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FROM: Mark Mawhinney
Acting Director of Corporate Services & Governance

DATE: 13 February 2020

To: PETER WEIR MLA
Minister of Education

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PANDEMIC INFLUENZA (EMERGENCY) BILL

Issue: To seek your agreement to the relevant clauses in the Pandemic Influenza (Emergency) Bill, which we understand is to be introduced urgently to Parliament by the UK Government.

Timescale: Desk Immediate.

Financial/Resource Implications: None.

FOI Implications: It is likely that an exemption will apply to part of the information in this submission under the terms of section 35(1) of the Freedom of Information Act 2000 (information held in relation to formulation of government policy, Ministerial communications and advice by law officers).

Statutory Duties Implications: The Bill will confer new legislative powers on the Department

Presentational Issues: Press Office will use this submission if any issues arise.

Recommendation: You are invited to:

- i. note that there is insufficient time in the circumstances for the usual process to be followed to secure the consent of the Assembly to the UK Government legislating on its behalf;

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- ii. agree the content of the clauses providing:
 - a) the Department of Education with the power to direct schools to close in the event of a pandemic (Annex B); and
 - b) the Department of Health with the power to direct the closure of childcare provision is submission (Annex C); and
- iii. agree that officials may approach the Education Committee to offer a briefing, in a closed session given the sensitivity of the subject, on the content of the Bill which pertains to Education in Northern Ireland.

Background

1. The Department has been involved in the drafting of a Pandemic Influenza (Emergency) Bill for some time. It was intended that the Department would take a power to direct schools (and possibly other educational establishments) to close in the event of an influenza pandemic.
2. It was always intended that this Bill would remain drafted and only used in a state of emergency called in the event of an influenza pandemic. The UK Government is now considering using the legislation drafted in the event of the Coronavirus (COVID 19) becoming a pandemic in the United Kingdom. They have now stated that it is their intention to introduce this legislation as a matter of urgency.
3. A letter from Dr Michael McBride, Chief Medical Officer, providing public health advice on the current novel Coronavirus and the actions to be taken by public authorities, was circulated to school principals and the Department's arm's length bodies on 11 February. The letter is attached at Annex A.
4. Normally where the UK Government proposes new primary legislation that will legislate for Northern Ireland on devolved matters, the Minister responsible, after consultation with the relevant Assembly Statutory Committee and agreement by the NI Executive, brings forward a Legislative Consent Motion seeking the agreement of the NI Assembly to the UK Parliament considering that the Bill (or the relevant provisions therein contained).

5. Given the unique and urgent circumstances presented by the outbreak of the coronavirus and the potential necessity of immediate legislation to deal with it, there is not sufficient time for the usual process to be followed and, as such, the Department is limited to consulting the Education Committee and seeking urgent Executive agreement to the UK legislating on our behalf, by way of a new version of the Influenza Pandemic Bill that has been drafted specifically for coronavirus.
6. To enable the Minister for Health (who is taking the lead on this Bill in Northern Ireland) to seek Executive agreement you are required to signal your agreement to the clauses pertaining to Education in Northern Ireland. These are attached at Annex B (**Power to direct closure of schools etc in Northern Ireland**) and Annex C (**Restriction of access to childcare providers in Northern Ireland**). The drafts are presented here as standalone clauses but are likely to appear in the Bill as paragraphs in a Schedule.

Content of the Bill which pertains to Education in Northern Ireland

7. The clause at Annex B provides the Department of Education with the power to direct schools to close in the event of a pandemic. The Secretary of State for Education in the UK and the Scottish and Welsh Ministers are taking a similar power.
8. The power of direction to close also necessitates the suspension of duties on parents to ensure that their children attend school, the duty on schools to provide milk and meals, the duty of a school to admit a child in accordance with an attendance order and the duty of the Education Authority to make arrangements for the exceptional provision of education, whilst schools are closed.
9. The clause includes a specific section in relation to boarding schools, as we believe that this is the most appropriate way to ensure that when schools are closed boarding departments may remain open, should this be in the best interests of the children who board at the school. In the case of a pandemic it may be that boarding pupils are unable to travel home and their confinement in

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the boarding department may be the most appropriate way for these children to be protected.

10. The direction to close a school would be enforceable by an injunction should a school fail to comply. You are asked to agree the content of the clause at Annex B.
11. The clause at Annex C provides the Department of Health with the power to direct the closure of childcare provision. Although the provision of childcare, including early years and pre-school, is the responsibility of the Department of Education, the registration of childcare providers remains a function of the Health and Social Care Trusts under the terms of the Children (Northern Ireland) Order 1995. It therefore falls to the Minister of Health to take a power to direct the closure of childcare provision in Northern Ireland. You are asked to agree the content of the clause at Annex C.

Recommendation

12. You are invited to:
 - i. note that there is insufficient time in the circumstances for the usual process to be followed to secure the consent of the Assembly to the UK Government legislating on its behalf;
 - ii. agree the content of the clauses providing:
 - a) the Department of Education with the power to direct schools to close in the event of a pandemic (Annex B); and
 - b) the Department of Health with the power to direct the closure of childcare provision is submission (Annex C); and
 - iii. agree that officials may approach the Education Committee to offer a briefing, in a closed session given the sensitivity of the subject, on the content of the Bill which pertains to Education in Northern Ireland.

Personal Data

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Letter from Chief Medical Officer



Coronavirus ~ re
public health advice

Power to direct closure of schools etc in Northern Ireland



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Restriction of access to childcare providers in Northern Ireland



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