

# Submission to the Northern Ireland Affairs Committee Inquiry into Education Funding in Northern Ireland

14<sup>th</sup> September 2018

## Introduction

The 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) and (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. Under Article 7(4), NICCY has a statutory duty to advise any relevant authority on matters concerning the rights or best interests of children and young persons. The Commissioner's remit includes children and young people from birth up to 18 years, or 21 years, if the young person is disabled or in the care of social services. In carrying out her functions, the Commissioner's paramount consideration is the rights of the child or young person, having particular regard to their wishes and feelings. In exercising her functions, the Commissioner has regard to all relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC).

Educational Inequalities is one of NICCY's priorities. NICCY's vision for the education system is one where **the education received by all children in Northern Ireland is of high quality and which develops every child's personality, talents and abilities to the full**. NICCY wants to see inequalities in educational attainment being comprehensively addressed and all children succeeding in education and developing to their maximum potential in line with Article 29 of the UNCRC. An examination of the Government's International Obligations to children by virtue of children's rights standards is included at Appendix 1 of this document.

NICCY published its Cost of Education Report in October 2017,<sup>1</sup> highlighting the right of the child to a free education and the cost of sending a child to school in Northern Ireland.

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<sup>1</sup> 'A 'free' education? The cost of education in Northern Ireland, NICCY, October 2017.

The research examined costs associated with education and the impact of meeting these costs on the educational experience of children and young people. The findings of this report are contained in page 4 of this submission.

NICCY is extremely concerned about the financial position of the education system in Northern Ireland. We warmly welcome the Northern Ireland Affairs Committee Inquiry into whether the levels of funding allocated to education in the Northern Ireland Budget are sufficient to meet the challenges facing the sector, and what the spending priorities should be for the monies allocated to the Northern Ireland Department of Education.

In the interests of ease of readability and the avoidance of repetition, this submission addresses some of the Terms of Reference of the Inquiry in order of relevance and some are addressed together where the information provided is relevant to both.

### **Education Sectors in Northern Ireland**

There are a number of education sectors in Northern Ireland. Children in Northern Ireland are educated mainly in separate schools with only 7% of children attending desegregated or “integrated” schools - schools which are specifically established to educate Catholic and Protestant children together.<sup>2</sup> Since 1989 the Department of Education in Northern Ireland has had a statutory duty to “*encourage and facilitate the development of integrated education*”.<sup>3</sup> In addition, The Good Friday / Belfast Agreement of 1998 contains a specific pledge, “*to facilitate and encourage integrated education.*”

Despite this, most children attend non-sectoral nursery schools and then are educated in either the controlled (mainly Protestant) or maintained (mainly Catholic) education sectors. There is also a growing Irish Medium sector where children receive their education through the Irish language. Northern Ireland also operates a special school estate and there are a small number of independent (mainly Christian) schools. Many children engage to some degree in shared education. The Shared Education Act (Northern Ireland) 2016 includes a statutory definition of Shared Education which applies to the duty on the Education Authority<sup>4</sup> and places an obligation on the Department of Education to encourage, facilitate

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<sup>2</sup> Department of Education - [http://www.deni.gov.uk/16-schools-integratedschools\\_pg.htm](http://www.deni.gov.uk/16-schools-integratedschools_pg.htm)

<sup>3</sup> Article 64(1) of the Education Reform (Northern Ireland) Order 1989:

*“It shall be the duty of the Department to encourage and facilitate the development of integrated education, that is, the education together at school of Protestant and Roman Catholic pupils”.*

<sup>4</sup> Section 2(3) of, and paragraph 8(2) of Schedule 1 to, the Education Act (Northern Ireland) 2014

and promote shared education.<sup>5</sup> The legal definition of shared education in the Act is narrow and refers only to Protestant and Catholic children and children who are experiencing socio-economic deprivation and those who are not. Shared education is where children interact with other children of different religions and/or socio-economic status in the course of their education while being educated within traditional education sectors. There is an over-subscribed system of Grammar school education in Northern Ireland which operates at post primary level in the integrated, controlled and maintained sectors. A number of these are voluntary Grammar schools which are funded by the Department of Education and managed by a Board of Governors. Entrance to Grammar school is determined by examinations which are not State regulated. There are 63 selective Grammar schools in Northern Ireland attended by approximately 40% of the post primary population.<sup>6</sup> There are also a number of non-selective Grammar schools.

There are a range of education bodies in Northern Ireland linked to the various education sectors and funded by the Department of Education. These include the Council for Catholic Maintained Schools, Comhairle na Gaelscolaíochta (CnaG), Northern Ireland Council for Integrated Education (NICIE), the Governing Bodies Association (GBA) and the Controlled Schools' Support Council (CSSC).

### **Northern Ireland's School Population**

The school population in Northern Ireland is rising and becoming increasingly diverse in Northern Ireland.

The Department of Education figures on annual enrolments at schools and in funded pre-school education in 2017-18<sup>7</sup> show that around 23,500 pupils were enrolled in funded pre-school education this year. While this figure is a slight drop on last year it represents about 91% of 3 year olds in the wider population. 173,444 pupils were enrolled in primary schools (Years 1-7) this year, representing a rise of 2,000 from last year (2016-17), with the highest total of pupils enrolled in primary schools since 1999-2000. This reflects a

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<sup>5</sup> Section 3, Shared Education Act (Northern Ireland) 2016.

<sup>6</sup> <https://www.belfasttelegraph.co.uk/news/education/revealed-transfer-test-grade-intake-for-northern-ireland-schools-2017-36523243.html>

<sup>7</sup> NI Statistical Bulletin 2/2018 Annual enrolments at schools and in funded preschool education in Northern Ireland, 2017/18 Department of Education (see - <https://www.education-ni.gov.uk/sites/default/files/publications/education/17%20July%202018-%20enrolments%20at%20schools%20and%20in%20funded%20pre-school%20education%20in%20Northern%20Ireland%2017-18.pdf>)

rising trend in 4-10 year old population estimates. The number of pupils enrolled in post-primary schools (140,545) this year also shows a slight increase from 2016-17.

The increase in pupil numbers in Northern Ireland schools has come at a time when the funding per pupil in primary and nursery education has been cut. In August 2017 funding per pupil was reduced by £56<sup>8</sup> and in March 2018 funding for pupils in all schools in Northern Ireland was again cut by £6 per pupil.<sup>9</sup>

Enrolment figures also show that more than 100,000 pupils in Northern Ireland are now entitled to Free School Meals, representing about 3 in 10 of all pupils. There are growing numbers of children with some form of special educational needs (SEN). In Northern Ireland over 79,000 pupils have some form of SEN, representing 23% of the entire school population. More than 17,880 of these have a statutory statement of SEN (5.2%).

Schools are also becoming increasingly more ethnically diverse with a year on year rise of pupils whose first language is not English with 15,200 newcomer pupils accounting for 4.4% of the school population, representing a rise of almost 5,000 such pupils over the last five years.

There are increasing number of pupils enrolled in integrated education (now over 23,000) with significant increases in the primary school sector, largely as the result of three primary schools transforming to integrated status in the last few years. There is a steady rise in the number of pupils participating in funded Irish Medium education (currently around 6,200 enrolled) with just under 5,000 educated in dedicated Irish Medium Schools.

### **NICCY's Work on The Cost of Education**

NICCY's Cost of Education Report,<sup>10</sup> highlights the right of the child to a free education and the cost of sending a child to school in Northern Ireland. The research examined costs of education and the impact of meeting these costs on the educational experience of children and young people. Literature on the costs of education shows that living in

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<sup>8</sup> <https://www.bbc.co.uk/news/uk-northern-ireland-41088725>

<sup>9</sup> <https://www.bbc.co.uk/news/uk-northern-ireland-43393375>

<sup>10</sup> *Op cit* 1.

poverty greatly exacerbates the impact of these costs.<sup>11 12 13</sup> The face of poverty in Northern Ireland is changing and there is a marked increase in the number of people who are now in 'working poverty'. In Northern Ireland in-work poverty now accounts for 45% of income poverty.<sup>14</sup> The Trussell Trust has stated that the majority of food bank usage in Northern Ireland is related to families and people on low incomes.<sup>15</sup>

Over 1,000 parents across Northern Ireland were surveyed as part of the research, to identify the amount parents are having to spend for the education of their children. Some of the key findings of the report include -

- On average parents spent £1222.30 per child on education in the previous year;
- On average households<sup>16</sup> spent £1979.18 on education costs in the last year;
- Parents spent an average of £421.21 on pre-school children, £1004.64 on primary school children and £1611.31 on children attending post primary schools;
- Parents with children attending controlled schools spent an average of £1286.14 per child (Catholic maintained, £1131.55: integrated, £1292.71);
- Parents with children attending secondary schools spent an average of £1517.85 per child with the average spend on a child attending a grammar school, £1989.70;
- Parents and households in the legacy Western Education and Library Board area recorded the highest average annual cost (£1341.29 per child and £2390.47 per household), whereas parents in the Southern Education and Library Board area recorded the lowest average cost (£1073.50 per child and £1679.23 per household);

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<sup>11</sup> NASUWT The Teachers Union, *The Costs of Education 2013/14*, NASUWT, Birmingham, 2014.

<sup>12</sup> G Horgan, *Speaking Out Against Poverty: voices of children living in disadvantaged areas*, University of Ulster, Save The Children, Belfast, 2009.

<sup>13</sup> G Horgan, *Child Poverty and Education*, Child Poverty Alliance, *Beneath the Surface Child Poverty in Northern Ireland*, CPA, Belfast, 2014.

<sup>14</sup> New Policy Institute for Joseph Rowntree Foundation, *Monitoring Poverty and Social Exclusion*, 2016

<sup>15</sup> <http://www.itv.com/news/utv/2017-04-26/stark-figures-show-record-high-in-ni-food-bank-usage/>

<sup>16</sup> For the purpose of NICCY's survey on the Costs of Education, a household is one with 1.6 school age children. This is based on a representative survey of 1006 parents with 1620 school age children.

- School meals and snacks accounted for 52% of all education expenditure, with transport accounting for 15% and school uniforms 9%;
- 25% of parents said they knew beforehand roughly how much it would cost to send their child (ren) to school [75% were unaware];
- 6% of parents said that cost was a factor affecting their choice of school for their child (ren);
- 21% of parents said they would be comfortable approaching their child's school for financial help if they were struggling to pay the costs associated with sending them to the school [62% said they would be uncomfortable];
- 20% of parents agreed with the statement *'My family has had to go without other things to pay for school costs'* [75% disagreed];
- 30% of parents agreed with the statement *'I worry about finding/affording the money to cover the costs of sending my child (ren) to school'* [65% disagreed];
- 5% of parents reported getting into debt to pay their children's education costs, with family the most common source of loan funding (58%);
- 2% of parents had used a payday loan service to pay for their child's (ren) education costs.

The report also relied on UK Treasury data with regard to spend on education across the UK jurisdictions. The following table shows that the overall education spending per school age child in Northern Ireland is lower than any other region of the UK.

**Figure 1 - Public expenditure on education 2015-16 (excluding tertiary education)<sup>17</sup>**

	Total education spending (£millions)	Total education spending per school age child (£)	% higher spend per child than in NI
Northern Ireland	2,369	6545.52	0
England	65,329	6687.46	2
Scotland	6,486	8072.03	23
Wales	3,721	7068.81	8

In addition, as can be seen from the table below, the proportion of the education budget allocated specifically to preschool, primary and secondary education is higher in other regions than in Northern Ireland.

**Figure 2 - Public expenditure on preschool, primary and secondary education, including expenditure adjusted for reported category<sup>18</sup>**

	Total expenditure (£millions)	Total spending per child (£)	% higher spend per child than in NI
Northern Ireland	2,132	5,890	0
England	57,784	5,915	0.4
Scotland	5,870	7,305	24.0
Wales	3,456	6,565	11.5

There is a well recognised strong correlation between economic and educational disadvantage. This is exacerbated by financial pressure placed on families by the additional costs of education. While children are supposed to be provided with a free school place, this is not the reality. For many children, access to critical educational opportunities and key entitlements are based on their parents' ability to pay. There is an increasing disparity between schools not only in terms of what provision is offered, but also how much it costs to access this provision, and this is increasing inequality.

NICCY wishes to see all children in Northern Ireland having access to a free education

<sup>17</sup> HM Treasury (July 2017), Public Expenditure: Statistical Analyses 2017, (London: Treasury).

<sup>18</sup> Calculations provided by Department of Education, 11/10/17.

and adequate financial assistance being made available where required in line with the obligations on Government under Article 28 of the UNCRC. The Northern Ireland Executive, Department of Education and Education Authority should ensure that schools are adequately funded solely through public expenditure, and should not rely on parents and guardians to pay for the shortfall in the costs of their children's education.

### **Are the funds allocated to the Department of Education in the Northern Ireland Budget Act 2018 sufficient to improve educational outcomes in Northern Ireland?**

The Northern Ireland Budget announcement from the Northern Ireland Secretary of State on the 8 March 2018<sup>19</sup> indicated it would provide the clarity needed to allow departments to plan for the incoming financial year. It noted feedback from the Northern Ireland Budgetary Outlook Briefing,<sup>20</sup>

*“...has been considered and departments have worked with the Department of Finance and the NIO to identify what decisions and steps might be required to deliver a budget for 2018-19 that would address the key pressures in public services, particularly in health and education.”*

We note the Northern Ireland Budget is supported by revenue-raising and flexibilities from the UK Government which includes £25m generated by increasing the regional rate, and a decision to allow £100m of existing funding normally ring-fenced for capital to be invested in ongoing public service provision, enabling departments to further protect and preserve key services. The Department of Education has confirmed to NICCY that this reclassified capital funding is being used across all Government Departments and not just the Department of Education.<sup>21</sup> In addition, such a reclassification of Capital DEL to Resource DEL marks a departure from long-established practice and the Treasury's Consolidated Budget Guidance.<sup>22</sup>

In terms of education, the statement noted the Northern Ireland Budget 2018 -2019 will be used to,

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<sup>19</sup> “ NI Budget 2018-19 announced” - <https://www.finance-ni.gov.uk/news/ni-budget-2018-19-announced>

<sup>20</sup> Issued in December 2017.

<sup>21</sup> Departmental response to NICCY request for information (24/8/2018)

<sup>22</sup> See NI Assembly RAISE Briefing entitled “Public Finances in Northern Ireland: Key recent developments and how they may affect you” - <http://www.assemblyresearchmatters.org/2018/03/26/public-finances-northern-ireland-key-recent-developments-might-affect/>

*“...maintain schools budgets at 2017-18 levels in cash terms, as well as ensuring that other services to schools, some specific initiatives and youth services can continue to be provided. It will also ensure there are sufficient funded pre-school places to meet the demand for all 3-4 year old children in Northern Ireland as well as funding support for deprived communities through initiatives such as Sure Start and the Pathway Fund”.*<sup>23</sup>

While welcoming the passing of the Northern Ireland Budget 2018-19, NICCY is very concerned that this is only a single year Budget, impacting on the ability to carry out vital medium to long term planning in education. NICCY is also extremely concerned about insufficient funding for education and schools in Northern Ireland and the detrimental impact this is having on children and young people’s access to quality education and their families. The Permanent Secretary for Education has also highlighted serious concerns about the lack of sufficient funding for education in his Statement the Department of Education’s Annual Report and Accounts for 2017-18,<sup>24</sup> which attracted considerable media attention at the time including reports by the BBC Northern Ireland under the headline “Education system ‘facing severe financial challenges’”.<sup>25</sup>

The Northern Ireland Budget statement<sup>26</sup> and supporting tables provide some useful top level figures. In addition, the Department of Finance’s Departmental Main Estimates 2018-19<sup>27</sup> also provide some further details of DEL Resource and Capital allocations in line with departmental key objectives and top line spending areas with regard to the respective opening budgets of all Government Departments.

It is difficult to determine from the published Budget information whether the Department of Education’s opening budget includes allocations from the £100m of re-classified Capital DEL monies or the Confidence and Supply monies set aside for addressing ‘education pressures’ or other areas of earmarked Confidence and Supply funding. It is also unclear to what extent the Department of Education may benefit from any ‘additional resources’ for example from ‘In-Year Monitoring’ over the course of 2018-19.

NICCY therefore asked the Department of Education to provide some details about its Spending Plans for 2018-19, the level of use of Confidence and Supply monies during

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<sup>23</sup> See <https://www.finance-ni.gov.uk/news/ni-budget-2018-19-announced>

<sup>24</sup> Department of Education’s Annual Report and Accounts for 2017-18, August 2018.

<sup>25</sup> See <https://www.bbc.co.uk/news/uk-northern-ireland-45037429>

<sup>26</sup> *Ibid*

<sup>27</sup> See <https://www.finance-ni.gov.uk/publications/estimates-publications>

2017-18 and level and planned use in 2018-19 and also if reclassified capital monies are included in the Departments Main Estimates / opening Budget for 2018-19 and for what purpose. We also asked about the adequacy of capital budget allocations and likely impact of reclassifying capital monies to resource and whether the Department expects to receive additional funding during 2018-19 outside the Confidence and Supply monies.<sup>28</sup>

The Department has been very helpful in supplying NICCY with information on DE Resource and Capital DEL Budget Trends<sup>29</sup> and other queries noted above.<sup>30</sup> NICCY has drawn upon this information in our response to this and other aspects of the Inquiry's Terms of Reference.

The Department of Education Resource spending figures indicate it has a total opening budget for 2018-19 of £1,939.4m for Resource DEL and £164.6m for Gross Capital DEL. This figure represents a variance between 2017-18 and 2018-19 'opening' budgets of almost £80m (4.3%) for Resource DEL and a reduction of £8.4m (5.1%) for Capital DEL. However, there is a much smaller variance in the DE 2018-19 Opening Budget figures compared to their 2017-18 Closing Outturn figures. The latter figures represent a -0.3% reduction for Resource DEL (which included in-year allocations from centrally held funds, technical transfers between departments and EU funding totalling £4.6m) and a -4.4% reduction for Capital DEL.

In terms of the Department of Education's 2017-18 Closing Budget, information supplied by the Department indicates that -

- Around 89% of the total DEL Resource was directed toward funding schools and pupils;
- Around 60% was allocated directly to schools as the Aggregated Schools Budget

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<sup>28</sup> NICCY's initial and subsequent emails sent on 24/8/18 to Department of Education requesting budget related information

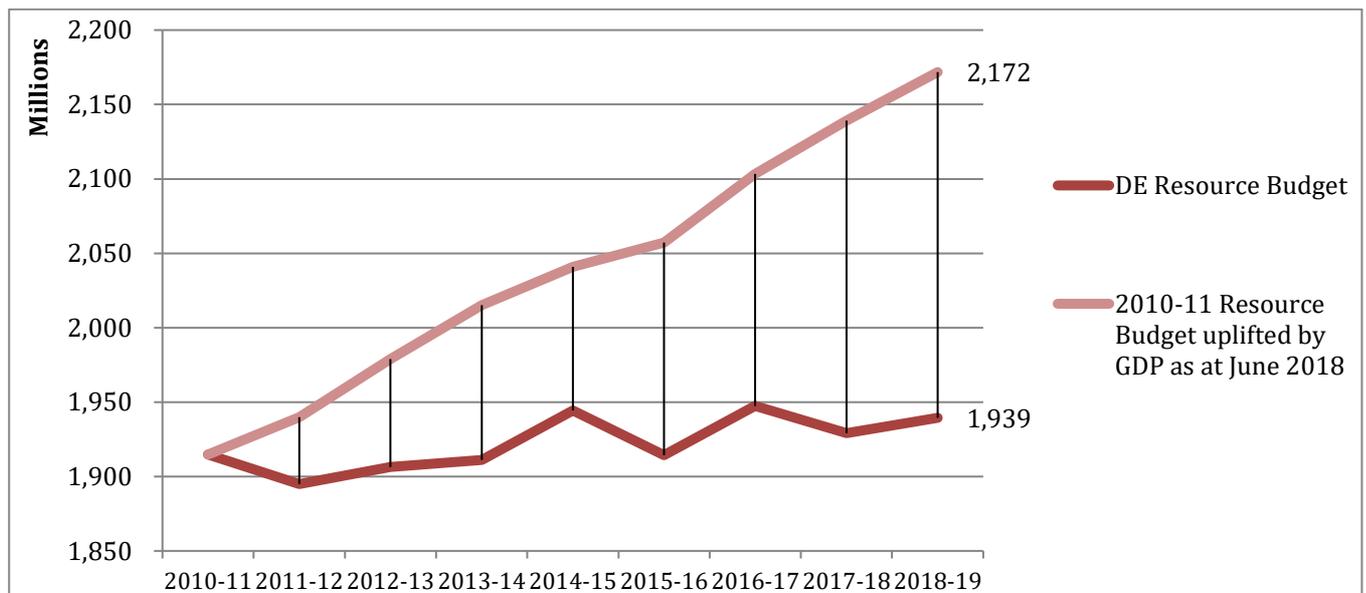
<sup>29</sup> Department of Education response on 24/8/2018 to NICCY's initial request for further information (which included information about DE Resource Budget Trends since 2010/11 and DE Capital DEL Outturn Trends since 2014/15 and 2018/19 Capital DEL Opening budget and further information)

<sup>30</sup> Department of Education response on 29/8/2018 to NICCY's subsequent request for subsequent Budget related information re: DE Spending Plans 2018/19, receipt and use of Confidence and Supply monies (ring-fenced and non-ring-fenced) in 2017/18 and 2018/19, what use any of the £100m Reclassified Capital monies will be used to address Education pressures, whether DE expect to receive additional in-year money in 2018/19 (outside of Confidence and Supply monies), planned use of Fresh Start monies by DE and what level of capital funding the department requires in 2018/19 and what impact reclassifying Capital monies might have on the DE.

- (ASB), via the Common Funding Formula;
- Around 19% was allocated to schools from central budgets including the Special Schools budget, Special Education in Mainstream, C2K the Department of Education's managed ICT service, Rates and Substitution costs;
  - Around 11% was attributed to schools for services provided to them for Transport, School Meals, Headquarters, Pupil Support, Schools Development Service, Music Service and School Library Service; and
  - The remaining 11% of funding in 2017-18 was allocated to Earmarked Funds (4.6%) including Extended Schools, Entitlement Framework, Pre-school Education Programme (non-statutory providers), Shared Education Signature Programme; etc; Youth and Community Relations (1.8%) which includes funding for EA youth, Regional Voluntary Youth Organisations; etc.; Other NDPBs (1.4%) including CCEA, CCMS, Middletown, CnaG, NICIE & GTCNI; Early Years Provision (1.4%) including Sure Start and the Pathway Fund; to the Department of Education (1.5%) for departmental staffing and GAE costs and; Other Education Services (0.5%) including Sectoral Support Bodies, Curriculum Sports Programme, Young Enterprise; Sentinus; etc

The Budget Trend information supplied by the Department of Education shows there has been an alarming **real term reduction of £233m** (12%) in the Department's Resource Budget between 2010-11 and the opening position in 2018-19, as illustrated in Figure 3 below.

**Figure 3 - Real Terms Reduction in DE Resource Budget Department of Education, August 2018**



The figures supplied to NICCY by the Department also indicate it received additional in-year resource funding totalling almost £85m in 2017-18 which includes £5m from ‘Confidence and Supply’ money to address education pressures.

A breakdown of the Department of Education’s opening budget for 2018-19 is provided in Figure 4 below.

**Figure 4 - Breakdown of the Department of Education’s Opening Budget for 2018-19<sup>31</sup>**

<b>Spending Area</b>	<b>Opening 2018-19 Budget £m</b>
ASB (main allocations to schools funded via the CFF)	1,167.5
EA Block Grant (includes teacher substitution costs, Special Education Needs (SEN) provision in mainstream schools, rates, school transport, free school meals, school library provision, special schools)	614.4
Earmarked budgets (allocated for specific purposes and monitored accordingly)	54.4
Other Non-Departmental Public Bodies (NDPBs)	25.5
Other Education Services	7.9
Early Years Provision	28.8
Youth	32.7
Department of Education (DE) Costs	30.0
Over-commitment	(21.8)
<b>Total Resource</b>	<b>1,939.4</b>

### **Confidence and Supply Funding**

The Department has confirmed that its 2018-19 opening Resource budget includes £16.5m from Confidence and Supply (Social Deprivation) money which has been specifically allocated to enable current key education policies which target severe deprivation to be maintained. Figure 3 below provides a breakdown of the allocation of Confidence and Supply Severe Deprivation Funding by Programme Area.

<sup>31</sup> As provided to NICCY by the Department of Education, 29<sup>th</sup> August 2018.

**Figure 5 - Breakdown of the Allocation of Confidence and Supply Severe Deprivation Funding by Programme Area<sup>32</sup>**

<b>Programme</b>	<b>£m</b>
Sure Start	6.4
Literacy and Numeracy	0.7
Nurture Units	1.3
Early Years Pathway Funding	2.3
Extended Schools	5.8
<b>TOTAL</b>	<b>16.5</b>

The Department of Education has informed NICCY that its budget contains very limited scope with regard to the areas where further cuts in funding can be made.<sup>33</sup> The Department is clear that due to the obligation it is under to fulfil its statutory functions, there are very few remaining discretionary spend areas. Those that remain are the education policies aimed at improving educational outcomes for groups of vulnerable children and young people, including children in poverty and looked after children such as those outlined above.

The Department's figures also show its 2018-19 opening Resource budget includes a further £20m of the Confidence and Supply money to meet other education funding pressures in 2018-19. While this £20m is not ring-fenced it has been used to reduce the level of cuts that may have otherwise been required had this funding not been received.

Therefore, almost £37m of Confidence and Supply funding will be used by the Department of Education in 2018-19 to address funding pressures, reduce cuts and maintain levels of education funding across a number of key education policies. Many of the programmes outlined above are key Departmental policy priorities which aim to address educational inequalities. Successive Education Ministers in Northern Ireland have given repeated commitments to providing support to tackle the educational underachievement of socio-

<sup>32</sup> *Ibid.*

<sup>33</sup> Meeting between NICCY and Permanent Secretary of Education, 20<sup>th</sup> February 2018.

economically disadvantaged children and young people.<sup>34</sup>

While it is welcome that such policies are being sustained at present, it is extremely concerning to note that in terms of the Department of Education's budget, these policies have already effectively been cut and funding for their continuation is coming from a short term, non-recurrent and insecure funding source. Reliance on such a short-term and insecure funding source to shore up key Northern Ireland education policies could result in these policies being withdrawn with very little notice. The impact of reduced or withdrawn financial assistance for socio-economically disadvantaged children, their families and schools will be devastating on the ability of children to fully participate in their education and on the realisation of their right to an effective education.

Cuts to such services will impact on our most disadvantaged pupils and this is a very real possibility if this funding continues to come from Confidence and Supply money. **There is an urgent need to increase core investment in the education of these children and to renew the Government's commitment to the provision of support to address the educational underachievement of disadvantaged pupils.**

It is surprising to note the lack of reference to the change in funding for these key Departmental policies in the 2018-19 Resource Budget Equality and Human Rights Budget Screening document produced by the Department of Education.<sup>35</sup> Despite the huge potential for adverse impact on many of the protected categories under section 75 of the Northern Ireland Act 1998, the screening document concludes that an Equality Impact Assessment is not necessary. It states that any impacts on the enjoyment of equality of opportunity by any members of the nine section 75 groups as a result of the introduction of a budget which is a real term reduction of £233m in the Department's Resource Budget between 2010-11 and the opening position in 2018-19 will be minor. It also states that there is not likely to be any adverse impacts suffered by those with multiple identities. This is despite the fact that the Department of Education has identified groups of children who are at particular risk of underachieving, including Traveller children; children from ethnic minorities; children with additional needs (including children with disabilities) and children from disadvantaged backgrounds.<sup>36</sup> It is well recognised that this disadvantage is

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<sup>34</sup> <https://www.education-ni.gov.uk/news/o%E2%80%99dowd-launches-pathway-fund-early-years-education>; <https://www.education-ni.gov.uk/news/tackling-underachievement-must-be-key-priority-everyone-weir>

<sup>35</sup> Revised December 2017

<sup>36</sup> Appendix 1, Priorities for Youth Consultation Document, Department of Education, consultation closed 10<sup>th</sup> December 2012.

exacerbated in groups of children with multiple identities, for example, Protestant working class boys.

It is NICCY's experience that as a result of reductions in budgets many children, particularly our most vulnerable children are not enjoying equality of opportunity in education. There is a clear obligation on the Department of Education to identify this, carry out a comprehensive equality impact assessment and introduce mitigations or alternative policies to protect vulnerable groups of children who are protected under section 75 of the Northern Ireland Act 1998.

### **How should the UK Government manage additional funding earmarked for education as part of the confidence and supply arrangement?**

NICCY notes the Finance Annex to the Confidence and Supply Agreement<sup>37</sup> sets out the financial support the UK Government would be prepared to make available to Northern Ireland, following discussions between the Conservative Party and the Democratic Unionist Party.<sup>38</sup>

Under, "Economy and Infrastructure", the document states,

*"In order to target pockets of severe deprivation so that all can benefit from growth and prosperity, the UK government will also provide £20 million per year for 5 years to support the Northern Ireland Executive to deliver this measure".*

In terms of "Health and Education", the UK Government recognises that Northern Ireland has unique circumstances within the United Kingdom, not least as a consequence of responding to the challenges of the past. It therefore commits to allocating an additional £50 million per year for 2 years to enable the Executive to address immediate pressures in health and education.

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<sup>37</sup> Updated 28 June 2018

<sup>38</sup> See <https://www.gov.uk/government/publications/conservative-and-dup-agreement-and-uk-government-financial-support-for-northern-ireland/uk-government-financial-support-for-northern-ireland>

The Westminster Scrutiny Unit Briefing Paper, “Departmental Spending; Grant to Northern Ireland Government and Northern Ireland Office Funding”<sup>39</sup> includes information about Northern Ireland Block Expenditure (Resource and Capital) and additional spending from Confidence and Supply Agreement and Barnett Consequentials. The Briefing does not specifically mention additional capital monies to be released in-year arising from Stormont House /Fresh Start Agreement, including the UK Government contribution of up to £500m over 10 years of new capital funding to support shared and integrated education subject to individual projects being agreed between the Executive and the UK Government.<sup>40</sup>

However, the Briefing does include information about £1b of Confidence and Supply additional spending over 5 years and the main spending areas and amounts drawn down (by vote) to date in 2017-18 and 2018-19 along with the Confidence and Supply money remaining.

The Briefing shows that £20m of Confidence and Supply funding was drawn down in 2017-18 and a further £80m has been drawn in 2018-19. It also shows that £100m has been drawn for Health Transformation and £10m for Mental Health in 2018-19 and £20m to address severe deprivation.

The Department of Education has confirmed to NICCY that it received an In-year Resource Budget allocation of £5m from the Confidence and Supply budget in 2017-18 which was used to address education funding pressures, although the Department did not specify what these pressures were.

We also note that the 2018-19 Budget position outlined by the Northern Ireland Secretary of State in March 2018 includes reclassifying £100m of capital funding to address resource pressures. The Department of Education confirmed to NICCY that this additional resource was not specifically allocated on a Departmental basis but has enabled key services to be protected and preserved, reducing the level of cuts that may otherwise have been required across all Departments.

This raises similar issues about using short term, reclassified capital ‘additional funding’ to address resource pressures to protect and preserve public services and reduce the level

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<sup>39</sup> See [https://www.parliament.uk/documents/Scrutiny-Unit/Main\\_est\\_\\_Northern%20Ireland\\_18\\_19\\_webpagev.pdf](https://www.parliament.uk/documents/Scrutiny-Unit/Main_est__Northern%20Ireland_18_19_webpagev.pdf)

<sup>40</sup> See [https://www.northernireland.gov.uk/sites/default/files/publications/nigov/a-fresh-start-stormont-agreement\\_0.pdf](https://www.northernireland.gov.uk/sites/default/files/publications/nigov/a-fresh-start-stormont-agreement_0.pdf)

of cuts during 2018-19, a very short timeframe.

From a budget scrutiny perspective, this also raises questions about where such reclassified capital money has been held, pooled and allocated. Also it is unclear how monitoring is being undertaken regarding the efficiency and effectiveness of how such non-departmental allocated monies have been used to address key departmental and/or Programme for Government objectives.

NICCY notes the well established In-Year Monitoring process provides a formal system for reviewing spending plans and priorities in each financial year in light of the most up to date position. It is designed to aid good financial management and ensure that resources are directed towards the Northern Ireland Executive's highest priority areas. However, we note the Department of Finance 'In-Year Monitoring of Public Expenditure 2018-19 Guidelines'<sup>41</sup> do not make any specific reference to the use of Confidence and Supply monies in the section on 'Controls and Presentation'.

With regard to the financial monitoring systems attached to the management of the Confidence and Supply monies, NICCY believes these should follow the same principles and stringent rules as apply in other areas of public expenditure. Also, it will be necessary to put in place a robust measurement of efficiency with regard to the use of Confidence and Supply monies to ensure that educational outcomes are measured using Outcomes Based Accountability, in line with the Northern Ireland Executive's Programme for Government. A comprehensive public consultation exercise should also be carried out to improve the transparency and accountability of the use of such monies, as well as the involvement of members of the public in the decision making process. This is a vital part of the Northern Ireland Peace Agreement and is a statutory obligation by virtue of section 75 of the Northern Ireland Act 1998. Plans should be screened and equality impact assessed to ensure that equality of opportunity is at the core of key budgetary decisions.

NICCY recommends that the Northern Ireland Affairs Committee requests all Northern Ireland Government Departments, including the Department of Education, to produce Confidence and Supply specific Spending Plans. Spending Plans should set out key priorities and specific initiatives that will be supported within ring-fenced and non-ring-fenced DEL Resource and Capital Confidence and Supply allocations and for how long.

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<sup>41</sup> See <https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/2018-19%20In%20Year%20Monitoring%20Guidelines.pdf>

The monitoring process should include gathering information about the progress, or otherwise, on delivering of key outcomes in relation to priorities supported by ear-marked Confidence and Supply monies. Final Departmental Confidence and Supply spending plans and progress reports should be publicly available to aid transparency and accountability. It will also be vitally important that there is transparency around what is funded through the Confidence and Supply money, as opposed to through the Department of Education's core budget. While key education policies are being sustained through this arrangement, there is great long term uncertainty about the ability of the Department to continue to support Programmes where the money to fund them is found through the Confidence and Supply arrangement. Decisions to fund key Departmental programmes and policies through Confidence and Supply should be subject to an equality impact assessment and mitigations should be put in place to ensure the sustainability of initiatives which aim to improve the educational outcomes of children and young people who are currently underachieving in education, including children living in poverty and looked after children and young people.

We also recommend that the Northern Ireland Affairs Committee gives consideration to how best to scrutinise the use of Confidence and Supply monies within the In-Year Monitoring Rounds process as this is likely to require amendments to Department of Finance's In-Year Monitoring Guidance.

### **Crisis in Education Funding in Northern Ireland**

In the Department of Education 2017-18 Annual Report and Accounts,<sup>42</sup> Permanent Secretary Derek Baker, noted in the opening paragraphs of his Statement on Performance that,

*"...the 2017-18 year has been most notable for the absence of devolved institutions, including a Minister, Executive and Assembly. This has resulted in significant and unique challenges for the Department in relation to budgets, policy development and delivery".*

Mr Baker cited examples of the development and implementation of some policies and strategies such as the Children and Young People's Strategy, the Executive Childcare Strategy, the joint Department of Education (DE)/Department of Health (DoH) Looked After Children's (LAC) Strategy and the Shared Education Campus Programme as all being

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<sup>42</sup> *Op cit* 24.

delayed pending decisions by a Minister and-or the Northern Ireland Executive and Departments.

From a financial perspective, the Department continues to face significant challenges and, following on from the 2016-17 overspend, the Education Authority (EA) has again reported a £18.9m overspend in its block grant for 2017-18.<sup>43</sup> The pressures creating this position remain the same, including schools' expenditure in excess of their 2017-18 allocations and the escalating costs associated with providing special educational needs services. While it is reported that the Department continues to work closely with the EA to try to mitigate the underlying causes and pressures in the system, this financial issue will not be fully addressed until there is significant transformation of the education sector.

Upon examination of the figures provided to NICCY by the Department of Education, Mr Baker's assertions that schools are facing unprecedented pressures with an increasing number moving into financial deficit are not surprising. Schools spend almost 90% or more of their budgets on staffing costs, which have increased year on year as a consequence of pay increments. As school budgets have remained flat in cash terms for a number of years, he has indicated it is inevitable that increasing numbers of schools will move into deficit given the limited scope to find ways of making alternative cuts in running costs. Pressure on school budgets, increasing numbers of pupils and other issues meant the 'system is under considerable strain'.<sup>44</sup>

There have been a wide range of media reports over the last number of months expressing serious concerns from parents, school principals, teachers unions /representative bodies and senior education officials regarding the crisis in education funding in Northern Ireland. This has led to a great deal of uncertainty regarding the future of education in Northern Ireland. Some of these media reports have been summarised and links provided below for the Committee's information and consideration.

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<sup>43</sup> <https://www.bbc.co.uk/news/uk-northern-ireland-43952285>

<sup>44</sup> <https://www.bbc.co.uk/news/uk-northern-ireland-45037429>

## Recent Media Reports on Education Funding in Northern Ireland

**Children's Commissioner warns of Stormont Crisis (23 August 2018)** – Northern Ireland Children's Commissioner warns that the lack of political leadership in Northern Ireland is severely impacting on the education of our most vulnerable children, including children with SEN. see [https://www.belfastlive.co.uk/news/belfast-news/childrens-commissioner-warns-stormont-crisis-15053068?utm\\_source=twitter.com&utm\\_medium=social&utm\\_campaign=sharebar](https://www.belfastlive.co.uk/news/belfast-news/childrens-commissioner-warns-stormont-crisis-15053068?utm_source=twitter.com&utm_medium=social&utm_campaign=sharebar)

**Education system 'facing severe financial challenges' (2 August 2018)** - The Department of Education's Permanent Secretary, Derek Baker, made the comments in the accounts for 2017-18, which have just been published. The Education Authority overspent its budget by about £19m last year, mainly due to increased spending on schools and pupils with SEN. See <https://www.bbc.co.uk/news/uk-northern-ireland-45037429>

**1,400 teachers made redundant in Northern Ireland over past three years (2 August 2018)** – SDLP MLA Daniel McCrossan, who obtained the statistics, said it revealed a "crisis in the education system". See <https://www.belfasttelegraph.co.uk/news/northern-ireland/1400-teachers-made-redundant-in-northern-ireland-over-past-three-years-37176973.html>

**Northern Ireland school costs pushing parents into arms of moneylenders (30 July 2018)** – Cash-Strapped Northern Ireland parents are turning to moneylenders in order to fund back-to-school costs for their children, according to a survey commissioned by the Irish League of Credit Unions (ILCU). See <https://www.belfasttelegraph.co.uk/news/northern-ireland/northern-ireland-school-costs-pushing-parents-into-arms-of-moneylenders-says-report-37166071.html>

**NI post-primary principals say education facing 'crisis' (18 June 2018)** - The letter is being sent to the Department of Education, the Education Authority and MPs in Northern Ireland. It is backed by about 200 principals across all 28 area learning

communities (ALCs). Gavin Boyd, the head of the Education Authority, said he shared many of their funding concerns. See <https://www.bbc.co.uk/news/uk-northern-ireland-44540086>

**Education Authority criticised for £19m overspend (1 May 2018)** - The Northern Ireland Audit Office (NIAO) has criticised the Education Authority (EA) for overspending its budget by £19m in 2016-17. See <https://www.bbc.co.uk/news/uk-northern-ireland-43952285>

**More than 60 NI schools lose funding to run breakfast clubs 9 (22 May 2018)** - More than 60 schools in Northern Ireland have lost funding to run schemes for disadvantaged children in 2018-19. The money helps to run breakfast and homework clubs and parenting support. The Department of Education said the 63 schools no longer met the extended schools programme's criteria. See - <https://www.bbc.com/news/uk-northern-ireland-44198553>

**£91m education cash to be made available in NI (20 April 2018)** – Unspent money totalling £91m for shared and integrated education from the Fresh Start Agreement will be made available in future years. That is according to the Treasury and the Department of Finance. The confirmation came after BBC News NI revealed the Department of Education had only been able to spend £8m of the £100m allocated since 2016. The Department had said discussions were still taking place with Treasury to ensure unspent money was not lost. The government would allow any remaining funding from previous years for shared education and housing to be dispersed flexibly within the current spending review period which runs until 2020-21, said the Department of Finance.

*"This £91m from 2016-17 and 2017-18 can be used for proposals that meet the objectives of increasing the provision of shared education and housing, including schools or campuses where children from different communities are educated together,"* said a Department spokesman.

Only £5m of £50m available to the Department of Education for new shared and integrated schools was spent in 2017/18. See <https://www.bbc.co.uk/news/uk-northern-ireland-43830518>

### **NI schools in the red: Education system faces £350m funds gap (12 Dec 2017) -**

The education system in Northern Ireland is facing a £350m funding gap by 2019-20 if it does not get more money. The warning comes from the Education Authority's (EA) Chief Executive. Gavin Boyd has also revealed in meetings with principals that almost 400 schools will be in budget deficit this year - the highest number ever. See <https://www.bbc.co.uk/news/uk-northern-ireland-42317279>

## **Area Planning in Education in Northern Ireland**

While Area Planning in Northern Ireland has been ongoing since 2011, there has been a renewed focus in Northern Ireland since 2016. In December 2016, The Education Authority (EA), working with the Council for Catholic Maintained Schools, Comhairle na Gaelscolaíochta (CnaG), Northern Ireland Council for Integrated Education (NICIE), the Governing Bodies Association (GBA) and the Controlled Schools' Support Council (CSSC), within the context of the Department of Education's Sustainable Schools Policy, set out in 'Providing Pathways – A Draft Strategic Area Plan for School Provision 2017 – 2020', a set of key themes which were agreed as the key drivers for the future planning of school provision:

- Securing parity of access for all to appropriate pathways,
- Enhancing choice for all children and young people,
- Promoting co-operation, collaboration and sharing across all sectors,
- Maximising the use of resources, and
- Informing strategic infrastructure planning.

The focus of the Area Plan is on the need to ensure that all pupils have access to a broad and balanced curriculum that meets their needs within a diverse system of education through a network of sustainable schools.

Following consultation on the 'Providing Pathways' Strategic Area Plan, the final document was published in April 2017. The then Education Minister made repeated reference to the consultation on the plan, welcoming the Area Planning process as providing the solution

for the many challenges faced by the education sector in the future.<sup>45</sup> It was envisaged that the Area Plan will provide the road map for future education provision in Northern Ireland. The policy proposals in the plan examine primary, post-primary and special education and the focus of the area plan for education is the DE's Sustainable Schools Policy.<sup>46</sup> The Sustainable Schools Policy does not apply to pre-school provision as it is non-statutory.

There are 6 criteria of the Sustainable Schools Policy on which decisions as to the viability of schools are made. One of these is 'sound financial position'. The Area Plan as consulted on in December 2016 acknowledged that school budgets are constrained and will remain so into the future and due to a lack of funding it is expected that the number of schools in deficit will continue to increase.

The Area Plan document noted in December 2016, that there were 175 primary schools and 47 post-primary schools in a budget deficit, making them unsustainable. It is also acknowledged that there is no capital funding for the accommodation of schools and that the education budget is unable to provide the investment required. This has further impacted on the sustainability of the school under the Sustainable Schools Policy. A lack of Government funding for schools is therefore forcing schools to fall below Department of Education policy requirements.

It also noted that –

- 57% of primary schools were also below the minimum enrolment figures required under the Sustainable Schools Policy;
- 128 of the 197 post primary schools were below minimum enrolment levels; and
- Large numbers of schools are falling short of the Entitlement Framework requirements – only 78 are fully compliant.

It likely that the only schools which will be sustainable under this policy in future will be extremely large. NICCY has concerns that this may not ensure every child the ability to succeed to their maximum potential and may have a detrimental impact on education in

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<sup>45</sup> 9<sup>th</sup> Nov 2016 Minister Weir addressing ASCL Conference - Association of School and College Leaders (ASCL) in Templepatrick, also on 16<sup>th</sup> Nov 2016 in response to the launch of the ETI Chief Inspector's Report.

<sup>46</sup> 2009

rural areas. In addition, the quality of the education received by children in schools earmarked for closure is a serious concern for NICCY.

The Department of Education's Annual Report on Area Planning<sup>47</sup> provides more up to date figures regarding school sustainability. It states that –

- In 2017-18 33.8% or 233 rural primary schools, 18.1% or 23 urban primary schools, 38.7% or 77 post primary schools and 28.2% or 46 sixth forms have enrolments below Department of Education sustainability thresholds;
- In total, 379 schools or 32% of all schools in Northern Ireland that are currently below the Department of Education's policy thresholds for school sustainability; and
- There are a total of 63,063 available places in total across primary and post primary schools in Northern Ireland, equating to 17.5% of available places as a percentage of all approved school places. This indicates a lack of efficiency with regard to the number of school places available and uptake of these places by children and young people.

The Education Authority published its first Annual Action Plan on 28<sup>th</sup> April 2017<sup>48</sup> and its second on 13<sup>th</sup> May 2018.<sup>49</sup> The first Annual Action Plan covers April 2017 to March 2018 and the second covers April 2018 to March 2019. Both Action Plans identify schools for which developments are proposed. It includes schools where sustainability is an issue but also includes some schools that are sustainable as it is these schools which may form part of the solution to sustainability issues in other schools or areas. Priorities have been identified for each year and the Action Plans focus on the key strategic themes and priorities for action consulted on in the Strategic Area Plan, including areas where sustainability is an issue and ensuring school places are located as required.

In July 2018, the Department of Education published its first Annual Report on Area Planning, the main purpose of which is to provide information on Area Planning activity and impact during the planning year April 2017– March 2018.<sup>50</sup> The Department of

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<sup>47</sup> Department Of Education Area Planning Annual Report 2017/18, July 2018.

<sup>48</sup> Providing Pathways Strategic Area Plan for School Provision 2017-2020 Annual Action Plan for Primary, Post-Primary and Special Schools April 2017 – March 2018, 28<sup>th</sup> April 2017.

<sup>49</sup> Providing Pathways Strategic Area Plan for School Provision 2017-2020 Annual Action Plan for Primary, Post-Primary and Special Schools April 2018 –March 2019, 13<sup>th</sup> May 2018.

<sup>50</sup> *Op cit* 47.

Education stated in this report that the pace of change has been slow and the volume of published DPs fell far short of expectations following the publication of the 2017-18 Annual Action Plan. In particular, those relating to composite classes in primary schools and small sixth forms was not as anticipated with only a total of 30 Development Proposals were published in 2017-18. It reported that these concerns have been raised and are regularly discussed with the EA and CCMS. It highlighted that the 2018-19 Annual Action Plan includes details of 62 work streams (out of 102) carried forward from 2017-18.

The Department concluded that the conversion of work streams into published DPs that give effect to meaningful change and address sustainability issues in the school network should be a priority for statutory education planning authorities. The report also stated that as part of a wider education transformation programme, it is hoped that additional resources will be secured to help the Department of Education, and those charged with delivery of planning priorities, accelerate the pace of change resulting from area planning activity.

In the absence of a Minister, Mr Baker indicated in the Department of Education 2017-18 Annual Report and Accounts,<sup>51</sup> that he took decisions on 32 Development Proposals in 2017-18. Among these were decisions to close 5 primary schools and one post primary school and two major amalgamations involving five post primary schools. He also noted he made decisions to approve increasing places where they were needed and removing places where they are no longer needed.

### **Decision Making in the Absence of a Northern Ireland Executive**

A recent judicial review decision<sup>52</sup> and subsequent appeal<sup>53</sup> by senior officials in the Northern Ireland Civil Service relating to planning processes regarding approval of a controversial incinerator may have further implications on the willingness of senior civil servants to make decisions which would normally require Ministerial approval. In the Buick appeal decision, the High Court ruled that,

*"Any decision which as a matter of convention or otherwise would normally go before the minister for approval lies beyond the competence of a senior civil servant in the absence of a minister."*

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<sup>51</sup> *Op cit* 24.

<sup>52</sup> [2018] NIQB 43

<sup>53</sup> [2018] NICA 26

The Court of Appeal ruled that the decision to approve the “controversial” waste incinerator was contrary to the letter and spirit of the Good Friday Agreement and the Northern Ireland Act 1998.<sup>54</sup> The court ruled that the Northern Ireland Act 1998 – which put in place the provisions of the Good Friday/Belfast Agreement,

*“...clearly reflects the intention of the Agreement that ministers should head departments and be politically accountable for what happened within those departments”.*

While, the Court did not express a view on the competence of civil servants to make decisions in the absence of ministers more generally<sup>55</sup> NICCY envisages a lack of willingness in the future by civil servants to make decisions which may be considered beyond their professional or legal competency. This has the potential to result in further delays with the progression of key education developments, including the Area Planning process.

On the 6<sup>th</sup> September 2018, Northern Ireland Secretary of State, Karen Bradley MP announced her intention to introduce legislation which will,

*“...include provisions to give greater clarity and certainty to enable Northern Ireland departments to continue to take decisions in Northern Ireland in the public interest and to ensure the continued delivery of public services.”*<sup>56</sup>

She stated her rationale for bringing forward legislation to allow decisions to be taken by Government officials,

*“...there is a need to provide reassurance and clarity to both the Northern Ireland Civil Service and the people of Northern Ireland on the mechanisms for the continued delivery of public services.”*

While NICCY welcomes the decision as there is an urgent need for decisions to be taken with regard to public services in Northern Ireland, not least in education, we are concerned that it will take time for such interim and ‘emergency’ legislation to be agreed in

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<sup>54</sup> See “Arc21 Court of Appeal ruling: What does it mean?” BBC News (6 July 2018) - <https://www.bbc.co.uk/news/uk-northern-ireland-44739552>

<sup>55</sup> See “Court dismisses appeal by NI civil servants over decision made without ministers” - Civil service World News (10 July 2018) - <https://www.civilserviceworld.com/articles/news/court-dismisses-appeal-ni-civil-servants-over-decision-made-without-ministers>

<sup>56</sup> “Northern Ireland Assembly members’ pay to be cut” (6/9/2018) – see <https://www.bbc.co.uk/news/uk-northern-ireland-45434415>

Westminster. Indeed, it is not proposed to proceed with the legislation until after the political party conference recess. In addition, while it appears that such legislation will empower senior public officials to make decisions ‘in the public interest’, in the context of ongoing democratic deficit in Northern Ireland it remains unclear how such strategic decisions will be made and how these will be independently scrutinised. NICCY would urge that this legislation is used to enable decision making in Northern Ireland as an interim measure only. Decisions about public services in Northern Ireland should be taken forward by elected representatives and be subject to the accountability and scrutiny mechanisms in place within the Northern Ireland Assembly.

### **Action Short of Strike**

Action short of strike began in schools in Northern Ireland in January 2017. This is as a result of a dispute regarding teacher’s pay and terms and conditions of employment. The dispute cannot be resolved without a Minister for Education and relates to decision making delays without a Northern Ireland Executive and pressures on education funding. Currently 4 of the teachers unions are taking part. Because of action short of strike the Education and Training Inspectorate (ETI) can’t award performance levels or observe teaching. NICCY is extremely concerned about the detrimental impact that Action Short of Strike is having on the quality of children’s education. Action short of strike is predominantly impacting on the primary sector. NICCY was informed by the ETI that in 2017, in 250 Primary main inspections, 20% of schools failed to provide safeguarding assurances on day of inspection.

The ETI has expressed its concerns about the impact that Action Short of Strike is having on the progression of the improvement agenda in schools. As a result of the inability of the ETI to carry out thorough school inspections meaningful recommendations for improvement cannot be made.

A further concerning practice in schools in Northern Ireland is the reduction in school days. Some schools have ‘compressed’ their school days so that children are in school for fewer hours. Media reports indicate that this practice is taking place in a number of schools across Northern Ireland to the knowledge of the Department of Education due to Action Short of Strike and financial pressures.<sup>57</sup>

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<sup>57</sup> <https://www.bbc.co.uk/news/uk-northern-ireland-42179383>

## Educational Outcomes in Northern Ireland

There are marked inequalities in Northern Ireland with regard to attainment in education. Specific groups of children and young people are much more likely to do better or worse in education depending on their characteristics and /or circumstances. The Department of Education has identified groups of children who are at particular risk of underachieving, including Traveller children; children from ethnic minorities; children with additional needs and children from disadvantaged backgrounds.<sup>58</sup> Evidence shows that there are Additional Groups at risk of underachieving in education and these include – Boys, Non Grammar School Children, Protestants and Children out of School e.g. in Education Other Than at School, Community and Statutory Alternative Education Providers, Informally Excluded, Children in Hospital, Children in the JJC and possibly Children Educated at home, although no data exists on this group.<sup>59</sup>

It is unclear whether children and young people in Northern Ireland are getting an effective education in line with Article 29(1) of the UNCRC. While data on educational outcomes is available from the Department of Education and other sources, this tends to focus almost exclusively on the educational attainment of young people in GCSE and A Level examinations. There are no measurements of long term educational outcomes which relate to the development of the personality, talents and abilities of individual children as required under Article 29(1) of the UNCRC. While educational qualifications are important, the achievement of a child rights compliant education system in Northern Ireland requires a broader examination of outcomes in education which encompass the, 'distance travelled' by each individual child. This should include a clear focus on the development of the personality, talents and skills of all children in education in Northern Ireland.

In 2016/17 70.3% of children and young people achieved 5 GCSE's grades A\* to C including English and Maths.<sup>60</sup> Boys achieve slightly below average at 67% and girls slightly better at 74%.<sup>61</sup> 66% of Protestants, 69% of Catholics and 69% of children of other

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<sup>58</sup> Appendix 1, Priorities for Youth Consultation Document, Department of Education, consultation closed 10<sup>th</sup> December 2012.

<sup>59</sup> Click to access - Educational Inequalities and Inclusion Position Paper, NICCY, 31<sup>st</sup> July 2017

<sup>60</sup> Statistical Bulletin 10/2017, Year 12 and Year 14 Examination Performance at Post-Primary Schools in Northern Ireland 2016-17, Department of Education, 14<sup>th</sup> December 2017.

<sup>61</sup> *Ibid.*

religions<sup>62</sup> achieved 5 GCSE's grades A\* to C including English and Maths.<sup>63</sup> Just 50% of FSME children achieve 5 GCSE's grades A\* to C including English and Maths compared to 78% of children who are not entitled to free school meals.<sup>64</sup>

The biggest inequality of all is the difference between the achievement levels of children who attend Grammar schools and those who do not. 94% of children at grammar schools achieve 5 GCSE's grades A\* to C including English and Maths as opposed to 50% of children who do not attend grammar schools.<sup>65</sup> This is a difference of almost 44 percentage points. Based on Department of Education statistics relating to the number of children in Grammar and Secondary schools in Northern Ireland we can therefore estimate that almost 39,000 young people in post primary education do not achieve 5 GCSE grades A\* to C including English and Maths. One of the most common arguments given for the retention of academic selection at 11 is social mobility. However, only 14% of children in Grammar schools are free school meal entitled (FSME) as opposed to 40% of FSME children in Secondary schools.<sup>66</sup>

Multiple disadvantage exacerbates educational inequalities. With regard to children who are FSME, 34% of Protestant Boys, 43% Protestant Girls, 44% Catholic Boys and 53% Catholic Girls achieve 5 GCSE's A\* – C including English and Maths.<sup>67</sup> There are 2,373 looked after pupils in Northern Ireland.<sup>68</sup> 28% of LAC achieve 5 GCSE's grades A\* to C including English and Maths in comparison to 70% of the general population.<sup>69</sup> Looked after children are also much more likely to have a statement of SEN – 27% have a statement of SEN in comparison to 5% of the general population.<sup>70</sup> There are more than 79,000 pupils or 23% of the total school population with some form of Special Educational

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<sup>62</sup> 'Other' is defined as other Christian, no religion and non-Christian.

<sup>63</sup> Statistical Bulletin 6/2017 Qualifications and Destinations of Northern Ireland School Leavers 2015/16, Department of Education, 7<sup>th</sup> June 2017.

<sup>64</sup> Statistical Bulletin 10/2017, Year 12 and Year 14 Examination Performance at Post-Primary Schools in Northern Ireland 2016-17, Department of Education, 14<sup>th</sup> December 2017.

<sup>65</sup> *Ibid.*

<sup>66</sup> Statistical Bulletin 4/2017 School Meals in Northern Ireland, 2016/17, Department of Education, 11<sup>th</sup> April 2017.

<sup>67</sup> Statistical Bulletin 6/2017 Qualifications and Destinations of Northern Ireland School Leavers 2015/16, Department of Education, 7<sup>th</sup> June 2017.

<sup>68</sup> Looked After Children in Education, Key Statistics 2016/17, Department of Education.

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*

Needs (SEN).<sup>71</sup> 17,800 children have a statement of SEN.<sup>72</sup> Also, 21% of children with statement of SEN and 39% of children on the SEN Register achieve 5 GCSE's Incl. English and Maths A\* - C.<sup>73</sup>

With regard to children with disabilities, there is no disaggregated data collected relating to disability specifically. However we do know that 32% working age disabled people compared to 13% non-disabled people have no qualifications.<sup>74</sup> In 2016/17 just over 1,000 Traveller and 353 Roma children were enrolled in NI schools.<sup>75</sup> 81% of Traveller and 73% of Roma children are FSME.<sup>76</sup> Statistics on the attainment levels of Traveller and Roma children are not published, broken down by specific ethnic group, by the Department of Education due to small numbers. However information that is available shows that Traveller pupils continue to have exceptionally poor educational outcomes - From 2003/4 – 2009/10 only 11 Traveller children achieved 5 GCSE's grades A\* - C. None of these children went onto higher education.<sup>77</sup> In 2011/12 just 9.3% of Roma children in England and NI achieved 5 GCSE's Incl. English and Maths A\* - C.<sup>78</sup>

There has been a huge increase in the numbers of Newcomer children in NI schools. In 2001/2002 there were just under 1,400 Newcomer children and in 2016/17 this increased to almost 14,000.<sup>79</sup> Currently there are over 80 languages spoken in NI schools with Polish and Lithuanian the most popular languages after English.<sup>80</sup> Issues for Newcomer children and their ability to access education and achieve in education on the basis on equality of opportunity include school readiness, a lack of recognition of diversity by schools and unrecognised and therefore unmet need relating to multiple inequalities e.g.

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<sup>71</sup> Statistical Bulletin 2/2018 Annual enrolments at schools and in funded pre-school education in Northern Ireland, 2017/18, Department of Education 27<sup>th</sup> February 2018.

<sup>72</sup> *Ibid.*

<sup>73</sup> Statistical Bulletin 6/2017 Qualifications and Destinations of Northern Ireland School Leavers 2015/16, Department of Education, 7<sup>th</sup> June 2017.

<sup>74</sup> DETINI , Labour Force Survey, Quarterly Supplement January-March 2014 as referenced in Figuring it Out, Looking Behind the Social Statistics in Northern Ireland Ann Marie Gray Goretti Horgan Amanda Leighton, ARK, November 2015

<sup>75</sup> Irish Traveller & Roma pupils in education, Key Statistics 2016/17, Department of Education.

<sup>76</sup> *Ibid.*

<sup>77</sup> Report of the Taskforce on Traveller Education to the Department of Education, August 2011.

<sup>78</sup> DENI Survey of School Leavers, 2011-12 / National Pupil Database and Key Stage 4 Attainment Data, 2001/12.

<sup>79</sup> Statistical Bulletin 2/2017 Annual enrolments at schools and in funded pre-school education in Northern Ireland, 2016/17, 22<sup>nd</sup> February 2017.

<sup>80</sup> *Ibid.*

SEN.<sup>81</sup>

Recent Department of Education commissioned research into the educational experience of LGBT children and young people found that two thirds of LGBT young people in NI do not feel welcomed or valued in their post-primary school and almost half had experienced bullying as a result of their sexual orientation or gender identity.<sup>82</sup>

Education Other than at School (EOTAS) provides education for children with social, emotional, behavioural, medical or other issues, who cannot otherwise access suitable education. In 2016 / 2017 617 children in NI were registered in EOTAS Centres.<sup>83</sup> NICCY has concerns around the ability to access timely assessments for EOTAS and that as a result many children are disengaging from education and not returning to it, leaving school without qualifications. Evidence shows a continued increase in the number of young people with mental health, anxiety-related conditions and addictions in EOTAS Centres.<sup>84</sup>

There are no figures or estimates for the number of children of compulsory school age who are not receiving full-time education. One of the reasons for this is because parents who choose to home educate their child are not required to register their child with the Education Authority. There is no statutory duty on the Education Authority to routinely monitor the quality of home education.

Anxiety in schools is an area which has repeatedly been raised through NICCY's engagement with hundreds of children and young people to date. The pressure that children are under as a result of the emphasis schools place on academic attainment due to published league tables and continual assessments are issues which children and professionals raise frequently in NICCY's engagement with them on education. Children's mental health in Northern Ireland is an extremely serious issue. Northern Ireland remains the region in the UK with the highest child suicide rate.<sup>85</sup> Research by the National Union

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<sup>81</sup> The integration of newcomer children with interrupted education into Northern Ireland schools (A Belfast Based Case Study) Northern Ireland Strategic Migration Partnership, September 2014.

<sup>82</sup> Post-Primary School Experiences of 16 – 21 year old people who are Lesbian, Gay, Bisexual and/or Transgender (LGBT), PACEC for the Department of Education, April 2016.

<sup>83</sup> Statistical Bulletin 2/2018 Annual enrolments at schools and in funded pre-school education in Northern Ireland, 2017/18, Department of Education 27<sup>th</sup> February 2018.

<sup>84</sup> The ETI Chief Inspector's Biennial Report 2014-2016, 16<sup>th</sup> November 2016.

<sup>85</sup> Safeguarding Board for Northern Ireland (2014) Annual Report for the period to 31 March 2014 & CYPSP Monitoring Outcomes Report 2014-2015

of Teachers in England<sup>86</sup> has highlighted the high levels of school-related anxiety, stress, disaffection and mental health problems of children in schools.

It is clear that there is a pressing need for additional investment in education to improve the educational outcomes of a huge range of groups of children who are currently under-attaining in education. NICCY is extremely concerned about the ability of the education system to meet the needs of many children in Northern Ireland currently and in the future. Children are being failed as a result of a crisis in education funding and upholding the fundamental right of many children to access a good quality education is not being upheld or prioritised by Government.

NICCY is deeply concerned about the inadequate levels of funding for education in Northern Ireland, inefficient use of resources and delays in progressing key areas of policy, arising from a lack of Northern Ireland Executive ministerial level decision-making on many key issues.

NICCY is particularly concerned about the impact of inadequate levels of funding, inefficient use of scarce or limited resources and delayed decision-making is having on children and young people's access to a safe school / learning environment which will help them fulfil their potential and deliver good education and well-being outcomes.

NICCY would call on members of the Northern Ireland Affairs Committee to use this Inquiry as an opportunity to ensure a much needed increase in funding for education in Northern Ireland. We would also urge the Committee to make clear recommendations about the need for the education system in Northern Ireland to be fundamentally reformed in order to ensure that it is operating at its most efficient and making best use of public money by guaranteeing all children and young people in Northern Ireland equal access to an excellent quality education in line with Articles 28 and 29 of the UNCRC. We would also ask the Committee to investigate the costs and inefficiencies of supporting a system which comprises multiple education sectors, at different levels of education.

NICCY wants to see an inclusive system of education which enables children and young people in Northern Ireland to be taught and learn together and one which is also much more efficient and cost effective, especially given the current climate of financial / budgetary pressures on public resources.

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<sup>86</sup> "Exam Factories", National Union of Teachers, June 2015.

### **What are the areas of greatest need in the education sector in Northern Ireland?**

The information provided above in relation to the educational outcomes of children and young people in Northern Ireland with certain characteristics, is clear that for specific groups of children and young people inequalities exist in education. The education of children and young people and ensuring that all children can achieve to their maximum potential must be the focus of developments and investment in education going forward. It is vital that the educational inequalities which exist in Northern Ireland are addressed without delay.

While the Department of Education has core responsibility for the education of children and young people in Northern Ireland, it also has responsibility for other key areas of children's policy. These include Early Years, Childcare, Co-ordination of reports to the UN Committee on the Rights of the Child and the Children and Young People's Strategy. It is unclear from an examination of the Department of Education's budget what the level of budget allocations are in order to carry out these functions. NICCY wishes to alert the Committee to these additional responsibilities so that this Inquiry considers these functions and the need for them to be adequately resourced in order to meet the needs and realise the rights of children and young people in Northern Ireland.

## **Are levels of capital funding sufficient to support investment in improvements to Northern Ireland's schools?**

The Department of Education provided information to NICCY to inform this submission.<sup>87</sup> With regard to the Department's capital budget and capital commitments in education, the Department stated that it was allocated £164.6m of capital funding for the 2018-19 financial year giving a gross available capital budget of £166.6m, including £2m of anticipated receipts. As well as the capital works at schools and youth facilities, capital budget is also required for IT, school buses, grounds maintenance equipment, kitchen equipment etc.

This allocation does not include funding from the Fresh Start Agreement (FSA) which is ring-fenced for specific shared and integrated education projects, agreed in advance with the Northern Ireland Office (NIO) and HM Treasury (HMT). The capital programme is planned over a 3-5 year time horizon. The programme of works planned for the 2018-19 financial year is in line with the budget allocation received.

NICCY notes from the Department of Education Main Estimates Budget that the majority of this spending (£151.5m) is for schools infrastructure to ensure that strategic investment supports the delivery of the area plans; that the premises in which young people grow and learn are safe, fit for purpose and conducive to learning; and that the environment provides opportunities for sharing and for building a more cohesive society.

Only, £13m has been allocated for the provision of youth and other children's services, to provide positive developmental and participative opportunities for young people through youth services directly linked to raising standards and narrowing the gap in achievement.

The Department of Education's Performance Statement in the Accounts for 2017-18 states that the budgetary environment is likely to remain as constrained as it has been in previous years.<sup>88</sup> However, when asked for a breakdown of capital funding and projects that cannot be progressed due to a lack of funding the Department stated that there are no major works or school enhancement projects that cannot be progressed. The capital budget for minor works has been increased significantly for the 2018-19 financial year, and while additional funding would always be welcome, currently the constraint on the delivery

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<sup>87</sup> Information received by NICCY from the Department of Education 11<sup>th</sup> September 2018.

<sup>88</sup> *Op Cit* 24.

of a further expansion to the minor works programme would be beyond the capacity of the existing teams to deliver it.<sup>89</sup>

Availability of Fresh Start Agreement funding for the Strule Shared Education Campus is needed to deliver on the Department's capital programme in future years. At that time, approval was pending from the NIO on the announcement of a second tranche of shared campuses and integrated school projects to progress under Fresh Start Agreement funding. The Department has confirmed to NICCY that it expects that £17m of Fresh Start funding will be required in 2018-19 for education purposes. Of this, £6.3m will be required to continue work on the original 23 shared and integrated education projects accounted in the March 2016 Fresh Start announcement, while £11m will be required to support the development of the Strule Shared Education Campus project.

However, it has recently been reported in the media that the development of the already delayed<sup>90 91</sup> Strule Shared Education Campus project may now be beset by further delays. Mr Daniel Mc Crossan MLA stated that the Permanent Secretary for the Department of Education has confirmed that the project requires Ministerial sign off, leading to concerns that the project will at least be delayed, if not shelved entirely.<sup>92</sup> In response to a request for information about the Strule Shared Education Campus, the Department of Education has indicated to NICCY that it has encountered unprecedented issues related to market failure and political uncertainty in relation to the main works contract procurement competition to build the five post-primary schools and shared facilities at Strule, which has an expected value of over £100 million. As a result this competition is now suspended (although it remains 'live') while Programme business case options, costs, benefits, risks and value for money is being re-confirmed. The construction timescales are under review, and based on the current position, the provisional opening of the campus is anticipated to be 2022 or 2023. Meanwhile the rest of the Programme, on both construction and non-construction, continues uninterrupted.

NICCY is aware that there are concerns about the levels of health and safety compliance with regard to a number of school buildings that may not be fit for purpose. A number of school principals and elected representatives have contacted NICCY regarding individual

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<sup>89</sup> *Op cit* 87.

<sup>90</sup> <https://www.irishnews.com/news/2017/09/18/news/omagh-shared-education-campus-faces-delay-1138984/>

<sup>91</sup> <https://www.bbc.co.uk/news/uk-northern-ireland-44526098>

<sup>92</sup> <https://www.sdlp.ie/news/2018/mccrossan-permanent-secretary-confirms-strule-campus-needs-ministerial-sign-off/>

schools with issues relating to a lack of facilities on school premises, long delays in the delivery of promises of a new build, overcrowding and health and safety concerns due to old and poorly maintained school buildings. The Education Authority's consultation document on Area Planning<sup>93</sup> acknowledged that there is no capital funding for the accommodation of schools and that the education budget is unable to provide the investment required.

NICCY is aware of one school campus which shares a site with a Further Education College where both the Education Authority<sup>94</sup> and the Education and Training Inspectorate<sup>95</sup> have raised serious concerns dating back to 2016, regarding the wellbeing, health and safety and safeguarding of the children attending the school. NICCY has written to the Education Authority to seek clarification on plans for the school, highlighting the awareness of Government agencies regarding the non-compliance of the school with key pieces of domestic legislation designed to ensure the safety and protection of our children while in school.

The Department of Education's Annual Report and Accounts<sup>96</sup> state that the Department will start work in 2018-19 on a programme of transformation aimed at introducing changes which will help deliver better outcomes for children and young people and will support the delivery of a more sustainable, effective and efficient education system. One of the key objectives for the Department is the need to critically review aspects of the existing education system; identify where improvements can be made; and deliver a managed programme of transformation for the benefit of children and young people.

NICCY recommends that the Committee use this Inquiry to make recommendations to ensure adequate capital investment in education so that the education system in Northern Ireland is fit for purpose, where children are safe, equipped to learn and develop to their maximum potential

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<sup>93</sup> Strategic Area Plan for School Provision 2017-2020, Education Authority, December 2016. Final document published April 2017.

<sup>94</sup> EA Confidential Internal Review of Craigavon Senior High School Lurgan Campus, December 2016, as reported in Lurgan Mail 'Campus Not Fit for Purpose, (28/6/2018) – see <https://www.lurganmail.co.uk/news/education/campus-not-fit-for-purpose-1-8549216>

<sup>95</sup> Post primary Inspection (Involving Action Short of Strike) Craigavon Senior High School in January 2018, ETI, March 2018 - See - [https://www.etini.gov.uk/sites/etini.gov.uk/files/publications/asos-post-primary-inspection-craigavon-senior-high-school-portadown-county-armagh-521-0282\\_2.pdf](https://www.etini.gov.uk/sites/etini.gov.uk/files/publications/asos-post-primary-inspection-craigavon-senior-high-school-portadown-county-armagh-521-0282_2.pdf)

<sup>96</sup> *Op cit* 24.

## How can funding be best deployed to ensure value for money in education spending?

The education system in Northern Ireland is unnecessarily complex. There are a range of education sectors as outlined above, almost all of which are funded by the Department of Education. Each sector has at least one Government funded agency which carries out a range of different functions. These are not common functions across sectoral bodies. A number of political representatives have called for a fundamental review of education in Northern Ireland.<sup>97</sup> NICCY concurs with this recommendation and believes that the education system in Northern Ireland is long overdue fundamental reform in order for it to be fit for purpose.

NICCY's Cost of Education Report<sup>98</sup> contains a recommendation regarding the need to fundamentally reform the education system in Northern Ireland and end duplication of spend on numerous education sectors –

*The Northern Ireland Executive must ensure an end to the duplication of spend on the administration of the various education sectors in Northern Ireland. The focus of the provision of education within restricted budgets must be on ensuring that all children receive an education in line with Article 29(1) of the UNCRC and fulfil their maximum potential. Education should therefore focus on the development of the skills, talents and abilities of children as well as formal schooling.*

In her research, “Child Poverty and Education,”<sup>99</sup> Goretti Horgan highlights the additional cost of division in education and recommends replacing the current expensive segregated education system with a socially integrated model and states that,

*“...too much of the cost of education in Northern Ireland goes into maintaining a segregated system – segregated on lines of religion, social class and gender. Evidence from across the world is clear that mixed-ability schools with a good social mix provide the best educational outcomes. Our children deserve no less.”<sup>100</sup>*

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<sup>97</sup> Chris Lyttle, Alliance Party NI, MLA call for Bengoa style review of Education – See <https://allianceparty.org/article/2018/0011889/lyttle-reiterates-call-for-bengoa-style-review-of-education>

<sup>98</sup> ‘A ‘free’ education? The cost of education in Northern Ireland, NICCY, October 2017.

<sup>99</sup> Child Poverty Alliance, Beneath the Surface Child Poverty in Northern Ireland, 2014

<sup>100</sup> Pg 106, *Ibid.*

**It is clear that short term solutions will not be enough to address long term inefficiencies and problems with the composition of the education system in Northern Ireland.** NICCY urges the Committee to take the opportunity of this Inquiry to address some of the fundamental problems with the education system in Northern Ireland and to call for a whole system review. This review should focus, first and foremost, on meeting the needs of children and young people in education and ensuring that education funding is spent on all children in Northern Ireland succeeding to their maximum potential.

## **How can funding be used to support the different school sectors in Northern Ireland, including schools for children with special educational needs and disabilities?**

More than 5,700 pupils are enrolled in 39 dedicated special schools. In addition to this, more than 1,800 are educated in learning support centres in primary and post-primary schools across 92 schools. Pupils with special educational needs are increasingly being educated in mainstream schools rather than special schools. In 2003/04, 39.6% of statemented pupils and 9.8% of pupils with any needs attended special schools. In 2017/18 the corresponding figures have dropped to 30.5% and 7.5% respectively. More than 79,000 pupils in schools have some form of special educational needs; this is 23.0% of the entire school population. Of this, more than 17,800, or 5.2% of pupils, have a statement of special educational needs. The number of pupils with special educational needs has been steadily rising, with more than 2,800 pupils with any needs and 800 additional pupils with statements compared to last year.

With regard to the level of funding for children with SEN and whether this is adequate to support them sufficiently, the Education Authority overspent its budget by approximately £19m in 2017-18. The reason for this overspend is mainly due to increased spending on schools and pupils with SEN. There is therefore a clear need for increased investment if we are to adequately meet the needs of the SEN population in Northern Ireland.<sup>101</sup>

The Northern Ireland Audit Office (NIAO) published a report into special educational needs in June 2017.<sup>102</sup> The Report found that:

- The educational achievements of children with SEN are improving. Fewer are leaving school with no formal qualifications and more are going on to further and higher education.
- In 2015-16, 79% of statements of SEN were completed outside the statutory time limit of 26 weeks. The report states that EA told the NIAO that this is mostly due to valid exceptions permitted in legislation relating to delays in receiving advice from the health sector, but could not provide a detailed breakdown.

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<sup>101</sup> <https://www.bbc.co.uk/news/uk-northern-ireland-45037429>

<sup>102</sup> Special Educational Needs, Report By The Comptroller And Auditor General, 27th June 2017.

- Annual expenditure on SEN is increasing and in 2015-16 was over £250 million. Of this, £217 million is EA expenditure. The NIAO found inconsistencies between the figures held by the Department and the EA in relation to spend on SEN and were unable to get a complete breakdown of the costs.
- There are variations in the methods used by schools to identify children requiring additional support despite the knowledge that early intervention makes a real difference to life chances and may result in lower spend in meeting that child's needs as they grow up.
- The costs associated with providing support for children with SEN without a statement are not ring-fenced and are primarily funded from school budgets. The small sample of schools visited to compile the report highlighted the difficulties faced in managing the significant, and growing, number of children with SEN within existing resources. For some schools this may not be sustainable.
- At present over 17,000 statements of SEN are reviewed each year at an annual cost of around £6 million. 80% of statements remain unchanged.
- The provision of a classroom assistant (at an annual cost of £55 million) is often considered as a key form of support given to children with a statement of SEN yet their impact, or that of any other support provided, has not been evaluated at a strategic level.
- There has been no strategic evaluation of the support provided to children with SEN to ensure the best possible outcomes. Delay in the completion of statements remains a major issue yet only limited information could be provided as to the reasons behind these continued delays.
- As a result of the NIAO's review, they conclude that neither the Department nor the EA can currently demonstrate value for money in terms of economy, efficiency or effectiveness in the provision of support to children with SEN in mainstream schools.

Evidence from NICCY's legal cases highlights concerning trends regarding the operation of the SEN system. The imposition of set allocations of educational psychology time to

schools mean that only those children viewed by schools as ‘most in need’ are referred for educational psychology assessments. As a result, many children are waiting unacceptably long periods of time for referrals which adversely impacts on their education. Statements of SEN have become vague and unenforceable, in terms of specified provision. Evidence also shows a marked move away from ‘specification and quantification’ i.e. including in statements the support/services necessary and total number of assistance hours a child requires by the Education Authority, which is in breach of the requirement for specificity in statements imposed by Article 16 of the Education (NI) Order 1996.

NICCY has concerns about children with SEN and/or disabilities who are being sent home early from school or who are on part-time timetables due to the inability or unwillingness of schools to meet their needs in class for the full school day. These ‘exclusions’ are generally not recorded and are known as “informal exclusions”. There are no formal appeal rights to challenge informal exclusion from school as the practice is potentially unlawful. Informal exclusions are not being properly documented, resulting in such exclusions being a hidden problem with no data collection hampering knowledge about the scale of the problem. This problem is exacerbated further by a failure to commence an appeals mechanism against formal suspension.<sup>103</sup>

In March 2018 it was reported in the media that the Education Authority was planning to close and merge seven special schools in Belfast.<sup>104</sup> The plans are an indication that the special school estate requires updating and reconfiguration to meet the increasingly diverse and complex needs of children in Northern Ireland. Plans have not been publicly progressed but NICCY understands that there is a wider examination of the special school estate ongoing to ensure that the special school estate is fit for purpose and able to meet the needs of children and young people. This will involve a considerable capital commitment.

Information from the Department of Education’s Area Planning Annual Report<sup>105</sup> relating to the special school estate has indicated delays in the reconfiguration of the special school estate. The report states that the reconfiguration of special school provision has proved to be especially challenging for the EA, with no special school DPs now anticipated before the final quarter of the 2018/19 planning year.

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<sup>103</sup> Article 33 Education & Libraries (NI) Order 2006.

<sup>104</sup> <https://www.belfasttelegraph.co.uk/news/northern-ireland/parents-fear-for-children-as-belfast-special-schools-merger-plan-revealed-36721682.html>

<sup>105</sup> *Op cit* 47.

The Special Educational Needs and Disability Act received Royal Assent on 23<sup>rd</sup> March 2016. The Department of Education has also consulted on its SEND Regulations,<sup>106</sup> which will support the Act and a consultation on the SEND statutory Code of Practice has been expected for over a year. The Department of Education has informed NICCY that an 8 week public consultation will place in November 2018 on the draft Code of Practice. The review of SEN has been ongoing since 2006 at a cost of £2.4 million. We are aware that the Regulations are being developed with the Departmental Solicitors Office with a view to being ready to go to the Education Committee in the event of a restitution of the NI Assembly.

NICCY recently provided comprehensive advice to the EA on its consultation on A Case for Transformation Proposed Framework of Future Provision for Children in the Early Years with Special Educational Needs.<sup>107</sup> This outlines a number the EA's proposed changes to the provision of Nursery education to children with SEN in Special Schools. There are many positive aspects to the EA's proposals, but there remain concerns about the extent of integration of children with SEN in mainstream schools (new proposal) who are integrated into the school community but separate in an SEN unit, the level of training and qualifications of Early Years professionals who will replace classroom assistants in the Early Years, the availability of one to one adult assistance where this is required, the continuity of provision post age 6, whether Early Years professionals will be allocated to groups of children, whether the professional is allocated to children on a permanent or temporary basis, the provision of 3 hours a day for many children with SEN (dual day) and the availability / provision of additional support to these children e.g. home visits etc.

We are clear that this is just one part of the proposed framework for the provision of education for children with SEN in Northern Ireland and there is a pressing need to see a clear overview of the EA's plans for the provision of education to children with SEN across the entirety of the education system.

7% of all children in NICCY's Cost of Education research<sup>108</sup> had special educational needs. The report found that parents with children with special educational needs spent an average of £295 per child on additional items and activities relating to their child's special educational needs, or an average of £364.41 per household. This places children with

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<sup>106</sup> May 2016.

<sup>107</sup> 24<sup>th</sup> May 2018.

<sup>108</sup> *Op cit* 1.

SEN at a significant disadvantage in accessing their right to an effective education without discrimination as protected by the UNCRC. In the report NICCY recommended that the Department of Education ensures that the additional costs of education incurred by children with Special Educational Needs (SEN) are met through statutory funding. All children should be able to fulfil their maximum potential in education and this should not be based on their ability to pay.

The UNCRPD and UNCRPD UN 2011 Guidance, the UNCRC and the Special Educational Needs and Disability Order (SENDO) 2005 all very are clear about the need for an inclusion framework whereby children with SEN who wish to be educated in mainstream education should be. The EA has indicated in discussions with NICCY that support and resources to best meet the needs of children with SEN could be utilised in the development of learning support and need specific centres attached to mainstream schools in the furtherance of the inclusion agenda.<sup>109</sup>

In terms of the costs of such facilities, the EA has provided approximate figures including £100,000 to establish a learning support centre and £125,000 for an autism specific centre. It is the view of the EA with regard to funding for children with SEN that better provision to meet the needs of all children with SEN in mainstream schools should be the priority as well as getting common funding formula right in the first instance. It is vital that services for children with SEN are available immediately to all children who need it and are not contingent on children receiving a statutory statement of special educational need. This is currently not the case in Northern Ireland and many children are being denied their right to access services which they need in order to uphold their right to an effective education. As stated above, many children, especially those who are not considered a priority for an educational psychology referral may wait very long times for a referral or may never be referred, thus denying them access to services which would be of immense benefit to their education.

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<sup>109</sup> Meeting between NICCY and the EA 7<sup>th</sup> September 2018.

## **Conclusion and Recommendations**

NICCY warmly welcomes this Inquiry into Education Funding in Northern Ireland and is happy to assist the Committee in any way as the Inquiry progresses. It is vital that this Inquiry is used as an opportunity to bring about fundamental changes to the education system in Northern Ireland to address educational inequalities and ensure that all children can access an excellent quality education which develops them to their maximum potential, regardless of their particular characteristics or circumstances.

**NICCY calls on members of the Northern Ireland Affairs Committee to use this Inquiry as an opportunity to ensure a much needed increase in funding for education in Northern Ireland.**

**NICCY calls on the Committee to recommend a core investment increase in the education of children under achieving in education and to renew the Government's commitment to the provision of support to address the educational underachievement of disadvantaged pupils.**

**NICCY also urges the Committee to make clear recommendations about the need for the education system in Northern Ireland to be fundamentally reformed in order to ensure that it is operating at its most efficient and making best use of public money by guaranteeing all children and young people in Northern Ireland equal access to an excellent quality education in line with Articles 28 and 29 of the UNCRC.**

**The Commissioner asks the Committee to investigate the costs and inefficiencies of supporting a system which comprises multiple education sectors, at different levels of education.**

**The Commissioner asks the Committee to consider her Cost of Education Report<sup>110</sup> recommendation that the Northern Ireland Executive, Department of Education and Education Authority should ensure that schools are adequately funded solely through public expenditure, and should not rely on parents and guardians to pay for the shortfall in the costs of their children's education.**

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<sup>110</sup>A 'free' education? The cost of education in Northern Ireland, NICCY, October 2017.

**NICCY recommends that the UK Government puts in place a robust measurement of efficiency with regard to the use of Confidence and Supply monies to ensure that educational outcomes are measured using Outcomes Based Accountability, in line with the Northern Ireland Executive's Programme for Government.**

**A comprehensive public consultation exercise should also be carried out to improve the transparency and accountability of the use of such monies, as well as the involvement of members of the public in the decision making process. Plans should be screened and equality impact assessed to ensure that equality of opportunity is at the core of key budgetary decisions.**

**NICCY recommends that the Northern Ireland Affairs Committee requests all Northern Ireland Government Departments, including the Department of Education, to produce Confidence and Supply specific Spending Plans. Spending Plans should set out key priorities and specific initiatives that will be supported within ring-fenced and non-ring-fenced DEL Resource and Capital Confidence and Supply allocations and for how long.**

**NICCY recommends that the education of children and young people and ensuring that all children can achieve to their maximum potential must be the focus of developments and investment in education going forward. It is vital that the educational inequalities which exist in Northern Ireland are addressed without delay.**

**NICCY also recommends that the Northern Ireland Affairs Committee gives consideration to how best to scrutinise the use of Confidence and Supply monies within the In-Year Monitoring Rounds process as this is likely to require amendments to Department of Finance's In-Year Monitoring Guidance.**

**NICCY recommends that the Committee use this Inquiry to make recommendations to ensure adequate capital investment in education so that the education system in Northern Ireland is fit for purpose, where children are safe, equipped to learn and develop to their maximum potential**

**NICCY urges the Committee to take the opportunity of this Inquiry to address some of the fundamental problems with the education system in Northern Ireland and to call for a whole system review. This review should focus, first and foremost, on**

**meeting the needs of children and young people in education and ensuring that education funding is spent on all children in Northern Ireland succeeding to their maximum potential.**

**NICCY urges the Committee to recommend significantly increased investment in SEN. This is vital if we are to adequately meet the needs of the SEN population in Northern Ireland.<sup>111</sup>**

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<sup>111</sup> <https://www.bbc.co.uk/news/uk-northern-ireland-45037429>

## Appendix 1 - Education and International Obligations

The main UNCRC articles which relate to education are Articles 28 and 29. Other articles are also relevant in the context of education, not least the 4 principles of the Convention. The UNCRC principles require the Government to ensure that children are not discriminated against - Article 2, their best interests are upheld - Article 3, they develop to their maximum potential - Article 6 and they are able to meaningfully participate in all aspects of their lives - Article 12. General Comment 1 on the Aims of Education<sup>112</sup> highlights a number of other Convention articles which are relevant to education and the fulfilment of the aims of education as detailed under Article 29 of the Convention.<sup>113</sup> These include, but are not limited to, the rights and responsibilities of parents (Articles 5 and 18), freedom of expression (Article 13), freedom of thought (Article 14), the right to information (Article 17), the rights of children with disabilities (Article 23), the right to education for health (Article 24) and the linguistic and cultural rights of children belonging to minority groups (Article 30). One additional relevant article which applies in the provision of all services to children is Article 4 of the UNCRC. Article 4 states that:

*“States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.”*

The text of the two main articles which relate to education, Articles 28 and 29 of the UNCRC, is as follows: -

### Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and

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<sup>112</sup> United Nations Committee on the Rights of the Child, General Comment No. 1 (2001) ‘The aims of education’ CRC/GC/2001/1.

<sup>113</sup> Para 6, *Ibid*.

take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

## **Article 29**

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. 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.

It is clear from the above articles that Article 28 outlines the right to education, whereas Article 29(1), which details the aims of education, adds a qualitative dimension to the general right to education under Article 28. Article 29(1) reflects the rights and inherent dignity of the child; it insists on the need for education to be child-centred, child-friendly and empowering and highlights the need for educational processes to be based upon the principles outlined in Article 29(1). The Committee's General Comment on the Aims of Education issued in 2001<sup>114</sup> provides guidance on what is meant by the obligations under Article 29(1) which are addressed below.

In its 2016 examination of the UK Government's compliance with its obligations under the UNCRC, the Committee made a number of recommendations relevant to education. With regard to the allocation of resources the Committee recommended that,

*"In accordance with article 4 of the Convention and Sustainable Development Goal 10, Targets 10.2 and 10.4, the Committee urges the State party to allocate the maximum extent of available resources for the implementation of children's rights, with a special focus on eradicating child poverty and reducing inequalities within and across all jurisdictions."*<sup>115</sup>

Relevant to the costs of education the Committee recommended that,

*"...the State party ensure that its international development cooperation supports the recipient States in guaranteeing the right to free compulsory primary education for all, by prioritizing free and quality primary education in public schools, refraining from funding for-profit private schools, and facilitating registration and regulation of private schools."*<sup>116</sup>

Certain groups of children and young people were specifically referenced, including children in the care of the State and children with disabilities,

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<sup>114</sup> *Ibid.*

<sup>115</sup> Para 12, CRC/C/GBR/CO/5, 3<sup>rd</sup> June 2016

<sup>116</sup> Para 17, *Ibid.*

*“Inform and consult with children from an early stage on plans for their care and transition and provide sufficient support for care leavers, including for accommodation, employment or further education.”<sup>117</sup>*

*“(a) Ensure full respect of the rights of children with disabilities to express their views and to have their views given due weight in all decision-making that affect them, including on access to and choice of personal support and education;*

*(b) Set up comprehensive measures to further develop inclusive education, ensure that inclusive education is given priority over the placement of children in specialized institutions and classes, and make mainstream schools fully accessible to children with disabilities;”<sup>118</sup>*

The main education recommendations made by the Committee include recommending that the Government,

*“(a) Enhance its efforts to reduce the effects of the social background or disabilities of children on their achievement in school and to guarantee the right of all children to a truly inclusive education in all parts of the State party, including for newcomer children without experiences of formal education. In this regard, closely monitor and if necessary, regulate the establishment and management of academies and free schools in England, and abolish the practice of unregulated admission tests to post-primary education in Northern Ireland;*

*(b) Use the disciplinary measure of permanent or temporary exclusion as a means of last resort only, forbid and abolish the practice of “informal” exclusions, and further reduce the number of exclusions by working closely with social workers and educational psychologists in school and using mediation and restorative justice;*

*(c) Ensure that children have the right to appeal against their exclusion, and are provided with legal advice, assistance and, where appropriate, representation for those without means;*

*(d) Abolish the use of isolation rooms;*

*(e) In Northern Ireland, actively promote a fully integrated education system and carefully monitor the provision of shared education, with the participation of children, in order to ensure that it facilitates social integration;*

*(f) Taking note of Sustainable Development Goal 4, Target 4.2 on access to quality early childhood development services, allocate sufficient human, technical and financial*

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<sup>117</sup> Para 52(f), *Ibid.*

<sup>118</sup> Para 56(a) and (b), *Ibid.*

*resources for the development and expansion of early childhood care and education, based on a comprehensive and holistic policy of early childhood development, with special attention to the children in the most vulnerable situations.*

*(g) Make children's rights education mandatory.*"<sup>119</sup>

General Comment 1 on the Aims of Education<sup>120</sup> provides insight into the obligations on Government under Article 29(1) of the Convention. According to the UNCRC Committee's General Comment on Article 29 of the Convention – a statement of its meaning and objectives - education must be child-centred, child-friendly and empowering.<sup>121</sup> The goal is to strengthen the child's capacity to enjoy the full range of human rights, to promote a culture which is infused by appropriate human rights values and to empower the child through developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence. In this context, 'education' goes far beyond formal schooling to embrace the broad range of life experiences and learning processes which enable children, whether individually or collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society.

Article 2 of the First Protocol to the European Convention on Human Rights as incorporated by the Human Rights Act 1998 also provides that no one shall be denied the right to education. This has been interpreted by the European Court of Human Rights to mean that every child is entitled to access *effective* education. Moreover, taken together with Article 14 ECHR - the non-discrimination principle - the right to access available educational facilities must be secured to all children without discrimination.

Further, on discrimination in education, as highlighted above, under Article 2 of the UNCRC, each Member State undertakes to ensure Convention rights to every child without discrimination on any ground. All children are therefore entitled to equal access to education regardless of their social origin or status, their geographical location, their membership of a linguistic, ethnic or other minority, their detention or their disability. Similarly, Article 1 of the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention Against Discrimination in Education prohibits,

*"...any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic*

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<sup>119</sup> Para 72, *Ibid.*

<sup>120</sup> *Op cit* 112.

<sup>121</sup> *Ibid.*

*condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education.*<sup>122</sup>

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<sup>122</sup> UNESCO Convention against Discrimination in Education 1960, 14 December 1960