

Atheist Ireland

To: Taoiseach and Tanaiste,
Government Ministers,
TDs and Senators



4 May 2021

Implementing the commitment in the Programme for Government to legislate if necessary for inclusive Relationship and Sexuality Education

Dear TD,

The Programme for Government commits to make legislative changes, if necessary, to ensure inclusive Relationship and Sexuality Education in schools. These legislative changes are now clearly necessary, in light of the publication of the Flourish RSE course by the Catholic Bishops, and for other reasons that we outline here.

These legislative changes were recommended by the Oireachtas Joint Education Committee and other bodies. They involve amending the Education Act to ensure that religious ethos cannot influence children's right to objective sex education, and amending the Employment Equality Act to protect teachers from being disciplined for not upholding the religious ethos of schools.

We ask the Government to do this, and we ask TDs and Senators to support this.

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We look forward to hearing your views on this.

Yours sincerely

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1. Overview

The commitment on page 95 of the Programme for Government is to:

“Develop inclusive and age-appropriate RSE and SPHE curricula across primary and post-primary levels, including an inclusive programme on LGBTI+ relationships and making appropriate legislative changes, if necessary.”

<https://www.gov.ie/en/publication/7e05d-programme-for-government-our-shared-future/>

On 29 April 2021, Tanaiste Leo Varadkar, responding to a question from Roisin Shortall, told the Dail:

“The programme for Government is explicit on this and states that the Government will develop inclusive and age-appropriate curricula for RSE and social, personal and health education, SPHE, across primary and post-primary schools, including an inclusive programme on LGBTI+ relationships. That is the Government's policy and position, and it is what we expect to be upheld in publicly funded schools.

As things stand, all schools have to have an RSE policy and that has to be developed in consultation with school management, parents, teachers and students, as appropriate. A school's programme for RSE is developed and taught in the context of the school's RSE policy. The ethos of the school should never preclude learners from acquiring knowledge about the issues involved, but may influence how the content is treated.”

<https://www.oireachtas.ie/en/debates/debate/dail/2021-04-29/3/>

The first paragraph of the Tanaiste's statement outlines the Government's commitment as described in the Programme for Government, although it omits the part about “making appropriate legislative changes, if necessary.”

The second paragraph (which begins with “As things stand...”) outlines the current position in schools, which includes that the ethos of the school should not influence the content of the course, “but may influence how the content is treated.”

The current position (“As things stand...”) in the second paragraph does not allow the Government's commitment in the first paragraph to be implemented. If school ethos can influence how the content is treated, then children will not get inclusive sex education.

That is why the legislative changes are necessary. This was already the case, but it is even more clear in light of the publication of the Flourish RSE course by the Catholic Bishops.

2. The Current Position

The current position that the Tanaiste describes (“As things stand...”) is the policy of the Department of Education, as reflected in the following.

Section 9(d) of the Education Act states that:

“9. A recognised school ... shall use its available resources to (d) promote the moral, spiritual, social and personal development of students and provide health education for them, in consultation with their parents, having regard to the characteristic spirit of the school.”

<http://www.irishstatutebook.ie/eli/1998/act/51/section/9/enacted/en/html>

The purpose of Circular Letter 0037/2010 issued by the Department of Education in 2010 was to remind schools to develop a school policy in regard to RSE. The Circular quotes Section 9(d) though it inaccurately refers to it as Section 9(e). It also states that:

“2.2 The RSE policy should reflect the core values and ethos of the school as outlined in the school's mission statement. Spiritual, moral and ethical issues may arise when teaching

RSE. The school's RSE policy should guide teachers in the treatment of such issues, in accordance with the ethos of the school."

https://www.education.ie/en/Circulars-and-Forms/Active-Circulars/cl0037_2010.pdf

The Department of Education Resource Materials for Relationship and Sexuality Education 1998 states that:

"Schools may wish to supplement or amend these materials in order to reflect particular values set out in school policy. For example, a school may wish to emphasise that sexuality is a gift from God, and therefore would include additional resource material to reflect this dimension."

https://sphe.ie/downloads/teaching_resources/rse_junior_cycle_book.pdf

At the Oireachtas Education Committee in 2018, the Department of Education responded to questions about this from Thomas Byrne, Paul Murphy, and Catherine Martin. The Department argued that a religious ethos should not affect the content of the state curriculum, but it can have an impact on the resources used and how students 'hear' it. When asked if this distinction between content and delivery was Jesuitical, the Department agreed:

"Yes, you are right, because obviously what is taught and how it is taught run side by side with each other, but the reality is that the 1998 legislation does provide that right to schools to protect their ethos."

<https://www.teachdontpreach.ie/2020/11/religious-ethos-sex-education/>

The NCCA Report of December 2019 on the Review of Relationships and Sexuality Education (RSE) in primary and post-primary schools, states:

"While the review acknowledges that school ethos can be a source of tension and uncertainty for some schools/teachers when it comes to addressing some aspects of SPHE/ RSE the review concludes that at this point school ethos cannot be separated out from other factors that influence the teaching of RSE."

<https://ncca.ie/media/4319/report-on-the-review-of-relationships-and-sexuality-education-rse-in-primary-and-post-primary-schools.pdf>

3. The Flourish Course

This overall policy of the Department, which does not merely allow but actively encourages schools to include additional resource material that emphasises that sexuality is a gift from God, has contributed to the recent Flourish course on RSE for Primary schools, published by the Catholic Bishops, which states:

<https://www.cpsma.ie/rse-primary-programme-flourish/>

"The SPHE curriculum for primary schools determines what children will learn in terms of RSE as part of a spiral curriculum. The Catholic school must consider these topics within a moral framework that reflects the teachings of the Church."

"In delivering such a programme the Catholic school aims to provide a framework based on the teachings of Jesus Christ and reflecting the dignity of each person created in the image and likeness of God."

When discussing LGBT issues, "The Church's teaching in relation to marriage between a man and a woman cannot be omitted."

"Puberty is a gift from God. We are perfectly designed by God to procreate with him."

"Together we will say the 'Angel of God' prayer: Angel sent by God to guide me, Be my light and walk beside me, Be my guardian and protect me, On the path of life direct me. Amen."

4. Why Legislative Changes are Necessary

RSE is part of Social, Personal, and Health Education in the Curriculum. Article 42.3.2 of the Constitution states that:

“The State shall, however, as guardian of the common good, require in view of actual conditions that the children receive a certain minimum education, moral, intellectual and social.”

The Oireachtas Joint Committee on Education and Skills Report on Relationships and Sexuality Education in January 2019 stated:

“The Committee was advised that the Education Act 1998 will need to be amended because the NCCA has no legal power over how the curriculum is delivered by school patron bodies with their own religious ethos. The Committee recommends that clarity is given by the DES regarding how schools and colleges, under religious patronage, should implement a comprehensive RSE programme so that all children and young people are treated equally.”

“14. The Committee recommends that the Education Act 1998 be amended or at least reviewed, so that ethos can no longer be used as a barrier to the effective, objective and factual teaching of the RSE and SPHE curriculum to which every student is entitled.

15. The Committee recommends that the necessary legislative amendments required to remove the role of ethos as a barrier to the objective and factual delivery of the RSE and SPHE curriculums be made as soon as possible and at the latest by the end of 2019.”

https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_education_and_skills/reports/2019/2019-01-29_report-on-relationships-and-sexuality-education_en.pdf

The Citizens' Assembly on the Eighth Amendment recommended in 2017 that:

“Improvements should be made in sexual health and relationship education, including the areas of contraception and consent, in primary and post-primary schools, colleges, youth clubs and other organisations involved in education and interactions with young people.”
<https://2016-2018.citizensassembly.ie/en/The-Eighth-Amendment-of-the-Constitution/Final-Report-on-the-Eighth-Amendment-of-the-Constitution/Final-Report-incl-Appendix-A-D.pdf>

Circular Letter 0037/2010, referred to above, highlights the positive right of students to objective sex education under Article 11.2 of the European Social Charter.

“1.5 Access to sexual and health education is an important right for students under the terms of the Article 11.2 of the European Social Charter. The Council of Europe European Committee of Social Rights, which examines complaints regarding breaches of the Charter, has indicated it regards this Article as requiring that health education “be provided throughout the entire period of schooling” and that sexual and reproductive health education is “objective, based on contemporary scientific evidence and does not involve censoring, withholding or intentionally misrepresenting information, for example as regards contraception or different means on maintaining sexual and reproductive health.”
https://www.education.ie/en/Circulars-and-Forms/Active-Circulars/cl0037_2010.pdf

In their List of Issues in October 2020 in relation to Sex Education the UN Committee on the Rights of the Child asked Ireland to:

“1(c) Ensure comprehensive, age-appropriate education on sexual and reproductive health and rights, including information on family planning, contraceptives and the risks related to early pregnancy, as well as on the prevention and treatment of sexually transmitted infections.”

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fIRL%2fQPR%2f5-6&Lang=en

The UN Committee on the Elimination of All Forms of Discrimination against Women recommended in 2017 that Ireland should:

“(c) Integrate compulsory and standardised age-appropriate education on sexual and reproductive health and rights into school curricula, including comprehensive sex education for adolescent girls and boys covering responsible sexual behaviours and focused on preventing early pregnancies; and ensure that it is scientifically objective and its delivery by schools is closely monitored and evaluated.”

The UN Committee also expressed concern about:

“(c) The narrow approach towards the provision of sexuality education due to the fact the content of the Relationship and Sexuality Education (RSE) curriculum is left to institutions to deliver it according to the schools ethos and values and as a result it is often taught together with biology and religious courses.”

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fIRL%2fCO%2f6-7&Lang=en

5. What Legislative Changes are Necessary

1. Amend Section 9(d) and 15.2(b) of the Education Act 1998

“9. A recognised school ... shall use its available resources to (d) promote the moral, spiritual, social and personal development of students and provide health education for them, in consultation with their parents, having regard to the characteristic spirit of the school.”

“15.2 A Board shall (b) uphold, and be accountable to the patron for so upholding, the characteristic spirit of the school as determined by the cultural, educational, moral, religious, social, linguistic and spiritual values and traditions which inform and are characteristic of the objectives and conduct of the school, and at all times act in accordance with any Act of the Oireachtas or instrument made thereunder, deed, charter, articles of management or other such instrument relating to the establishment or operation of the school.”

2. Amend Section 37.1(a) and (b) of the Employment Equality Act 1998

“37.1 A religious, educational or medical institution which is under the direction or control of a body established for religious purposes or whose objectives include the provision of services in an environment which promotes certain religious values shall not be taken to discriminate against a person for the purposes of this Part or Part II if

(a) it gives more favourable treatment, on the religion ground, to an employee or a prospective employee over that person where it is reasonable to do so in order to maintain the religious ethos of the institution, or

(b) it takes action which is reasonably necessary to prevent an employee or a prospective employee from undermining the religious ethos of the institution.”

This second amendment is necessary to protect teachers from being disciplined where a school has a policy to implement courses such as Flourish.