



Northern Ireland
Assembly

Committee for Education

OFFICIAL REPORT (Hansard)

Integrated Education Bill: Department of
Education

22 September 2021

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Chris Lyttle (Chairperson)
Mr Pat Sheehan (Deputy Chairperson)
Ms Nicola Brogan
Mr Robbie Butler
Mr Daniel McCrossan
Mr Justin McNulty

Witnesses:

Ms Alison Chambers	Department of Education
Mrs Lorraine Finlay	Department of Education
Mrs Janis Scallon	Department of Education
Mrs Shirley Sweeney	Department of Education

The Chairperson (Mr Lyttle): I give a very warm welcome to officials from the Department of Education: Janis Scallon, the director of sustainable schools policy and planning; Alison Chambers, the director of promoting collaboration and tackling disadvantage; Lorraine Finlay, the head of area planning and policy; and Shirley Sweeney, the head of Irish-medium and integrated education. You are very welcome, folks. I can give you no more than 10 minutes to make an opening statement, which will be followed by questions from Committee members. Thank you.

Ms Alison Chambers (Department of Education): Thank you, Chair. I am sure that we would all agree with the Minister's statement during the Second Stage debate that the ultimate vision is that all children be educated together. The question is how we achieve that vision. Although the private Member's Integrated Education Bill may be intended to provide momentum towards that vision, in practice, it will create more difficulties across all of education than it will provide solutions. There are significant technical difficulties with the Bill. If it were to be passed in its current state, it would make for law on integrated education and schools that would be extremely inconsistent in some respects and unclear in others.

Currently, integrated schools are either grant-maintained or controlled. That is how the existing legislation defines and refers to them. The definition in the Bill goes much wider than that. Although that may, at first, sound like a positive step, it represents an extremely complex and difficult position across the entire education sector, including for existing integrated schools. If the Bill becomes law, the wishes of parents and children, and the associated parental preference on school choice, will be secondary to sectoral interests. The potential for schools to argue that they meet the new definition of an integrated school and that they intentionally promote the aspects that are required to justify that is high. That will not change behaviours or build good relations. In practice, it will simply serve to

redesignate schools based on their current practice and, in reality, dilute what integrated education has meant since its inception 40 years ago.

As stated in the briefing, the education budget is finite and under continued pressure. Many specific aspects of the Bill require additional funding and will make further additional and significant demands on that finite budget. The likelihood of legal challenges being made is also high: from the integrated sector, if it deems that any shortcomings are apparent from the Department; from other education bodies from having to meet the requirements of the Bill; and from every other sector, if the requirements of the Bill are being met, as those will impact on other schools. There is a cost to the public purse for every judicial review (JR) that is taken.

Looking through the clauses and their potential impact, whether intended or unintended, we identify many causes of concern across the Department and the wider education sector. The education system here is based on supporting the principle of parental preference: not unfettered choice, but preference. A choice of different sectors is available, supported by various sectoral support bodies. The Bill treats integrated education differently — not equitably, as has been suggested, but differently — to the extent that integrated education and its sectoral support body would be elevated above all other sectors. The Bill would also require the Department to consult on every function, whether related to integrated education or not, with a body that provides support and advice to it relating to promoting integrated education. The explanatory and financial memorandum suggests that the Northern Ireland Council for Integrated Education (NICIE) could fulfil that role. NICIE has a fully committed work plan. How it is to respond to urgent departmental consultation requests on sensitive or confidential matters, or on those that, for example, require professional knowledge, is among the range of matters on which the Bill is silent.

The Bill would require the Department, not just its arm's-length bodies, to promote integrated education, as well as to encourage and facilitate its development. No such duty exists for any other sector. The Department is clear that it does not promote one sector over another. There is no other way in which to ensure that the principle of parental preference is delivered. Through the outworkings of the Bill, unfettered parental choice would be presented to parents who seek integrated education for their children, with a resultant and increasing limitation for parents who seek education for their children in any other sector. Initial advice that we have sought confirms that, and the view that requirements to meet demand in that way could conceivably operate to the detriment of parental preference over time by reducing the availability of other types of schools.

Requiring every education body to include provision for integrated education when developing, adopting, implementing or revising policies, strategies and plans, as well as when designing and delivering public services, immediately places a conflict of statutory duties on such bodies. The Education Authority (EA), in discharging its duties relating to area planning, has such a conflict. The Council for Catholic Maintained Schools (CCMS) has such a conflict. Indeed, how it is to discharge its statutory requirements for the Catholic maintained sector, which it is set up and funded to do, is completely at odds with that duty to include provision for integrated education. Although Comhairle na Gaelscolaíochta is not amongst the education bodies listed in the Bill, the impact on the Irish-medium sector will also be significant. The requirements for the Department to promote, generate and meet demand for integrated education and for other bodies to include provision in all their policies, strategies, plans and services, as well as the presumption that any new school must be integrated, would have a clear impact on the growing Irish-medium sector.

The requirement for every new school that is established to be an integrated school, with severely limited circumstances in which it could be any other type, is extremely concerning. At its most basic level, the Department expects that that requirement would be subject to legal challenge. When we cannot consider the religious demographics of an area or available places in other schools, that would impact on any proposal that is put forward to establish a new school. What option would people who wish to establish a controlled, maintained, Irish-medium or voluntary grammar school see, other than to take a judicial review?

Area planning is one of the Department's key priorities. It was established in the context of our diverse education system and developed to support the implementation of the sustainable schools policy through the area-planning process. The support structures for area planning have been carefully constructed to ensure that all school types are represented in the planning arena. To elevate one sector above all others would completely undermine the complex and sensitive environment in which area planning takes place. The Bill would detrimentally impact on area planning across the Department and all its education partners. In particular, it would cut across the area-planning priorities for the next planning cycle, from 2022 to 2027, which are set out in the Minister's written statement to

the Assembly in August 2021. It would result in a complete rewrite of current area-planning policy, structures, processes and guidance. It would derail the work that is ongoing to develop the next strategic area plan, thereby presenting a major and unmanageable risk to the plan's commencement in September 2022. It would detrimentally impact on the implementation of the sustainable schools policy. That would cause major disruption to the provision of sustainable education and see children continue to be educated in unsustainable schools. It would elevate the views of one sector above all others. It would present a conflict for the EA and the CCMS in their statutory planning duties. It would result in further spare capacity being introduced into the system. It would curtail the collaborative and innovative solutions that the Minister has tasked the managing authorities and sectoral bodies with bringing forward. It would limit future school types if every new school is to be an integrated one. It would impact on the statutory development process and departmental consideration of related proposals, which could lead to an increase in JRs.

The Bill presents many consequences and challenges for area planning, whether intended or not. Area planning particularly involves the trust and collaboration of all involved in the process. Recent developments, including agile projects, increased collaborative working and the development of strategic planning for children with special educational needs (SEN), are testament to the dedication of all involved in working to deliver a network of sustainable schools that give every child the opportunity to access a high-quality education. As we work towards the next strategic area plan, those relationships are vital to progression. The Bill serves to impact severely on those relationships by elevating one sector above all others. The plan will not be deliverable or potentially survive if the Bill becomes law.

It is also clear in the Bill where wording has been lifted from the Shared Education Act 2016. We have set out those concerns in the written briefing, but suffice it to say, shared education is a funded programme that is open to all sectors. Integrated education is a sector; it is not a programme. The two are not the same. Shared education funds schools from all sectors to come together, with the intention of breaking down barriers and promoting good relations. The same approach to publishing strategies and reporting biennially for the integrated sector would not be effective. In area-planning terms, two years is a relatively short time, so it is not evident how such reports would be helpful. In addition, the Department currently funds NICIE to promote integrated education. If that duty were placed on the Department as well, it would raise concerns about duplication.

There are other concerns, which are reflected in the briefing paper, but I come back to my opening point about how we achieve the ultimate vision of all children being educated together. The Department is clear that the independent review of education provides the appropriate means to assess education design and delivery strategically, gather evidence and, importantly, listen carefully to the voices of all stakeholders. That should be the means by which change for any sector of education is effected. We have a diverse system of education here, but there is no doubt that paramount is the education and well-being of our children — all our children — regardless of the sector in which they have chosen to commence, continue and complete their educational journey. The Bill is sector-focused and could serve to impose a tiered approach to education that is neither child-centred nor respectful of parental preference. Education is for all. It respects parental preference. It does not elevate one sector above others. Our processes and policies allow for those who wish their children to be educated in an integrated school to avail themselves of that option. They create the conditions for new schools to be established and grow. The independent review of education provides the proper means to listen to the voices of schools, governors, parents and communities without predetermining what the end solution should be.

Thank you. We are happy to take questions.

The Chairperson (Mr Lyttle): Thanks for that. I realise that the record of the Department of Education on advancing integrated education and reform of education is poor, but that is an eye-opener.

To what extent are children and young people in Northern Ireland currently educated together?

Ms Chambers: In terms of the number of integrated schools?

The Chairperson (Mr Lyttle): In terms of anything. You said that the Department of Education's vision is for children to be educated together. What is the current extent of children being educated together?

Ms Chambers: About 60% of our schools are involved in shared education, with well over 86,000 children being educated together in the shared education programmes. I will defer to Janis to give us a breakdown on integrated schools.

Mrs Janis Scallon (Department of Education): We have quite a few integrated schools, and the number has been growing recently, but I will give you some of the most recent figures for primary-school children applying to integrated schools. In 2019-2020, we had 6.8% of children applying to integrated schools as first preference. In 2020-21, we had 6.7% of children applying. In 2021-22, we had 6.9%. The demand for integrated education has therefore remained steady.

In post-primary, the figures over those years have stayed roughly the same, with 9.8%, 10.5% and 9.1% of children applying to integrated schools. Overall, the figure is around 7%, but I can get you an exact figure and send it to you.

The Chairperson (Mr Lyttle): I am not really sure what that tells me, to be honest with you. You also have the good-relations indicators, which track the number of applications that result in a placement in an integrated school. My understanding is that the most recent data puts that at about 20% of children, or one in five, who apply to an integrated school not being placed. Is that accurate?

Mrs Scallon: That indicator is slightly different, Chair. If I remember correctly, going back to my Executive Office days, it measures something different from what tends to be quoted by others. It is interpreted slightly differently. I can give you the figures for the number of children who applied to schools this year and were accommodated. Across the cohort of children applying to post-primary schools, around 85% got their first-preference school. For integrated schools, the percentage was broadly in line. Across all sectors, it was 84.5%. For integrated schools, it was 84.1%.

The number of those who were not selected at first preference but were subsequently placed in an integrated school is a further 1.52%. On the whole, that is therefore well in excess of 85% of children who applied to an integrated school as first preference and who got a place in an integrated school. It is therefore a slightly higher percentage than that for the whole cohort.

The Chairperson (Mr Lyttle): OK. Perhaps you can provide us with that data in detail.

I guess that that answers my next question to a certain extent. You are basing demand on applications. One can apply only to a school that exists. How do you assess parental choice and demand for educating children together or for integrated education? How do you assess the extent to which the Department of Education is meeting that demand?

Mrs Scallon: I will take that one, Chair, if you do not mind. As Alison has already said in her briefing, change in any school or, indeed, the creation of any school, as I outlined in a previous Committee briefing that I attended, comes from a grassroots level. The demand comes from the ground up through the area-planning local group. For integrated education, it comes through NICIE. NICIE works with communities on the ground and brings that evidence of demand to the area-planning local group, which then takes collective decisions that go up through the area-planning working group. It devises the annual action plan, which feeds into the strategic area plan and the strategic level group, which is the area-planning steering group. NICIE is represented at all those levels of area planning.

I will give you some figures on available places in integrated schools. I will use last year's figures, if that is OK. I could use this year's, but they are only preliminary figures, so I would rather go with last year's, which are finalised, official statistics.

Last year, in primary schools, we still had 1,446 available places. We had 1,377 available places in integrated schools at post-primary level. At nursery level, we had 67 available places. Across the board, we therefore had almost 3,000 available places in integrated schools last year. This year, those figures are slightly lower, but not by much. We are still at around the 3,000 mark for available places, but those are preliminary figures that will not be finalised until the school census.

For additional places year-on-year, from a school admissions point of view, we look at demographic pressure in an area. That process is twofold. We go out before the post-primary transfer process to all schools and give them the opportunity to apply for additional places, and that is based on demographic pressure in a sector. If there is demographic pressure in the integrated sector, and schools perceive that coming, they will apply for additional places. At the other end of the process, schools can come to us for a temporary variation (TV) in the event that they are oversubscribed, and

the temporary variation policy is child-centred rather than in the interests of individual institutions. If an integrated school comes to us for a temporary variation, it will, by and large, be granted if there are no other available places in the integrated sector within a reasonable travelling distance. In 2021, 100% of TV requests for additional year 1 places at integrated schools were approved, while, at post-primary level, 89% of requests were approved, which equated to around 118 additional places. The proportion of requests approved across all sectors was only 54%, so the 89% approved at post-primary shows that there were still available places in the integrated sector for those children.

The Chairperson (Mr Lyttle): OK. If I want to attend an integrated school in my constituency, I should start it myself.

Mrs Scallon: You can apply to a school in your constituency.

The Chairperson (Mr Lyttle): An integrated school?

Mrs Scallon: Yes.

The Chairperson (Mr Lyttle): OK. May I —?

Mrs Scallon: Sorry, Chair. May I come in there? Our schools do not have those geographical cut-offs. As you know, children move across boundaries, and some children travel far and wide, beyond parliamentary constituency boundaries, so there will be integrated schools that you could apply to within a reasonable travelling distance from your home.

The Chairperson (Mr Lyttle): OK. When did the Department of Education start funding NICIE to promote integrated education?

Ms Chambers: From its inception, Chair. That has always been part of its role. There seems to be some misunderstanding about its role to promote integrated education. It has always had that role.

The Chairperson (Mr Lyttle): Has it always been funded to do that?

Ms Chambers: Yes.

The Chairperson (Mr Lyttle): OK.

Mrs Shirley Sweeney (Department of Education): It is part of its management statement, the financial memorandum and the articles of association, and it is part of the legislation under which the Department funds NICIE, so *[Inaudible.]*

The Chairperson (Mr Lyttle): OK. I am probably running out of time, so I will ask a couple of final questions really quickly.

The Department of Education's independent review of integrated education recommends that the Department of Education:

"brings forward legislation to place a duty on DE and the EA and ... on all other Arms [sic] Length Bodies to encourage, facilitate and promote integrated education."

Is that recommendation being dismissed?

Ms Chambers: Fifteen of the recommendations were recommended by the previous Minister to be included in the independent review of education, and those have all been included in that review. It is specifically for the independent panel to address.

The Chairperson (Mr Lyttle): That recommendation 2 is therefore included in the independent review.

Ms Chambers: Yes.

The Chairperson (Mr Lyttle): What is the point in putting it in the independent review if you are objecting to it now?

Ms Chambers: The independent review is looking at a single education system, so we wanted it to be aware of the recommendations from the independent review of integrated education. We were not able to progress a lot of those recommendations because they were legislative and policy changes, and Ministers were absent for three years. When the Minister was back in place, we went through the recommendations and decided that it was best to place a number of them in the terms of reference for the independent review. That is why the Minister states that the review is the appropriate vehicle for looking at the issues.

Mrs Sweeney: It is also the case that the independent review will look across the whole education sector. As Alison says, that recommendation, amongst the range of recommendations linked to legislation or significant policy change, needs to be looked at in whole in order to determine what an overall education system should look like here.

The Chairperson (Mr Lyttle): OK. I had better bring in other members.

Mr Sheehan: Thanks to the officials. I want to ask a question about Irish-medium education, although I do not want to bring us down a rabbit hole. I want to see what impact the Bill, if passed into law, would have on the Irish-medium sector. In your opening presentation, you said that it would have a significant impact on it. In your answer to Chris, you said that there are 3,000 places available in integrated schools. Can you tell me how many places are available in the post-primary Irish-medium sector?

Mrs Scallon: Pat, I am sorry, but I do not have that information in front of me. I do not want to mislead anybody, so may I come back to you? I know that the figure is small, if there are any places at all available: I will say that. I know that a lot of Irish-medium post-primary schools are full and oversubscribed, but I will come back to you with an exact figure. I will try to do that before the end of the session.

Mr Sheehan: Thank you. Your colleague said that, if the Integrated Education Bill were passed, it would have a significant impact on the Irish-medium sector. Can one of you explain what the impact would be?

Ms Chambers: Clause 7 requires every new school to be considered as an integrated school first, except in exceptional circumstances. We would therefore not be allowed to take into account the vacant spaces or demographics in an area. All the education bodies that are listed in the Bill would have to look at integrated education first, so there would potentially be an impact on the Irish-medium sector and on our statutory duty to encourage and facilitate Irish-medium education.

Mr Sheehan: OK. When Kellie Armstrong spoke to her Bill, she told us that certain criteria mentioned in it should not be used as reasons to presume that every new school would be an integrated school. She said that that would not affect the Irish-medium sector. Given that the sector is not mentioned in the Bill, however, what impact would that have?

Ms Chambers: The Bill does not mention Irish-medium education. That is one of the problems. If the Bill is not to have an impact on the sector, the sector should be mentioned in the Bill. The way in which the Bill is drafted affects every education sector.

Mrs Sweeney: One of our concerns is that the Bill may not be intended to affect Irish-medium education but, in reality, if it is passed as it is, it absolutely will.

Mr Sheehan: OK. Thanks for that. Can you advise us on the Bill's financial implications? If there were a statutory duty to promote one specific education sector over another, what would the financial impact be on other sectors?

Ms Chambers: It is difficult to put a number on that at the minute. There would be a range of impacts, including the statutory duty to promote and the fact that every body listed in the Bill would have to consider integrated education in all its policies and strategies. If the Bill passes in its current form, there will be a significant impact on all the Department's policies, procedures and strategies. As I said in my opening address, it will have an impact on area planning and the strategic area plan. The

financial impact is difficult to quantify. There will definitely be judicial reviews if the Bill passes in its current format. We expect the other sectors to bring challenges if every new school is supposed to be an integrated school. You may also have parents bringing forward judicial review challenges if, as an unintended consequence of the Bill, they cannot find an integrated space. The judicial review process is very expensive.

Mr Sheehan: OK. In terms of —.

Mrs Sweeney: Apologies. It will impact in so many ways. If we are to promote and deliver the meaning of promotion, as set out in the Bill, in order to meet integrated demand, no cost to the public purse can be considered in meeting that demand. Therefore, whether a school in which an integrated place is sought has the physical capacity, the teaching complement or any ability to facilitate those additional pupils cannot be taken into consideration.

Mr Sheehan: OK. Thanks for that. You touched on the legal implications in the briefing document. Can you go into some more detail about the potential legal implications of, in particular, the planning process and the proposed new definition of integrated education? Thanks.

Mrs Scallon: From an area-planning point of view, if the Bill were to pass in its current form, the statutory development proposal (DP) process could result in legal challenge from the integrated sector itself, if it feels that it has not been appropriately consulted or, as the Bill sets out, elevated above all other sectors, and from all the other sectors on the presumption that any new school would be an integrated school. There is potential for more legal challenge from parents if parental preference is not planned for in the way that it normally is across all sectors.

If all new schools become integrated by default, what does that mean for, for example, three Catholic maintained schools that have come through a very long journey on area planning and have brought forward a proposal to combine and amalgamate to form either a new maintained school or a voluntary grammar school? If that school were to be integrated, there would be potential for a challenge on the grounds that the development proposal process had not been followed. There is therefore quite a large potential for legal challenge across the board and from parents as well, if parental preference for a different sector is not being met.

Mr Sheehan: OK. Thanks for that.

The Chairperson (Mr Lyttle): How do you measure parental preference?

Mrs Scallon: How do we define parental preference?

The Chairperson (Mr Lyttle): Yes. How do you assess the parental preference in an area?

Mrs Scallon: The Bill does not mention preference. It mentions demand, and that is undefined in the Bill.

The Chairperson (Mr Lyttle): How does the Department define it?

Mrs Scallon: OK. For the temporary variation policy, we understand "parental preference" to be for the sector as opposed to, as Alison said, having unfettered choice for an individual school. We look at four sectors. We look at denominational, non-denominational, Irish medium and integrated. That is how we interpret parental preference. If you have applied to an integrated school, we will look only at other integrated schools with available places that are within reasonable travelling distance. Likewise, if you have applied to a Catholic maintained school, we will look at all Catholic maintained schools, grammar and non-grammar, within a reasonable travelling distance. That is what drives that policy.

The Chairperson (Mr Lyttle): So, it is purely on applications? There is no community consultation or engagement with the community to try to assess what the demand is, aside from the demand for what already exists?

Mrs Scallon: That is the temporary variation policy from a school admissions point of view. From an area-planning policy point of view, as I said at a previous Committee meeting and earlier today, each of the sectors and sectoral body representatives is involved at all levels of the area-planning

structures, which, as Alison said, have been carefully crafted over the years to ensure that all sectors have a voice at all area-planning levels. As I said, for the integrated sector, that comes from a grassroots level. It is represented by NICIE at the area-planning table. Initially, when proposals are brought forward, that will come from a community voice. Then, when it goes through the statutory development proposal process, we take two more consultative elements to that process to listen to the community voice.

The Chairperson (Mr Lyttle): Recommendation 8 of the independent review states:

"That the EA carries out an in-depth and individualised audit of demand for places in existing integrated schools."

That has not been accepted or implemented either, then, no?

Mrs Sweeney: That is among the recommendations to be considered through the independent review.

The Chairperson (Mr Lyttle): OK, that, too, is kicked down the road.

Mr McCrossan: Thanks to our witnesses for that interesting presentation.

You say that the Bill places a conflict between the definition in the Bill and the existing statutory requirements for controlled integrated schools in particular. Can you please expand on that?

Ms Chambers: Within the Bill itself there is an omission in that controlled integrated schools are not included when we look across all of the legislation, so they, potentially, will be outside the Bill. There is also an aspect of the Bill in the new definition and the four elements of that, that existing integrated schools may not comply with that, so there are technical difficulties with the way that it is written.

Mr McCrossan: OK, thank you. Also, now that we have the first maintained school transformed, could legal problems with definitions emerge here?

Ms Chambers: Potentially.

Mrs Sweeney: There could, potentially, be an issue with any existing integrated school.

Mr McCrossan: OK, fair enough. I have a number of pointed questions. You tell us that the Bill amends some existing statutory provisions but not others, with a resultant impact of conflict with existing legislation. Can you please specify the potential problems that you see there?

Ms Chambers: As one example, the general duty under clause 6 requires the education bodies in all their planning and strategic planning etc to "include provision for integrated education". That includes the EA, the Council for the Curriculum, Examinations and Assessment (CCEA), the Youth Council and CCMS, so a decision under clause 7 for a purely Catholic school would be in breach of clause 6, thereby bringing CCMS into a bit of difficulty. That is just one example where there is an issue.

Mr McCrossan: OK, that makes sense. You tell us that the Bill presents the potential for existing integrated schools to lose their status. What would happen to such a school if that were to happen? Is there a plan to deal with it if it does indeed happen?

Ms Chambers: That is why I referenced the appetite for judicial reviews going forward, because the Bill lacks clarity. If existing integrated schools have to meet the four new objectives within the new definition, and they do not, I think that the only way to test that will be through judicial review.

Mr McCrossan: OK. Mr Justice Treacy's ruling was that integrated education was a stand-alone concept. Could the redefining of "integrated education" as set out in the Bill have the potential to replace or change that concept?

Ms Chambers: Yes, it will overtake that.

Mr McCrossan: So, there is a difficulty there. OK, thanks for your short answers. I hope that the Chair will indulge me slightly.

Your written submission informs us that the Bill has the potential to dilute what integrated education has stood for since its inception. Can you expand on that important issue, please?

Ms Chambers: That is a reference to the fact that a lot of schools other than integrated schools may be able to meet the new wider definition and thereby declare themselves as integrated schools. The only way to test that is through the JR process. That is where I foresee one issue.

Mrs Sweeney: Absolutely. If the Department has a duty to promote the integrated sector, you can see the appeal for existing non-integrated schools to state that they meet the new definition as it is applied, which, as Alison said, does not currently apply to the legislation governing controlled integrated schools. The likelihood is that there would then be schools coming forward. However, the dilution point relates to the fact that they are not actually going to do anything differently from what they currently do, but they will meet that broad requirement and therefore be capable of being deemed an integrated school for the purposes of this Bill. That will simply dilute what integrated education has meant and the whole process of transformation, which is a very committed process.

Mr McCrossan: Are you telling us that it would be possible, under the Bill, to have an integrated school without any representation from one of the two main elements of our community?

Mrs Scallon: There is nothing set out. At the minute, Daniel, as you know, we have a process for any significant change to a school. Any such change comes through the statutory development proposal process, but there is nothing in this Bill that says how a school would be redesignated. Therefore, we would have no way of exploring whether those intentions are there, real, present or evidenced. It negates what is there, in transformation, where, under the development proposal process, we look at the intentions of the school and at the transformation action plan, changes to the board of governors and intentions for the future, as well as sustainability. There is nothing in this Bill that allows us to do that.

Mrs Sweeney: It is definition by dint of its existing pupil population, where there may well be a number of schools with a reasonable mix of Protestant and Roman Catholic, others from different cultures and religious beliefs and none, socio-economic deprivation or not, or different abilities.

Mr McCrossan: I have a final point. I appreciate your direct answers. Is there a suggestion, then, that non-selective post-primary schools would be open to judicial reviews for streaming, or even banding, pupils?

Mrs Scallon: Potentially.

Mrs Sweeney: There is that potential risk.

Mr McCrossan: Where would this leave integrated education, which has special units, such as language units, that support children who may or may not be statemented, for instance? Could there be legal challenges here as well?

Mrs Chambers: Yes, potentially.

Mr McCrossan: OK. Thank you Chair for that. I appreciate it.

The Chairperson (Mr Lyttle): Thanks, Daniel. Is the Department able to provide us with the legal advice on which those positions are based?

Ms Chambers: We are still working with the Office of Legislative Counsel (OLC) and the Departmental Solicitor's Office on that, Chair, but we will, in due course, provide suggested changes to every clause in the Bill, if that is something that you are willing to look at.

The Chairperson (Mr Lyttle): Will you provide us with the legal advice that you base those positions on?

Ms Chambers: That is subject to legal privilege. We can certainly summarise.

The Chairperson (Mr Lyttle): OK. Thank you.

Mr Butler: Thank you, Chair. I enjoyed listening to Daniel, there. His background obviously came to the fore, given his line of questioning.

Having listened to you and read through the material, it is fair to say that the Department has serious reservations about the Bill. However, given that there are instabilities in government in Northern Ireland, historically and even at the moment, can you give us an update on the independent review of education? Obviously, the Department puts great store by the independent review. You have even stated here the potential ability of that review to pick this piece up, maybe in a more holistic way. Can you give the Committee an update on where we are with that review, what stage we are at, how long it is going to take, what power it will have and what the terms of reference and scope of the review will be?

Ms Chambers: My understanding is that the terms of reference for the independent review were made available to the Committee, but maybe I am incorrect in that. I can check. I also understand that the Minister is going to make an announcement on the review quite soon.

Mrs Sweeney: Announcing the panel.

Mr Butler: How long will it run for?

Mrs Sweeney: It is expected that work will commence as soon as the panel is announced. I do not have the detail here.

Ms Chambers: We can find that out for you.

Mrs Sweeney: We can come back with the precise details. Timescales are set out within which it will report. That is without any recourse to the political institutions' position.

Mr Butler: I am not sure that it would do, insofar as some of the previous recommendations that were mentioned could not be implemented because of the lack of ability to make legislation, so some of the recommendations could require legislation and, if we do not have stable government, obviously that is going to be a difficulty.

Mrs Sweeney: Apologies. I simply mean that the actual review, with the work to take that forward, will continue with the recommendations. Apologies if I misrepresented that. I did not mean to.

Mr Butler: You probably did not. It is probably just how I took the information in, to be fair. That gives me some comfort. I spoke on this Bill. Whilst I said that I could not support it in the manner in which it is drafted, for a number of the reasons, which you guys have outlined, I see some benefit in parts of it.

I think that the piece that you picked up on regarding the preference that the sector would get is really important. Perhaps an even playing field is where we should be on that.

It was interesting that you touched on empty seats. I have a question on the breadth of that, regarding empty desks across the full sector. What does the proportionality of empty desks in the integrated sector look like?

Mrs Scallon: Robbie, we refer to that as "available places", not "empty desks".

Mr Butler: OK.

Mrs Scallon: Sorry for getting hung up on terminology. We do not fund those places because there are no children in them, so it is referred to as "available places".

On the previous occasion, I gave a briefing on the full number of available places. That has decreased quite a bit over the past 10 years and will decrease further with the recent downsetting. I can send you

those figures directly, and they are available on our website. In 2020-21, in total, there are 53,040 available places across our system.

Mr Butler: Can that be broken down by sector so that we can have a look at that?

Mrs Scallon: These are figures for last year, 2020-21. We will not get next year's figures until we get the school census. In the controlled sector, there are 23,009 available places. That is across all phases. In the voluntary sector, there are 1,240 available places. In the Catholic maintained sector, there are 25,191 places. In the "other maintained" category, there are 710 places. In the integrated sector, which includes controlled and grant-maintained integrated schools, there are 2,890 available places. That gives a total of 53,040.

To answer Pat's query from earlier, I have the figure. There are 26 Irish-medium available places at post-primary school. We cannot count the units because that sector does not have its own separate admissions number. All TVs that Irish-medium schools asked for this year were granted.

Mr Butler: I have only one further question, and thanks for coming back to Pat on that. In your presentation, you mentioned the impact on the current integrated sector, and that is very interesting. Maybe it is unfair to ask you guys — I should probably ask the Bill sponsor — about the level of consultation that went on with integrated schools. Are you guys getting any feedback through the Department with regard to integrated schools, particularly post-primary schools, on their appetite for the Bill?

Ms Chambers: Not directly. My understanding is that the consultation took place in 2016, and it is not my understanding that that was refreshed. On the impact on existing schools meeting the meaning of "integrated education", which is set out in clause 1, when they primarily have a Christian ethos, that is where I am talking about the potential dilution of the ethos that exists with those schools. In addition, it may be difficult for them to be able to meet the four separate new clauses. Therefore, I expect that they will have a view on this.

Mr Butler: I appreciate that. Thank you so much.

Ms Brogan: Thanks, everyone, for attending this afternoon. It is clear that there is a range of views and opinions on the Bill, but I think that the general principle of children and young people being educated together is well supported, and we should take the time to consider that properly. I know that good work has been undertaken previously on this. Can the officials please provide an update on the status of the 11 recommendations that were made from the Committee review into shared and integrated education?

Mrs Chambers: Is that the independent review that Colm Cavanagh was involved in?

Ms Brogan: Was there a shared and integrated education review from the Committee?

Mrs Sweeney: I am not sure. We have been working on the independent review of integrated education, which had 39 recommendations in total. I am not sure whether that is the one that you are referring to or something different.

Ms Brogan: Can I have an update on the status on those recommendations then?

Mrs Sweeney: Certainly. We have completed on recommendation 12. Recommendation 15 remains in progress, and specific financial work is going on with the Department and the Education Authority. Recommendations 12, 17, 19, 23, 24, 25, 27 and 28 are complete. Recommendation 26 remains in progress, as far as it can be taken forward because of capital restrictions and limitations. The five-year business case for the case for change remains a work in progress, and that falls into the area-planning discussions.

A number of recommendations will be taken forward through the independent review of education. That includes recommendations 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 13, 14, 16, 33, 37 and 38. Apologies if reading out the numbers is unhelpful. It takes quite a while to read that all out, but I can expand on any of the recommendations. The Department considers that recommendation 22 is within the role that NICIE is funded to undertake. There are a number of recommendations — 18, 21, 29 and 30 — that the previous Minister categorised as not to be taken forward.

Ms Brogan: Thank you. Obviously, work is ongoing on the recommendations. Finally, do you have any data or information on the projected growth of the integrated sector in the years to come? Even if this Bill is removed, what is the projected growth without complete legislation?

Mrs Scallon: I am happy to take that question. The area planners will look at projections to see what certain areas need. The projection of growth falls very much to the area-planning local groups and the area-planning working group. Certainly, from a school admissions point of view, we plan for post-primary transfer every year. We look at each sector and the cohort coming through from P7. Next year, we will be planning for two years in advance. Therefore, on a local area basis, we plan for the post-primary transfer. However, from an area-planning, long-term projected point of view for each sector, we expect those involved in area planning to be able to do that.

Ms Brogan: From your knowledge, do you expect the current demand to be met without a change in legislation?

Mrs Scallon: Earlier, I outlined the number of available places in integrated schools. While over 85% of children who applied at first preference to an integrated school got a place and 14% of children did not, there are still over 1,400 places available in integrated schools at the post-primary level.

Ms Brogan: Thank you.

The Chairperson (Mr Lyttle): Nicola was referring to the Education Committee inquiry into shared and integrated education. That inquiry reported in July 2015. One of the recommendations was that the Department undertake a strategic review of its approach to integrated education. The report stated:

"the terms of reference of which should include: the effectiveness of its actions in encouraging and facilitating this form of education in particular its assessment and treatment of parental perceptions and demand for Integrated Education in the Area Planning and Development Proposal processes; the roles of the sectoral bodies; and the relevance of minority community designation in the enrolment of Integrated schools."

Is that taking place?

Mrs Scallon: Chair, I can give some detail on the work that has taken place on the ground with area planning and development proposals. Since 2012, around 3,000 places have been added through development proposals to increase admissions and/or enrolments to integrated schools. Since 2012, 58 integrated education DPs have been brought forward: 69% have been approved; 31% were not approved.

As regards a phased analysis, we have had 17 post-primary development proposals: one to close, and 16 to establish. We have also had 12 proposals to increase admissions or enrolment, one to introduce academic selection, one for a new school, and one to transform a post-primary school. For primary, we have had 21: one for closure; one for the addition of SEN provision; two to decrease enrolment; eight to increase admissions or enrolment; one to relocate; one to change management type; and seven for transformation of primary schools from another sector, whether maintained or controlled, to integrated management type. Twenty preschool DPs have come through from the sector: 16 to open a nursery unit, and four to increase nursery provision. That is an overview of the type of development that is deemed necessary from the sector, coming through the area-planning channel.

Mrs Sweeney: The recommendation relating to reviewing all of that led to the independent review of integrated education.

The Chairperson (Mr Lyttle): Obviously, the DPs that you refer to, Janis, are brought forward by schools, not the Department.

Mrs Scallon: The Department does not bring forward any DPs. We do not have the legal power to do so. It is not set out in legislation for us to bring forward development proposals. The Minister is the ultimate decision-taker on DPs. The area-planning teams assess objectively the content of the cases for change. DPs are brought forward by the planners, who are legally bound to plan for their sectors.

The Chairperson (Mr Lyttle): Exactly. What was the outcome of the 20 nursery DPs?

Mrs Scallon: Of the 16 DPs to open, nine were approved and seven were not approved. Of the four DPs to increase nursery provision, two were approved and two were not approved.

The Chairperson (Mr Lyttle): That is only 50%. Why was that?

Mrs Scallon: We look across the board at the evidence that comes in. It was deemed that there are sufficient nursery places in the area. I can come back to you. All the proposal decisions are on our website. I can send you links to each individual proposal, and you can read those. I am paraphrasing quite simply about why plans were not approved to increase nursery provision, but I can send you that detail.

Mr McNulty: Thanks, folks. I have the words of my teammate Oisín McConville ringing in my ears: he has discussed how he did not meet a Protestant until he was in his late teens, when he was on the bus going to St Pat's Armagh. That is a similar experience to mine: I had never met a Protestant until the Abbey in Newry and Newry High had a shared sports game. We played one half of Gaelic football and one half of hockey, which was a brilliant experience. Obviously, there is a need to look at integration to help our society to move forward. The Bill's aspiration to do that is noble, and I am fully behind that aspiration. However, the sense that I am getting from you all is that the Department has gone to war with the Bill. Can you give me your perspective on that?

Ms Chambers: I do not think that the Department has gone to war on the Bill, if that is what you said; your sound is a wee bit fuzzy. We are looking at the impact of the Bill in a pragmatic and practical way across the education system, all of our arm's-length bodies and the Department. As I said in my opening address, everyone signs up to the vision of all our children being educated together. That is the ultimate aim. I hope that the independent review, although not looking to its outcome, will go some way to getting us there. There are some technical difficulties with the Bill. We need to look carefully at the impact that the Bill would have if it were to go through as it is drafted.

Mr McNulty: Thank you. Maybe my words were a bit strong. It was just a sense that I got. I know that you have come very well prepared with the information that you have presented today, so thank you for that.

This comment is made in the briefing note:

"Surveys and polls tend to show high levels of support for the concept of integrated education, but the evidence suggests that parents tend to prioritise performance over integrated ethos".

Can you expand on that, please?

Ms Chambers: That comes back to the point that, if the child is not offered a first place in an integrated school, parents tend to go to the nearest grammar school for that child, even if there are still a lot of unallocated places in integrated schools. Therefore, it is not necessarily about the integrated ethos.

Mr McNulty: OK.

"More than half of integrated schools do not have at least a 70:30 split in terms of religious background of pupils".

What does that mean?

Ms Chambers: That is just in relation to transformation. The ultimate aim is that 30% of the population will be from either the Catholic or the Protestant population, depending on what is the smaller population in the area. It depends on the context of the school. It is an ambition, not a target. At present, there are several integrated schools with relatively small numbers from the minority community.

Mr McNulty: OK. Basically, you are saying that, at present, half of integrated schools are predominantly Catholic or predominantly Protestant?

Ms Chambers: Half certainly do not achieve the 30%, but schools are given a long time to try to get to those numbers. NICIE has a role to promote integrated education in those areas to try to get the numbers up.

Mrs Sweeney: We tend to look at the work that a school is doing to achieve the religious balance and take account, which the Bill specifically precludes us from doing, of the religious demographics of an area, because that is obviously relevant to what a school can achieve. Prior to transformation, we may see evidence through the transformation action plan, which the school will work through for potentially 18 months to two years before it transforms. There will be support from NICIE and from the shared education sectoral support team in the Education Authority, drawing on experience and expertise of what other schools in similar areas have done to break down some of those barriers and build up that community support, which is very important in enabling any school of any type to survive. We try to work very positively with that to deliver on the duty to encourage and facilitate the development of integrated education. We look to see whether there are areas of concern. For example, there may be schools where less than 10% of pupils are from whichever the minority religious background is in that area. We are not going in with a heavy hammer. We are going in through the Education Authority and NICIE to ask, "What support can we provide that will improve that?". We recognise that integrated education is about educating Protestant and Roman Catholic pupils together at school. Currently, we are able to take account of the religious demographics of an area because it is a relevant factor for every school.

Mr McNulty: OK. Thank you. In the briefing paper, you point out that the wording around consultation at clause 3 alludes to:

"any function ... in respect of decisions which have no bearing whatsoever on integrated education."

Can you explain in more detail what you mean? Clause 3 states clearly:

"the provision of support and advice to the Department in its promotion of integrated education".

Mrs Sweeney: The element that you are referring to is in determining which body the Department has to consult with. It is an example of the unintended, I presume, consequence of the drafting. However, clause 3 states:

"In exercising its functions (whether or not under this Act) the Department of Education must consult".

So, it will be for every area that is coming before Committee. The Department will have to consult on a new SEN framework with a body that has as its objective the provision of support and advice in relation to integrated education. The budget and matters in relation to the emotional well-being of children are very sensitive areas across the Department. Clause 3 requires the Department to consult with that body on every single function that the Department carries out. The definition for the promotion of integrated education relates only to whichever body it is.

Ms Chambers: The explanatory memorandum suggests that that body will be NICIE. I referenced this in my opening address. NICIE simply does not have the capacity to deal with the volume of work. I think that that is an unintended aspect of the Bill that probably needs to be amended. If the Bill goes through in its current form, the Department will have to consult NICIE on every single issue of any new policy or procedure.

Mrs Scallon: We would have to consult NICIE on any and every new development proposal. That would elevate NICIE's view above all other views. The development proposal process does not elevate any view above another. It has come out of previous legal judgements in other cases that, to deal with a development proposal truly objectively, we should not elevate one party or body above any other.

Mr McNulty: You have told us that DE, in line with previous advice and judgements, does not consult with any specific group on statutory development proposals. The Bill would change that. What advice and judgements are you alluding to? What potential dangers do you see emerging?

Mrs Scallon: The development proposal process is a statutory process. The lead planning authority, the Education Authority, undertakes pre-publication consultation. I am sure that the Education Authority will come to the Committee to talk about that. The Department then undertakes a statutory objection period. Anyone can come to the Department with any views on any proposal. They may seek a meeting with us or the Minister, or they may write a letter of objection or support. We do not discriminate between those; we treat all those equally. This would lift NICIE out of the process and mean that the Department must seek a consultation with NICIE. At the minute, NICIE is fully included in the area-planning arena. NICIE, like any other body or parent, also has the opportunity to enter, at any stage, evidence that supports or objects to any development proposal.

Mr McNulty: Thank you, ladies. You have come very well prepared. There are huge learnings and lessons for us all.

The Chairperson (Mr Lyttle): Shirley, can I check that I have correctly taken up something that you said? Are you saying that it will be difficult to have an integrated school unless the religious demography of an area has some degree of mixing in it?

Mrs Sweeney: No; apologies if that is how it came across. I was referring to our current provision and looking at the religious balance of existing integrated schools. The fact is that we currently take account of the religious demographics of the area. There may be an area that is predominantly Protestant and where it is very challenging to achieve a 30% Catholic intake. We wish to recognise that and work with the school to see whether steps are being taken to continually improve it. We can recognise and allow for that. That is equally the case if it is a predominantly Catholic area and the religious balance of the Protestant intake is a challenge.

The concern relates to the fact that, under clause 7, the Department cannot take account of religious demographics in an area when looking at new schools. That elevates the issues about what the reasonable numbers are determined to be. Currently, we take account of religious demographics in an area, but that is done for the benefit of existing integrated schools and to work with them.

The Chairperson (Mr Lyttle): OK. How important are demographics compared to the ethos being one of integration?

Mrs Sweeney: We are not saying that you must have the religious demographics. We did recognise that there are challenges with that. As we have said, where a school is actively working through the whole transformation process, through its ethos and board of governors, through its curriculum, through its after-school provision, through its music and through many aspects of school life, those are crucial. That is why, when the revised transformation guidance, 'Integration Works', was written and published, we talked about —

Ms Chambers: It mentions "reasonable numbers".

Mrs Sweeney: — "reasonable numbers". We do not set specific targets, because we are not trying to make this difficult when it comes to the religious demographics of the area. However, currently, integrated education is about the education of Protestant and Roman Catholic pupils together at school. We are trying to work with schools to make sure that they actively promote that. The integrated ethos is a key part of how they do that.

The Chairperson (Mr Lyttle): OK. This is my final question. I think that all members have had an opportunity to ask questions. If anybody has not, please alert me to that. Would legislation help you to fulfil your duty in relation to integrated education and/or advance the remaining 31 of the independent review of integrated education's 39 recommendations?

Ms Chambers: I do not think so, Chair — if you are talking about this Bill becoming legislation. A lot of those recommendations are not referenced in this Bill. We take our statutory duty —

The Chairperson (Mr Lyttle): No, that is not what I was asking. I was asking whether you think that legislation would help you to advance the duty that you have or any of the recommendations of the independent review.

Mrs Sweeney: The outstanding recommendations of the review of integrated education relate to significant area-planning policy changes or legislation, which will be looked at properly in the independent review of education.

As regards how the Department delivers its current statutory duty to integrated education, we have taken as much as we can from looking at the role of NICIE, as Janis mentioned. We ensure that NICIE is round the table on area planning and able to represent the integrated sector's views. We have formalised our work with NICIE and improved the funding. We have very strong governance and accountability requirements with NICIE. We now have a shared education and sectoral support team in the Education Authority. We have revised the guidance on transformation. We are very open to continually looking to improve how we do things. We are doing that in the context of the Department, as a whole, having a duty to every child and to enabling every child to have access to education that is effective, efficient, sustainable and of a high quality. There are serious concerns about the impact of the Bill, some of which we have gone through today. No, I do not think that legislation is required at this point given that, depending on the outcome of the review of education, further legislative change is likely to come.

The Chairperson (Mr Lyttle): When were the recommendations of the independent review of integrated education first made?

Mrs Sweeney: The report was published in March 2017 for information purposes only. That was literally as the Executive had —

Mrs Scallon: Fallen.

Ms Chambers: Collapsed.

Mrs Sweeney: — fallen. The Department then worked actively on any recommendations on which work could be taken forward. I think that that has been welcomed by the sector and by NICIE. You have seen that result in specific guidance being updated to try to take account of the existing integrated schools and the religious balance, which is an example that we have already discussed.

From January 2020, when the Executive resumed, we had a Minister. We put the report and recommendations up to the Minister and, quite early on in his role — I think that it was by March 2020 or April 2020 at the latest — the Minister categorised those so that they could be considered properly and fully. For example, there is a recommendation relating to calls for Fresh Start capital to be allowed to include special schools. That is simply not possible. There are recommendations that will not be taken forward, but I think that that has all been clearly communicated.

The Chairperson (Mr Lyttle): OK. So, four years on from the review, eight out of 39 recommendations have been completed.

Ms Chambers: Quite a significant number of those would have required legislative and policy change, which require a Minister to be in place. There was no Minister in place for three of those years.

The Chairperson (Mr Lyttle): So, legislation would be required to advance some of the recommendations then?

Ms Chambers: At present, the recommendations that are deemed appropriate are being considered as part of the independent review of education. It remains to be seen whether an outworking of that review will be a requirement for primary legislation.

The Chairperson (Mr Lyttle): OK. Thanks very much for your time. It is much appreciated. Sorry: Daniel is waving his blue hand at me like there is no tomorrow. Daniel, briefly.

Mr McCrossan: Chair, I had to do that to get your attention. I know from another Committee that I am on that, sometimes, it can be missed.

Thanks very much for the information. I just want to go back to a point. I am more focused on the legalities of the draft legislation than anything else. You have identified that clause 10 presents a number of problems. Specifically, you ask why there is a need to make regulations that are already covered in primary legislation. What problems are associated with primary legislation's being amended by subordinate legislation, as is provided for in the Bill? I do not think that there is a precedent for doing that, but maybe you will confirm otherwise.

Mrs Sweeney: Sorry, just to be clear: are you asking whether we are aware of any precedent where subordinate legislation has been made in order to amend primary legislation?

Mr McCrossan: Yes.

Mrs Sweeney: No. It was a surprise to see that there.

Mr McCrossan: Yes. It does not make sense. OK.

Mrs Sweeney: It enables primary legislation to be amended through a very different procedural process.

Mr McCrossan: Can you explain the consequences of that if it did proceed?

Mrs Sweeney: It would mean that the Department could amend any piece of primary legislation without going through the full primary legislation process and the scrutiny that that requires. It would be done through regulations that were made by negative resolution. Those would be presented to the Assembly and would be made unless someone prayed against them. It is a very different route.

Mr McCrossan: It would take power away from the Assembly and give it to the Department, to be crude about it. It takes the initiative away —

Mrs Sweeney: Just to be clear: that is not a power that we seek.

Mr McCrossan: No.

Ms Chambers: It is not a power that we want.

Mr McCrossan: It would be entirely unheard of.

Mrs Sweeney: As far as we are aware, yes.

Mr McCrossan: Yes. OK.

The Chairperson (Mr Lyttle): Imagine doing things that are unheard of; that would be revelational for an Assembly and Executive, wouldn't it?

Thanks, folks. We will obviously take evidence from a wide range of stakeholders and the Bill's proposer. I am sure that the Bill's proposer will want to respond to the wide range of issues that you have raised. We, as a Committee, look forward to playing a constructive role in that regard. Thanks very much indeed for your time, folks. All the best.