Stage. Furthermore we would advocate that from primary school through to post primary school, local and global citizenship should make express provision for children's rights education.

#### **Article 12 Determination of curriculum policy and of curriculum**

In relation to Article 12 (4) (a) (i) we note that it is to be the duty of the Board of Governors when determining or reviewing its curriculum policy to take account of the findings of any inspection of the school. We believe that this provision should be more robust and require the Board of Governors to, not only take account of the findings of

any inspections, but comply with any recommendations of any inspection. Where the Board of Governors is not minded to do so, it should provide written reasons to the inspection body, which should upon due consideration, ultimately have a statutory power to require compliance with recommendations made as part of its inspection.

Further at 12 (4) (a) (ii) and (4) (b) we note the requirement on the Board of Governors to (a) (ii) consider any representations made to it regarding the curriculum by the relevant board, the Council for Catholic Maintained Schools and any other body or person connected with the community served by the school; and (b) to consult the principal of the school before making or varying any written policy statement. We believe that moving beyond representations there should be a requirement on the Board of Governors to consult widely when determining or reviewing its curriculum policy and expressly involve and consult with children and young people.

In reference to Article 12 (8) we would recommend that the written curriculum policy statement is made publicly available for whosoever should seek this information and in particular should be available to both current and prospective pupils and their parents.

#### **Article 15 Exceptions by regulations**

CiNI notes that under Article 15 exceptions to the application of some of the statutory requirements relating to the curriculum are permissible. CiNI believes that this area and all other areas relating to exceptions should be tightly regulated to minimise any interference with the statutory requirements of the curriculum.

#### **Article 17 Temporary exemptions for individual pupils**

CiNI notes that under Article 17 the principal of any grant-aided school may, in accordance with regulations made by the Department, (a) direct that for a registered pupil some of the statutory requirements relating to the curriculum (i) can be applied with modifications; or (ii) shall not apply.

CiNI is concerned that the principal in the making of this direction should be under a statutory duty to consult with the registered pupil and his/her parent. It appears from the draft order that it is only *after* the principal makes the direction that there is a statutory requirement to 'take such steps as may be prescribed to give that information to the parent of a pupil' (Article 17 (3)).

CiNI notes that in relation to this provision there is a right of appeal to the Board of Governors (Article 17 (7)). While we support a right of appeal, we believe this should be to a sufficiently independent appeals body and that on appeal there should be a statutory provision allowing the pupil or a pupil representative and the parent of the pupil to make their representations.

CiNI would ask the Department to clarify whether there is a further right of appeal of the decision of the Board of Governors to the Board appointed Complaints Tribunal as proposed in Article 25.

Again we would highlight that any regulations which the Department makes under this article should be the subject of full public consultation in compliance with section 75 of the Northern Ireland Act 1998.

## **Article 21 Arrangements for provision of secondary education on behalf of a grant-aided school**

CiNI believes that it will be important for the Department to issue guidance regarding the arrangements for provision of secondary education on behalf of a grant-aided school and we believe that such guidance should seek to encourage the development and maintenance of arrangements across and between *all* of the varying education providers, including providers of education in special school settings. However, we feel that the duty on a Board of Governors, rather than requiring that it 'shall take account of such guidance;' should state that 'as far as is possible in the circumstances of the school' it will comply with the guidance issued by the Department.

CiNI fully supports the co-operation and collaboration envisaged by the arrangements which will be made for provision of secondary education, noting that it is already being successfully piloted in Northern Ireland, and can be further facilitated through approaches such as block time-tabling and the option for teachers to travel between schools as opposed to requiring large numbers of pupils to travel between schools and colleges. However to enable and facilitate the effective operation of such collaboration and co-operation we would strongly advocate that school funding mechanisms align with this approach, for example, through pooling of resources to support collaborative working.

We also believe that there is scope for developing and extending this cooperative and collaborative way of working in view of the imminent introduction of the extended school model which is to be supported by the Children and Young People's Priority Funding Package.

This would see an emphasis on the whole child's health and well-being which is essential in enabling their educational enjoyment and achievement. We believe that there should be a statutory requirement on schools to co-operate and collaborate, through the development of appropriate arrangements, with those providing health and well-being services, including providers of such services in the voluntary and community sector.

## **Article 24 Provision of Information**

CiNI believes that in relation to the provision of information the Department should require the Board of Governors or the principal of a grant-aided school to make 'information available generally'. It is not sufficient that information is provided to prescribed persons. However, we do believe that information should be made available both in accessible and child-friendly formats reflective of Department's obligations under Section 75 of the Northern Ireland Act 1998.

Again we would advocate that the Department in making regulations under this article should consult widely in conformity with its section 75 duty.

CiNI is particularly concerned that under this article the results of an individual pupil's assessment may be made available to the Board of Governors of any other school to which that pupil applies for admission and that this applies in particular to any assessment of a pupil at a special school (24 (6) (a)). We are concerned that this article

in explicitly making provision for the sharing of any assessment of a pupil at a special school with another school to which the pupil applies for admission amounts to differential treatment on the grounds of disability. We do not believe this can be justified as it may adversely affect, for example, the pupil's application for admission to a mainstream school.

### **Article 25 Complaints**

CiNI also has real concerns regarding the status of the board appointed complaints tribunal. We do not believe that a board appointed complaints tribunal can be sufficiently independent so as to hear complaints made against the Board. CiNI would advocate that the complaints tribunal is appointed by the Department as an entirely independent and impartial complaints body.

Furthermore CiNI notes at 25 (4) that the Department has responsibility for developing regulations that will provide for the constitution and procedure of a complaints tribunal. However, we would have real concerns regarding the provision at 25 (4) (e) that all matters relating to the procedure on the hearing or determination of any complaint which are not specifically regulated by the regulations shall be determined by the *board* [own emphasis added]. This would suggest that board could regulate the very procedure that is to hold it to account. This would appear to be a highly irregular procedure and we would advocate that all of the procedures relating to the complaints tribunal should be provided for in regulations developed by the Department and subject to the statutory consultation requirements of Section 75 of the Northern Ireland Act 1998.

CiNI also notes that there is no provision made under the article for the voice of the child, his/her representative, and parent to be heard as part of the complaints process and we would advocate that this is explicitly provided for in the article and followed through in the development of regulations relating to the procedure of the complaints tribunal.

## **Part III Miscellaneous and Supplementary**

### **Article 28 Admission Criteria**

CiNI firmly supports the provision that admission criteria will not include any criteria to assess academic ability or aptitude of the child. However, in relation to the Pupil Profile we would strongly advocate that CCEA ensure real and meaningful involvement of children in the ongoing development of the Pupil Profile in line with both the Section 75 of the Northern Ireland Act 1998 and Article 12 of the UNCRC. CiNI would emphasise that rather than this engagement being through a blank sheet exercise that children's participation must be informed by having sight of the full pupil profile and being given the opportunity to respond and comment on the actual content of the pupil profile, in a way that involves them in an actual assessment of their own learning so that it is a balanced and informed record of the child's development journey through primary school.

CiNI would urge CCEA to actively involve children in the ongoing process of developing, testing and refining the Pupil Profile. Children should also be actively involved in the process of regularly reviewing the Pupil Profile. CiNI regards this type of engagement and participation as crucial to ensuring that children have confidence in the Pupil Profile.

Given that the pupil profile will include elements relating to a child's special educational needs and behaviour and that it is a record which will follow the child and be forwarded to the post-primary school we believe that it will be important for the school to regularly discuss the Pupil Profile with their child's teacher. The draft order should provide for a formal independent appeal mechanism should a pupil or parent be unhappy with the content of the Pupil Profile.

In relation to the admission criteria CiNI would urge that they are fully equality impact assessed so as not to produce any adverse treatment for particular groups of children and young people. Furthermore, we believe there is merit in considering further how the admission criteria could be used to pro-actively promote equality for disadvantaged groups of children.

CiNI notes that under the draft order Article 16 of the 1997 Order is substituted stating - 'the Board of Governors of each grant-aided school shall draw up, and may from time to time amend, the criteria to be applied in selecting children for admission to the school'. CiNI believes this provision is loosely construed in relation to the power to amend and we would advocate that regulations explicitly provide the grounds upon which amendments may be sought and the process which should be followed in seeking to amend the admission criteria.

CiNI also notes that again there is an absence of any statutory requirement on a Board of Governors when drawing up or amending admissions criteria to consult with pupils, their representative and their parents and would again advocate that in line with Article 12 of the UNCRC provision should be made to hear the voice of the child and give the voice due consideration in view of the child's age and maturity.

CiNI notes that there is no express provision under Article 28 for appeal against an admission decision. However, the Minister, in her statement announcing the beginning of formal consultation, did state that 'there will also be an important role for the new Education Authority to ensure that schools comply with the new admissions arrangements and apply their admissions criteria in an open and fair way' (DE, p.8).

CiNI believes that there should be an independent appeal mechanism that could also have responsibility for monitoring and reporting on fair access to education provision.

Again we would advocate that any regulations made under this article should be the subject of full and proper public consultation in accordance with Section 75 of the Northern Ireland Act 1998.

CiNI notes the 'exceptional circumstances' criteria and while we agree that this criteria is most appropriately assessed by an independent body we feel that the compelling individual circumstances must be closely regulated so that the provision is not misused.

### **Articles 30-33 Suspension and Expulsion of Pupils**

In relation to suspension and expulsion of pupils CiNI notes the provision at Article 30 (4) (a) that the Department shall review a scheme specifying the procedure to be followed in relation to the suspension and expulsion of registered pupils from grant-aided schools not later than five years after the issue of the scheme. CiNI believes that this is a substantial period of time to await the review of a scheme, particularly if the scheme is

not felt to be operating effectively given the significant adverse impact the operation of such a scheme would have on a child's right to education. CiNI would advocate that this provision is amended and that a period of three years is sufficient to allow the scheme to operate for the purposes of reviewing whether or not it is operating effectively.

We also note the requirement at 30 (5) that the Department consult before making or revising a scheme with a relevant bodies including 'any other person with whom consultation appears to it to be desirable'. Again we would strongly advocate that the Department before making or revising a scheme should consult directly with pupils, their representatives and parents in accordance with the section 75 of the Northern Ireland Act 1998.

In relation to appeals against expulsion we note with concern that a pupil under the age of 18 does not have a right of appeal; the right of appeal lies with a 'relevant person' defined by the article as the pupil's parent.

Article 31 (6) (d) states that regulations may in particular provide for representations to be made to an expulsion appeal tribunal by or on behalf of the relevant person, that is, the pupil's parent. CiNI would advocate strongly that in line with the child's right to be heard a pupil under the age of 18 should be able to make representations to the tribunal or should have the option of having separate representation for the process.

While CiNI welcomes the provision at Article 32 for appeals against suspension, we are concerned that the legislation does not robustly provide for the constitution and procedure of an independent suspension appeal mechanism. CiNI would advocate that provision is also made to allow representations to be made to an independent appeals body by or on behalf of the pupil and his/her parent.

## **Conclusion**

CiNI trusts that our response can usefully inform the further development of New Post-Primary Arrangements and the draft Education (Northern Ireland) Order. We look forward to viewing the Department's analysis of responses to this consultation and trust that the analysis will positively influence the ongoing development of the new arrangements.

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