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

## Summary of responses to the Consultation on the proposal for a draft Education Order



INVESTOR IN PEOPLE

June 2006



# CONTENTS

	<b><u>Section Number</u></b>
Foreword by Maria Eagle, MP .....	iii
Introduction .....	1
The Curriculum (Articles 3 –13 and Schedule 1) .....	4
The Curriculum: Special Cases (Articles 14 -17) .....	7
The Curriculum: Access to Courses for Older Pupils - Entitlement Framework (Articles 18 - 22) .....	8
The Curriculum: Miscellaneous and Supplementary (Articles 23 - 26) .....	11
Admissions Arrangements (Articles 27-29)* .....	14
Suspension and Expulsion (Articles 30-33)* .....	21
General Teaching Council for Northern Ireland (Articles 34-36)* .....	26
Institutions of Further Education (Articles 37 & 38)* .....	27
Baseline Assessment (Article 39)* .....	28
Annual Parents' Meetings (Article 40)* .....	29
Fees for Instruction by the Department for Agriculture and Rural Development (Article 41)* .....	30
Other minor amendments in the Order .....	30
Glossary .....	31

\* See Note in Introduction about the ordering of Articles.



# FOREWORD

## **By Maria Eagle, MP, Minister with responsibility for Education**

In December 2005 Angela Smith launched a period of consultation to seek comments on the Proposal for a draft Education (Northern Ireland) Order.

Some 10,000 responses to the consultation were received and I would like to thank all those who took the time to consider the provisions and submit their comments. This report summarises the responses to the consultation, covering the range of comments made by our education partners, political parties, other interested bodies, parents and the general public, and sets out the Government's response.



Maria Eagle MP  
Minister for Education

All the responses were carefully considered. When I took over responsibility for education in Northern Ireland, I held meetings with key interests to give me the opportunity to hear, at first hand, their views on the changes proposed. I took particular account of the weight of arguments advanced for making changes to the Order.

With regard to admissions and academic selection in particular, it is clear that different views remain. Having familiarised myself with the review of post-primary education to date, listened to the arguments and considered the comments on the draft Order, I am convinced that ending academic selection is essential to end the uncertainty about future arrangements and that future transfer arrangements should be on the basis of informed parental choice.

I believe the package of reforms within this draft Order, including the ending of academic selection, will enable all young people to reach their potential and make a positive contribution to society and the economy. However, given the differences of view about academic selection, I have decided that if the Assembly is restored before 25 November a vote by the Assembly will be necessary to end academic selection. If the Assembly is not restored by that date the ending of academic selection will automatically become law. The Order has been amended to provide for this.

I have also decided to make a number of changes to the admissions provisions of the Order. New provisions are included to require the Department to issue guidance about the admissions process which will supplement the admissions criteria regulations and also to enable the Department to require the Board of Governors of a school to reconsider their admissions criteria if the Department has concerns about the likely effect of those criteria on admissions to the school. An amendment has been made to clarify that information about a pupil will not normally be made available to receiving post-primary schools until the pupil has gained admission but that a pupil's parents may request that it is made available.

A number of changes to other parts of the Order have also been made. The curriculum provisions have been amended to allow Irish to be taken as the sole second language at key stage 4 other than in Irish speaking schools. The arrangements for the expulsion of pupils have also been amended to ensure a consistent approach to expulsions, through the introduction of a common scheme which all schools will operate. Following consideration of the responses to consultation and issues raised in discussions, I have decided to remove from the draft Order the designation of the education and library boards as the expelling authority for all schools in their area. The current responsibilities for expulsions will remain, but with all schools and education and library boards operating under a single scheme. Further details of all the changes are included in this summary.

The draft Order provides the legislative framework for the implementation of a number of important reforms which will widen and improve the educational experiences of all pupils to enable them to fulfil their potential and provide them with relevant knowledge and skills for the future. There will be further consultation on key elements of a range of issues, including the admissions criteria regulations, and the suspension and expulsion scheme. This will provide opportunities to influence the detailed implementation of the new arrangements.

The draft Order has been laid before Parliament and is subject to approval by both Houses of Parliament.



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**MARIA EAGLE**

# INTRODUCTION

## Summary of responses to consultation and the Government's response

### Purpose of consultation

The purpose of the consultation was to seek views on the provisions of the Proposal for a draft Education (NI) Order 2006 which will give statutory effect to the Government's policies and will:

- ◆ revise the Northern Ireland Curriculum and its associated assessment arrangements;
- ◆ introduce a curricular Entitlement Framework to provide access to a wider range of general and applied courses for pupils in key stage 4 (KS4) and those over compulsory school age;
- ◆ abolish academic selection, and confer powers to enable the Department to make regulations about the admissions criteria for post-primary schools;
- ◆ provide new arrangements for the suspension and expulsion of pupils;
- ◆ amend the responsibilities of the General Teaching Council for Northern Ireland (GTCNI);
- ◆ make changes relating to members of the Governing Bodies of further education institutions;
- ◆ clarify the powers of the Department for Agriculture and Rural Development (DARD) to charge fees for courses of education or instruction it provides; and
- ◆ make a number of other minor and consequential amendments to current education law.

## The consultation format

The consultation on the Proposal for a draft Order ran from 6 December 2005 to 7 March this year. A copy of the draft Order and the explanatory memorandum were sent to education partners; schools; libraries; political parties; churches; rural, community and voluntary groups and statutory and voluntary agencies concerned with children's rights, together with a response booklet. To enable parents to respond, copies of a leaflet were issued to all schools to be given to parents advising them that the consultation was taking place and how they could participate, together with copies of the Minister's statement of 6 December 2005 which provided the context for the provisions in the draft Order. Advertisements were also placed in the regional press and all the documents were made available on the Department's website. The Department also provided the facility for responses to be completed and submitted electronically.

In all, 10,118 responses were received, including 135 on-line. Of these, 312 were incomplete or anonymous, and 28 were duplicates or withdrawn as not being sent by the apparent signatory. Single-issue campaigns opposed to the abolition of academic selection, excluding responses which were incomplete, anonymous or withdrawn, represented 9,076 (92.8%) of the remaining 9,778. Almost 8,900 of the campaign responses were of a common form prepared by the Concerned Parents for Education (CPE) which members of the public signed and submitted. There was a low response from schools with 119 responses (43 primary, 28 secondary non-grammar, 47 grammar and 1 special).

In addition to these responses, 6 petitions with 11,071 signatures were submitted. 5 of these, from 4 district councils in the greater Belfast area and a grammar school, and totalling 9,804 signatures, were broadly opposed to ending of academic selection. The last, with 1,267 signatures, was from an Irish language group, and expressed concerns about the position of Irish in the curriculum.

In the response booklet the Articles in the Order were grouped into topics (the main ones being the curriculum, the Entitlement Framework, admissions, expulsions and suspensions). The booklet was designed to elicit reasons or explanations for suggested changes to the Order rather than yes/no answers. This was to enable the range and the strength of arguments (both in support of and opposed to the

draft Order's provisions) to be gauged, rather than simply counting responses. This approach is in line with Cabinet Office guidance which states that:

*“Analysing responses is never simply a matter of counting votes. The House of Lords Science and Technology Committee has drawn attention to the risks of single-issue groups monopolising debate. Particular attention may however need to be given to the views of representative bodies, such as business associations, trade unions, voluntary and consumer groups and other organisations representing groups especially affected. Eventually it is for Ministers to assess the argument and evidence and reach decisions in the public interest.”*

This report summarises the comments received, identifies the main organisations and groups who made them, sets out the Government's response and states whether any changes have been made to the Order as a result of the comments. A list of the abbreviations used in the text to identify responding bodies may be found in the Glossary.

**NOTE:**

The draft Order laid before Parliament contains an Article (Article 30) inserted following consultation, and the numbering of subsequent Articles has been changed accordingly. In this summary, the numbering of the Articles in the Proposal for a draft Order on which consultation took place has been used for clarity's sake, but with bracketed references to new numbers where they have been changed.

# 1. THE CURRICULUM: ARTICLES 3 - 13 AND SCHEDULE 1:- REQUIREMENTS AND DUTIES RELATING TO THE CURRICULUM

## 1.1 Overview of comments received during consultation

1.1.1 There was broad support for the revised curriculum, its focus on skills and the greater flexibility it provides. However, the Governing Bodies Association (GBA), CPE, a small number of the primary and grammar schools which responded, a few of the secondary schools which responded and a minority of members of the public, opposed the curriculum changes and argued that the Department of Education (DE) and the Council for the Curriculum, Examinations & Assessment (CCEA) will have too much power. There were requests for more detail on curricular content, skills and assessment and the “other thinking skills” specified in the Order.

1.1.2 There were also many comments on **assessment arrangements**, with schools, CPE, the general public and education interests criticising aspects such as the use of Levels of Progression and the assessment burden, and suggesting the use of alternative methods of assessment such as Computer Adaptive Tests. Other comments (GBA, CPE, some grammar schools, some members of the public) related to matters of implementation such as resources, training and phasing, and a concern that Northern Ireland pupils should still be able to take GCSEs offered by awarding bodies in Great Britain.

### **Government response**

The approach in the Order is essentially the same as the existing legislation, which is to provide only the broad enabling powers for the revised curriculum and assessment. In due course, the Department will bring forward regulations to introduce the new curriculum and assessment arrangements for each key stage, and CCEA will be publishing documents that outline the detail which respondents have requested. The Department will publish lists of GCSE courses offered by CCEA and awarding bodies in Great Britain. No change to the Order.

## 1.2 Amendments suggested during consultation

1.2.1 *The Contributory Elements of Mathematics and The World Around Us at Foundation Stage should be the same as at key stages 1 and 2 (Belfast Education and Library Board (BELB), South Eastern Education and Library Board (SEELB), Catholic Trustees).*

### **Government response**

The Foundation Stage has been drafted in this way to reflect the new approach to early years teaching and learning. No change to the Order.

1.2.2 *Article 12 should be revised to link a school's curriculum policy to School Development Plans (North Eastern Education and Library Board (NEELB)).*

### **Government response**

A school's development plan should take account of its curricular provision and this is already provided for in regulations. No change to the Order.

1.2.3 *There should be specific reference to the learning of a second language in primary school. (BELB)*

### **Government response**

This is already possible through the provision enabling a school's curriculum to include other matters (Article 5(3)). Work is already in hand to develop a NI Languages Strategy, which can be expected to include recommendations on primary language learning. No change to the Order.

1.2.4 *Amend the Religious Education (RE) provisions of Article 21 of the 1986 Order (Northern Ireland Council for Integrated Education (NICIE), Labour Members NI).*

### **Government response**

These provisions are outside the scope of the consultation on the draft Order. The issue is about inclusion and an Equality Impact

Assessment is already being carried out on Proposals for a revised Core Syllabus for RE, which includes provisions for learning about other religions. No change to the Order.

1.2.5 *Amend the definition of an Irish speaking school to: “a school is an Irish Medium (IM) school if the teaching of the minimum content of all Areas of Learning other than Language and Literacy is conducted at each of the key stages mainly in Irish and the “school” includes part of a school.” (Comhairle na Gaelscolaíochta (CnaG)).*

#### **Government response**

The draft Order re-enacts the existing definition of Irish speaking school, but substitutes reference to the new ‘minimum content’ for the former ‘programmes of study’. The draft Order reads: “a school is an Irish speaking school if more than one half of the teaching of religious education and the minimum content of the areas of learning other than that called Language and Literacy is conducted (wholly or partly) in Irish and ‘school’ includes part of a school”. The amendment proposed would make it significantly more difficult to establish an Irish speaking school. This would be unhelpful in relation to the overall promotion of Irish in that it would make it difficult to establish Irish speaking units at English speaking schools. No change to the Order.

1.2.6 *Amend the contributory elements of Language and Literacy, i.e. Talking and Listening, Reading and Writing in key stages 1 and 2 to provide that they will be in Irish in Irish speaking schools (CnaG).*

#### **Government response**

The contributory elements describe the constituent parts of the area of learning, not the medium in which they are taught. The curriculum documents to be published by CCEA will provide for Irish speaking schools to teach Language and Literacy in Irish and English at key stages 1 and 2. No change to the Order.

## 2. THE CURRICULUM: ARTICLES 14 - 17:- SPECIAL CASES

### 2.1 Overview of comments received during consultation

2.1.1 These Articles are re-enactments of existing law and were broadly supported as providing flexibility to develop the curriculum and provide for individual circumstances.

### 2.2 Amendments suggested during consultation

2.2.1 *Change ‘experiments’ to ‘research’ in Article 14 (Council for Catholic Maintained Schools (CCMS), the Catholic Trustees, and a small number of non-grammar post-primary schools).*

#### **Government response**

Article 14 provides for modification or disapplication of certain curriculum provisions for “development work and experiments”. “Experiments” describes more accurately than “research” what this provision is designed to accommodate. It has been in place since 1989, and has not caused any difficulties. No change to the Order.

2.2.2 *In Article 14, allow other educational agencies to apply for disapplications (BELB, voluntary groups).*

#### **Government response**

The revised curriculum is itself much less prescriptive than the existing version, and the need for disapplication should therefore diminish. No change is necessary at the moment in advance of the changes arising from the Review of Public Administration (RPA).

2.2.3 *Amend ‘the application’ in Article 16 to ‘any or all applications’ (CCMS).*

#### **Government response**

From a legislative point of view the current drafting is correct, and accommodates the purpose of the proposed changes. No change to the Order.

2.2.4 An independent panel to hear appeals relating to Article 17 may be more appropriate (SEELB).

#### **Government response**

This provision gives principals the power to disapply the curriculum in individual cases. These appeals are currently considered by the Board of Governors and we are satisfied that this remains appropriate. No change to the Order.

### **3. THE CURRICULUM: ARTICLES 18 - 22:- ACCESS TO COURSES FOR OLDER PUPILS (THE ENTITLEMENT FRAMEWORK)**

#### **3.1 Overview of comments received during consultation**

3.1.1 Many respondents (education partners, a minority of schools across grammar, secondary and primary sectors, public and other interest groups, including the political parties) expressed support for the idea of providing pupils with access to a wider range of courses and also expressed support for the principle of collaboration. Some highlighted the opportunity to promote cross-sectoral collaboration or pool resources, others the need to ensure that special schools, alternative education providers and voluntary sector training providers are included in collaborative arrangements.

3.1.2 There was opposition from the Ulster Unionist Party (UUP), the Democratic Unionist Party (DUP), GBA, the Institute of Directors (IoD), some schools and members of the public to the numbers and range of courses to which schools would be required to provide access, and to DE specifying this number and range (rather than leaving it to individual schools to decide). Concerns were expressed about the need to protect the character and ethos of schools and high academic standards. There were also concerns about the lack of clarity in the definitions of applied and general courses.

3.1.3 A number of respondents suggested that the number of courses to which schools would be required to provide access should be reduced, that schools should be required only to provide a mix of courses, and that the number of courses

to which each school would be required to provide access should be related to its enrolment number.

### **Government response**

Guaranteeing pupils access to a wider range of courses, including vocational courses, will secure equity of access for all pupils, irrespective of the school they attend, and provide all pupils with a wider choice of courses to better meet their individual educational needs, interests and aspirations. The number of courses has not been specified in the Order to allow some flexibility in implementation, taking account of the fact that some schools will find providing the required access to courses more challenging than others. The Department's powers to determine these numbers will be exercised so as to ensure that the requirements are deliverable by schools working in collaboration with other schools, Further Education (FE) colleges and others. The Department, in circulars to schools, will determine the classification of courses as 'applied' or 'general' and the definition of these terms.

The Vocational Enhancement Programme, developing collaborative working between schools and further education colleges, and support for school-to-school collaboration are enabling the system to identify issues and develop solutions to these. Article 21 (see para. 3.3 below) enables the Board of Governors of a school to enter into an agreement with other institutions for the provision of secondary education for pupils on behalf of the school. Guidance will be available to schools on all these issues. In addition, there will be support available through school managing authorities to facilitate the development of collaborative arrangements. No change to the Order.

## **3.2 Amendment suggested during consultation**

*3.2.1 Irish at key stage 4: The Order as currently drafted requires schools to provide pupils with access to at least one Modern Language course at KS4 but English and Irish cannot be counted as fulfilling this minimum. This places Irish at a disadvantage, preventing pupils taking Irish at KS4, and breaches the*

*Government's various commitments to promote the Irish language. Amend Article 18(1)(d) to allow Irish to be taken as a sole second language. (Social Democratic & Labour Party (SDLP), Sinn Fein (SF), CnaG, Foras na Gaeilge (FnaG), schools, some public responses, political representatives and other IM interests)*

### **Government response**

This provision sought to ensure that pupils have access to languages that sufficiently prepared them for the global economy. However, Irish will become an official language of the European Union (EU) from 1 January 2007 and it is not the Government's intention to treat Irish less favourably than other official EU languages. This provision has been amended to allow schools (with the exception of Irish speaking schools) to offer Irish to fulfil their minimum Modern Languages requirement.

## **3.3 Collaborative Arrangements: Article 21: Agreements Between Schools**

3.3.1 Most respondents commented on costs and the practical difficulties involved, including transport, timetabling, pastoral care, health and safety, pupil welfare, discipline, responsibility for pupils, quality assurance of new courses, the challenge for small and rural schools and the differences in the qualifications and terms and conditions between teachers and FE lecturers. The need to review the Local Management of Schools' Common Funding Formula was also raised by some education partners on the grounds that it encourages competition between schools. Many respondents raised the need for more piloting, monitoring and evaluation.

### **Government response**

The provision is designed to ensure that issues such as pastoral care, health and safety, welfare and discipline are fully considered when schools enter into arrangements with other schools and colleges. The Vocational Enhancement Programme and support for school-to-school collaboration are enabling the system to identify issues and develop solutions to these. No change to the Order.

## 4. THE CURRICULUM: ARTICLES 23 – 26:- MISCELLANEOUS AND SUPPLEMENTARY

### 4.1 Article 23: Curriculum Advice and Support

4.1.1 This was generally supported. Three Education and Library Boards (BELB, NEELB and SELB) asked for amendments to reflect the broader role of the Curriculum, Advisory & Support Services (CASS) in school development planning and school improvement and to extend its remit to providing training and support to governors, pre-school and classroom assistants (education partners, schools). BELB also asked that the CASS service be given right of entry to schools. There were also suggestions for consultation with CCEA, CCMS and GTCNI, before schemes are prepared. GBA, CCMS and a small number of schools suggested devolving the budgets and responsibility for training to principals, with CASS in a quality assurance role. A small number of education partners and schools also expressed concerns about the impact of RPA.

#### **Government response**

This Article is a re-enactment of existing law. Amendments will be required to better reflect the overall role of CASS but these will be taken forward in the context of the broader changes to support services arising from RPA. No change to the Order.

### 4.2 Article 24: Provision of Information: General

4.2.1 There was broad support from education partners, schools and the public for this Article (e.g. providing openness while protecting privacy). However, there were some concerns, e.g. the potential to increase bureaucracy, the potential to re-introduce league tables and a concern to 'contextualise' school performance data to show 'value-added'.

4.2.2 CCMS, the Catholic Trustees, NICIE and SDLP expressed concerns that a provision giving the Department power to make regulations about the transfer of educational records could lead to assessment outcomes being made available to post-primary schools in advance of admissions decisions. The GBA suggested that schools should have access to the Pupil Profile as of right before admissions decisions are made.

## **Government response**

This Article is a re-enactment of an existing provision and as drafted would not prevent the regulations being written in such a way that information could be passed to a receiving school in advance of a pupil being admitted.

Government has decided that the information about a pupil should not be available to prospective schools in the context of transfer at age 11 unless a parent requests that the information is made available to a Board of Governors or has provided the information voluntarily to potential receiving schools. The draft Order has been amended to make it clear that regulations cannot require such information to be provided to another school until the pupil has gained admission, or unless the parent of a pupil requests that the information is made available to a Board of Governors.

### **4.3 Article 24: Provision of Information: Pupil Profile**

4.3.1 This Article provides the enabling power for the Department to make regulations about the Pupil Profile. Although not provided for directly in the Order, the Pupil Profile attracted much comment. There was broad support for the more holistic picture that the Pupil Profile will give of a child although there were some criticisms. These include:-

- ◆ it is too subjective/ an objective element is needed, perhaps informed by Computerised Assessment Tests;
- ◆ the potential for it to give rise to pressure on teachers and conflict with parents (and possibly litigation);
- ◆ the need to involve parents and pupils in its production, and to have an appeals process;
- ◆ concerns about the potential to increase teacher workloads and testing of pupils; and
- ◆ the need for it to be meaningful and easily understood by parents.

## **Government response**

CCEA continues to develop and refine the Pupil Profile to ensure that the information is understandable and helpful for parents and that the process is manageable for teachers. A key element of the development process is to pilot the Pupil Profile in schools, with feedback from teachers and parents. The Key Stage 2 Pupil Profile being piloted in schools at present includes the results of computer based standardised tests in reading, writing and numeracy. Decisions on the final version of the Pupil Profile will be made shortly, taking account of feedback from the current pilot.

Some of the concerns raised about the Pupil Profile, for example, those about litigation or conflict between teachers and parents, reflect a mistaken belief that the Pupil Profile is to be a replacement for the existing Transfer Tests i.e. a new form of academic selection. That is not the case: its purpose is to provide consistent information to parents. The detailed requirements relating to the Pupil Profile will be set out in regulations and these will be the subject of consultation in due course. No change to the Order.

## **4.4 Article 25: Curriculum Complaints**

4.4.1 This provision re-enacts existing provision and extends the powers of existing curriculum complaints tribunals to include the duties of Boards of Governors in relation to the Entitlement Framework. This was supported for providing openness and accountability (education partners, schools, public) but some were opposed (GBA, Irish National Teachers' Organisation (INTO), National Association of Schoolmasters Union of Women Teachers (NASUWT)). Concerns were expressed about the need to protect the powers of Governors (schools, GBA, CPE, public) and the potential of the Entitlement Framework to lead to an increase in complaints, with a subsequent need for additional resources to remunerate tribunal members (education partners, schools). There were also comments on the impact of RPA, with CCMS suggesting that a single tribunal should be established: some members of the public suggested an independent complaints body. In addition, the NI Commissioner for Children and Young People (NICCY) and some equality/human rights groups have asked for parents and pupils to be tribunal

members and CCMS has requested an amendment to require copies of determinations to be provided to it.

#### **Government response**

This provision provides an important external balance to the powers enjoyed by Boards of Governors over the curriculum and the access to the Entitlement Framework. These issues will be considered further in light of RPA. No change to the Order.

### **4.5 Article 26: Application to Nursery and Hospital Schools**

4.5.1 This re-enacts existing law and was broadly accepted.

#### **Government Response**

No change to the Order.

## **5. ADMISSIONS ARRANGEMENTS: ARTICLES 27 - 29**

### **5.1 Articles 27 and 28: Prohibition of Academic Selection as an Admissions Criterion**

5.1.1 The prohibition of academic selection as an admissions criterion was supported by 3 education and library boards (BELB, Western Education and Library Board (WELB), NEELB), CCMS, Catholic Trustees, NICIE, the main teachers unions (Ulster Teachers' Union (UTU), NASUWT, INTO), AHTSS, SF, SDLP, children's groups, Northern Ireland Council for Voluntary Action (NICVA) and a small number of primary and secondary (non-grammar) schools. The Northern Ireland Public Service Alliance (NIPSA) argued for a fully comprehensive system.

5.1.2 SELB supports the ending of the Transfer Tests but cannot support the abolition of academic selection until more acceptable admissions criteria are devised and tested. The Board considered that little note had been taken of the Craigavon 2-tier system and that this should be protected. SEELB is opposed to the prohibition of academic selection and argues that the match between a school offer and a child's aptitude or ability should remain. This view was also taken by

the GBA which suggested that pupils' aptitude for specific types of learning and their various intelligences should be criteria used by receiving schools.

5.1.3 The TRC supports the removal of the Transfer Test. It has considered the arguments from educationalists and those who support academic selection but has concerns about how the new arrangements will work, in particular in relation to rural areas and to ensure equality of treatment. It wishes to be consulted about the admissions criteria before commenting on the suitability of this aspect of the legislation.

5.1.4 The Catholic Trustees and SDLP, while supporting the abolition of academic selection, have some concerns about the proposed admissions criteria, in particular to ensure that there is equality of treatment and that rural pupils are not disadvantaged.

5.1.5 GTCNI has some concerns about new admissions criteria and welcomes the proposed further consultation on the draft regulations.

5.1.6 The two main unionist parties oppose the removal of academic selection:

- ◆ DUP: schools should be able to set their own admissions criteria – to enable them to maintain their ethos.
- ◆ UUP: oversubscribed schools are in the best position to assess best match between the schools and the pupil, based on ability and aptitude – the Pupil Profile, including standardised scores, should be used to match pupils to the most suitable schools and the Profile should be made available to the receiving school.

5.1.7 The abolition of academic selection was also opposed by NI Conservatives (decisions about using academic selection should rest with individual schools), some rural interest groups (particular concerns about distance criteria and the impact on rural pupils and communities), 5 district councils, the majority of responses from the public, mainly in the form of campaign responses organised by CPE, grammar schools which responded and a small number of primary schools, and the petitions organised by 4 district councils. IoD considered that schools should be free to choose their admissions criteria except where individual schools are abusing this to get round government policy on academic selection.

Association of Teachers & Lecturers (ATL) opposes the criteria based approach and argues that new admissions arrangements should not be introduced in advance of collaborative arrangements.

5.1.8 All the political parties and a small number of primary and grammar schools shared rural groups' concerns about geographical criteria and that pupils in rural areas may be disadvantaged.

### **Government response**

The Government has accepted the recommendations of the Costello Working Group that age 11 is too young to determine a child's future pathway and that future transfer arrangements should be on the basis of informed parental and pupil choice. The current transfer process, which is high stakes, creates anxiety and stress for pupils, parents and teachers, closes down pupils' options when they should be widened and creates a sense of failure among pupils who do not achieve a grammar school place.

The Craigavon 2-tier system is a delayed system of academic selection based on internal class tests where pupils are ranked and transfer to a grammar school or a senior high school accordingly. Under the new arrangements, transfer at any age on the basis of academic selection would be inconsistent with the principle of pupils and parents choosing schools rather than schools choosing pupils.

Having considered carefully all the arguments about academic selection the Government continues to believe that ending it is in the best interests of all children and therefore the provision prohibiting academic selection being part of schools admissions criteria remains in the Order.

The Government recognises that there are strongly held views in favour of retaining academic selection as well as in favour of ending it. In the circumstances the Government has decided that if the Assembly is restored by 25 November 2006, it should have the opportunity to vote on academic selection. The Order has therefore been amended to provide that if the Assembly is restored by that date, a vote will be required to give effect to the prohibition of academic selection. If the Assembly is not restored by that date the prohibition of academic selection will come into force immediately, to take effect from admissions to post-primary schools from September 2010.

## 5.2 Articles 27 and 28: Admissions Criteria Generally

5.2.1 As indicated above, some concerns were raised that there is insufficient information about the proposed admissions criteria and how they will work. In particular, some concerns were expressed about geographical criteria and the likely impact on rural pupils. SDLP considered that language skills should be a pre-requisite for admission to Irish speaking schools, the Ulster Farmers' Union (UFU) said that schools must consider the needs of rural children, the Countryside Alliance said admissions criteria should embrace the ability of rural children to attend the school of their choice and that a criterion of random selection should be introduced. NICVA considered that blind or random selection should replace all the proposed criteria. The Equality Commission suggested that criteria should give priority to ensuring that each school allocates places to children from lower social-economic groups. There were calls from children's groups for equality impact assessments on the admissions criteria and Rural Development Council called for rural proofing.

### **Government response**

Under the new arrangements Boards of Governors will select admissions criteria from a menu which will be set out in regulations. This approach will ensure consistency, fairness and transparency and enable Boards of Governors some flexibility to choose criteria which reflect their local circumstances.

The main elements of the menu were listed in a statement issued by the Government on 6th December 2005, as well as an outline of the new admissions process for parents.

The key principles to underpin the drafting of the admissions criteria regulations, and in particular the geographical/community criteria are that they should not result in post-code selection or social exclusion and should not disadvantage pupils living in particular areas, e.g. rural areas, or pupils attending feeder primary schools that are not given an appropriate degree of priority for admissions.

The Order requires that the detail of the admissions criteria will be in regulations made by the Department and it also requires

consultation on the regulations before they are made. The Department will undertake equality screening and will seek to minimise any disadvantage to pupils living in rural areas as part of the process of preparing the admissions regulations. All of these issues will be considered, as the draft regulations are prepared.  
No change to the Order.

### **5.3 Article 28: New Provision (Article 16(8) of the 1997 Order as substituted)**

5.3.1 The draft Order provides for regulations which will set out the menu of permitted admissions criteria from which schools may draw. Further consideration of the new admissions arrangements has identified a need to ensure that post-primary schools do not propose to use permitted criteria in an inappropriate way. An additional provision has therefore been included to enable the Department to require the Board of Governors to reconsider its criteria if it appears that a school is proposing to use criteria in a way which would cause the Department concern. In such circumstances, the criteria may not be published without the Department's consent.

### **5.4 Articles 27 and 28: Amendments suggested during consultation**

5.4.1 *Specifically prohibit "first preference school" as a criterion (WELB).*

#### **Government response**

Although it is included in existing primary legislation it is proposed that it will be prohibited by the proposed regulations. No change to the Order.

5.4.2 *Name CCMS and the Catholic Trustees as bodies to be consulted (CCMS, Catholic Trustees).*

#### **Government response**

The legislation as drafted enables the Department to consult with those bodies which it considers appropriate. No change to the Order.

## 5.5 Article 29: Exceptional Circumstances

5.5.1 SDLP argued that the arrangements should be tightly applied and the Children's Law Centre said that they should not be open to abuse.

### **Government response**

What constitutes exceptional circumstances will be tightly prescribed by the Department.

5.5.2 UUP considered that statemented pupils admitted to a school should not be over and above a school's admissions number.

### **Government response**

This is a comment on a provision that is being re-enacted. This issue was raised in the consultation on new admission arrangements. Full account was taken of the range of views expressed and the Government decided that the policy position should remain unchanged. No arguments have been advanced to change that view. No change to the Order.

## 5.6 Article 29: Amendments suggested during consultation

5.6.1 *Pupils judged to have exceptional circumstances should not be admitted over and above a school's admissions number (UUP and the Association of Head Teachers in Secondary Schools (AHTSS)).*

5.6.2 *The issue of exceptional circumstances should be determined by the Board of Governors and cases should be referred to a central body if the Board of Governors cannot make a decision (GTCNI).*

### **Government response**

The aim of a central body is to achieve consistency in the consideration of exceptional circumstances and what constitutes exceptional circumstances will be tightly prescribed by the Department. The number of cases where exceptional circumstances will be agreed is expected to be small, unlike the current arrangements, and will not have any significant impact on

the admissions number of any individual school. No change to the Order.

5.6.3 *Governing Bodies should be represented on the exceptional circumstances panel and that Boards of Governors should have the right of appeal (NICIE).*

#### **Government response**

The membership of the panel will be set out in regulations which will be the subject of consultation. Giving Boards of Governors a right of appeal has the potential to undermine the objective of achieving consistency across all schools. No change to the Order.

5.6.4 *Members of the exceptional circumstances panel should be paid attendance allowances in addition to the proposal to pay travel and subsistence (BELB, WELB and NEELB).*

#### **Government response**

It is likely that the members of the panel will be professionals in their own field, e.g. educationalists, social workers, medical practitioners and already be remunerated from public funds. No change to the Order.

## **5.7 Article 30 (new provision): Guidance as to Admissions**

5.7.1 Further consideration of the new admissions arrangements has identified the need for an additional provision to provide guidance on the process. The draft Order provides for regulations which will set out the menu of permitted admissions criteria from which schools may draw. It will, however, be important to provide guidance to schools on their approach to drawing up their admissions criteria, applying the criteria and on other aspects of the admissions process. The guidance will also apply to education and library boards, admissions appeal tribunals and the exceptional circumstances body on their functions in the admissions arrangements.

5.7.2 An additional provision has therefore been included to enable the Department to issue guidance on the new admissions arrangements to which schools and other bodies will be required to have regard. The admissions

regulations and the guidance will be complementary. The power to enable the Department to issue admissions guidance will also apply to the arrangements for admission to primary schools.

## **6. SUSPENSION AND EXPULSION OF PUPILS: ARTICLES 30 - 33 (now 31 - 34)**

### **6.1 Article 30: Scheme for the Suspension and Expulsion of Pupils**

6.1.1 Many respondents expressed support, in the interests of equity, for the introduction of a common scheme specifying the procedures to be followed by all grant-aided schools in the suspension and expulsion of pupils from school. Consultation on the scheme was welcomed and some respondents suggested that this should include all grant-aided schools, children and young people, parents and voluntary and community sector organisations. CCMS believes that the Government should not proceed with the proposals on suspensions and expulsions at this time, rather that any changes would be more appropriately made under RPA. CCMS suggested that it should be named for the purposes of consultation.

#### **Government response**

The changes to the arrangements are designed to ensure consistent practice across all schools to allow equity of treatment for all pupils irrespective of the school they attend. It is in the interests of pupils that the common scheme is introduced as soon as possible rather than awaiting the changes flowing from RPA.

The draft Order already makes provision for the Department to consult extensively on the common scheme. It is the intention that all grant-aided schools will be consulted when the scheme is made, but should the scheme be revised it is the intention that, in order to reduce the bureaucratic burden on schools, a representative sample of schools will be consulted. In addition to consulting education and library boards and a sample of schools, the draft Order requires the Department to consult with any other persons with whom consultation appears to it to be desirable. CCMS is one

of the bodies which will be consulted about a proposed scheme and it is not necessary to name the Council in the Order. The views expressed about wider consultation will be taken into account when the arrangements for consultation are being prepared. No change to the Order.

## **6.2 Article 30: Arrangements for the Expulsion of Pupils**

6.2.1 The provision to establish each education and library board as the expelling authority for all grant-aided schools in its area was supported by children's interests groups, 4 education and library boards, and the voluntary/community sector.

6.2.2 CCMS considers that a single education and library board be designated as the expelling authority for all grant-aided schools or that the proposal be delayed until RPA. The BELB considered that all schools should have the authority to expel within the parameters of a common scheme. Most schools that responded opposed the proposal, as did the majority of the teacher unions. DUP and UUP opposed the provision, SDLP recommended it be delayed until RPA and SF contrasted the position with that in England where schools' powers in relation to discipline are being strengthened. District Councils did not support the proposal. Opposition is mainly on the grounds that schools will be disempowered if they lose the authority to expel.

### **Government response**

Under current arrangements, Catholic maintained, voluntary and grant-maintained integrated schools have the authority to expel pupils. Currently a higher proportion of pupils are expelled each year from these schools than in controlled schools where the education and library board is the expelling authority. The introduction of a common scheme, which all schools must operate, will create the circumstances to address this differential. However, a strong argument has been advanced that the common scheme will address any differences across the schools and that responsibilities for expulsions in schools should remain unchanged, until the common scheme has been given an opportunity to work. The draft Order has therefore been amended to provide that the suspension and expulsion scheme prepared under Article 30(1)

shall provide that the current responsibilities for expulsions of pupils in grant-aided schools will continue. The draft Order provides for a review of the common scheme after five years, and this will also provide the Government with the opportunity to review the impact of the scheme on the different sectors and to take any necessary action regarding responsibilities at that stage.

### **6.3 Article 31: Independent Expulsion Appeals Tribunal**

6.3.1 Many respondents (education partners, voluntary/community sector, children's interests groups) expressed support for the establishment of a regional Independent Expulsion Appeals Tribunal to hear and consider appeals against expulsion. Voluntary and community sector responses suggested that children should have the right of appeal regardless of their age. Human Rights and Equality responses also supported the provision but suggested that consideration needs to be given to the position of pupils with a disability who have reached the age of majority but may not be in a position to appeal.

6.3.2 There was opposition from NASUWT, which has stated that it has campaigned extensively against independent appeals panels, and Omagh District Council considered that the education authority should have authority over the appeals process. Three education and library boards considered that members of appeals tribunals should be paid. Some schools felt that an independent appeals tribunal undermined the authority of school principals.

#### **Government response**

The Department will set out the detailed arrangements for the Tribunal in regulations and a number of the issues raised will be considered when the regulations are being prepared. There will be consultation on the draft regulations in due course. There is already provision to pay travel and subsistence allowances to tribunal members. There is no evidence to suggest that the calibre or experience of tribunal members would be improved by remunerating them. No change to the Order.

## **6.4 Article 32: Right of Appeal against Suspension**

6.4.1 This proposal attracted strong support from children's interests groups – the Children's Law Centre suggested that, in accordance with the United Nations (UN) Convention on the Rights of the Child, the right of appeal should be accessible to children and young people as well as their parents.

6.4.2 However, the proposal attracted strong opposition from key educational interests (all education and library boards, CCMS, two teachers' unions, schools, the general public and two district councils). A range of reasons were put forward including that it would undermine the authority of the Principal, be an unhelpful and unnecessary micro-management of schools, that it would be unworkable and bureaucratic, reduce the effect of a suspension, have health and safety implications for other pupils and staff within the school, have resource implications and involve timescales that might not support the quick return of pupils to school. CCMS proposed the introduction of a precautionary suspension for a maximum of 3 days without any recourse to an appeal which might inhibit or delay the immediate removal of a pupil/student. The Council would not wish this to be recorded on the pupil/student record unless it led to a formal suspension.

6.4.3 Some respondents were concerned that this was not consulted upon, that the Department does not appreciate the seriousness of this part of the legislation and how all schools universally oppose it.

### **Government response**

There is currently no right of appeal against suspension. In England, Scotland and Wales, parents or pupils have a statutory right of appeal against a suspension imposed by a school.

The original proposals for change in the consultation document issued in March 2004 recommended that there should be no right of appeal against suspension. However, during the public consultation there was a strong lobby for parents and pupils to have a statutory right of appeal against a suspension which they considered to be unfair or unreasonable.

The draft Order empowers the Department to make regulations providing for appeals against decisions to suspend a registered pupil from a grant-aided school. Before any regulations are drafted or introduced, the DE Working Group (set up to review the existing procedures for the suspension and expulsion of pupils) will be asked to give further consideration to various options for a suspension appeal system which is fair and independent without being unduly bureaucratic or legalistic. A suspension appeal system will not be introduced without a full assessment of all the options and consultation with key education partners, in particular, schools.

This parity legislation is an enabling power and arrangements will be developed and consulted on before introduction. No change to the Order.

## **6.5 Article 33: Education of Suspended Pupils**

6.5.1 There was broad support for this proposal. However, some schools, CCMS, GTCNI, West Belfast Partnership Board and Newtownabbey BC expressed concern that the provision of education to a suspended pupil could place an undue financial burden on schools and urged the Department to include provision for such circumstances into the allocation of resources to schools.

## **6.6 Amendments suggested during consultation**

6.6.1 *The Department or the new education body may be better placed to co-ordinate the delivery of services to suspended or excluded pupils (SDLP).*

6.6.2 *The definition of 'suitable education' should be specified (Catholic School Trustees).*

### **Government response**

This provision clarifies what is currently normal practice, that the Board of Governors has responsibility for the education of pupils while on suspension from school. The provision also provides for the Department to determine when it may be appropriate for the

education and library boards to assist schools in making education provision for such pupils. The term “suitable education” is already defined in the Order. Under RPA the support arrangements will become the responsibility of the new education authority. No change to the Order.

## **7. GENERAL TEACHING COUNCIL FOR NORTHERN IRELAND: ARTICLES 34 - 36 (now 35 - 37)**

### **7.1 Comments received during consultation**

7.1.1 WELB stated that the concept of “guilt” is not appropriate in the context of professional incompetence. NASUWT considered that cases of professional incompetence should remain outside the control of GTCNI.

#### **Government response**

This provision in the draft Order corresponds to the equivalent provision in England and Wales and, for reasons of consistency, no changes have been made to the Order.

7.1.2 GBA expressed concern about the employment of unqualified teachers and that the law should state that GTCNI should strive to maintain and enhance levels of teacher qualifications.

#### **Government response**

The first point will be addressed in the context of the Teacher Education Review, the employment practices of Boards and the outworking of Protection of Children and Vulnerable Adults (POCVA). On the second point, this is already the role of GTCNI under its enabling legislation. No change to the Order.

7.1.3 The Catholic Trustees considered that GTCNI should be responsible for criminal record checks and SEELB suggested that no teacher should be registered until he or she has been vetted.

### **Government response**

This will be considered further by GTCNI and in the context of the Bichard recommendations. No change to the Order.

7.1.4 ATL and the National Association of Teachers in Further and Higher Education (NATFHE) suggested that staff in FE colleges should be registered by GTCNI. ATL also suggested that GTCNI should look at the equivalence of the Post Graduate Certificate on Further and Higher Education qualification and the Post Graduate Certificate in Education.

### **Government response**

The FE sector may in due course be the subject of compulsory registration with GTCNI but it is not proposed to introduce this requirement until such time as FE lecturers are able to meet the registration requirements. Compulsory registration prior to this would result in a number of FE lecturers, who currently do not have a recognised teaching qualification, losing their livelihood. FE lecturers who already meet the registration requirements may, however, register with the GTCNI if they so wish. No change to the Order.

7.1.5 NICCY suggested that the Order should contain provision that staff found guilty of misconduct that puts a child at risk should be placed on a debarring list.

### **Government response**

This does not require primary legislation. No change to the Order.

## **8. INSTITUTIONS OF FURTHER EDUCATION: ARTICLES 37 - 38 (now 38 - 39)**

### **8.1 Article 37: Membership of Further Education Governing Bodies**

8.1.1 There was support for the new powers to change the constitution of Further Education Governing Bodies from 2 Boards (Belfast and North Eastern), INTO, Church of Ireland Board of Education, the Countryside Alliance and a small number

of schools. UUP considers all systems of appointing Boards of Governors needs to be reviewed. Omagh DC and Newtownabbey BC both commented that FE Boards of Governors should include elected representatives (Newtownabbey BC suggested a majority).

#### **Government response**

The membership of the governing bodies is not set out in the legislation and the views of respondents can be addressed through subsequent consultation. No change to the Order.

## **8.2 Article 38: Payments to Further Education Governing Bodies**

8.2.1 Opposition to remunerating FE governors came from GBA, SF, ATL, NASUWT, NATFHE, a small number of schools and a few individual responses on the basis that payment would create a perverse incentive. UUP opposed and suggested a further review which would include consideration of remuneration across a range of educational establishments; a number of schools, 2 district councils, South East Secondary Heads and some individuals were opposed on the basis that it is unfair to pay FE governors and not schools. NI Conservatives were opposed.

#### **Government response**

The provision confers enabling powers and there will be further consultation before any such powers are introduced. There are no plans to introduce payments to Boards of Governors of schools. Remunerating school governors is unlikely to lead to improvements in the calibre, expertise or experience of Governors, would be prohibitively expensive and there is the potential for the reverse impact with potential Governors putting themselves forward for the wrong reasons. No change to the Order.

## **9. BASELINE ASSESSMENTS: ARTICLE 39 (now 40)**

9.1 The provision repealing the requirement on primary schools to carry out Baseline Assessments in P1 was broadly welcomed. However, some schools and

members of the public have asked for this to continue, arguing that it provides a useful tool for teachers and is a useful measure of a pupil's progress.

#### **Government response**

This provision is superseded by a new approach to early years curriculum, assessment and reporting (Pupil Profile) which will involve annual assessment. These articles provide only the broad enabling powers for the revised curriculum. In due course, regulations will introduce the new curriculum and assessment arrangements for each key stage and CCEA will be publishing documents that outline the detail of the arrangements. No change to the Order.

## **10. ANNUAL PARENTS' MEETING: ARTICLE 40 (now 41)**

### **10.1 Overview of comments received during consultation**

10.1.1 Omagh District Council and the NI Conservatives are opposed to removing the requirement for an annual parent's meeting. The proposal has otherwise met universal support.

#### **Government response**

No change to the Order.

### **10.2 Amendment suggested during consultation.**

10.2.1 In the context of the transformation process for a school to become integrated and which does not require a meeting of parents, there should be a requirement to allow parents to raise issues with Boards of Governors (NICIE).

#### **Government response**

The comment is specific to the transformation process and is outside the scope of this provision. No change to the Order.

## **11. FEES FOR INSTRUCTION PROVIDED BY DARD: ARTICLE 41 (now 42)**

11.1 A majority of the responses from education partners and the general public supported the proposals. There was opposition from half of the agricultural and rural interests (notably UFU and the Royal Ulster Agricultural Society (RUAS)), two political parties and a few members of the public. Concerns expressed were that all education should be free and that charging for DARD courses would disadvantage the rural community.

### **Government response**

This provision regularises DARD's existing practice of charging fees. There will be consultation with key stakeholders on the regulations which will set out the detail of the fees. No change to the Order.

## **12. OTHER MINOR AMENDMENTS TO THE ORDER**

### **12.1 Statutory limit on class sizes in key stage 1**

The Department, through regulations, fixes a limit on the number of pupils in a class in key stage 1. Under the proposed Order key stage 1 is split into the Foundation Stage and key stage 1. An additional provision has been included to amend Article 16 of the Education (NI) Order 1998 to make clear that the class size limit will apply to the Foundation Stage and key stage 1.

### **12.2 Typographical error**

A minor amendment is required to correct a typographical error in Schedule 3 to the Order – a reference to “Articles 128” should be amended to read “Article 128”.

# GLOSSARY

<b>AHTSS</b>	Association of Head Teachers in Secondary Schools
<b>ATL</b>	Association of Teachers & Lecturers
<b>BELB</b>	Belfast Education & Library Board
<b>BC</b>	Borough Council
<b>CASS</b>	Curriculum, Advisory & Support Services
<b>CCMS</b>	Council for Catholic Maintained Schools
<b>CCEA</b>	Council for the Curriculum, Examinations & Assessment (NI)
<b>CnaG</b>	Comhairle na Gaelscolaíochta (Council for Irish-medium Education)
<b>CPE</b>	Concerned Parents for Education
<b>DARD</b>	Department of Agriculture and Rural Development
<b>DC</b>	District Council
<b>DE</b>	Department of Education
<b>DUP</b>	Democratic Unionist Party
<b>EU</b>	European Union
<b>FE</b>	Further Education
<b>FnaG</b>	Foras na Gaeilge
<b>GBA</b>	Governing Bodies Association
<b>GCSE</b>	General Certificate of Secondary Education
<b>GTCNI</b>	General Teaching Council for Northern Ireland
<b>IM</b>	Irish Medium
<b>IoD</b>	Institute of Directors
<b>INTO</b>	Irish National Teachers' Organisation
<b>NATFHE</b>	National Association of Teachers in Further and Higher Education

<b>NASUWT</b>	National Association of Schoolmasters Union of Women Teachers
<b>NEELB</b>	North Eastern Education & Library Board
<b>NI</b>	Northern Ireland
<b>NICCY</b>	Northern Ireland Commissioner for Children & Young People
<b>NICIE</b>	Northern Ireland Council for Integrated Education
<b>NICVA</b>	Northern Ireland Council for Voluntary Action
<b>NIPSA</b>	Northern Ireland Public Service Alliance
<b>POCVA</b>	Protection of Children and Vulnerable Adults
<b>RE</b>	Religious Education
<b>RPA</b>	Review of Public Administration
<b>RUAS</b>	Royal Ulster Agricultural Society
<b>SDLP</b>	Social Democratic & Labour Party
<b>SEELB</b>	South Eastern Education & Library Board
<b>SELB</b>	Southern Education & Library Board
<b>SF</b>	Sinn Fein
<b>TRC</b>	Transferor Representatives' Council
<b>UFU</b>	Ulster Farmers' Union
<b>UN</b>	United Nations
<b>UTU</b>	Ulster Teachers' Union
<b>UUP</b>	Ulster Unionist Party
<b>WELB</b>	Western Education & Library Board



# Proposal for a draft Education (Northern Ireland) Order

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