EXPLANATORY MEMORANDUM TO

THE RELATIONSHIPS AND SEXUALITY EDUCATION (NORTHERN IRELAND) (AMENDMENT) REGULATIONS 2023

2023 No. 602

1. Introduction

1.1 This explanatory memorandum has been prepared by The Northern Ireland Office and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 The purpose of these regulations is to make age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights a compulsory component of curriculum for adolescents, covering prevention of early pregnancy and access to abortion, and monitor its implementation.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument is limited to Northern Ireland.

4.2 The territorial application of this instrument is the same as the territorial extent.

5. European Convention on Human Rights

5.1 The Secretary of State for Northern Ireland, Chris Heaton-Harris MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Relationships and Sexuality Education (Northern Ireland) (Amendment) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument applies to education policy which is a transferred matter for Northern Ireland under the Northern Ireland Act 1998 (c.47). In October 2019, due to the absence of a functioning Northern Ireland Executive, Parliament determined by legislating in section 9 of the Northern Ireland (Executive Formation etc) Act 2019 (c.22) (NIEF Act), that the recommendations contained in paragraphs 85 and 86 of the Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under Article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Report) were implemented, on the basis that the recommendations address a human rights issue. The UK Government remained committed to restoring devolution in Northern Ireland during this time and the Executive was restored on 13 January 2020.

6.2 On 6 March 2018, the Committee on the Elimination of Discrimination against Women (CEDAW) published the CEDAW Report. In relation to education, the CEDAW Report found in particular that "young people in Northern Ireland were

denied the education necessary to enjoy their sexual and reproductive health and rights. Most children in Northern Ireland attend denominational schools, either Catholic or Protestant. Church representatives play active roles in school management boards, and the result is that relationship and sexuality education, although a recommended part of the primary and post-primary statutory curriculum of the Department of Education, is underdeveloped or non-existent since it is at the school's discretion to implement the contents of the curriculum according to its values and ethos. Where relationship and sexuality education is delivered, it is frequently provided by third parties and based on anti-abortion and abstinence ethos." And concluded that: "Those factors point to State negligence in pregnancy prevention through a failure to implement its recommended curriculum on relationship and sexuality education."

6.3 The Report also made a number of recommendations relating to sexual and reproductive health rights and services for the UK, focusing on Northern Ireland, including the recommendation in paragraph 86(d) of the CEDAW Report that the state party: "Make age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights a compulsory component of curriculum for adolescents, covering prevention of early pregnancy and access to abortion, and monitor its implementation."

6.4 On 8 February 2022, the First Minister, Paul Givan MLA resigned and as a result of the power-sharing arrangements, the deputy First Minister left office. Other Northern Ireland Ministers, including the Minister of Education remained in post until October 2022. Northern Ireland has been without a devolved Government since that time.

6.5 The Northern Ireland Department of Education ("the Department") initially provided assurances that they were implementing the recommendation in paragraph 86(d) of the CEDAW Report. However, the actions taken to date, and evidence provided have so far fallen short of ensuring the recommendation in paragraph 86(d) of the CEDAW Report is implemented. Following several years of engagement, in July 2022, the Northern Ireland Minister of Education clarified the Department's position, which is that the curriculum on Relationship and Sexuality Education is a matter for schools and teachers to decide how it should be delivered, which resources to use, and which specific topics should be covered. This position is in direct conflict with the Secretary of State's legal duty to ensure that the recommendations in paragraphs 85 and 86 of the CEDAW report are implemented in respect of Northern Ireland.

6.6 In bringing forward these regulations, the Secretary of State is exercising the powers conferred by section 9(1) and (4) of the Northern Ireland (Executive Formation etc) Act 2019.

6.7 (1)The Secretary of State must ensure that the recommendations in paragraphs 85 and 86 of the CEDAW report are implemented in respect of Northern Ireland.

6.8 (4)The Secretary of State must by regulations make whatever other changes to the law of Northern Ireland appear to the Secretary of State to be necessary or appropriate for the purpose of complying with subsection (1).

7. Policy background

What is being done and why?

7.1 As paragraph 6.1 explains, the Secretary of State has a statutory duty under section 9 of the NIEF Act 2019 to implement the recommendations contained in paragraphs 85 and 86 of the CEDAW report.

Explanations

What did any law do before the changes to be made by this instrument?

7.2 This instrument is concerned with recommendation 86(d) of the CEDAW report which recommends that the State party: "make age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights a compulsory component of curriculum for adolescents, covering prevention of early pregnancy and access to abortion, and monitor its implementation."

Why is it being changed?

7.3 The Government recognises that the issue of relationship and sexuality education in Northern Ireland can be politically sensitive. In relation to complying with the legal requirements under the NIEF Act, the overarching policy aim was to ensure that adolescents in Northern Ireland are educated with scientifically accurate information in relation to their sexual and reproductive health and rights, without advocating a particular view on the moral and ethical considerations.

What will it now do?

7.4 This instrument targets adolescents in the key stage 3 and 4 categories (11-16 year olds) for whom education is compulsory. We are not amending the curriculum for post 16 year olds in grant aided schools as education is no longer compulsory after that point. However, where a school provides education on sexual and reproductive health and rights beyond key stages 3 and 4, we anticipate that education will also be comprehensive and scientifically accurate.

7.5 From a starting point, certain elements of education, such as "opportunities to explore self-awareness, personal health and relationships" are mandatory for all pupils of compulsory school age (4 to 16), however, it is currently a matter for schools and teachers to decide how the curriculum should be delivered, which resources to use, and which specific topics should be covered. The CEDAW report recommends that the State party "make age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights a compulsory component of curriculum for adolescents, covering prevention of early pregnancy and access to abortion".

7.6 Regulation 2 of the instrument amends the Education (Northern Ireland) Order 2006 to provide for pupils in key stages 3 and 4 in Northern Ireland to receive relationships and sexuality education in accordance with recommendation 86(d) of the CEDAW Report. The instrument inserts the following wording after Article 5(1), Article 5(1A) "The curriculum for every grant-aided school shall, in relation to key stages 3 and 4, include age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights, covering prevention of early pregnancy and access to abortion."

7.7 Regulation 3 of the instrument amends the Education (Curriculum Minimum Content) Order (Northern Ireland) 2007, to ensure that the curriculum includes that pupils "Receive age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights covering prevention of early pregnancy and access to abortion" under Part 5 and Part 6 of Schedule 2 (Specification of Minimum Content).

7.8 The Department of Education has made some progress on this issue, and has been working with the Council for the Curriculum, Examinations & Assessment (CCEA) on a Relationships and Sexuality Education Progression Framework. CCEA has undertaken significant stakeholder consultation on the framework. We assess the Framework can be updated to reflect the CEDAW recommendation. Article 10A(1) of the of the Education (Northern Ireland) Order 2006, inserted by regulation 2, places a duty on the Department to issue guidance on the content and delivery of the education (in Article 5(1A)) in grant-aided schools by 1 January 2024. This duty comes into force the day after the instrument is made, to allow the Department to progress work on issuing the guidance by 1 January 2024.

7.9 It is the responsibility of the Board of Governors of each school to ensure that a comprehensive programme of education is delivered. The Department also requires each school to have its own written policy on Relationship and Sexuality Education which is subject to consultation with parents and endorsed by a school's Board of Governors. Article 10A (3) of the Education (Northern Ireland) Order 2006, inserted by regulation 2, places a duty on the Board of Governors and principal of every grant-aided school to have regard to guidance issued by the Department.

7.10 During the process of developing the policy proposals, we considered the comparisons between how Relationships and Sexuality Education is delivered in other parts of the United Kingdom, and how implementing this policy would be received by schools, pupils and parents in Northern Ireland. Recognising the sensitivities, a ministerial decision was taken that parents should have the opportunity to excuse their child/children from receiving the education required, or specified elements of that education, relating to age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights, covering prevention of early pregnancy and access to abortion.

7.11 Section 9(4) of the NIEF Act requires the Secretary of State to "make whatever other changes to the law of Northern Ireland appear to the Secretary of State to be necessary or appropriate" to implement the CEDAW recommendations. Article 10A(5) of the Education (Northern Ireland) Order 2006, inserted by regulation 2, places a duty on the Department to make regulations about 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. Timing for the Department to make regulations about the circumstances in which a pupil may be excused from receiving education on the updated curriculum is a matter for the Department. There is no guarantee this will be in place by January 2024, the point at which the Department is under a duty to issue guidance to schools on the content and delivery of the updated curriculum. This may attract criticism from faith-based schools, and some teachers and parents. However, it is our assessment that education should be delivered in a way that informs children of contraception, the legal right to an abortion in Northern Ireland and how relevant services may be accessed, without advocating a particular view on the moral and ethical considerations. We also assess

that there will need to be a period of implementation, and consultation by the Department with parents and teachers will be key to providing reassurance.

7.12 The CEDAW recommendation requires the Government to monitor the implementation of the required education. We undertook engagement with a range of statutory and non statutory organisations who have responsibilities, duties or an interest in Relationship and Sexuality Education. Regulation 4 of the instrument places a duty on the Department to publish a report on the implementation of relationships and sexuality education in grant-aided schools, and consult with the Equality Commission for Northern Ireland; the Northern Ireland Commissioner for Children and Young People; the Northern Ireland Human Rights Commission; and any other persons the Department considers appropriate. The Department must also lay the report before the Northern Ireland Assembly.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument inserts Article 5(1A) and Article 10A into the Education (Northern Ireland) Order 2006, and amends Part 5 and Part 6 of Schedule 2 to the Education (Curriculum Minimum Content) Order (Northern Ireland) 2007.

9.2 These amendments, save for the requirement on the Department to issue guidance which comes into force earlier, come into force on 1 July 2023, once the 2022 school year has concluded, and in preparation for delivery during the 2023 school year.

10. Consultation outcome

10.1 There is no legal requirement to conduct a public consultation.

10.2 During the course of developing the policy, we engaged with a range of stakeholders and statutory organisations to ensure the aims of the policy were met.

11. Guidance

11.1 The regulations place a duty on the Department to issue guidance on the content and delivery of relationships and sexuality education in grant-aided schools by 1 January 2024. The guidance must be issued with a view to ensuring that—

(a) pupils receive education on sexual and reproductive health and rights, including prevention of early pregnancy and access to abortion, and

(b) the sexuality education received by pupils is age-appropriate, comprehensive and scientifically accurate.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies. The regulations stipulate that the Department must produce a report on the implementation of relationships and sexuality education by 1st September 2026, and specifies certain bodies which must be consulted. The report must be laid before the Assembly.

12.2 There is no, or no significant, impact on the public sector.

12.3 An impact on the public sector is expected as the Department and will come under a duty to issue guidance on the content and delivery of age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights, covering prevention of early pregnancy and access to abortion in grant-aided schools. The exact impact will depend on decisions taken during the planning of delivering on the guidance. Furthermore, schools will also be under a legal duty to deliver the updated curriculum. The collection of data, such as equality data will be an important factor during the process of implementation.

12.4 A full Impact Assessment has not been prepared for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen free text.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is in terms of the provision of Relationships and Sexuality education in line with the CEDAW report recommendation will be a matter for the Department of Education in Northern Ireland. The Government will continue to engage with the Northern Ireland Executive on this legislation when it comes into force.

14.2 A statutory review clause is included in the instrument at regulation 4(1). The clause stipulates that the Department of Education must produce a report on the implementation of relationships and sexuality education by 1st September 2026, and specifies certain bodies which must be consulted. The report must be laid before the Assembly.

15. Contact

15.1 Julie Miller at the Northern Ireland Office Telephone: 07747 564946 or email: Julie.Miller@nio.gov.uk can be contacted with any queries regarding the instrument.

15.2 Paul Flynn, Deputy Director for Constitution and Rights Group, at the Northern Ireland Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Secretary of State for Northern Ireland, Chris Heaton-Harris MP at the Northern Ireland Office can confirm that this Explanatory Memorandum meets the required standard.