

**Re: 'Consultation' on the role of religion in school admissions
- Proposed amendment of Section 7 (3) (c) of the Equal Status Act, 2000**

By e-mail and post

20th March 2017

Dear Sir/Madam,

In response to the 'consultation' process concerning the role of religion in school admissions, the following is the submission made on behalf of *Faith in Our Schools* [FIOS]. It is a recently formed research and advocacy group promoting the Christian vision of education as encapsulated in both the Roman Catholic and Reformed traditions.

With this submission, we are furnishing the first document prepared by FIOS, which will be formally launched, with the publication of this document, on 25th March next. This document explains the purpose of this group and its contact details. It also chronicles the progressive and systematic nature of the action by the Government and the National Council for Curriculum and Assessment to erode the ethos of Christian schools at both primary and secondary level since the establishment of the Forum on Patronage and Pluralism in 2011.

The part which the proposed amendment or repeal of section 7 (3) (c) of the Equal Status Act, 2000 plays in facilitating the undermining of the Christian ethos of these schools is set out at page five of the accompanying document. It provides that:

"An educational establishment does not discriminate under subsection (2) by reason only that where the establishment is a school providing primary or post-primary education to students and the objective of the school is to provide education in an environment which promotes certain religious values, it admits persons of a particular religious denomination in preference to others or it refuses to admit as a student a person who is not of that denomination and, in the case of a refusal, it is proved that the refusal is essential to maintain the ethos of the school".

This latest initiative is situated within the overall narrative of what has been taking place since the Forum on Patronage and Pluralism commenced in 2011. It is requested that this document and this correspondence are both read and considered as part of the one submission by FIOS.

1. The implementation of a prior and private consultation process

In the first instance, it needs to be questioned whether the Department of Education and Skills is engaged in a 'consultation' process as suggested. Submissions are invited in relation to four options concerning the legislative restriction of school admissions policies, which was announced by Mr. Richard Bruton T.D., Minister for Education and Skills, at an event organised by *Equate* on 16 January 2017.

The public consultation about these four options is, in fact, **a consultation about how to implement a prior decision**, namely that the current legislative scheme concerning school admissions policies has to be amended. This decision has already been made by the Department of Education and Skills without any public or sufficient consultation as to whether this is required. This assertion is made for the following reasons:

- (i) The results from Census 2016, which was conducted on 24 April 2016, in relation to the religious affiliations of the national population, have yet to be published. The Department of Education and Skills is intent upon removing the legislative protection of schools in the Roman Catholic and Reformed traditions to allocate places to pupils from them, when it does not have the findings of the latest national census in relation to the religious affiliations of these pupils and their parents;
- (ii) The Equal Status Act, 2000 was originally presented by the then Minister for Justice, Equality and Law Reform, John O'Donoghue T.D., before Dáil Éireann in 1999. The Act is, therefore, in law as a matter of justice and equality and not primarily as a matter of education. The question arises as to whether there has been any consultation by the Department of Education and Skills with the Department of Justice and Equality about the proposed amendment or repeal of section 7 (3) (c) of the Equal Status Act, 2000 before the current implementation process was announced by Richard Bruton T.D., Minister for Education and Skills, at the meeting convened by *Equate* on 16th January 2017;
- (iii) The importance of this inter-departmental consultation is underlined by the fact that when the Equal Status Bill, 1999 was being debated in Dáil Éireann in 1999, the current Minister for Justice and Equality, Mrs. Frances Fitzgerald, suggested amendments on behalf of the Fine Gael party. The records of the Dáil debates at that time do not reflect any criticism being made by the current Minister for Justice and Equality of the intended presence of section 7 (3) (c) in the Bill to be enacted;
- (iv) In fact, the spokesperson for the Labour Party for Justice, Equality and Law Reform, at the time that the Equal Status Bill, 1999 was being debated in Dáil Éireann was Mrs. Jan O'Sullivan T.D. Again, the entire record of this debate does not indicate any criticism being made by Mrs. O'Sullivan about the intended presence of section 7 (3) (c) in the Bill to be enacted. It is of note that Mrs. O'Sullivan then spoke in Dail Éireann on 28 June 2016 on the Equal Status (Admission to Schools Bill) 2016 as the then Minister for Education and Skills. She stated that *"The Bill being debated this evening builds on progress the Labour Party has made on Equality issues when we had the opportunity in Government recently and in the 1990's."* In 1999, however, Mrs. O'Sullivan had no criticism to make of section 7 (3) (c) of the Equal Status Act, 2000 when she spoke on behalf of the Labour Party in relation to the Equal Status Bill, 1999 throughout all of the debates concerning it in Dáil

Éireann. It would be interesting to canvass the views of Mrs. Fitzgerald or Mrs. O'Sullivan as whether this section is discriminatory now, when, in both of their views, it was not so in 1999;

- (v) The Attorney General at the time that the Equal Status Act, 2000 was enacted was Senator Michael McDowell. In the current implementation process, the Department of Education and Skills has invited legal opinions from "*people or groups who are legally qualified or who have access to professional legal advice*". As a Senior Counsel and Attorney General in 1999/2000, he must be assumed to have advised the Government that section 7 (3) (c) of the Equal Status Act, 2000 was a prudent and necessary provision. The question arises as to whether his views have been sought as to why it was deemed to be a necessary provision in the Equal Status Act, 2000 at the time of its enactment. It also arises for consideration, from a legal perspective, as to how this provision was not discriminatory in 2000 but can now be argued to be so in 2017;
- (vi) Deputy Martin Heydon addressed a Dáil question to Minister Bruton for written answer on 23 February 2017. The question was "*To ask the Minister for Education and Skills the number of primary schools here which were oversubscribed for admissions for entry to junior infants in August and September 2015 and 2016; the location of these schools by county and the figures by reference to each patron body concerned with each such school; and if he will make a statement on the matter.*" The first substantive paragraph of the reply is as follows:

"School are not required to report to my Department on the number of applicants who are refused enrolment and therefore, the information requested by the Deputy is not available."

The question then arises as to what is the information that Minister Bruton has based his decision to embark upon this implementation process, what is its quality and objectivity and from whom has he received it;

- (vii) The Register of Lobbying, maintained by the Standards in Public Office Commission, records that for the period of 1 September 2015 to 31 December 2015 *Equate* has been involved in the lobbying of seven members of Dáil Éireann and three other designated public officials. Between 1 January 2016 and 30 April 2016, it is registered as having lobbied nine members of Dáil Éireann and two other designated public officials. Between 1 May 2016 and 31 August 2016, *Equate* is registered as having lobbied ten members of Dáil Éireann, including Minister Richard Bruton and Minister Katherine Zappone, together with three other public officials. *Equate* is registered as having lobbied four more designated public officials, including one member of Dáil Éireann between 1 September 2016 and 31 December 2016. In every single entry from 1 September 2015 to 31 December 2016 the reason given for this lobbying by *Equate* is "Admission policies/School Patronage/School management/Curriculum Reform";
- (viii) In his speech given on 16 January 2017 at the event organised by *Equate*, Minister Bruton said: "*I would like to thank Michael Barron and Equate for hosting this event and for inviting me along. I have met Michael and his team on a number of occasions since taking office, and I look forward to continuing to work with them as we reform our school system.*" There is no record on the

Register of Lobbying of Minister Bruton meeting *Equate* during the period from 1 September 2015 to 30 April 2016 or from 1 September 2016 to 31 December 2016. All of these meetings, between Minister Bruton and *Equate*, prior to 31 December 2016, took place, according to the Register of Lobbying, between 1 May 2016 and 31 August 2016;

- (ix) On 22 June 2016, a letter was sent to Minister Bruton on behalf of FIOS requesting that a delegation from this group meet with him. A replying letter was sent by Mr. Seán Tansey, Private Secretary, on 27 June 2016 (Ref. 1603186 SO'B) which stated as follows:

"Thank you for your recent correspondence requesting a meeting with Mr Richard Bruton T.D. Minister for Education and Skills to discuss the newly formed group "Faith in our Schools" and the issues they are concerned with. Your correspondence will be brought to the Minister's attention and this office will revert to you as soon as possible."

No further communication has been received from the Minister's office.

The current implementation process proceeds upon the decision that section 7 (3) (c) of the Equal Status Act, 2000 must be amended. By ignoring any proper, informed or impartial consultation as to whether this should be so, this approach reveals, once again, the systematic and ongoing nature of governmental action to undermine the Christian integrity of primary and secondary schools. In the first document of FIOS, which is furnished with this submission, the proposed amendment or repeal of section 7 (3) (c) of the Equal Status Act, 2000 is explained within this context at page five thereof. This is another part of the sustained campaign to fundamentally alter primary and secondary schooling in this country so as to dismantle its religious ethos and orientation. This implementation process needs to be arrested and its partisan and non-researched origin needs to be critically evaluated. There has to be first a genuine, professional and impartial consultation process as to whether section 7 (3) (c) of the Equal Status Act, 2000 needs to be amended or repealed at all.

2. The proper basis for proceeding in relation to school admissions based upon religion

In addition to arresting this implementation process, it is suggested that a proper consultation would first identify the shared, unchanging principles upon which the question of school admissions should be considered. In order for the Minister's approach to be consistent with justice, it must at least be consistent with the following considerations:

- 1) *The right of all parents to conscientiously determine the basic type of religious (or secular) education that they believe, as a matter of conscience and integrity, is best for their children*

While, due to a shortage of alternative ethos-type schools, this right is most often infringed in the case of non-Christian parents, it must not be uncritically assumed that amendments to admissions legislation won't adversely affect the rights of Christian parents in this regard. Moreover, it would be seriously unfair to consider that "it doesn't matter" if the amendments do adversely affect the rights of Christian parents.

2) *The right of religious communities to conscientiously determine the role their religious ethos has in the life of their schools*

While, due to historical and demographic reasons, the ethos of minority religious communities stand to be most affected by potential legislative changes in the area of admissions, it must not be assumed that proposed amendments won't in time unfairly impact upon the ability of Catholic faith schools to honour and foster their distinctive ethos by inhibiting their ability to cater for the religious needs of members of the Catholic faith community. Moreover, it would be seriously unfair to consider that "it doesn't matter" if the amendments do adversely affect the autonomy rights of Catholic faith schools (whether in the short or long term).

Whatever approach is taken by the Minister, it must be able to accommodate the rights of religious persons and communities as outlined in the below case study.

Case Study

*By reason of a ban prohibiting their nearest Catholic school from giving priority of access to members of the Catholic community in the event of oversubscription, two parents are forced against their **conscience** to send their child to a school with a secular ethos.*

Furthermore, their nearest Catholic school is forced to facilitate this coercion despite knowing that these parents play an active part in the local church community and despite believing that these parents would have gladly volunteered significant time and energy to serve the school community through membership of the parents' council and other voluntary activities.

*The parents of another child, who is admitted into the Catholic school ahead of these parents' child, have no interest or commitment to religion but are glad, for **convenience** sake, to have been granted access. They would not have had any conscientious objection to sending their child to the school that the other two parents must now send their child to.*

This case study highlights that at the root of this implementation process is the triumph of convenience over conscience. It is submitted that the Minister and his advisors need to be aware that there are tens of thousands of Christian parents in this country, who sincerely wish for their children to have a Christian rather than a secular education. Motivating many of these parents is the sincere view that the increasingly secularising tendencies of our culture have a corrosive effect on the ability of parents to hand on the gift of faith to their children.

3. The four proposed approaches and the two neglected approaches

The 'consultation' document begins by citing two concerns of the Minister as indicated in the speech given by him at the event organised by *Equate* on 16 January 2017:

- it is unfair that a non-religious family, or a family of a different religion, living close to their local publicly-funded school, finds that preference is given to children, of the same religion as the school, living some distance away;
- it is unfair that parents, who might otherwise not do so, feel pressure to baptise their children in order to gain admission to the local school.

FIOS shares these concerns, even if we believe the first concern is very vaguely stated as “some distance away” and that a proposed solution to it could potentially end up working injustices in the other direction. It needs to be recognised, however, that **none** of the approaches proposed by the ‘consultation’ document address both of the Minister’s concerns. Not only that, **only one of them** (Approach 4 – Outright Prohibition) could do something substantial to address the second of the concerns expressed by the Minister, that is concerns over parents acting against their consciences when making educational choices for their children.

As the above case study illustrates, however, **Approach 4 (Outright Prohibition)** will put pressure on religious parents to send their children to a school with an ethos discordant with their religious faith. It will also undermine the legitimate autonomy of faith schools to protect their own ethos. This approach violates the conscience and educational rights of parents, as well as the religious, autonomy and associational rights of faith schools. Sub-option (ii) of Approach 4 is of no benefit to the conscience rights of religious parents. Furthermore, sub-option (ii) does little of substance to respect the ethos of faith schools since an important part of that ethos will be to make a sincere effort to accommodate the religious and educational needs of families of the same faith community. Sub-option (iii) openly discriminates against the conscience and educational rights of *Catholic* parents as well as the religious, autonomy, and associational rights of *Catholic* faith schools.

Approach 1 (Catchment Area) and Approach 2 (Nearest school rule) are vastly superior to Approach 4 but, nonetheless, it is difficult to see how they will alleviate pressure on some secular parents in certain parts of the country to baptise their children.

As it is currently specified **Approach 3 (Quota system)** will fare little better since if the quota for prioritising religious parents is set too low it will have the effect of forcing some religious parents to send their children to a secular school. If it is set too high, it will have the effect of putting pressure on non-religious parents to baptise their children. Also, it does nothing to prevent the phenomenon of ‘school shopping’.

It is necessary to mention two approaches neglected by the document, which together offer the best way to solve the difficulties under discussion:

- A. the approach of providing more school places
- and
- B. the approach of engineering greater plurality of ethos choice in certain demographics (an approach which involves the divestment of certain religious-run schools).

Unless these approaches are addressed first, then the problem of over-subscription will remain and continue under different criteria. In truth, this implementation process highlights that the order of priorities is wrong. This process is part of a systematic

campaign to undermine faith in schools but does not actually address the real need which is to provide a greater diversity of schools in a more pluralist society. Instead, this process is another step in seeking to sculpt schools into a secularist model, shorn of any Christian character and ethos, which will be of universal application.

Accordingly, for the reasons outlined above and in the document furnished with this submission, FIOS can only conclude that the oversubscription problem is being seized by opponents of faith education to undermine the integrity of faith schools. It is an agenda which the Department of Education and Skills have not critically challenged but has instead decided to implement in this 'consultation' process.

Yours sincerely,

**Signed for and on behalf of FIOS
by Patrick Treacy S.C.**

The Department of Education and Skills,
Marlborough Street,
Dublin 1.
