

EXPLANATORY MEMORANDUM TO

The Curriculum (Circumstances in which a Pupil may be Excused from Sexual and Reproductive Health and Rights Education) Regulations (Northern Ireland) 2023

S.R. 2023 No.222

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Education to accompany the Statutory Rule (detailed above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Articles 10A(5) and 43(5) of the Education (Northern Ireland) Order 2006 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The Statutory Rule makes provision 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) of the Education (Northern Ireland) Order 2006 (as inserted by regulation 2(2) of the Relationships and Sexuality Education (Northern Ireland) (Amendment) Regulations 2023); that is to say "Article 5(1A) education" or specified elements of that Article 5(1A) education which are prevention of early pregnancy and access to abortion.

3. Background

- 3.1. The Relationships and Sexuality Education (Northern Ireland) (Amendment) Regulations 2023 ("the 2023 Regulations") made by the Secretary of State came into force, largely on 1 July 2023. Regulation 2 of the 2023 Regulations amended the Education (Northern Ireland) Order 2006 ("the 2006 Order"), regulation 3 amended the Education (Curriculum Minimum Content) Order (Northern Ireland) 2007 and regulation 4 introduced a Review provision, the effect of which is that the Department of Education (the Department) is required, by 1st September 2026, to publish a Report on the implementation of Article 5(1A) education in Northern Ireland. In preparing that Report, the Department is required to consult various entities including the Equality Commission for NI and the Northern Ireland Human Rights Commission. The Department may consult such other persons as it considers appropriate. The Department is required to lay the Report before the Northern Ireland Assembly.
- 3.2. Regulation 2(2) of the 2023 Regulations inserted the following paragraph into Article 5 of the 2006 Order:- "(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."

- 3.3. The Statutory Rule defines the above paragraph as ‘Article 5(1A) education’ and ‘prevention of early pregnancy’ and ‘access to abortion’ as ‘specified elements of Article 5(1A) education’.
- 3.4. Regulation 2(3) of the 2023 Regulations inserted a new Article 10A into the 2006 Order. Paragraphs (1) to (4) of Article 10A make provision for guidance on the content and delivery of the education required to be provided by Article 5(1A) of the 2006 Order. That guidance is required to be issued by the Department on or before 1st January 2024. It must be issued with a view to ensuring that pupils receive education on sexual and reproductive health and rights, covering prevention of early pregnancy and access to abortion and the education received by pupils is age-appropriate, comprehensive and scientifically accurate.
- 3.5. Schools are required to have regard to the guidance and the Department may revise it at any time. Paragraph (5) of the new Article 10A imposes a requirement on the Department to make Regulations providing for the circumstances in which, at the request of a parent, a pupil may be excused from receiving the education required to be provided by Article 5(1A) or specified elements of that Article 5(1A) education. This Statutory Rule provides those circumstances.

4. Consultation

- 4.1. The Department consulted on the Statutory Rule from 1 September to 24 November 2023. The Department received 13,000 responses and will publish its response in due course.

5. Equality Impact

- 5.1. An Equality Screening has been completed and is available at Relationships and Sexuality Education (RSE) Consultation Department of Education (education-ni.gov.uk)

6. Regulatory Impact

- 6.1. A Regulatory Impact Assessment has not been prepared for the Statutory Rule as it has no impact on businesses, charities, social economy enterprises or voluntary bodies.

7. Financial Implications

- 7.1. There are no financial implications resulting from the Statutory Rule.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied that this Statutory Rule is not incompatible with any of the Convention rights; is not incompatible with Community law; does not discriminate against a person or class of person on the grounds of religious belief or political opinion; and does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. Not applicable.

11. Additional Information

- 11.1. This Statutory Rule does not comply with the 21-day rule.
- 11.2. The 2023 Regulations were made by the Secretary of State. With the exception of regulation 1(3), they came into force on 1 July 2023. As a consequence, there is now in Northern Ireland an extant statutory obligation in the 2006 Order that 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 (See Article 5(1A) of the 2006 Order, inserted by regulation 2(2) of the 2023 Regulations).
- 11.3. The 2023 Regulations also amended the Education (Curriculum Minimum Content) Order (Northern Ireland) 2007 to ensure that pupils in key stage 3 and 4 ‘receive age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights covering prevention of early pregnancy and access to abortion’ (see regulation 3 of the 2023 Regulations).
- 11.4. In addition to both of those statutory obligations, the 2023 Regulations placed a further statutory obligation on the Department of Education: to have in place, by 1st January 2024, statutory guidance (See Article 10A(1) of the 2006 Order, inserted by regulation 2(3) of the 2023 Regulations). That statutory guidance is with a view to ensuring that—
- (a) pupils receive education on sexual and reproductive health and rights, covering prevention of early pregnancy and access to abortion; and
 - (b) the education received by pupils is age-appropriate, comprehensive and scientifically accurate.
- 11.5. The Department is of the view that, in light of all of the above statutory obligations, whilst there is no statutory requirement to have this Statutory Rule operational on or before 1st January 2024, the abovementioned Statutory Framework would be incomplete without the Statutory Rule being operational in time for 1st January 2024. Accordingly, given the extant statutory obligations, and the fact that statutory guidance will be in situ on or before 1st January 2024, the Department feels compelled to breach the 21-day rule and make this Statutory Rule operational for 1st January 2024.’