

## Advice to the Department of Education in relation to the proposed changes to Factors in the Common Funding Formula.

5 March 2010

### **1.0 Introduction**

The office of Commissioner for Children and Young People (NICCY) was created in accordance with 'The Commissioner for Children and Young People (Northern Ireland) Order' (2003) to safeguard and promote the rights and best interests of children and young people in Northern Ireland.

Under articles 7(2)(3) of this legislation, NICCY has a mandate to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and best interests of children and young people by relevant authorities.

Article 7(4) outlines the duty of the Commissioner to advise the Secretary of State, the Executive Committee of the Assembly and other relevant authorities on matters concerning the rights and best interests of children and young people. This can be provided in response to a request, or otherwise when the Commissioner thinks appropriate.

In determining how to carry out her functions, the Commissioner's paramount consideration is the rights of the child and NICCY is required to base all its work on the United Nations Convention on the Rights of the Child (UNCRC).

### **2.0 Consultation with NICCY on proposals**

This advice is submitted in response to the EQIA, but also to provide advice more broadly on the summary of changes to the common funding formula. We note that NICCY was only consulted on the EQIA of the latter and would point out that the Commissioner has an expectation, given her statutory responsibility, to be consulted on changes to legislation, policies and services to children. We consider that the changes proposed to the funding of preparatory and primary education warranted a full consultation, and that this shouldn't have been limited solely to schools. The Commissioner in particular should have been consulted.

We also note that both the Equality Commission and the Human Rights Commission were consulted in the production of the DE Schools Finance Branch *Review of Funding to Preparatory Departments of Grammar Schools*, but that NICCY, despite our remit, was not consulted. We consider this a significant omission.

### 3.0 A comparative analysis of expenditure on education in Northern Ireland

In 2007 NICCY published an analysis of public expenditure on children in Northern Ireland, in comparison with other parts of the UK. This focussed on a number of areas of expenditure, including education. Comparable figures for England and Scotland were not available, but the report did note that, in 2004-5, expenditure per child in Northern Ireland in the primary level was on average £500 less than the average for children in Wales – ie 17.2% less per child. At the post primary level, Northern Ireland spent slightly more, £20 per child or around 0.5%.

Table 1: Per Capita Current Expenditure on Education at Primary and Secondary Schools, 2004-05

	Northern Ireland	Wales
Primary	2,398	2,898
Post Primary	3,615	3,595

Source: NICCY Public Expenditure report

'A Child's Portion', a Save the Children report published in 2009 on spending on children across the UK provided further evidence of a significantly lower spend on education for Children from Northern Ireland as compared to children in Scotland, Wales and England. Moreover, as Table 2 demonstrates, it showed that the increase in spending per pupil has risen in Northern Ireland by 9% over four years from 2002/3 to 2006/7, compared with 23% in Wales, 27% in Scotland and 29% in England.

Table 2: Per pupil expenditure (£) on schools, 2002/3-2006/7 (in 2006/07 prices)

	England	Scotland	Wales	N.Ireland	UK
2002/3	3,777	4,679	3,416	3,615	3,714
2003/4	4,210	5,028	3,680	3,553	4,105
2004/5	4,385	5,312	3,854	3,563	4,298
2005/6	4,702	5,684	4,058	3,814	4,579
2006/7	4,869	5,945	4,203	3,955	4,736
% increase 2002/3 – 2006/7	29%	27%	23%	9%	28%

Source: Save the Children, (2009), 'A Child's portion' p42, data from HM Treasury, Public Expenditure Statistical Analyses 2008.

This was an actual increase in the NI education budget of 4% as compared to 18% in Wales, 21% in Scotland and 25% in England.

The report also provided figures for delegated expenditure per pupil on education in 2006/7 at primary and secondary levels. This confirmed that spending on education in the primary sector was particularly low, with spending per child in Northern Ireland 13% less than in Wales, 33% less than in Scotland and 28% less than in England.

Table 3: Per pupil expenditure (£) by sector, 2006/7

	England	Scotland	Wales	N Ireland
Primary	3,260	3,390	2,870	2,540
Secondary	4,340	4,760	3,670	3,820

Source: Save the Children, (2009), 'A Child's portion' p43, data from national sources

Both reports therefore highlight that Northern Ireland primary schools are significantly under-resourced in comparison with other parts of the UK, which is a matter of considerable concern for NICCY.

#### **4.0 The proposal to increase the relative share of funding for primary pupils, through a higher AWPU weighting.**

Given the considerable underspend in primary education outlined above, NICCY is very supportive of the Department's proposals to increase funding to primary schools. An increase of £24 or £20 per pupil, however, only goes a small way towards overcoming the huge discrepancies in funding in comparison with other parts of the UK. As demonstrated above, an increase of £330 to £850 per pupil would be required to equalise spending with children in other parts of the UK.

However, given that the overall education budget is not being increased, the question arises of how the higher AWPU weighting will be funded. Two proposals for funding the increase in primary level funding are presented in the consultation document for schools:

- a. By a reduction in funding to secondary and nursery pupils
- b. By finding an additional £3million funding

The second option allows for a larger increase in funding to primary level pupils, and protects the funding for secondary and nursery pupils, and therefore is the option preferred by NICCY. This is based on the assumption that the £3million can be found from savings elsewhere that will not impact adversely on the rights or best interests of children.

While the proposal to increase funding for primary pupils is outlined in the same document as the proposal to withdraw funding from preparatory schools, the two actions are not obviously linked. NICCY would welcome clarity on where the Department is considering obtaining this money.

## **5.0 Proposal to cease funding to preparatory schools with effect from 1 September 2010.**

### **5.1 Promoting equality in education**

In considering the questions posed by the Equality Impact Assessment, it is unclear whether the group of children most affected by the removal of funding to preparatory schools can be considered under the first question:

'Do you consider that any of the proposals impact adversely on any of the Section 75 groups?'

Clearly children as a whole are more affected by this change than other groups since the proposals focus solely on them. However, while one sub-group of children will be impacted more by this change than others, it is not clear whether they can be considered under this category. However, as the ECNI Guide to the Statutory Duties makes clear, the purpose of Equality Impact Assessment is to promote equality of opportunity.

The main argument in favour of removing the funding appears to be in relation to promoting equality of opportunity, although it is not entirely clear exactly how this will follow. The funding of preparatory schools is described in Bain as 'anomalous', 'inequitable' and 'counterintuitive', but it is not explained how the removal of this funding will deliver equality of opportunity for children.

NICCY would expect that the intention is that the funds would be redistributed to schools where there are less resources, and larger class sizes – although this is not explicitly stated. We also note that the Department has not provided an analysis of whether the removal of funding will result in a freeing of resources that could be allocated in other ways.

The Department's figures indicate that grant aid funding to preparatory schools is £808 per pupil, in comparison to an average of £2,911 allocated for each mainstream primary school pupil. It follows therefore that, if one in four children currently in a preparatory school is moved into a primary school, this will result in an overall increased budgetary spend, rather than a releasing of resources.

**NICCY recommends that the Department states clearly whether the removal of funding from preparatory schools is intended to release resources to be allocated to other areas. If this is the case, the Department should indicate clearly the basis for this expectation and how it would redirect these funds.**

## **5.2 Considering children's right to education**

NICCY's remit is to advise relevant authorities on the rights and best interests of children in Northern Ireland, and our advice should have regard to the UN Convention on the Rights of the Child (UNCRC).

Article 28 (1)(b) of the UNCRC recognises the right of the child to a free education. Article 29 outlines the principles underlying education and states that:

No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.<sup>1</sup>

NICCY considers that the provision of free primary school places fulfils article 28. Moreover, while we note that article 29 recognises the freedom to develop educational institutions other than those provided by the state, the latter does not have a responsibility to provide funding for children to be educated privately.

## **5.3 Safeguarding the best interests of children**

Article 3 of the UNCRC states that the best interests of the child must be a primary consideration in all actions concerning children.

NICCY recognises that the Department of Education does not have an obligation to provide funding to preparatory schools, and that the Minister has authority to determine how the Education budget is allocated.

However, consideration must be given to the best interests of the children who will be affected by this decision, and measures put in place to minimise the upset experienced by them as a

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<sup>1</sup> Article 29(2) UNCRC

result. Behind the facts and figures are real children, who have been attending a school with the expectation of completing their primary school education there.

NICCY has received over seventy letters from parents expressing grave concern at the proposals and the effect they will have on their children – and two letters directly from children. While many parents may be in a position to pay the additional costs resulting from the withdrawal of state funding, we are informed that a number of children will have to be withdrawn from the preparatory schools due to their parent's inability to pay the higher fees. Has the Department of Education assessed the proportion of children who are likely to move schools and can they provide us with figures to date of the number of children who have been moved since these proposals were made public?

NICCY is concerned that moving schools can be very disruptive for children, particularly those who may be in their final years at school. Moreover, moving schools may also have implication for childcare arrangements.

Further consideration must be given to how children who are moved from preparatory schools can be included within local primary schools. NICCY notes that one of the main reasons for reviewing the funding of preparatory schools was due to the statement in the Bain Report (2006) that 'This would seem to be an inequitable use of public funds and counterintuitive in a funding system simultaneously managing the pressures of a high level of surplus capacity.'

However, it is not necessarily the case that preparatory schools are located in areas where there are falling rolls. Indeed, many parents who have contacted us have expressed alarm over whether they will be able to find a place in a local school, should they have to remove their children from their preparatory school.

**The Department should provide an analysis of the location of preparatory schools to confirm whether these are in areas of falling rolls. Moreover, it should state how it is intending to ensure that places are available for children who may be withdrawn from preparatory schools as a result of the funding changes.**

NICCY is also concerned that the decision whether to remove funding from preparatory schools is being taken in March/April 2010, to have effect in September 2010. This is causing a great deal of anxiety as it does not allow much time for parents to consider their options and to make alternative arrangements.

**NICCY recommends that the Department reconsiders the date by which the funding will be removed, delaying this to September 2011 to allow parents time to make alternative arrangements for their children's education if necessary. Moreover, the Department should take into account the best interests of the children affected and consider other ways in which the impact on children affected could be minimised. One suggestion would be to remove the funding in stages, for example continuing to fund pupils in the last few years of school.**

## **6.0 Children's right to have a say**

Article 12 of the UNCRC states that children have a right to have a say in decisions affecting them and to have their views taken seriously. For a number of children this decision will have a very significant impact, and it is a matter of great concern to NICCY that the Department has not consulted them on it.

NICCY notes that the children's version of the EQIA produced recognised the Department's responsibility to consult children and their parents, stating that:

'Before a final decision is made about whether to give your school any further money we need to do a few things:

- We need to ask your school for it's thoughts about this;
- We need to ask you and your mum or dad or guardians for their thoughts about this.'

The Department of Education should be at the forefront of promoting good practice in relation to engaging with children and young people, and NICCY regrets that a children's version of the EQIA, for example, was only produced and distributed the day before the consultation closed. This is not indicative of a proactive and serious approach to listening to children and taking account of their opinions.

## **7.0 Conclusion**

We hope that our advice is useful in considering the proposals for changes to the common funding formula. For further information on or clarification of any of the points included, please contact Alex Tennant, Head of Policy and Research at [alex@niccy.org](mailto:alex@niccy.org). We look forward to being kept up to date with any progress made.