

Department of Education consultation on Relationship and Sexuality Education (RSE)

20th October 2023.

The following paper, authored by DUP Education Spokesperson Diane Dodds MLA, and approved by the Officers of the Democratic Unionist Party, is submitted to the Department of Education on the subject of Relationship and Sexuality Education (RSE) in Northern Ireland as the DUP response to the DE consultation process.

Introduction

The Democratic Unionist Party believes every child should enjoy a safe and happy learning environment in which their individual needs are met, they are treated with compassion and where the wishes of their parents, carers or guardians are respected. We acknowledge that Relationships and Sexuality Education (RSE) has been a requirement of the school curriculum in Northern Ireland for many years. However, in recent times there has been growing concern in our communities, and among parents, regarding the direction of RSE, including the content of some resources.

Until now the minimum content requirements, which are permissive in nature, have afforded significant freedom to schools to decide how subjects are taught in a way that is sensitive and in line with their ethos. In practice, this means there is wide variety in how schools teach this content, with some adopting a conservative approach and others applying a more liberal interpretation of what is contained in the Education (Curriculum Minimum Content) Order (Northern Ireland) 2007.

Making it compulsory for post-primary schools to teach about abortion undermines this flexibility and endangers established practice. As a Party we object to the framing of abortion as a right, as do many parents. Bringing this topic into the classroom risks increasingly bringing parents into conflict with teachers and governors. This is compounded by the fact that this consultation does not afford parents, teachers, principals or governors an opportunity to inform the statutory guidance in respect of the delivery of new RSE minimum content, including what is deemed to be “age-appropriate, comprehensive and scientifically accurate education” in these areas. That is damaging to public confidence.

We would stress that both education generally and RSE specifically are devolved issues. They should remain in the gift of a restored Northern Ireland Executive and Assembly.

Shamefully, the regulations that give rise to this consultation were introduced at Westminster without prior consultation - in stark contrast to England, where there was not only a concurrent consultation on the draft legislation and draft guidance but also an initial call for evidence. DUP MPs vociferously opposed the regulations and forced a full vote in the House of Commons. Regrettably, the plans were approved by 373 votes to 28.

The Department of Education was expected to gauge views on the circumstances in which a parent will be able to request that their child is withdrawn from new compulsory elements of the RSE curriculum. However, in reality these circumstances are not prescribed anywhere in the consultation document. That is hugely concerning. Similarly, the DUP is deeply perturbed

by the decision to pit the rights of parents against the rights of their children in the context of Question 3. We believe the overarching duty on schools to educate children in conjunction with the wishes of their parents must be upheld in relation to RSE as in all other areas of the curriculum.

We are clear that the statutory requirements imposed by the Relationships and Sexuality Education (Northern Ireland) (Amendment) Regulations 2023 are narrow in scope and must be interpreted accordingly. They apply only to the prevention of early pregnancy and access to abortion as a subset of the range of issues engaged by sexual and reproductive rights. The DUP will resist any attempt to exploit this consultation to apply sweeping changes to RSE. We will oppose efforts to dilute parental rights in respect of existing content taught in our schools.

The DUP also strongly opposed both the CEDAW report and the Northern Ireland (Executive Formation etc) Act 2019 which are being used to justify and advance these reforms. Even as far back as 2011, an Education and Training Inspectorate Report on RSE noted that almost all of the lessons observed during the evaluation were good or better; almost a quarter (24%) were outstanding. The rate of Sexually Transmitted Infections (STI) among young people in our Province is also generally much lower than other regions of the United Kingdom. Therefore we do not agree that there is either a need or a moral imperative for the divisive reforms that are the subject of this consultation.

With this in mind, the DUP's headline position can be summarised as follows:-

1. *The Christian ethos of our schools should be protected*

- The teaching of RSE must take account of the ethos and values of our schools. The vast majority of pupils in Northern Ireland attend schools shaped by Christian teaching and values.
- Many of our schools were transferred to state control on the understanding that a non-denominational Christian ethos would be maintained.
- At the heart of a Christian ethos is belief in the dignity of every human being, respect for self and others, compassion and tolerance. Abortion is at odds with this and it is our strong view that both lives ought to matter.
- In England, RSE must be appropriate to the religious background to pupils. Schools can teach about faith perspectives within RSE. These safeguards must be provided in Northern Ireland.

2. *The rights of parents must be respected, not restricted*

- Parents are best placed to determine what is in the best interests of their child. They should be consulted on the development of all RSE materials.
- Parents, not head teachers, should have the final say on whether a pupil is withdrawn from RSE.
- A parental opt-out must be in place before the new teaching requirements take effect. It must be unfettered as is the case for RE and collective worship.

- A statutory opt-out from teaching on abortion must not prevent parents from withdrawing their child from other elements of RSE. This is already common practice across our schools.
- It is not enough to inform parents about the content of RSE. Schools must share teaching materials in advance.

3. Abortion is a moral issue and should be treated as such

- Abortion involves the taking of innocent human life. Consequently, it is a deeply contentious moral and ethical issue.
- Where political issues are brought into the classroom, there should be space for a balanced presentation of opposing views.
- How are schools supposed to teach the facts when the facts are highly contested? The consultation doesn't give us an opportunity to have our say on what is 'scientifically accurate' or 'age-appropriate.'

4. Teachers must not be forced to act against their conscience

- Teachers must not be forced to teach elements of RSE that conflict with their deeply-held personal beliefs.
- They should be able to opt-out from teaching in these circumstances.
- The consultation ignores these concerns completely and that must be rectified.

5. The role of governors should not be undermined

- The agreement of Boards of Governors, teachers and parents in developing RSE is absolutely key.
- Governors nominated by the churches served by a school have a duty to promote a concept of education that is shaped by Christian teaching and values.
- The requirement to teach abortion within RSE is therefore a direct attack on their role.

Our response to Statement 1 – Disagree

“The content of teaching and learning resources for Learning for Life and Work developed by CCEA should be factual and contain age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights, covering prevention of early pregnancy and access to abortion and these resources should not advocate, or oppose, a particular view on the moral and ethical considerations of abortion or contraception.”

Lack of consultation

Section A is framed as an opportunity for the public to shape the Department of Education's guidance on how the changes to the content of RSE imposed by the Secretary of State should be delivered. In reality, however, there is no such consultation. The Democratic Unionist Party is dismayed that the views of parents, teachers and governors are not sought on what is deemed to be *'age-appropriate, comprehensive and scientifically accurate education'* in relation to preventing early pregnancy and access to abortion. This will be left entirely in the gift of the Council for the Curriculum, Examinations and Assessment (CCEA), who, we understand, are already in the process of producing content of teaching and learning resources on these topics.

Although schools are not currently obliged to use RSE resources prepared by CCEA, some parents have voiced concern that a number of its resources, including on gender, are not balanced in their presentation of sensitive issues. There is also alarm that the CCEA RSE Progression Framework has previously been described as being aligned to UNESCO guidance, which, among other things, recommends that 5-8 year olds should learn about sex and sexuality. These factors exacerbate fears around the lack of consultation and engagement with parents, teachers and governors regarding the new guidance, which will ultimately carry even more weight than what is currently provided.

We would highlight that the primary legislation which requires this change in the RSE curriculum was introduced by way of controversial and rushed amendment which did not allow the new curriculum components to be debated by the House of Commons. To compound this, whereas the Northern Ireland Office then proceeded to consult on the development of regulations pertaining to abortion provision, it introduced the RSE regulations without any RSE public consultation whatsoever. Almost all Northern Ireland representatives who spoke, spoke against these regulations and a majority of Northern Ireland representatives voted against them.

The consultation document makes fleeting reference to CCEA having engaged with interested stakeholders; however, this is no way a substitute for a full and comprehensive public consultation on the new guidance. In England, there was first a call for evidence and then a consultation on draft regulations and draft guidance in relation to changes to RSE. The people of Northern Ireland should have been afforded no less respect, particularly given that the Government promised in Parliament that there would be fulsome consultation on the new guidance.

Never before has there been a consultation to which it will be more important to take account of the current views of the people of Northern Ireland, including those of parents, school governors, school principals etc, in the development of the guidance. The DUP believes it is imperative that the Department instruct CCEA to put any guidance or resources out to consultation. In reality, there should have been two separate consultations; one on the parental opt-out and another on the teaching guidance.

Attack on the ethos of our schools

Worryingly, the only sense in which there is any kind of consultation in Statement 1 relates to the proposal that content developed by CCEA should *'not advocate, or oppose, a particular view on the moral and ethical considerations on abortion or contraception.'* This stipulation is not actually required by the regulations but is mentioned in their explanatory notes. The Democratic Unionist Party is concerned that if implemented it would effectively require schools with a denominational or non-denominational Christian ethos to be neutral on the subject of abortion, which is simply not possible.

The controlled sector is the largest and most diverse education sector in Northern Ireland - comprising 49% of all schools across all phases - and it is characterised by a non-denominational Christian ethos. These schools were transferred to the state on the condition that such an ethos would be maintained and, as surety for that, representation on Boards of Governors was conferred and has since been maintained. As a Party, we are clear that requiring post-primary pupils to be taught about abortion, and in a way that remains silent on the need to value every human being, is an attack on Christian ethos, which not only has a corrosive impact on the minds of our young people, but creates a chilling effect for future appointments to Boards of Governors. This is because governors with deeply held religious beliefs will be under a specific duty to ensure RSE policies in their schools include teaching on access to abortion and thus violate their conscience.

In England, Section 80A (2)(b) of the Education Act 2002 requires statutory guidance to be provided with a view to ensuring RSE *"is appropriate having regard to the age and the religious background of the pupils."* This obligation is then unpacked further in the relevant guidance, granting schools the ability to teach about faith perspectives within RSE. The DUP believes it is entirely wrong that these same safeguards are not replicated in Northern Ireland. The regulations erode the rights of pupils, parents, teachers and governors with a pro-life outlook. This consultation does precious little to address such concern.

The question therefore arises as to whether this treatment is unlawful. The Secretary of State may only make regulations that could otherwise be made by an Act of the Northern Ireland Assembly. Given that the Assembly is prevented by the Northern Ireland Act 1998 from legislating in a way that *'discriminates against any person or class of person on the ground of religious belief or political opinion,'* it is difficult to see how the requirements placed on pupils, teachers and governors with a Christian ethos by the new RSE regulations respect religious freedom.

Requiring teaching to *'not advocate, or oppose, a particular view on the moral and ethical considerations on abortion or contraception'* will also remove any flexibility a school has to inform pupils about what the law says about abortion whilst at the same time teaching that there are a variety of views on the subject of the morality of abortion (and ultimately expressing a specific Church or Christian perspective.) The DUP is strongly opposed to this approach. It is possible that for many schools who wish to provide RSE teaching in line with their ethos, the most visible and toxic impact of these reforms will not be the inclusion of abortion on the curriculum per say but rather the fact that these and related issues cannot be

taught in a way that is sensitive, balanced and in keeping with a world-view that values human life.

Who decides what is scientifically-accurate?

The suggestion that RSE must not *'not advocate, or oppose, a particular view on the moral and ethical considerations on abortion or contraception'* implies that there is a settled view within science and across society about the practice of abortion. In truth, this is a deeply contested moral and ethical issue. If schools are prevented from advocating or opposing a certain view on the ethical considerations of abortion, pupils will not receive a balanced and informed understanding of these issues. It will simply normalise abortion.

As noted previously, this consultation does not seek views on what is deemed to be *'age-appropriate, comprehensive and scientifically accurate education'* in relation to preventing early pregnancy and access to abortion.

Such is the strength of our belief in the sanctity of life, the DUP does not believe access to abortion should be presented as a legitimate response to pregnancy in our classrooms at all. However we are also clear that if such an outcome is imposed on our schools, what is deemed scientifically accurate must encompass an understanding of competing opinion on a range of issues, including the question of when life begins, the capacity of a foetus to feel pain, the potential risks of abortion - including post-abortion mental trauma - and the risk of premature birth in subsequent pregnancy. It would be incongruous and unacceptable to require schools to teach about the availability of abortion but not what it entails - the deliberate ending of innocent human life.

In practice, if schools and the external providers are denied the opportunity to inform what is deemed scientifically-accurate in respect of abortion - because that is left in the gift of CCEA - these reforms will simply create a vacuum that will be filled by sectoral bodies and activists keen to impress upon pupils their own 'facts' in RSE.

The DUP would also stress that any teaching about access to abortion must be alongside teaching about the availability of all other options, including having the baby and adoption. This is crucial for any semblance of balance. The regulations are narrow in scope and Statement 1 would not fetter a school's ability to advocate a particular view on the moral and ethical considerations of options other than abortion and contraception. This outcome should be respected by the Department and CCEA going forward.

Absence of conscience protections for teachers

The DUP does not believe teachers should be forced to choose between acting in violation of their religious and philosophical convictions and beliefs or facing disciplinary action, a glass ceiling on promotion or having to resign from their position altogether. We find it unacceptable that neither the regulations, nor the content of this consultation, addresses the need for comprehensive and operable protections allowing post-primary teaching staff with a conscientious objection to recuse themselves from delivering new elements of RSE without discipline or disadvantage.

Our response to Statement 2 – Agree

“Parents/carers should be informed about the specific nature and content of the age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights, covering prevention of early pregnancy and access to abortion.”

An unfettered parental opt-out must be provided

The Democratic Unionist Party agrees that parents/carers should be informed about the specific nature and content of the new compulsory elements of RSE. However, this does not go far enough. There should be a clear statutory duty on schools to share teaching materials in advance. Ensuring that parents know when their children are being taught about RSE and what is covered will also enable them to complement teaching in a sensitive and informed way through conversations at home. Research suggests that children are less likely to engage in risky sexual activity if this engagement takes place.

Additionally, the Department must ensure that schools are prohibited from entering into any contracts or agreements with external groups which prevent them from ensuring parents are properly aware of the materials that are being used to teach their children.

It is our view that parents must be the starting point, not the end point in relation to the design of the new elements of the RSE curriculum. Parents are best placed to determine what is in the best interests of their child. They should be consulted on the development of all materials to the extent that being informed of final materials being used in the classroom is a reasonable expectation and part of a ‘no-surprises’ policy. Resources must be the product of a co-design process with parents.

It follows, therefore, that where a parent does not regard the final curriculum or classroom resources to be in keeping with their deeply held religious or philosophical beliefs on these issues, they must have the right to withdraw their child. The DUP would push back strongly against any tacit view that keeping parents/carers abreast of the specific nature, content and timing of lessons can be a substitute for an unfettered and operable parental opt-out.

This consultation was intended to explore *‘the circumstances in which, at the request of a parent, a pupil may be excused from receiving the education required to be provided by virtue of Article 5(1A), or specified elements of that education.’* Yet none of those circumstances are defined in the consultation document beyond general references to making a parent aware of content and a school’s RSE policy. Whether directly or indirectly, this misses the point completely.

The DUP believes that the current statutory provision allowing parents to withdraw their child from religious education and collective worship should be replicated in law and in practice for all aspects of the new compulsory elements of the RSE. That opt-out is unfettered and parental wishes must therefore be granted.

It is found in Section 21 (5) of the Education and Libraries (Northern Ireland) Order 1986, which states that: -

‘if the parent of any pupil requests that the pupil should be wholly or partly excused from attendance at religious education or collective worship or from both, then, until the request is withdrawn, the pupil shall be excused from such attendance in accordance with the request.’

Any new opt-out must also be applicable on this basis to all elements covered by the new minimum curriculum content, rather than ‘specified elements of that education.’ Plainly, all the matters concerned in Article 5(1A) of the RSE Regulations engage deep world-view issues and values. Therefore, the right of withdrawal must equally apply across the board. It must also be in place before the revised RSE curriculum takes effect in schools.

This protection is absolutely crucial and will ensure requests for withdrawal are addressed consistently across all aspects of the RSE curriculum at post-primary level. Although there is currently no statutory right of withdrawal in relation to elements of the RSE curriculum not addressed by this consultation, an effective right of withdrawal does already exist in convention and practice. CCEA guidance to schools is clear on this issue: -

“3.1 Withdrawal from Relationships and Sexuality Education

In Northern Ireland, parents or carers have the right to have their children educated according to their wishes. Therefore, whilst there is no legislative provision permitting parental withdrawal from sex education, schools can grant these requests on an individual basis. Schools and Boards of Governors should consider how they can support parents or carers who choose to withdraw their child from all or part of Relationships and Sexuality Education.”

The DUP believes it is essential going forward that the new statutory right of withdrawal with respect to teaching about reducing early pregnancy and abortion availability is expressly located alongside the wider effective right of withdrawal pertaining to the rest of RSE.

Our response to Statement 3 – Disagree

“The United Nations Convention on the Rights of the Child includes at Articles 1-3 and 12 the rights of the child to ‘express their views, feelings and wishes in all matters affecting them, and to have their views considered and taken seriously’ and at Article 5 ‘the rights and responsibilities of parents and carers to provide guidance and direction to their child as they grow up so that they fully enjoy their rights. This must be done in a way that recognises the child’s increasing capacity to make their own choices.’ The Department’s guidance, when developed, should consider in such instances how schools balance the rights of both children and parents/carers in implementing the regulations.”

The DUP believes it would be entirely wrong for the rights of the child to be either framed or deployed in such a way that allows schools and teachers to overrule the wishes of parents in relation to their child's attendance at RSE. Parents must have the final say.

The Supreme Court Named Person Judgement (2016) ruled that there is *"an inextricable link between the protection of the family and the protection of fundamental freedoms in liberal democracies."* It reiterates the rights and responsibilities of parents to bring up their children under the United Nations Convention on the Right of the Child (UNCRC). The UNCRC includes the following provision:

- Article 3(2) requires States Parties, in their actions to protect a child's wellbeing, to take into account the rights and duties of his or her parents or other individuals legally responsible for him or her
- Article 5 requires States Parties to respect the responsibilities, rights and duties of parents or, where applicable, other family or community members or others legally responsible for the child to provide appropriate direction and guidance to the child in the exercise of his or her rights under the Convention;
- Article 14(2) makes it clear that the State must respect the rights and duties of the parents to provide direction to the child in relation to their right to freedom of thought, conscience and religion;
- Article 27(2) emphasises that the parents have the primary responsibility to secure, within their abilities and financial capabilities, the conditions of living necessary for the child's development;
- Article 18(1) states that parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
- Article 29 states that a goal of education is that it should encourage children to respect their parents.

It is clear that any attempt to empower a child to override the wishes of their parents in respect of new RSE content would not be in keeping with these provisions, which make it clear that the role of the state is to assist and support parents in their primary responsibility to raise their children. Of course this does not, and should not, prevent the state from intervention where it is necessary to save a child from abuse and neglect but that is not what this consultation is concerned with.

Article 2 of the European Convention on Human Rights Protocol 1 makes it clear that:-

"in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching is in conformity with their own religious and philosophical convictions."

This is broadly reflected in Section 44 of the Education and Libraries (Northern Ireland) Order 1986 and, in our view, must continue to be the guiding principle in how cases in which the views of a child and parents differ.

The DUP asserts that the evolving rights of the child must not be used to limit the circumstances in which a parent/carer of a post-primary school pupil can exercise their right to request, and secure, the withdrawal of their child from some or all of RSE going forward. It would be wholly inappropriate for the state to become implicated in enabling a child to overrule parental wishes in this way.

Our response to Statement 4 – Agree

“Pupils and parents/carers should have access to an overview of their school’s RSE policy and planned RSE programme.”

We agree that pupils and parents/carers should have access to an overview of their school’s RSE policy and planned RSE programme.

Existing CCEA guidance states that *“a school’s policy should reflect the school’s ethos and should be subject to consultation with parents and pupils and endorsed by the Board of Governors.”* It would seem counter-intuitive to engage these groups in the development of the RSE policy but not make the final product available to them.

Whilst parents seek the protection that comes with the right of withdrawal, it is a right they generally hope they will not need to deploy. The more proactive and productive engagement there is between schools and parents and between the curriculum and parents, the less likely the circumstances will arise where a request for withdrawal is deemed necessary. In this sense, the DUP regards the duty to inform parents in particular of RSE policies - and make them aware of teaching materials - as an integral and interlocking part of reducing the potential for conflict.

The role that schools play in RSE must be to complement parental consent where it does exist, not to supplant or displace it. If parents are involved in the development of the RSE curriculum then they will have a greater sense of stake in it, such that, when the school informs parents on what days different aspects of RSE will be covered, they are not only likely to grant permission for their child to attend but will be better equipped to support that teaching outside of the school setting.

However, the parental right of withdrawal constitutes a critical safety valve. If a parent finds that RSE is going to be taught in a way they are not comfortable with, they must have the right to withdraw their child irrespective of the level of prior engagement with school leaders in relation to RSE content and resources.

The right of withdrawal will only be used in a minority of cases, but its presence constitutes a critical reassurance to parents who might otherwise withdraw their children entirely in favour of home education.