

Policy

MINUTES OF THE SECRETARY OF STATE'S MEETING WITH THE NORTHERN BISHOPS AT
STORMONT CASTLE ON 5 DECEMBER 1989

PRESENT: Secretary of State
Dr B Mawhinney
Mr J H Parkes
Mr I H N Wallace
Mr D Woods
Cardinal O'Faiach
Bishop Cahal Daly
Bishop Farquharhar
Bishop Brooks
Monsignor McCaughan

IN ATTENDANCE: Miss R A Sterling

TOPIC OF DISCUSSION: The Draft Education Reform (NI) Order 1989

1. The Secretary of State greeted the Cardinal and the Bishops and invited them to follow-up their previous discussion of 9 October, which had focused on issues arising out of the Government's Proposal for a Draft Order-in-Council on Education Reform.

2. Dr Mawhinney confirmed that the amended version of the Draft Order had been laid before Parliament on 23 November. The Bishops were gratified that the provision relating to the preparation of a core syllabus for religious education had been suitably revised to take account of their previously expressed concerns and they were reasonably satisfied that the amended Draft Order provided the powers required for the Council for Catholic Maintained Schools to function effectively. However, there was considerable disappointment that the legislation as presented to Parliament, took no account of the Bishops' views on the integrated education provisions and their effect on the Catholic school system. Cardinal O'Faiach stated that the Church's legal advisers were of the opinion that in this regard the proposed legislation would discriminate against the Catholic school system and the Catholic community, and in so doing would be in contravention of the Northern Ireland Constitution Act 1973. The issues in contention were the proposed differentiation in the grants available for Catholic and integrated schools and the provisions transferring Catholic school property from Trustee ownership in the event of the school acquiring integrated status.

3. The Bishops made it clear that they had been somewhat aggrieved at the reference in Dr Mawhinney's Press Statement of 23 November to the "unwillingness of some in the community to accept the Government's assurances about the intent of the legislative provisions". Bishop Daly spoke of the complexity of legal matters and the need for the Church to be vigilant to the letter of the law proposed in order to safeguard the interests of the Catholic community. On this point, Bishop Daly argued that the obligation on Catholic parents to contribute 15% of the capital cost of providing Catholic schools was a paradox in the context of the Government's policy on freedom of "Parental Choice" and "Equal Opportunities". The fact that the Catholic Church enjoyed more control over the governance of its schools by virtue of the majority position of the Trustees on the school's Board of Governors was not disputed. But it was indicated that the church would consider relinquishing this right in return for 100% capital grant and some form of legal protection of the Catholic school ethos equivalent to that in Schedule 5 and Article 89 of the Draft Order which provided for persons appointed to the Board of Governors of an integrated school to be committed to the school's integrated ethos. In this context, reference was also made to the provision in Articles 66(2) and 88 of the amended Draft Order which appeared to the Bishops to give the Board of Governors of an integrated school an additional power of control over the school's ethos.

4. The Secretary of State assured the Bishops that it had not been the Government's intention to discriminate between integrated and other grant-aided schools on grounds of ethos. The differentiation in capital grant rates merely reflected the majority control retained by the Trustees or foundation governors in the governance of both denominational and non-denominational voluntary schools. Dr Mawhinney added that the Department had not considered it necessary to replicate the provisions in Schedule 5 and Article 89 in respect of voluntary schools because of the majority position of the Trustees on the school Board. He further explained that the word "control" had been included in Articles 66(2) and 88 of the amended Draft Order to ensure that the Board of Governors had control over all the day to day management responsibilities associated with the school and to avert some of Bishop Daly's previously expressed concerns that integrated schools might be open to manipulation by outside forces for inappropriate purposes. It was stressed that the Draft Order was intended to give integrated schools parity with, rather than precedence over, other types of grant-aided schools.

5. Bishop Daly still contended that the education reform legislation would not provide a basis for equal opportunities for the Catholic community and asked the Secretary of State to consider the proposed change in the management structures and capital grant rate for Catholic maintained schools. He also sought the Secretary of State's agreement to a joint meeting between their respective legal advisers about the constitutional implications of the draft legislation. The Secretary of State explained that the Government had thrice taken legal advice on the views expressed by the Bishops during the consultation process and had been assured that the Draft Order was not legally flawed. The Bishops were advised that legislative procedures prohibited further amendments to a Draft Order-in-Council after it had been laid before Parliament and that in the circumstances there would be no advantage in a meeting between the Government's and the Bishops' legal advisers. If the Order received Parliamentary approval, any difficulties of interpretation would be a matter for the Law Courts.

6. Dr Mawhinney expressed the hope that any anticipated problems associated with the implementation of the education reform legislation could be resolved through existing channels of communication without the need for judicial action. He assured the Bishops that the legislation contained nothing disadvantageous to the Catholic education system and explained that the question of priority funding for integrated schools' capital works was a matter of policy, intended only for a transitional period, and was not enshrined in law. The Minister's assurances were welcomed but did not entirely satisfy the Bishops who remained concerned about the effect of a change of status of even one Catholic school on the Catholic education system as a whole and the timescale associated with planning alternative provision especially when other capital works financial priorities prevailed.

Dr Mawhinney advised the Bishops that a greater proportion of the NIO budget for the incoming financial year would be allocated to "education" and that this would help to speed up the capital works programme in all school sectors. The Bishops were also advised that the amended Draft Order now required the Department to consult the Trustees of a Catholic school becoming grant-maintained integrated before determining the future ownership of the school property. This would leave the way open for the property to remain in Catholic ownership provided that a sizeable proportion of parents were still

seeking Catholic education for their children at the school and suitable alternative provision could be made for the majority of parents opting for integrated education.

7. Bishop Daly questioned the right of a simple majority of parents to take a Catholic school into integrated status against the wider interests of the parish and asked the Minister to explain why a school's existing ethos could not be protected in the Northern Ireland legislation as it was in the Education Reform Act. Dr Mawhinney explained that it would be inappropriate to take such action when the purpose of introducing grant-maintained status in Northern Ireland was to enable a school to operate as an integrated school, which would, in many cases, automatically mean a change of ethos. The Minister also pointed out that there would be no change anyway in the status of a school without the publication of a development proposal and the opportunity for public comment.

8. Notwithstanding the Government's repeated assurances about the intent and purpose of the legislation, the Bishops remained firmly convinced that it would erode the ability of the Catholic community to avail of equal rights and opportunities in the education sector. However, given the stage the legislation had now reached, no amendments could be made, but the position would be kept under review. In the circumstances, the Bishops indicated that they did not intend to issue any public statements after the meeting.

9. The Secretary of State thanked the Bishops for presenting their views and expressed a willingness to have further discussion with them on any issues arising as implementation of the reforms progressed.

Roberta Sterling

R A STERLING (MISS)

Psley

cc PS/Secretary of State (B&L)
PS/PUS (B&L)
PS/Sir Kenneth Bloomfield
Mr Parkes
Mr Burns
Mr Wood
Mr Burnett

1. Mr Hill
2. PS/Dr Mawhinney (B&L)
3. PS/Secretary of State (B&L)

MEETING WITH CARDINAL O'FIAICH AND NORTHERN BISHOPS
EDUCATION REFORMS

Background

1. Despite the amicable tone of the meeting with the Northern Bishops on 9 October (reinforced by the joint approach to the media by Cardinal O'Fiaich and Dr Mawhinney), the Bishops issued a further major statement about the Draft Education Reform Order on 8 November, which was highly critical of aspects of the proposed legislation.
2. On 10 November the Cardinal wrote to the Secretary of State requesting a further meeting. Since then the Draft Order has been laid before Parliament. The Cardinal will therefore be aware that, by implication, Government does not intend to make any further amendments to it. The purpose of the meeting is thus to permit the Bishops to reiterate their concerns and to offer them reassurance about Government's intentions.

Bishops' November Statement

3. The statement issued by the Bishops on 8 November included expressions of concern about the implications of the assessment arrangements for less academic pupils and about the implications of the open enrolment provision for certain schools. This part of the statement simply reiterated points which were made in earlier submissions and which have already been fully discussed with the Bishops (indeed the latter was the subject of specific reassurances given in Dr Mawhinney's letter after the last meeting). Quite clearly,

however, the main burden of the Bishops' concern is integrated education, which occupies the bulk of the statement's six pages. The detailed briefing attached therefore concentrates on this aspect.

4. In his letter of 10 November, the Cardinal focused specifically on two aspects which the Church views as "discriminatory", and thus, according to their legal advisers, possibly contravening the 1973 Constitution Act. These are the 100% capital grant being offered to integrated schools compared to the 85% for voluntary schools; and the possibility of school property being taken away from the trustees, ie the present legal owners, as part of a change to integrated status. Our own legal advice has confirmed that neither of these provisions is discriminatory. They apply potentially to all types of schools, both Catholic-managed and non-Catholic managed, and are not targeted specifically at any one denominational group. The Cardinal's letter suggested that the respective legal advisers should meet to discuss these points. We do not see that such a discussion is necessary or appropriate. It should suffice that we respond unequivocally to the charge of unconstitutionality and stress that Government would not in any circumstances place before Parliament a Draft Order which was at variance with the provisions of all the other legislation pertaining to Northern Ireland.

Press Statement

5. A draft press statement is attached, but its content will have to be reviewed in light of the actual discussion and any agreement with the Cardinal about the nature of the approach to the media.

6. Personality notes, provided by PAB, are also appended as requested, as are a further copy of the Bishops' statement of 8 November and a copy of Dr Mawhinney's letter of 19 October to the Cardinal.

D WOODS

30 November 1989

[PS]11178

SECRETARY OF STATE'S MEETING WITH CARDINAL O'FIAICH AND NORTHERN BISHOPS

EDUCATION REFORM ORDER : INTEGRATED SCHOOLS

Background

In spite of reassurances given at an earlier meeting, and confirmed in a letter from Dr Mawhinney, the Catholic Bishops - in a full statement issued on 8 November - expressed continued concern that 2 particular provisions of the Draft Education Reform (NI) Order may discriminate against the interests of Catholic schools.

These provisions are:-

- a. that the legislation allows for the possibility that the ownership of the property of a Catholic school acquiring Grant-maintained Integrated (GMI) status might transfer from the trustees to the Board of Governors of the new school without the consent of the trustees; and
- b. that integrated schools will receive 100% grants towards the cost of approved capital expenditure, while the rate currently applicable to Catholic schools is 85%.

General Line to Take

- Welcome the opportunity to follow-up the previous meeting of 9 October with the Cardinal and Bishops, at which matters of concern about the Draft Order were discussed in an open and constructive manner.
- Specific assurances have been given about the purpose and operation of the proposed legislation, both at the meeting itself and in a subsequent letter from Dr Mawhinney.
- Can confirm that an additional provision has also been introduced to the Draft Order to secure consultation with trustees before decisions are taken affecting the ownership of voluntary schools.

- In view of these assurances, disappointed that the Bishops should continue to feel that there are substantial differences on some issues.
- Can assure you that Government would not present to Parliament draft legislation that was constitutionally flawed; we have taken legal advice.
- Welcome nevertheless the opportunity for this further meeting: hope that it will be possible to reassure Bishops about Government's intentions.

SPECIFIC ISSUES

1. OWNERSHIP OF CATHOLIC SCHOOLS BECOMING GMI SCHOOLS

Introduction

Under present legislation, procedures whereby a Catholic school may become an integrated school may only be initiated by the trustees themselves. No Catholic schools have ever sought integrated status.

Under the new legislation, however, it will be possible for integrated status to be sought by any school in Northern Ireland (with only a few technical exceptions) following a majority vote of parents in a secret ballot. A ballot will be initiated if at least 20% of parents request it.

It is therefore theoretically possible for the governors of a Catholic school to be forced to seek integrated status against their wishes. The concern of the Bishops is that if a request for GMI status were approved by the Department, the property of the school would transfer to the Board of Governors.

Line to Take

I can assure you that if the Department of Education were to approve a proposal for a Catholic school to become grant-maintained integrated, it would consult with the Trustees before making any decision about the transfer of the property.

If the Department were satisfied after consultation that there were good reasons why the property should not transfer, it would direct that the trustees should continue to hold it.

Additional points

- Integrated schools must be given every opportunity to succeed.
- There could be particular problems with former Catholic schools. These might include:-
 - poor siting to attract Protestant parents;
 - the school may be part of a parish structure;
 - the school may have been consecrated
 - there may be a sizeable 'rump' of parents seeking the continuation of their children's education at a separate Catholic school.
- In the event of the parents at a Catholic school voting that it should become an integrated school against the wishes of the trustees, the Department would wish to consider the circumstances very carefully indeed.
- Where there was a significant number of parents of pupils at a Catholic school who sought integrated schooling, alternative ways forward could be considered, depending on circumstances. These might include:-
 - parents moving their children to an existing integrated school;
 - setting up a new school (where a group of similar minded Protestant parents existed in the area);
 - consider whether parents at a nearby controlled school might be sympathetic to Controlled Integrated status.
- Without detriment to the policy objectives, therefore, the property of a Catholic school might well continue to be held by its Trustees while other possible outcomes were examined.

SPECIFIC ISSUES

2. DIFFERENTIAL GRANT LEVELS

Introduction

There are 2 types of Catholic schools, Catholic maintained schools and Catholic voluntary grammar schools. Each type is entitled to receive 100% recurrent grants but only 85% capital building grants.

This is because all Catholic schools are in the voluntary sector, where foundation governors appointed by school trustees have an overall majority on Boards of Governors. The 'quid pro quo' for this degree of autonomy is that the trustees must raise 15% of the cost of approved building works. This applies equally to non-Catholic voluntary schools.

Integrated schools will not be voluntary schools and there will be no overall majority for any one interest on their Boards of Governors. They will receive 100% recurrent and capital grants.

Line to Take

Catholic schools are voluntary schools. As such, their trustees enjoy the right of appointment of an overall majority of the school's governors. The 85% capital grant rate recognises this degree of control which Trustees retain in the governance of their school. This arrangement applies equally to Catholic and non-Catholic voluntary schools.

Integrated schools will not be voluntary schools. Their management structures will provide no overall majority for any one interest.

I would be happy at any time to receive representations for changes in the capital grant rate and management structures for Catholic schools.

Additional Points

- Note that new integrated schools will not receive any capital grants at all from Government while they are subject to conditional financing over the first few years of their existence. New Catholic schools are entitled to receive 85% capital building grants from the outset.
- The capital grant rates payable in Northern Ireland are the same as for the corresponding school types in England and Wales.

MAIN ADDITIONAL POINTS MADE BY THE BISHOPS ABOUT THE INTEGRATED EDUCATION PROPOSALS

1. PLACE OF INTEGRATED EDUCATION

- 1.1 Integrated schools appear to be regarded by Government as intrinsically superior to all other categories

LINE TO TAKE

The purpose of the legislation is not to impose integrated schools on anyone. Indeed, far from discriminating between any schools on grounds of ethos, our purpose is to afford equal legitimacy to all parental aspirations, whether for integrated schools, Catholic schools or others.

- 1.2 Integrated education appears to be regarded by Government as a panacea for Northern Ireland's problems

LINE TO TAKE

Government has never claimed this. Indeed, we acknowledged in our Consultation Paper that there is room for debate over how far segregation in the schools system contributes to the continuation of divisions.

This is not in any way to devalue the excellent work being done in very many schools, including Catholic schools, to promote mutual understanding and cross-community contact. Indeed, considerable sums of money continue to be allocated specifically to increase the scope of such contacts.

2. ROLE OF PARENTS

- 2.1 It is unfair that a simple majority wish of parents should be able to take a Catholic school into integrated status against the wider interests of the parish.

LINE TO TAKE

Decisions about the acquisition of integrated status will be taken by the Department of Education, and only after careful consideration of all the circumstances of the case, including views and objections which may be made to a published proposal.

A vote of parents is therefore only the first step in the acquisition process, and both the participation rate and the size of the majority will be important considerations. Other views, such as those representing "the wider interests of the parish" will have every opportunity to be expressed and to be considered.

In the case of a school where a large body of parents who might be vigorously opposed to it had no reasonable alternative choice of school for their children, or indeed where other factors such as location would make it unlikely to be supported by parents from both communities, a new school might be preferable to the re-designation of an existing school.

- 2.2 Parents should also be able to vote an integrated schools back out of integrated status.

LINE TO TAKE

It would be potentially too disruptive for a school to be liable to

'to-and-fro' from one category to another. A grant-maintained integrated school will be set up as a corporate body, and could only be properly wound up after certain complex legal formalities were followed.

However, there is provision for integrated schools to be discontinued if, among other things, they cease to attract reasonable numbers of pupils from both traditions. In any such case, a proposal for the 'return' of the school to its original status could readily be made under existing school development procedures.

3. PROTECTION FOR EXISTING ETHOS OF SCHOOLS BECOMING GMI

The legislation should contain similar protection for the existing ethos of schools as there is in England when a school becomes Grant-maintained.

LINE TO TAKE

In England, the acquisition of Grant-Maintained status will have no effect on the ethos of the school. In Northern Ireland, however, the whole point of Grant-maintained Integrated status is for the school to operate as an integrated school. For some schools, this may mean a change of ethos.

Clearly protection for the former ethos would be inappropriate. However, I can give you the assurance that if the trustees of a Catholic school had good reasons why GMI status should not be granted, their arguments would be very seriously considered.

4. CAPITAL PRIORITY FOR INTEGRATED SCHOOLS DEVELOPMENT

It is unfair to give capital priority to the integrated sector.

LINE TO TAKE

The new legislation will allow more open access for parents to integrated schools. If there should be a strong initial demand, this should in fairness be given a reasonable chance to establish itself. We do not wish to impose any artificial restrictions on growth.

But this does not mean that integrated education schemes will automatically go to the head of the queue. There are well-established arrangements for allocating priorities among the many competing demands on the schools capital programme. Schemes will continue to be judged on their merits.

As for resources, the additional resources made available this year have certainly far exceeded any extra demand from integrated schools. We hope to be able to announce shortly a financial package which will further enhance capital provision in all sectors in future years.