



Northern Ireland  
Assembly

# Research and Information Service Bill Paper

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## Education Bill

**NIAR 699-12**

The Education Bill aims to provide for the establishment of the Education and Skills Authority (ESA) and introduces a range of other provisions related to the management and governance of schools. This Bill Paper discusses the Bill and highlights a number of areas that could be given further consideration.



## Key Points

- Membership of ESA will involve a Chair and 12 members appointed by the Department, and eight political members (appointed using d'Hondt). The appointed members are to represent controlled and maintained schools and the community;
- ESA will become the **single employing authority** for all staff in grant-aided schools;
- The Bill outlines requirements for the '**submitting authority**' of the school to prepare and submit schemes of management and employment schemes;
- The submitting authority will be the Board of Governors for controlled or grant-maintained integrated schools and the trustees for voluntary schools (or the Board of Governors if the trustees so determine);
- The duty of Boards of Governors to set **school admissions criteria** is unchanged;
- The Department may produce **model employment schemes and schemes of management** and the submitting authorities must have regard to these in preparing their schemes;
- Boards of Governors have the right to refer approved schemes to a **tribunal** that will be established with powers to ensure that schemes align with the legislation and Heads of Agreement;
- The Bill introduces an entirely **new statutory function – area planning** of the schools estate. An area plan will set out an assessment of needs for schools, an assessment of current provision and proposals for meeting needs;
- The Bill introduces a **new statutory duty for Boards of Governors** to promote high standards of educational attainment by pupils;
- It also requires ESA to appoint **governors who are committed to the ethos** of the school, and in the case of Irish-medium education, to the viability of the school;
- The Bill significantly **enhances the functions and powers of inspectors**: their role is widened to include inspection of 'any aspect' of establishments as appropriate; they may inspect and report on areas such as resources and accommodation; and are required to inspect CCEA;
- It also gives inspectors **powers to inspect, copy or take away documents** and obtain access to computers or associated material; in addition, Boards of Governors will be required to publish an action plan in light of the inspection report;
- The Bill requires OFMdfM to make regulations for the **appointment of a Tribunal** by the Department to review employment schemes and schemes of management;
- Definitions are set out in the Bill for sectoral bodies.



# Executive Summary

## Introduction

The Education Bill aims to provide for the establishment of the Education and Skills Authority (ESA). This Bill Paper provides an overview of the Bill and highlights a range of areas that could be given further consideration.

## Roles and responsibilities

**Clause 2** requires ESA to contribute towards the development of children, young people and the community by ensuring the provision of efficient and effective schools, youth and other educational services. The term “educational services” aims to cover a gap in existing legislation which does not specify provision for early years. ESA is required to carry out its functions with a view to encouraging Irish-medium education.

**Clause 3** brings about a key change in the existing arrangements, in that ESA will become the single employing authority for all staff in grant-aided schools. This clause also details the “submitting authority” of schools (which will be responsible for preparing an employment scheme and scheme of management):

- The Board of Governors for controlled or grant-maintained integrated schools;
- The trustees for voluntary schools, or if the trustees so determine, the Board of Governors of the school.

In discharging their duties as a submitting authority trustees of voluntary schools are required to “*consult with and have due regard to the views of Boards of Governors*”. Consideration could be given to the weighting to be given to their views.

Subsection (4) of Clause 3 provides for Boards of Governors to refer an approved scheme to a tribunal which has powers to ensure that it aligns with the legislation and Heads of Agreement. In addition, subsection (5) states that the duty of Boards of Governors to set admissions criteria for their school is unchanged.

## Employment schemes

**Clauses 4-5** require submitting authorities to prepare and submit to ESA an employment scheme. The scheme will detail the employment arrangements for the school and set out arrangements and procedures for carrying out these functions.

**Clause 5** states that ESA must approve the scheme unless it does not comply with the requirements. The Department may, with the approval of OFMdfM, issue guidance including model schemes, and the submitting authorities must have regard to such guidance. Consideration could be given to any potential implications of these requirements, for example the use of model schemes and any implications for governors’ workload.

## Schemes of Management

The requirements for the content of schemes of management prescribed under the Bill are similar to those currently in place. The key differences relate to responsibility for preparing and submitting the scheme; the use of model schemes devised by the Department; and the opportunity to refer schemes to a tribunal.

**Clauses 33-34** require every school to have in place a scheme of management providing for the membership and procedures of the Board of Governors and the management of the school. Boards of Governors may refer an approved scheme to the tribunal for a test of compatibility with the Heads of Agreement.

Schemes must be prepared by the submitting authority having regard to the guidance and model schemes for *'particular descriptions of schools'* issued by the Department. If a scheme differs from a model scheme, the submitting authority must provide ESA with information on the extent to which the submitted scheme differs. Currently, the legislation permits standard schemes of management for controlled or maintained schools, and in practice many schools use standard schemes (devised by the ELBs or CCMS as appropriate).

Consideration could be given to a range of areas, for example:

- The basis on which model schemes will be created, for example by school management type, phase, size, urban/ rural setting or using other variables;
- The extent to which submitting authorities will be permitted to deviate from model schemes in practice;
- The potential implications of using model schemes for school autonomy;
- The duty for Boards of Governors to secure the viability of Irish-medium schools – for example, the capacity of Boards of Governors to ensure viability and the implications for governors if a school is deemed to be unsustainable.

## Area planning

The Bill introduces an entirely new statutory function – area planning of the schools estate.

**Clause 24** defines an 'area education plan' as a document, including a map, setting out an assessment of need for schools, youth services and educational services; an assessment of the adequacy of current provision; and proposals for meeting need.

**Clause 28** requires ESA to consult relevant interests in preparing, revising or revoking plans. These include sectoral bodies and providers. However subsection (3) states that this requirement does not apply *"if ESA determines that the changes to the plan for the area are not of sufficient importance to warrant the involvement and consultation"*.

Consideration could be given to a number of areas, including:

- How areas will be decided and whether plans for neighbouring areas will be considered together;
- Whether plans will take into account cross-border provision;
- What criteria and indicators will be used to determine the adequacy of current provision and what data and indicators will be used to forecast enrolments;
- Whether a rural proofing process will be carried out for area plans; and
- Whether criteria will inform what type of revisions warrant consultation.

### **New arrangements for governors**

**Clause 38** places a new statutory duty on Boards of Governors to promote high standards of educational attainment by pupils. Consideration could be given to the potential implications of this, for example:

- How '*high standards of educational attainment*' will be defined;
- Potential implications for the recruitment and retention of governors, particularly for schools facing challenging circumstances;
- What training and support governors may require to discharge this duty; and
- The implications for Boards of Governors if the educational attainment within their school is deemed to be of an inadequate standard.

**Clause 39** transfers to ESA the role of making appointments to Boards of Governors that currently falls to the Department and ELBs. This clause places a duty on ESA to consult on the appointment of governors, and to appoint governors committed to the ethos of the school. In the case of Irish-medium schools, or schools with an Irish-medium unit or stream, it must appoint governors committed to the viability of those schools or part of the school. Consideration could be given to:

- The implications of these requirements for the recruitment of governors, for example how commitment to a particular school's ethos will be defined and the process by which a person's commitment will be ascertained;
- How commitment to the viability of an Irish-medium school will be defined and demonstrated in practice;
- In the case of schools with Irish-medium units or streams, the implication of this duty for both the Irish- and English-medium parts of the school.

### **Inspections**

The Bill significantly enhances the functions and powers of inspectors of schools and providers of educational or youth services. The key changes include:

- Widening of the role to advise the Department on ‘any aspect’ of establishments as appropriate (current legislation requires advice on ‘any aspect of the curriculum’);
- **Clause 44** sets out the areas that inspectors may inspect and report on, including teaching and learning; management; and equipment and accommodation;
- A new statutory requirement to inspect CCEA;
- New powers to inspect, copy or take documents away from the establishment under inspection; and to obtain access to any computer and associated material - “*at reasonable times only*”;
- A new duty on the ‘responsible authority’ (typically Board of Governors) to prepare and publish a statement on the actions it will take in light of the inspection report.

A number of areas could be given further consideration. For example, the potential implications of the changes for the inspection process, particularly for the schools, Boards of Governors and staff involved. In addition, clarification could be sought on how inspection of equipment and accommodation will feed into inspection reports and ratings; to how any documents taken will be used and stored; and what is meant by “*at reasonable times only*”.

### **Tribunal**

**Clause 62** requires OFMdfM to make regulations for the appointment of a Tribunal by the Department to review decisions on employment schemes and schemes of management. Consideration could be given to how the tribunal will be appointed and what measures will be taken to ensure that it is independent and objective.

### **Sectoral bodies**

**Clause 63** sets out definitions for the sectoral bodies. Consideration might be given to the proposed funding arrangements for the bodies, and the timescale for which they are to be established.

### **Membership of ESA and committees**

**Schedule 1** states that the Chair of ESA will be appointed by the Department, as will the 12 appointed members of which four will represent the interests of controlled schools, four will represent the trustees of maintained schools, and four will be representative of the community in NI. There will also be eight political members appointed using the d’Hondt formula.

Consideration could be given to the extent to which the proposed membership represents the interests of all stakeholders in education and the wider community here, and whether it is likely to result in an appropriate mix of skills and expertise.





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## 1 Background

The Review of Public Administration (RPA) was launched by the Executive in 2002 to deliver modernisation and reform across the public sector. The outcome of the RPA suggested a need for a new single Education and Skills Authority (ESA), which was intended to help improve standards, promote equality and enable more resources to be directed to schools.<sup>1</sup>

An Education Bill (NIA 3/08) was introduced to the Assembly on 25<sup>th</sup> November 2008 to provide for the establishment of ESA. However, no date was set for the consideration stage of the Bill after the Committee Stage.<sup>2</sup> On 16<sup>th</sup> December 2011, the First Minister and deputy First Minister published Heads of Agreement on establishing ESA. Subsequently, the *Programme for Government 2011-15* committed to making ESA operational in 2013.

## 2 Consultation

The Department established a working group in 2006 to consult with education stakeholders on the RPA proposals for education, and officials also held meetings with particular sector representatives. The Department produced a series of policy papers in 2006 and invited comments on these; however, the Bill itself was not open to consultation.<sup>3</sup>

Since then there have been meetings with stakeholders to shape policy decisions.<sup>4</sup> With regard to public consultation, the Department has confirmed that it will not conduct consultation on the Education Bill. In addition, there was no public consultation on the previous Bill in 2008.<sup>5</sup>

## 3 Overview of the Bill

The Education Bill currently before the NI Assembly aims to provide for the establishment of ESA. ESA will replace eight existing organisations: the Education and Library Boards; the Staff Commission for Education and Library Boards, the Council for Catholic Maintained Schools (CCMS) and the Youth Council for Northern Ireland. The policy objective of the Bill is:<sup>6</sup>

*“The establishment of modern, fit for purpose administration arrangements for education.”*

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<sup>1</sup> *Review of Public Administration* [online] Available at: <http://www.deni.gov.uk/index/8-admin-of-education-pg/100-review-of-public-administration.htm>

<sup>2</sup> *Bills introduced in the Assembly* [online] Available at: <http://www.niassembly.gov.uk/legislation/primary/assleg10.htm>

<sup>3</sup> Education Bill Explanatory and Financial Memorandum

<sup>4</sup> Education Bill Explanatory and Financial Memorandum

<sup>5</sup> Information provided by the Department of Education, 12<sup>th</sup> March 2012

<sup>6</sup> Education Bill Explanatory and Financial Memorandum

The Bill sets out the principal functions of ESA as follows:

- Acting as the employing authority for all staff in grant-aided schools;
- Funding grant-aided schools, youth services and educational services;
- Providing (or securing the provision of) support to grant-aided schools, youth services, and other educational services;
- Providing library services to grant-aided schools and other educational establishments;
- Equipping and maintaining controlled and maintained schools;
- Planning and securing the delivery of the education estate;
- Ensuring the adequacy of arrangements within education for safeguarding and promoting the welfare of children and young persons.

The Bill is divided into six parts, has 69 clauses and eight Schedules. This paper explores a number of areas within the Bill that may merit further consideration.

## 4 Roles and responsibilities

### **Clause 2: Functions and general duty of ESA**

This clause places a duty on ESA to contribute towards the development of children, young people and the community by planning and ensuring provision of efficient and effective schools, youth and other educational services. Subsection 2(c) of this clause states that it is the duty of ESA to:

*2(2)(c) “Promote, and co-ordinate the planning of, the effective provision of schools, educational services and youth services.”*

The inclusion of ‘educational services’ in this part of the clause is intended to fill a gap in the current legislation, which does not set out specific provision for early years. Subsection (3) requires ESA to treat all schools on the same basis in discharging its functions.

This clause also contains a new statutory duty for ESA to exercise its functions with a view to promoting the achievement of high standards of educational attainment.

2(4) *“ESA shall ensure that its functions relating to grant-aided schools are (so far as they are capable of being so exercised) exercised with a view to promoting the achievement of high standards of educational attainment.*

2(5) *“ESA shall ensure that its functions relating to grant-aided schools are (so far as they are capable of being so exercised) exercised with a view to encouraging and facilitating the development of education provided in an Irish speaking school.”*

With regard to subsection (5), the implications of the duty to facilitate the development of education in Irish-medium schools could be considered.

### **Clause 3: ESA to employ all staff of grant-aided schools**

This clause involves a key change within the Bill, in that ESA is to become the single employing authority for all staff within all grant-aided schools. This represents a significant departure from the current situation, which involves a mixture of employing authorities (the ELBs, CCMS, and individual schools- voluntary and grant-maintained schools).

It also sets out requirements around the “submitting authority” for schools. The submitting authority will have responsibility for preparing an employment scheme and a scheme of management for their school.

3(2)(a) *“the submitting authority” in relation to a grant-aided school, means-*

- (i) *in the case of a controlled or grant-maintained integrated school, the Board of Governors of the school;*
- (ii) *in the case of a voluntary school, the trustees of the school or (if the trustees so determine) the Board of Governors of the school.”*

3(3) *“Where the trustees of a voluntary school are the submitting authority for the school, the trustees shall, in exercising their functions as the submitting authority, consult with and have due regard to the views of Boards of Governors.”*

Subsection (3) of this clause places an additional duty on the trustees of voluntary schools to *“consult with and have due regard to the views of the Boards of Governors.”* Consideration could be given to the weighting to be given to the views of Boards of Governors by the trustees in carrying out their duties.

3(4) *“If a scheme is approved by ESA, Boards of Governors have right of referral to the tribunal for test of compatibility with the Heads of Agreement.”*

Subsection (4) allows Boards of Governors to refer an approved scheme to a tribunal which has powers to approve or amend the scheme to ensure that it aligns with the legislation and Heads of Agreement. The relevant principles set out in the Heads of Agreement include:<sup>7</sup>

- There will be no change to the ownership arrangements which negatively affects the respective role of the Boards of Governors of a school;
- There will be no change to the method of appointing governors;
- Where it is already the case, Boards of Governors will continue to employ and dismiss members of staff;
- There will be no transfers, secondments or redeployments of teachers without the consent of the respective schools, Boards of Governors or teachers involved.

Subsection (5) of Clause 3 states that the functions of Boards of Governors in drawing up and amending admissions criteria for their schools are not affected.<sup>8</sup>

## 5 Employment schemes

### **Clauses 4-5: Employment schemes for grant-aided schools**

These clauses set out the introduction of mandatory Schemes of Employment that would be prepared by the ‘submitting authority’ of every school and submitted to ESA. The employment scheme will set out the employment arrangements for the school, determining the employment functions to be carried out by the Board of Governors.

### **Schedule 2: Provisions required in employment schemes**

Clause 4 requires that each employment scheme contains the compulsory elements set out in Schedule 2. An overview is provided in Table 1 (however for full detail of the requirements see Schedule 2).

<sup>7</sup> Northern Ireland Executive (2011) *Statement by First Minister and deputy First Minister on the Education and Skills Authority* [online] Available at: <http://www.northernireland.gov.uk/index/media-centre/news-departments/news-ofmdfm/news-archives-ofmdfm-nov-2011/news-ofmdfm-161111-statement-on-education-skills-authority.htm>

<sup>8</sup> Under Article 32 of the Education (Northern Ireland) Order 1998

**Table 1: Overview of provisions required in employment scheme**

Area of provision	Overview of key requirements scheme must provide for
Determination of staff complement	<ul style="list-style-type: none"> <li>The complement of teaching and non-teaching posts to be determined by the Board of Governors</li> </ul>
Appointment of staff	<ul style="list-style-type: none"> <li>The selection of a person for appointment to a post at the school to be carried out by ESA (in the case of a specified post)<sup>9</sup> or by the Board of Governors (any other post)</li> <li>Procedures to be followed by the Board of Governors in selecting a candidate</li> </ul>
Discipline	<ul style="list-style-type: none"> <li>That the regulation of staff discipline and procedures for staff to redress any grievances against them are under Board of Governor control</li> <li>That Boards of Governors establish disciplinary rules/ procedures after consultation with ESA</li> </ul>
Arrangements for suspension	<ul style="list-style-type: none"> <li>That both the Board of Governors and the principal have powers to suspend any staff member</li> <li>That when exercising that power, the principal or Board of Governors must immediately inform ESA and the principal/ Board of Governors</li> </ul>
Dismissal	<ul style="list-style-type: none"> <li>The scheme must provide for a range of requirements, including:</li> <li>That where the Board of Governors determines that a member of staff should cease to work there it will notify ESA and that ESA will give notice or terminate the contract without notice if appropriate</li> </ul>
Payments for dismissals/ resignations	<ul style="list-style-type: none"> <li>That it is for the Board of Governors to determine whether any payment should be made by ESA in respect of the dismissal, and the amount of the payment</li> </ul>

**Clause 4** sets out a series of statutory requirements for employment schemes, including:<sup>10</sup>

- Schemes must contain the compulsory elements in Schedule 2 (see Table 1);
- Schemes must not contain any provision inconsistent with legislation;

<sup>9</sup> Defined as a post specified or of a description specified in the scheme

<sup>10</sup> Education Bill Explanatory and Financial Memorandum

- Each scheme must be consistent with any instrument of government and school scheme of management (unless education law permits otherwise);
- Each scheme must be prepared having regard to any guidance issued by the Department.

**Clause 5** states that ESA is required to approve the scheme unless it does not comply with the requirements. Where a scheme does not meet the statutory requirements, ESA must try to agree the appropriate modifications with the submitting authority and approve the scheme. In any other case, ESA is required to refer the scheme to the tribunal established under Clause 62.<sup>11</sup>

Clause 5 states that the Department may, with the approval of the Office of the First Minister and deputy First Minister, issue guidance on schemes of employment, including model schemes.

Consideration could be given to the potential implications for the workload for governors. Consideration could also be given to the use of model schemes, and to whether training would be required for governors.

#### **Clause 7: Revision of employment schemes**

If the Department issues revisions to its guidance on employment schemes, submitting authorities will be required to prepare and submit a revised employment scheme. This clause also allows submitting authorities to do so at any other time.

#### **Clause 8: Procedure where ESA does not approve a submitted scheme**

This clause sets out the arrangements for cases where a scheme is referred to the tribunal established under Clause 62. The tribunal may order ESA to approve the scheme or to approve it with modifications specified by the tribunal. In the case that the tribunal considers that the scheme does not meet the statutory requirements and cannot be modified to do so, the tribunal makes a scheme for the school.<sup>12</sup>

In the interim period before the tribunal makes an order, the submitted scheme applies. However ESA may apply in this period to the tribunal for an order to modify the submitted scheme.

#### **Powers to modify employment law and other powers**

#### **Clause 13: Modification of employment law**

This clause allows the Department to make modifications in employment law if necessary. The explanatory memorandum states that the aim of this is to ensure that

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<sup>11</sup> Education Bill Explanatory and Financial Memorandum

<sup>12</sup> Education Bill Explanatory and Financial Memorandum



the carrying out of employment functions by Boards of Governors in the name of and on behalf of ESA, is compatible with the requirements of employment law.<sup>13</sup>

The previous Education Committee's *Report on the Education Bill* recommended that this clause be amended to the effect that no amendment should be made unless a draft of the order has been laid before, and approved by, the Assembly. The Bill does not include provision to this effect. However, it states:

13(2) *"Before making any order under this section the Department shall consult:*

- (a) ESA;*
- (b) DEL;*
- (c) The Office of the First Minister and deputy First Minister;*
- (d) The sectoral bodies; and*
- (e) Such organisations representing the staff of grant-aided schools as appear to the Department to be appropriate."*

Consideration could be given to the likely implications of this clause, and to the relevance of the previous Committee's recommendation to require Assembly approval for any amendment.

## 6 Area planning

Provision for area planning of the schools estate within the Bill represents an entirely new function.

### **Clause 24: area education plans**

This clause defines an 'area education plan' as a document (including a map) setting out, for an area defined in the plan: an assessment of need for schools, youth services and educational services; an assessment of the adequacy of current provision; and proposals for meeting need.

Consideration could be given to seeking clarification on this clause, for example:

- How areas will be decided;
- Whether area plans for neighbouring areas will be considered together;
- Whether area plans will take account of cross-border provision;
- What criteria and indicators will be used to determine the adequacy of current provision;

<sup>13</sup> Education Bill Explanatory and Financial Memorandum

- What data and indicators will be used to forecast enrolments; and
- Whether a rural proofing process will be carried out for area plans.

Consideration could also be given to the 2006 *Bain Review* which recommended strategic planning of the schools estate on an area basis. It made a number of suggestions with regard to how area-based planning should be conducted, including:<sup>14</sup>

- Areas should comprise coherent sets of nursery, primary and post-primary schools, as well as accessible further education provision;
- As far as possible areas should lie within a single local council area to facilitate links between education planning and community planning;
- The concept of area planning is closely linked with the notion of community; thus the planning process needs to be based on a proper understanding of local communities;
- ESA should establish, lead and co-ordinate planning groups that are representative of all the educational interests;
- There should be an agreed system-wide set of parameters for the strategic planning of the schools estate: DE and ESA should establish quality indicators and other criteria and use them consistently in conjunction with a sustainable schools policy.

**Clause 27** requires ESA to publicise and carry out consultation before submitting new or revised plans for approval, or seeking approval to revoke a plan. It stipulates that ESA must consult the relevant district council.

In addition, **Clause 28** subsection (1) places a duty on ESA to consult and involve relevant interests in the preparation, revision, or revoking of plans. The relevant interests include sectoral bodies and providers of youth and education services.<sup>15</sup>

*28(3) "But the duty in subsection (1) does not apply in relation to the preparation of a revised plan for an area if ESA determines that the changes to the plan for the area are not of sufficient importance to warrant the involvement and consultation mentioned in that subsection."*

Subsection (5) allows ESA to consult with a wider range of stakeholders, for example service users, parents, governors and staff.

Consideration could be given to subsection (3) above, for example, whether criteria will be applied to inform what type of revisions should require consultation and involvement of relevant interests.

<sup>14</sup> Bain, G. (2006) *Schools for the Future: Funding, Strategy, Sharing* Bangor: Department of Education

<sup>15</sup> Education Bill Explanatory and Financial Memorandum

## 7 Schemes of management

### **Clauses 33-4: Schemes of management *and* Preparation and approval of schemes of management**

Clause 33 requires every grant-aided school to have in place a scheme of management which provides for the membership and procedures of the Board of Governors of the school and the management of the school (particularly the functions to be exercised by the Board of Governors and principal). This clause sets out a number of statutory requirements that the scheme of management must meet:<sup>16</sup>

- Schemes of management must not contain any provision that is inconsistent with legislation;
- Each scheme must be consistent with any instrument of government for the school, unless education law requires or authorises otherwise;
- Each scheme must be prepared having regard to guidance issued by the Department under Clause 34;
- A scheme of management for an Irish-speaking school or a school with an Irish-speaking unit must require the Boards of Governors to use their best endeavours to secure viability of the school or unit.

The Bill makes it clear that the functions of Board of Governors under the Education (Northern Ireland) Order 1998 to draw up and amend admissions criteria for schools are not affected (Clause 34 subsection (10)).

#### ***Preparation of schemes***

**Clause 34** provides for the management scheme for each school to be prepared by the ‘submitting authority’ and submitted to ESA for its approval. This clause also states that the scheme will not come into force until it is approved by ESA.<sup>17</sup>

Subsection (8) of this clause requires the trustees of voluntary schools, where they are the submitting authority, to “*consult with and have due regard to the views of the Boards of Governors.*” Consideration could be given to the weighting to be given to the views of Boards of Governors by the trustees.

#### ***Approval of schemes***

Subsection (4) of Clause 34 requires ESA to approve a submitted scheme unless it does not meet the statutory requirements (Clause 33). In such a case, ESA must seek to agree with the submitting authority the appropriate modifications; in any other case, ESA is required to refer the scheme to the tribunal established under Clause 62.

<sup>16</sup> Education Bill Explanatory and Financial Memorandum

<sup>17</sup> Education Bill Explanatory and Financial Memorandum

Subsection (9) gives Boards of Governors the right to refer an approved scheme to a tribunal for a test of compatibility with the Heads of Agreement. Clause 37 states that the tribunal will consider whether the submitted scheme complies with the statutory requirements, and that it may order ESA to approve the scheme or approve it with modifications specified by the tribunal.

The tribunal will make a scheme for the school if it decides that the submitted scheme does not meet the requirements and cannot be modified to do so. Subsection (7) states that the submitted scheme applies in the interim period. ESA may apply to the tribunal during this time for an order to modify the submitted scheme.<sup>18</sup>

### ***Use of guidance and model schemes***

As outlined above, Clause 33 requires the submitting authority to have regard to guidance issued by the Department. Clause 34 provides details on this guidance, including the use of model schemes for particular school types.

*34(2) "The Department may, with the approval of the Office of the First Minister and deputy First Minister, issue such guidance as the Department thinks fit as to the provisions it regards as suitable for inclusion in schemes of management; and such guidance-*

- (a) shall include model schemes regarded by the Department as suitable for particular descriptions of schools;*
- (b) shall be kept under review and revised by the Department from time to time; and*
- (c) shall be published in such a manner as the Department thinks fit.*

Subsection (3) of this clause requires that submitting authorities also submit to ESA information on the extent to which (if at all) the submitted scheme differs from any model scheme for a school of the same description.

Consideration could be given to the use of model schemes, for example:

- What is envisaged by 'particular descriptions of schools'? For example, will model schemes be created by school management type, phase, size, urban/rural or using other variables?
- The extent to which submitting authorities will be allowed to deviate from the model schemes in practice; and
- What the potential implications may be of using model schemes with regard to flexibility and autonomy for schools.

<sup>18</sup> Education Bill Explanatory and Financial Memorandum

### ***Comparison to current arrangements***

The requirements for the content of schemes of management under the Education Bill are similar to those currently in place under the Education Reform (Northern Ireland) Order 1989.<sup>19</sup> The key differences relate to responsibility for preparing and submitting the scheme, the use of model schemes devised by the Department and the opportunity to refer schemes to a tribunal.

The current legislation permits standard schemes of management for controlled or for maintained schools, and in practice, in many cases there are standard schemes of management across many schools.

**Table 2: Organisations/ bodies currently with responsibility for preparing a scheme of management**

<b>School management type</b>	<b>Responsibility for preparing the scheme of management</b>
Controlled school	ELB (must consult the Board of Governors of the school before preparing the scheme of management)
Catholic maintained school	Council for Catholic Maintained Schools (must consult the trustees or managers of the school and the board by which the school is maintained)
Voluntary school	Boards of Governors
Grant-maintained integrated school	Boards of Governors

As previously set out (Clause 34(7)), the ‘submitting authority’ under the Bill is the Board of Governors of controlled or grant-maintained integrated schools, and the trustees of a school in the case of voluntary schools (or the Board of Governors if the trustees so determine). As such, the preparation of a scheme of management will be a new role for most Boards of Governors or trustees.

Consideration could be given to the implications of this duty for Boards of Governors and trustees.

### ***Duties in regard to Irish-medium education***

**Clause 33** places a duty on the Board of Governors to take actions to secure the viability of the school as an Irish-medium school.

<sup>19</sup> Education Reform (Northern Ireland) Order 1989 [online] Available at: <http://www.legislation.gov.uk/nisi/1989/2406/article/123>

33(5) *“The scheme of management for an Irish speaking shall require the Board of Governors to use its best endeavours to ensure that the management, control and ethos of the school are such as likely to ensure the continuing viability of the of the school as an Irish-speaking school.”*

The 2010 *Review of Irish-medium Education Report* highlighted issues for the sustainability of Irish-medium primary schools. In particular, it noted challenges around developing high quality leadership in the developing sector and the small size (in terms of enrolments) of current Irish-medium primary schools.<sup>20</sup>

This may have implications for the extent to which Boards of Governors have the capacity to ensure the viability of Irish-medium schools, and may raise questions around the implications of this duty for governors if an Irish speaking school is deemed to be unsustainable.

**Subsection 6** states that:

33(6) *“The scheme of management for a grant-aided school of which a part is Irish speaking shall require the Board of Governors to use its best endeavours to ensure that the management, control and ethos of the school are such as likely to ensure the continuing viability of the Irish speaking part of the school.”*

This refers to Irish-medium units, which are attached to a host (English-medium) school, often established where there are insufficient pupils to establish a free-standing school. All of the teaching in the unit is conducted through the medium of Irish.

The *Review of Irish-medium Education Report* in 2010 highlighted concerns among some parents around how the relative needs of the Irish- and English-medium parts of schools with Irish-medium units or streams have been balanced. For example, some parents felt that the Irish-medium part of a school lost out on the budget allocated by the Board of Governors, while others believed that the opposite was the case.<sup>21</sup> The implications of this part of the clause for both the Irish-medium unit and the English-medium part of the school could therefore be given further consideration.

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<sup>20</sup> Department of Education (2010) *Review of Irish-medium Education Report* Bangor: DE

<sup>21</sup> Department of Education (2010) *Review of Irish-medium Education Report* Bangor: DE

## 8 New duty for governors in relation to promoting high standards of attainment

### **Clause 38: Duties of Boards of Governors in relation to achievement of high standards of educational attainment**

This clause places a new statutory duty on Boards of Governors to promote high standards of educational attainment by pupils.<sup>22</sup>

38(1) *“It is the duty of the Board of Governors of a grant-aided school to exercise its functions with a view to promoting the achievement of high standards of educational attainment by pupils registered at the school.*

*(2) In particular, it is the duty of the Board of Governors to cooperate with ESA in relation to actions undertaken by ESA with a view to promoting the achievement of high standards of educational attainment by those pupils.”*

While the Department’s current guidance on governor roles and responsibilities states that the strategic role of the Board of Governors *“is to fulfil its functions in relation to the school with a view to promoting the achievement of high standards of educational attainment,”*<sup>23</sup> this is not currently in statute.

Consideration could be given to the implications of this new statutory duty, for example:

- How *‘high standards of educational attainment’* will be defined (for example, will assessment involve a specified set of criteria and performance indicators; a value-added approach; and/ or benchmarking against other schools)
- Potential implications for the recruitment and retention of governors, particularly for schools with lower standards of achievement;
- What training and support governors may require to fulfil this duty; and
- Implications for Boards of Governors if the educational attainment within their school is deemed to be of an inadequate standard.

## 9 Appointments to Boards of Governors

### **Clause 39: Appointment by ESA of governors for controlled, maintained, grant-maintained integrated and certain voluntary grammar schools**

This clause transfers to ESA the function of making appointments to the Boards of Governors schools that currently fall to the Department and the ELBs. It also requires

<sup>22</sup> Education Bill Explanatory and Financial Memorandum

<sup>23</sup> Education standards [online] Available at: [http://www.deni.gov.uk/index/85-schools/5-school-management/79-school\\_governors\\_pg/schools\\_79\\_governor-roles-and-responsibilities\\_pg/schools\\_79\\_chapter-6-education-standards\\_pg.htm](http://www.deni.gov.uk/index/85-schools/5-school-management/79-school_governors_pg/schools_79_governor-roles-and-responsibilities_pg/schools_79_chapter-6-education-standards_pg.htm)

ESA to consult on the appointment of governors. The implications of this for the recruitment of governors could be given consideration.

*“Before choosing any person for appointment to the Board of Governors of a school... ESA shall consult -*

- (a) the relevant sectoral body; and*
- (b) the Board of Governors of the school.”*

Boards of Governors in schools are reconstituted every four years when members complete their term of office and may be replaced, in a process taking up to 18 months. Most Boards of Governors were last reconstituted in the 2009/10 school year and the term of office for these Boards will end on 30 June 2013.<sup>24</sup>

Clarification could be sought on the implications of this clause in the case of boards undergoing reconstitution and in the case of a new school which does not yet have a Board of Governors.

#### ***Commitment to the ethos of the school***

This clause also places duties on ESA to appoint governors committed to the ethos of the school, and in the case of Irish speaking schools, to the viability of those schools.

*“It is the duty of ESA, in choosing persons under any of those provisions for appointment to the Board of Governors of a school –*

- (a) to choose for appointment persons appearing to ESA to be committed to the ethos of the school;*
- (b) in the case of a school which is an Irish-speaking school or part of a school which is Irish speaking, to choose for appointment persons appearing to ESA to be committed to the continuing viability of the school as an Irish speaking school or (as the case may be) to the continuing viability of the Irish speaking part of the school.”*

Consideration could be given to the implications of this for the recruitment of governors, for example, how commitment to a particular school's ethos will be identified and defined.

<sup>24</sup> School governors [online] Available at: [http://www.deni.gov.uk/index/85-schools/5-school-management/79-school\\_governors\\_pg.htm](http://www.deni.gov.uk/index/85-schools/5-school-management/79-school_governors_pg.htm)



### ***Commitment to the viability of Irish-medium education***

This clause places duties on ESA to appoint governors who are committed to the *viability* of Irish speaking schools, units or streams, rather than those who are committed to the *ethos* of the school, as is the case for the other sectors.

Consideration could be given to how commitment to the viability of the school or unit is to be defined and demonstrated in practice, and to the potential implications if it is not possible to appoint persons who are committed to the continuing viability of the school or unit (for example, if there is a limited pool of candidates).

## 10 Inspections

### **Clauses 44-48**

These clauses significantly enhance the functions and powers of inspectors. Subsection 4(b) of Clause 44 states that as part of inspectors' duty to promote the highest standards of education and professional practice, they must advise the Department '*on any aspect*' of establishments which the Department may refer to them or on which they think advice is appropriate.

The current legislation, the Education (Northern Ireland) Order 1996, requires inspectors to advise the Department on '*any aspect of the curriculum*' of establishments. As such, the new legislation widens the remit of inspectors. Subsection (6) sets out the areas inspectors may consider in conducting their inspections.

44(6) "*Inspectors conducting the inspection of an establishment under this section may monitor, inspect and report of the establishment including, in particular -*

- (a) the teaching and learning activities carried on at the establishment;*
- (b) the management of the establishment; and*
- (c) the staffing, equipment, accommodation and other resources of the establishment."*

Consideration could be given to the potential implications of the widened role of inspectors. For example, the implications for the inspection process could be considered, and clarification could be sought on how, and to what extent, inspection of equipment, accommodation and resources will contribute to the inspection report and rating for the school.

In addition, **Clause 44** sets out a new duty for inspectors to monitor, inspect and report on the Council for the Curriculum, Examinations and Assessment (CCEA) on the

discharge of its functions (Subsection 5(b)). While the Department already inspects CCEA, this part of the clause places this in statute.

#### **Clause 45: Powers of inspectors**

This clause gives inspectors new powers to inspect, take copies of or take away any documents relating to the establishment under inspection, and to require the production of any document.<sup>25</sup> It also allows inspectors to obtain access to; inspect and check the operation of any computer and associated material which the inspector considers has been in use in connection with the documents.

45(5) *“The powers conferred by this section may be exercised at reasonable times only; and a person may not be required to do anything in pursuance of any provision of this section otherwise than at a reasonable time.”*

Consideration could be given to the potential implications of this clause, for example, what it may mean for schools and their staff under inspection, and how the documents will be used and stored. In addition, clarification could be sought on what is meant by stating that the powers may be exercised *‘at reasonable times only’*.

#### **Clause 46: Reports and action plans**

This clause requires inspectors to provide a written report to the Department, ESA and the Board of Governors. It places a new duty on the ‘responsible authority’ to prepare a written statement of the action it proposes to take in light of the report and to set out the time period for the actions. The responsible authority is defined as:

- The Board of Governors of a grant-aided school;
- The proprietor in the case of an independent school; and
- In the case of any other establishment, the body or person in charge of the activities carried on at the establishment.

The responsible authority is required to publish the statement *‘within such a period and in such a manner as may be prescribed’* and send copies to the Department and ESA. Subsection (5) of this clause states that the Department may waive these requirements. Consideration could be given to a number of areas, for example:

- The potential implications for the responsible authority and the school of the requirement to publish their action plan;
- The timescale and method of publishing envisaged by this clause; and
- The circumstances in which the Department may choose to waive the requirements.

<sup>25</sup> Education Bill Explanatory and Financial Memorandum

## 11 Tribunal

**Clause 62** requires the Office of the First Minister and deputy First Minister to make regulations for the appointment by the Department of Education of a Tribunal to review decisions on employment schemes and schemes of management.<sup>26</sup> These regulations must provide: for the members of the tribunal to be appointed by the Department; for the procedure of the tribunal; and for the payment of fees and expenses to members of the tribunal by the Department.<sup>27</sup>

Consideration could be given to how the members of the tribunal will be appointed, how long the appointments will last and what measures will be taken to ensure that the tribunal is independent and objective.

## 12 Sectoral bodies

**Clause 63** of the bill sets out definitions for sectoral bodies.

**Table 3: Definitions for sectoral bodies**

Term	Definition
Sectoral body	A body: <ul style="list-style-type: none"> <li>• <i>“which is recognised by the Department as representing the interests of grant-aided schools of a particular description; and</i></li> <li>• <i>to which grants are paid under Article 115 of the 1986 Order, Article 64 of the 1989 Order or Article 89 of the 1998 Order.”</i></li> </ul>
Relevant sectoral body	<i>“in relation to the exercise by the Department or ESA of any function in relation to a school or schools of a particular description, means the sectoral body appearing the Department or (as the case may be) ESA to represent the interests of schools of that description.”</i>

There are expected to be sectoral bodies for the Catholic maintained, controlled, integrated and Irish-medium sectors. Representation for the controlled schools sector was a key concern for many stakeholders during scrutiny of the previous bill. The Education Minister, John O’Dowd, announced a working group on Thursday 27<sup>th</sup> September to establish the controlled school’s sectoral support body.

Consideration could be given to the proposed funding arrangements for the sectoral bodies. In addition, clarification could be sought on the timescale within which any new sectoral bodies are to be established.

<sup>26</sup> Education Bill Explanatory and Financial Memorandum

<sup>27</sup> For further information on the duties of the tribunal, please see sections 5 (employment schemes) and 8 (schemes of management) of this paper

## 13 Membership of ESA and committees

### Schedule 1: The Education and Skills Authority

This Schedule contains provisions in relation to the status, membership, tenure of office of members, remuneration of allowances of members and employees and proceedings of ESA. It also makes provision in relation to finance, accounts, reporting and returns.<sup>28</sup>

#### Subsection 2

This sets out the Membership of ESA. It sets out in detail requirements around who can be appointed, however Table 4 sets out a broad overview of the arrangements.

**Table 4: Overview of the composition of ESA Membership set out in the Bill**

Member	Appointment arrangements
Chair	Appointed by the Department
8 political members	Nominations will be made using the d'Hondt formula
12 appointed members	Appointed by the Department. Of the 12: <ul style="list-style-type: none"> <li>• 4 shall be persons appearing to the Department to represent the interests of transferors of controlled schools</li> <li>• 4 shall be persons appearing to the Department to represent the interests of trustees of maintained schools</li> <li>• 4 shall be persons appearing to the Department, so far as practicable, to be representative of the community in Northern Ireland</li> </ul>

The term of office for the Chair or for an appointed member shall be *'for a specified period of not more than four years.'* However, they may resign at any time and the Department may remove a member or the chair if particular circumstances are met.

Consideration could be given to whether the Membership of ESA outlined in the Bill adequately represents the interests of all stakeholders in education and the wider community here, and whether it is likely to result in an appropriate mix of skills and expertise.

#### Subsection 8: Committees

This subsection allows ESA to establish committees. Part of this subsection states:

<sup>28</sup> Education Bill Explanatory and Financial Memorandum

*“8 (1) ESA may establish committees*

*(2) A person who is not a member of ESA shall not, except with the approval of the Department, be appointed to a committee of ESA.*

*“9. (1) ESA may, to such extent as it may determine, delegate any of its functions to-*

*(a) any committee of ESA; or*

*(b) any officer of ESA.*

*(2) Any committee of ESA may, to such an extent as the committee may determine, delegate any functions of the committee to any officer of ESA.”*

Consideration could be given to seeking clarification of what is intended by this aspect of the Bill, for example:

- What the committees are likely to involve;
- The composition of the committees envisaged (for example, will they include political and appointed members);
- Whether they would be on a regional or thematic basis; and
- How, if at all, committees would interact with stakeholders.

## 14 Transfer of assets, liabilities and staff of dissolved bodies

### **Schedule 3: Transfer to ESA of staff employed by the Boards of Governors**

This Schedule makes provision for the transfer to ESA of staff employed by Boards of Governors. Staff will be afforded protection of their terms and conditions of employment under the Transfer of Undertakings (Protection of Employment) Regulations 2006, and protection of their rights to accrue pension benefits.<sup>29</sup>

### **Schedule 4: Transfer of assets, liabilities and staff of dissolved bodies**

This Schedule makes provision for the transfer of assets, liabilities and staff of ELBs, CCMS, the Staff Commission for ELBs and the Youth Council for Northern Ireland. Staff will be afforded protection of their terms and conditions of employment under the Transfer of Undertakings (Protection of Employment) Regulations 2006, and protection of their rights to accrue pension benefits.<sup>30</sup>

<sup>29</sup> Education Bill Explanatory and Financial Memorandum

<sup>30</sup> Education Bill Explanatory and Financial Memorandum

*“2. (1) All assets and liabilities to which a dissolved body is entitled or subject immediately before the appointed day shall on that day be transferred to, and by virtue of this paragraph vest in, ESA.”*

The implications of the transfer of assets, liabilities and staff of dissolved bodies could be given further consideration, in particular any tax and budgetary implications.

In addition, in a response to an Assembly Question the Minister for Education highlighted the original business case for ESA which envisaged a reduction of 463 staff. The Minister noted that the business case is being reviewed and that no estimate has been made for the final staff reduction figure.<sup>31</sup>

The explanatory and financial memorandum highlights the envisaged savings in terms of staffing costs with the establishment of ESA, and states that this is likely to be achieved through voluntary redundancy, early retirement, normal retirements and natural turnover. Consideration could be given to the protection afforded to staff as set out in this clause, and how this will be balanced with any plans for a reduction in staff numbers.

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<sup>31</sup> Minister for Education response to an Assembly Question by Ms Pam Brown MLA, 7<sup>th</sup> March 2012