

Committee for Education

Report on the Education Bill
(NIA 3/08)
Volume 3

TOGETHER WITH MINUTES OF PROCEEDINGS, MINUTES OF EVIDENCE AND
WRITTEN SUBMISSIONS RELATING TO THE REPORT

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Membership and Powers

The Committee for Education is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, section 29 of the Northern Ireland Act 1998 and under Standing Order 46.

The Committee has power to:

- Consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- Consider relevant secondary legislation and take the Committee stage of primary legislation
- Call for persons and papers;
- Initiate inquiries and make reports; and
- Consider and advise on any matters brought to the Committee by the Minister for Education.

The Committee has 11 members including a Chairperson and Deputy Chairperson and a quorum of 5.

The membership of the Committee is as follows:

Mr Mervyn Storey (Chairperson)[\[1\]](#)
Mr Dominic Bradley (Deputy Chairperson)
Mrs Mary Bradley
Mr Jonathan Craig[\[2\]](#) [\[3\]](#)
Mr Trevor Lunn
Mr John McCallister[\[4\]](#)
Mr Basil McCrea
Miss Michelle McIlveen
Mr John O'Dowd[\[5\]](#)
Ms Michelle O'Neill
Mr Alastair Ross[\[6\]](#) [\[7\]](#)

[\[1\]](#) With effect from 10 June 2008 Mr Mervyn Storey replaced Mr Sammy Wilson as Chairperson of the Committee for Education

[\[2\]](#) With effect from 14 September 2009 Mr Jonathan Craig replaced Mr Edwin Poots as a member of the Committee for Education

[\[3\]](#) With effect from 17 June 2008 Mr Edwin Poots replaced Mr Sammy Wilson as a member of the Committee for Education

[\[4\]](#) With effect from 22 June 2009 Mr John McCallister replaced Mr Tom Elliot as a member of the Committee for Education

[\[5\]](#) With effect from 20 May 2008 Mr John O'Dowd replaced Mr Paul Butler as a member of the Committee for Education

[\[6\]](#) With effect from 14 September 2009 Mr Alastair Ross replaces Mr Nelson McCausland as a member of the Committee for Education

[\[7\]](#) With effect from 31 March 2008 Mr Nelson McCausland replaced Mr Jeffery Donaldson as a member of the Committee for Education

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Association for Quality Education (AQE)

The Association for Quality Education represents thirty three grammar schools, both Voluntary and Controlled, Concerned Parents for Education and the Confederation of Former Pupils' Association, and is grateful for this opportunity to express its views.

Our schools would be in general agreement that reforms are needed in the organisational structures of education and that prudent reorganisation should release more much needed monies into the system.

We note, however, that the ESA will be a large organisation, the direct employer of sixty to seventy thousand people and the largest education authority in Western Europe. It is our view that too much power will be placed in the hands of too few people, that not enough thought has been given to intermediate structures or to proper accountability, and that individual school ethos will be substantially eroded.

Although we have been asked to comment on the first Bill, it is our view that the two Bills are inextricably interlinked and interdependent and should be considered simultaneously: we feel that it is right to comment on all elements proposed for the ESA.

We respectfully submit our concerns on a number of areas and we should be pleased to enlarge upon these, should the situation arise.

The Constitution of the Education and Skills Authority

Schedule 1 of the Bill indicates that the ESA will comprise 7-11 members in addition to the Chair, appointed by the Minister and responsible only to the Minister. Of these members a majority will be councillors, each of whom should have relevant experience.

In our view very great power is going to be in the hands of a small number of people; in addition much more emphasis should be on people with relevant experience in finance or education. There is clearly a lack of accountability and there could be people managing the sector who have no relevant experience or knowledge of the sector.

This centralisation runs entirely counter to excellent educational practice all over the world, including Canada, where the decentralised system of Edmonton public schools is recognised internationally for their site-based, decision-making model and for offering the curriculum in ways which complement the unique backgrounds and talents of their pupils. We believe that the principles underpinning the ESA are not based upon education but upon control. Rural areas may particularly suffer from this centralisation.

The Employer Role

Article 3 (1) indicates that the ESA will employ all staff of grant-aided schools, and Article 3 (2), Sections 4 to 9, refers to the Boards of Governors or Trustees as being the "submitting authorities". In effect this will mean that every school will be a Controlled School and that every person who works in a school in any capacity is to be an employee of the ESA. Article 9 indicates that all staff will be transferred to the control of the ESA on the appointed day. We fail to see how schools will be able to manage day-to-day employment arrangements. Employment issues are a matter of contract; Article 3(1) indicates that the ESA is to be the employer of all staff, and so contractual responsibility will lie with the ESA.

In most areas of Europe, the emphasis has been on empowering Boards of Governors to develop and to be accountable; in our view the voluntary principle enjoyed by the voluntary schools should be made available to the other schools. Despite the assurances in the Policy papers about maximised supported autonomy, the Bill indicates less control to schools. Under Article 3, Boards of Governors will no longer be considered "employers", with the power to employ and dismiss members of staff; indeed Article 3 (2) (b) indicates that references to staff of a grant-aided school are references to the teachers and other persons employed by the ESA on the staff of any school.

Under the terms of the legislation, ESA, as Employer, will be able to deploy staff between institutions so that staff will have less loyalty to a particular school. All staff will have a standard contract of employment with the ESA and, in all of this, something will be lost. To transfer all staff to one employer could leave ESA open to legal challenges, as staff compares differing terms and conditions of employment.

The Employment Schemes

The relevant Articles, 5, 6 and 8 refer to the duty of the submitting authority (the Board of Governors or Trustees) to prepare an Employment Scheme for the school and to submit the Scheme to the ESA, taking into account the guidance issued. Model schemes will be produced for particular descriptions of schools. Paragraph 8 implies that any independence of thought to disagree will not now be possible; schools will be required to reconsider a matter until they agree with the proposal of the ESA. The Employer Functions are all delegated from the ESA and can be withdrawn by the ESA.

It seems to us that schools will lose their existing autonomy and, by virtue of standardised employment schemes of management, will become institutions of uniformity and of control. The Association for Quality Education believes that it should be possible to change or to amend the appropriate Articles to allow those schools, which wish to assume responsibility for their own employment matters, to do so.

Schemes of Management

Articles 30, 31 and 32 do not seem to match the assurance that the aim of the ESA is that schools should be empowered to set their own governance arrangements; the governance arrangements are all contained within a school's Scheme of Management, yet the Education Bill is clear that this is not a matter for the school, but must be agreed and approved by the ESA; otherwise it would have no legal standing.

The Bill will not allow the Boards of Governors of Controlled Schools to have greater power in appointing staff and deciding the school ethos.

Schemes of Management as proposed will be very prescriptive, containing a code of practice for the appointment of all Governors in all categories and dealing with issues of eligibility, gender, community balance and vetting. AQE believes that this Education Bill must have provision to provide for the principle of autonomy in school governance.

The Appointment of Governors

Significant changes are planned for the appointment of Governors; in addition there are strong powers given to the ESA to remove or restrain a Board, which appears to be ignoring advice. The ESA will have the power to appoint governors as considered necessary, including Community Governors (persons living or working in the local community). These governors may not be approved by individual Boards and may be able to outvote Foundation Governors. Schools need to have the power to draw governors from a wide area, ones who will have the skills relevant for their needs.

In our view the legislation as currently drafted should be amended to ensure that Foundation Governors have the right to challenge or veto any arrangements proposed by the ESA. The schools which AQE represents, have for years been "melting-pots", attracting pupils from wide areas, often across frontiers of division. Governors drawn from a local community will provide too parochial and narrow a view. A breadth of division is required in the appointment of school governors.

Payment of staff

Article 11 indicates that Boards of Governors of Voluntary Grammar Schools or of Grant-Maintained Integrated Schools may pay salaries and allowances of staff, but Grant-Aided Schools

may not. Again it is our view that greater freedom should be given to all schools. The rhetoric of the Policy Papers does not match the wording of the Bill.

Other areas of concern

There is a further raft of issues which give us causes for concern and which we should be pleased to discuss, if given the opportunity. This includes procurement, the control of the curriculum, the schools' estate and area-based planning.

Conclusions

In conclusion the Bill as it stands is in stark contrast to the promises in the Policy Papers about schools being empowered and trusted with greater freedom and it appears to run counter to developments in the rest of the United Kingdom. We feel that consideration needs to be given urgently to the following questions.

- (a) Why are these proposals contrary to the promises of the Policy Papers and to developments elsewhere?
- (b) Where is the focus on maximising autonomy at local level?
- (c) Where are the intermediate structures between the schools and the ESA?
- (d) All OECD countries have been making efforts to reduce bureaucracy by forcing decision making down to the lowest level. Why is this not happening here?
- (e) Given its success to date, why should the Voluntary School model not be extended and greater autonomy given to schools, rather than autonomy being eroded?
- (f) What evidence is there that this Bill will result in "improved working of the education administration" and achieve "better outcomes"?
- (g) Why are the two Bills not being considered together, given the inter-connection of so many issues?
- (h) The ESA is given the right to engage in commercial activities, and this is likely to relate to examinations. Article 26(1)(b) gives the ESA the job of ensuring that the standard of its examinations are recognised as equivalent to those elsewhere in the UK. Should this role not be independent of the ESA?
- (i) Article 35(3) gives the ESA the power to appoint Community Governors and defines eligible individuals as " persons living or working in the local area ". Surely this is a very restricting and narrow or parochial view of governance?
- (j) Schedule 1 paragraph 2 places the choice of members of the ESA in the hands of the Department. Does this not give any Minister the opportunity to appoint individuals who share the views of this particular person? Where does accountability come in?

The concerns expressed in this submission are not mollified in any way by bland assurances from the Minister and her Department that, in day-to-day terms, nothing much will change; we judge that such assurances, and indeed those of the Policy Papers, are incompatible in areas such as

employment and staff contracts, with what the legislation is actually proposing. Our fears can only be allayed by the Bill being radically amended in regard to these areas.

Association of Head Teachers in Secondary Schools (AHTSS)

The AHTSS wishes to place on record its appreciation for the important work of the Education and Library Boards over the last number of years but recognises and strongly supports the need for rationalisation of education in Northern Ireland.

The association believes that the chosen vehicle for this, Education Skills Authority is the most effective way for this major and radical overhaul to be achieved.

It is therefore disappointing to note that while the need for the most efficient use of facilities and resources are paramount in the new organisation it is unfortunate that the same view has not been addressed in terms of looking ahead to the requirements for the balances in the academic/vocational demands be controlled through one body and not two as is the present with shared responsibility between Department of Education which talks about a 14-19 curriculum and Department of Employment and Learning which talks of a 16-19 curriculum. This debate has been getting nowhere for a number of years and in the establishment of ESA it would seem an appropriate time to move the issues raised onto a new platform. It is, in our view, very important to maximise the resources we have in order to maximise the fullest potential of our young people who will be the economic providers of tomorrow.

The bringing together of nine educational organisations and making it into one is indeed a massive undertaking and as such it is most important that all the educational groups in the province are made to feel that the new body is there for everyone and not one sectional interest over another. For this reason we are opposed to the make up of the new 'governing body'. Schedule 1 point 2 states that the new members along with the chair will have 'at anytime a majority of members who are councillors, which means that 6 out of the 11 members will have a political background, not necessarily an educational one. It is the view of the AHTSS that such a combination will fail to reflect the variety of educational interests and deprive some such bodies of a voice in the shaping of the new organisation which will make the cohesion within ESA harder to achieve.

It is understood that there has to be political accountability in the relationship of ESA and the use of public accountability. We would consider the fact that ESA will be under the control of the DE, with a politically appointed minister and answerable to the Committees of the Assembly both Education and Finance, that there are sufficient mechanisms provided for political influence to be used without making the governing of the new body subject to such extensive political control. It would therefore be our view that the governing body be made up of educational interests and not direct political councillors.

Comhairle na Gaelscolaíochta (CnaG)

Comhairle na Gaelscolaíochta welcomes the opportunity to make a submission to the Assembly Education Committee on the proposed Education Bill. This submission will consist of the following:

- an introduction to Comhairle na Gaelscolaíochta, our history, roles and responsibilities, and who we represent;

- Our general comments on the Bill and
- Our comments on the bill that pertain specifically to Irish-medium (IM) education.

Introduction

Comhairle na Gaelscolaíochta is a Department of Education (DE) sponsored council responsible for the provision of advice pertaining to the development and provision of Irish-medium education (IME) in Northern Ireland. Comhairle na Gaelscolaíochta was established as a direct consequence of the Belfast Agreement, which placed a statutory duty on DE "to encourage and facilitate Irish medium education". Article 89 of the 1998 Education Order that followed the Belfast Agreement contained provision to allow DE to pay grants to any "body appearing to the Department to have as an objective the encouragement or promotion of Irish-medium education". In 2000 DE established Comhairle na Gaelscolaíochta to carry out this function.

There are currently over 4300 children attending IME provision in the north of Ireland, attending 46 preschools, 31 primary schools and 3 post-primary schools. We estimate that attendance figures will grow to between 8,000 and 10,000 over the next 10 years.

It is our role to represent the children, staff and schools in the Irish-medium (IM) sector and the wider IME community of families and communities.

We advise the Department and others in relation to the specific needs of IM pupils, staff and schools.

We lobby on behalf of the sector and provide practical support and advice to parents wishing to establish IM provision in the areas, or who wish to access IM education.

We participate on a wide variety of education workgroups and committees on behalf of the IM sector. It is envisaged that Comhairle na Gaelscolaíochta will become the sectoral support body for the IM sector.

Comments on the content of the Bill

Comhairle na Gaelscolaíochta welcomes the draft Education Bill. In particular we welcome the establishment of a single education authority to provide frontline services to schools and pupils. Comhairle na Gaelscolaíochta supports the aim of providing equitable provision across the whole of the north for all children irrespective of their school type or where they live.

Comhairle na Gaelscolaíochta in particular welcomes the fact that ESA will have responsibility for youth provision as an integral part of educational provision.

We also welcome the fact that ESA will be the single employing authority for all staff in schools. We believe that this will facilitate ESA to make provision for Irish-speaking staff in IM schools and preschools.

Comments Specific to Irish-medium Education

There are several areas where Comhairle na Gaelscolaíochta believes that the Education Bill could be strengthened to make provision for IM education. Each of these areas is described below.

Functions and general duty of ESA

Comhairle na Gaelscolaíochta believes that this section should include a reference to IME that would reflect DE's duty under the Belfast Agreement and under the 1998 Order that places a duty on DE "to encourage and facilitate the development of Irish-medium education".

Specific reference is made in the Belfast Agreement to the role of DE in respect of IME. It is important that this duty is reflected in the duties of agencies of the Department including ESA.

Legislation for the establishment and functioning of previous agencies of DE has not included references to IME. As a consequence, support for IME from DE agencies (ELBs, CCEA, etc.) has been sporadic and dependent on specific earmarked funding from DE to these agencies. There has been no obligation on such agencies to support IM provision from their existing resources. Pupils in IM schools have not benefited from the same levels of services as EM schools as a consequence. Inclusion of the reference above will ensure that ESA will be required to carry out the duties of DE as an agency of DE in respect of IME from within its block grant. IM pupils and schools will receive the same service provision and support as those in the English-medium (EM) sectors.

Because of the wide ranging powers and all-encompassing roles envisaged for ESA it will be difficult for DE to give effect to its duties under Article 89 of the 1998 Order in respect of IME if this is not legislated for in this Bill.

IM Ethos in IM Schools

The proposed legislation affords no protection for the characteristics of IM provision in a school. Therefore, practice may vary from time to time, and from school to school, resulting in the erosion of IM characteristics. For example, this may happen in response to the constraints on the school – e.g. school budget, staffing, accommodation, etc.

The distinctive characteristics of Irish-medium Education, that constitute the essence of IME, need to be maintained and protected in schools. This will ensure continued access to IM education in schools that have been established by parents for this purpose, and ensure that the IM status of the schools cannot be altered. It will also ensure high levels of educational attainment in respect of language acquisition and usage.

Comhairle na Gaelscolaíochta therefore, is proposing several amendments to the legislation to protect and maintain the status of IM provision in the longer term, and to bring arrangements in relation to IM schools in line with that of other sectors.

ESA to employ all staff of grant-aided schools

Section 3 (1) and (2) (a) and (b)

Comhairle na Gaelscolaíochta is concerned that the protection of the IM ethos; the defining characteristics of IM provision is not being afforded the same protection as that of other sectors, in particular that of the Catholic-managed sector.

Under this section, provision is made to allow the trustees of Catholic Maintained Schools to be regarded as the "submitting authority" for the purposes of submitting schemes of employment^[1]; however, no such provision is made for trustees of other schools including IM

schools. (Trustees are, however, afforded a role in the establishment of new schools under Section 53, Schedule 7, Article 14).

The long term maintenance and protection of the distinctive characteristics of an IM school are vested in the trustees of the school. This duty is entrusted into the care of the Board of Governors. However, ultimately, the responsibility lies with the trustees to maintain and protect these characteristics, which constitute the essence of IM provision.

Comhairle na Gaelscolaíochta requires provision to be made in the Bill for trustees of IM schools to be the "submitting authority" for IM schools. Comhairle na Gaelscolaíochta is seeking that provision is also made to allow for the duties in respect of "submitting authorities" to be delegated to Board of Governors where trustees so decide.

Discharge by ESA of its functions under sections 24 and 25.

Under this section Comhairle na Gaelscolaíochta is seeking a specific reference to IM education.

There are references in this section requiring ESA to have regard to the requirements of industry, commerce and the professions regarding education; and to the requirements of persons with special learning needs.

Comhairle na Gaelscolaíochta believes that it is appropriate to refer here to the requirements of persons being educated in the Irish language. The education of children through Irish is directly linked to employment opportunities in the Irish language, the development of the Irish-language economy. It is a legitimate expectation of the education system and of the role of ESA in it to expect it to have regard to the requirements of Irish language employers and of those charged with the provision of services in the Irish language.

Schemes of Management^[2]

Preparation and approval of schemes of management

Under Section 31, which deals with the preparation and approval of schemes of management, Comhairle na Gaelscolaíochta is seeking that provision be made for the trustees of an IM school to be included in the meaning of "the submitting authority". This will allow IM trustees the power to maintain and protect the distinctive characteristics of IM schools, in their delegation of powers to Boards of Governors.

Comhairle na Gaelscolaíochta is also seeking that provision is made to allow for the duties of "submitting authorities", in respect of schemes of management to be delegated to Board of Governors where trustees so decide.

Comhairle na Gaelscolaíochta is concerned to ensure parity between the IM sector and other sectors in this respect, in particular the Catholic Maintained Sector.

These changes will give the trustees of IM schools similar status to that being afforded the trustees of the Catholic sector, and the changes facilitate IM trustees to delegate the day-to-day management of its schools to school-management authorities without relinquishing control of the future status of the school as an IM school.

Duties of Board of Governors in relation to achievement of high standards of educational achievement

Comhairle na Gaelscolaíochta believes that it is important that IM schools and units are designated as such by DE, and that this legislation allows for that to take place. We are proposing an amendment to the Bill to ensure that the distinctive IM character of a school or IM unit is designated in a scheme of management and protected from change, particularly in the case of IM units in EM schools.

Comhairle na Gaelscolaíochta also feels that it should be a required duty of the Board of Governors of a grant-aided school to exercise its functions with a view to promoting and preserving the designation of that school, or of a unit in the school, as designated by the Department.

Boards of Governors

Currently, IM units in EM schools have no protection beyond the action of the Board of Governors of the school. There is no requirement for Boards of Governors to reflect, in its membership, the presence of an IM unit in its school.

Comhairle na Gaelscolaíochta believes that this position is anomalous and seeks to have a requirement included in legislation for Boards of Governors of schools with IM units to have governors appointed to it committed to the maintenance of the IM provision in the school.

Under the section entitled Boards of Governors, Comhairle na Gaelscolaíochta seeks provision to allow for the reconstitution of Boards of Governors of schools where part of a school (unit)^[3] is an Irish-medium school. Comhairle na Gaelscolaíochta proposes that the Bill be amended to place a duty on ESA to appoint persons committed to the maintenance of the IM unit in the school to a Board of Governors of a school that has an IM unit.

There is already legislation in place to this effect for Boards of Governors of Controlled Integrated schools.

Irish-medium Schools

Currently, IM schools are designated as other maintained schools, and consequently have no legal status as IM schools. Comhairle na Gaelscolaíochta seeks an addition to the Bill allowing for the designation of a school, for the purposes of the Education Orders, as an Irish-medium school. The Bill already contains provision for determining how a school should be designated as a particular type of school in relation to Catholic Maintained schools. This power also exists already for designation of Controlled status, Controlled Integrated and Voluntary Grammar schools as grammar schools.

Comhairle na Gaelscolaíochta proposes an addition to the Bill to provide for this in a section entitled Irish-medium schools.

Schedule 5

Transfer of certain staff of the Department

There is currently no arrangement in place to secure the effective transfer to ESA of Comhairle na Gaelscolaíochta staff involved at present in the provision of direct services to schools. Once

ESA is established it is intended that the responsibility for direct services currently delivered by Comhairle na Gaelscolaíochta and NICIE will pass to ESA, It has also been agreed with DE that Comhairle na Gaelscolaíochta and NICIE employees responsible for the delivery of those services will transfer to ESA.

The Bill only provides for the transfer of CCMS staff and certain staff of the Department of Education to ESA.

Comhairle na Gaelscolaíochta believes that the Bill should also contain provision to include other bodies that have been designated as affected bodies for the purposes of the RPA, of which certain staff will transfer to ESA; namely Comhairle na Gaelscolaíochta and NICIE. A transfer schedule will allow for the transfer of staff to ESA from these affected organisations. Otherwise, staff in Comhairle na Gaelscolaíochta engaged in the delivery of direct services to schools will be required to transfer to ESA without the cover of legislation in relation to pensions and other rights.

Section 53.

Schedule 7

Minor and consequential amendments

The Education Orders - general amendment of references to education and library boards

To secure the maintenance and protection of the IM ethos in IM schools and units, Comhairle na Gaelscolaíochta is seeking to have the role and authority of trustees of IM provision recognised and strengthened in legislation. We also seek to have the status of an IM school recognised and strengthened in legislation.

The Comhairle na Gaelscolaíochta proposal in respect of Trustees is based on that currently in place for the Catholic Maintained sector. The Comhairle na Gaelscolaíochta proposal in respect of recognition of the status of an IM school as such, is in line with that in place for all other types of school (Controlled, Controlled Integrated, Catholic Maintained and Voluntary).

Comhairle na Gaelscolaíochta is seeking that a proposal to establish an IM school or unit is identified as such, and that this is provided for in legislation. In this context, Comhairle na Gaelscolaíochta is seeking to ensure that trustees and those charged with supporting the development of future IM provision have a role in the decision-making processes and consultation relating to when and where new IM provision is established. This will ensure that a strategic approach to the development of new IM provision is maintained, and will minimise the potential for parent groups to establish new provision without reference to the impact of the proposed new provision on existing schools.

The proposed amendments will place IM schools on a par with Catholic Maintained schools, and schools in other sectors, and ensure that those charged with the strategic development of the IM sector are consulted in relation to development proposals.

Comhairle na Gaelscolaíochta is proposing that official legislative recognition is given to the status of an IM school and unit, that trustees of IM schools are afforded the same roles as the Catholic Trustees, that those acting on behalf of IM trustees are consulted in relation to changes to existing IM provision and in relation to the establishment of new provision.

[1] employment scheme") providing for - (a) the appointment of the staff of the school; (b) the determination of the staff complement of the school; (c) the regulation of conduct and discipline

of the staff; (d) the suspension and dismissal of the staff; (e) the making of payments in respect of dismissals or resignation of the staff; (f) the general management of the staff and the exercise by, or on behalf of ESA, of its functions as employer of the staff; and (g) such other matters as are required or authorised by or under the Education Orders to be included in or regulated by the employment scheme. (2) The employment scheme for a school may — (a) specify procedures to be followed in relation to any matter dealt with in the scheme; (b) impose duties on ESA and the Board of Governors of the school;

[2] For every grant-aided school there shall be a scheme (a “scheme of management”) providing for— (a) the membership and procedure of the Board of Governors of the school; (b) the management of the school, and in particular the functions to be exercised in relation to the school by the Board of Governors, the principal and any other person or body specified in the scheme; and (c) such other matters as are required or authorised by the Education Orders to be included in or regulated by the scheme of management. (2) The scheme of management for a grant-aided school may provide for the establishment by the Board of Governors of the school of committees (whether or not including persons who are not members of the Board of Governors) and for the membership and procedure of such committees. (3) The scheme of management for a grant-aided school may provide for the delegation to — (a) a committee of the Board of Governors, or (b) the principal of the school,

[3] Currently the description “Unit” is not used in legislation. Legislation allows for “part of a school” to be regarded as an Irish language school”

Community Relations Council (CRC)

The Community Relations Council’s (CRC) strategic aim is to “promote a peaceful, inclusive, prosperous, stable and fair society founded on the achievement of reconciliation, equality, co-operation, respect, mutual trust and good relations.” We do this by

- Identifying and developing new and effective approaches to peace-building and reconciliation in partnership with people, organisations and government
- Promoting the adoption of good relations policies and practice at local, community and institutional level
- Assisting communities and institutions in working through and beyond the legacies of the Troubles

In a changing environment, CRC works by promoting constructive and relevant dialogue, by actively supporting those taking real risks for relationship building, by acting as a practical bridge between groups in society and between the public, private, voluntary and community sectors, and by promoting wider learning through developing better practice.

Education Vision

CRC welcomes the opportunity to contribute to the Education Bill and we hope our comments contribute to the Bill at this Committee stage. CRC’s vision of education is one where the opportunities for meeting, sharing and collaboration are maximized and it is within this context that our observations are made.

- Equality & Good Relations. It is unfortunate there are no direct text references to equality, good relations or community relations. Council acknowledges DENI is bound by Equality legislation but believes the bill could be strengthened if direct reference was made to the various duties within the text.

- Preamble. Whilst the 'Functions and general duty of EAS' set out the duties of ESA it would be useful if there was a preamble to the Bill which addressed the divided nature of our society; clearly setting out how this re-structuring and re-organisation will contribute to the reconciliation of our communities, our society and more importantly how it will encourage interaction between young people. The Bill has a real opportunity to set a new course of direction for how children and young people engage with other within an education setting.
- Council also calls on the Committee to amend the text in the 'Functions and general duty of ESA' (Clause 2-2-a) and the General duty of the Department and DEL (Clause 23-3-1-b). There is no mention of good relations or community relations and feel it is crucial the new ESA take into consideration the segregated nature of our society and legacy issues. It is the responsibility of all government departments and their respective bodies, education in this instance, to promote good relations. ESA etc must execute their functions in a way that prepares children to live in a diverse society, thereby respecting difference and promoting reconciliation. It is not enough to confine this to internal teaching through civics teaching; it must go further and embed from the outset the need to enable high-quality and sustained engagement on a cross-sectoral and cross-community basis; this should form part of school development plans.

This Bill has the opportunity to mainstream a commitment of collaboration and engagement across all educational structures.

- ESA & provision of educational & youth services & facilities (clause 15-2). Council is pleased ESA has included a reference to working with others on educational & youth services. This is particularly important in the context of developing and implementing best practice and benefiting from the skills of others who work with young people.
- Activities (clause 15-2-b (youth service)). Council would like to see a broad definition of activities. It is important activities are well thought out actions that contribute to the growth of the young person. Whilst there is obviously a need for social activities it is important to consider how they benefit a broader programme of development.
- Community Governors (clause 35). Council is pleased with the insertion that community governors should live or work in the local community. Council suggests the inclusion of a provision which advocates training and support for these managing bodies in terms of good relations and equality thereby promoting inclusion and diversity.
- Schools Estate. Council also seeks clarification on the area of asset management. The Committee should examine how the Bill enables the schools estate to develop as a network of shared spaces and the implications this will have for the management, planning and maintenance of such spaces as shared.

Council hopes the above comments are taken constructively. Equality and good relations must be core objectives and be mainstreamed. This is an important discussion which CRC looks forward to continuing with the Committee.

Council for Catholic Maintained Schools (CCMS)

1.0 Introduction

1.1 The Council for Catholic Maintained Schools (CCMS) accepts the broad intentions underpinning the Bill to create an administrative framework which is fit for purpose, coherent and efficient.

1.2 Certain clauses and schedules will have clear impact on the Catholic Maintained sector and comment on these, alongside some reservations, will be the focus of this evidence.

2.0 Clauses 1 and 2 and Schedule 1 - Representation

2.1 CCMS has concerns regarding the changed proposals on the governance of the Education and Skills Authority (ESA). The principal concern is that (on the basis of a small membership of the authority of 11 or 12 persons) the wide range of educational interests might not be represented particularly if the majority are to be politicians. It is acknowledged, however, that all appointments will be on the 'merit principle' and that any political representation will not be directly representative of an area. There is also some concern around the requirement that all sub-committees must include a member of the main Board given the wide range of responsibilities which the ESA will have to discharge. A further potential area of concern is the reference in the Minister's Statement of 8th December 2008 to the Assembly that 'local manager and delivery units..... will be sensitive to and receive input from local committees comprising, amongst other, a number of elected representatives'. Council would wish to have clarified the constitution and status of these Committees, their relationship to the ESA Board, to 'local teams' and to local Councils.

2.2 Clause 2 (3) states that "ESA shall ensure that schools whose premises are not vested in ESA are treated on the same basis as schools whose premises are vested in ESA". It is presumed that the former includes Catholic maintained schools. It will be important to establish how this provision will deal with the fundamental contradiction, even for a short period between the introduction of this Bill and the second Bill, that ESA will manage and own (or have vested in it) some schools but manage and not own others. This is of paramount importance to CCMS in view of its responsibilities to Trustees as owners of Catholic Maintained Schools.

3.0 Clauses 3-12 – Employment

3.1 The Council is concerned at the lack of clarity in the use of the terms 'Employing Authority' and 'Employer'. These terms are used in a manner which conveys that they have a single meaning which refers only to those roles to be discharged by the ESA. There is a need to provide a 'term' to describe the 'employer' functions of the Boards of Governors as described in the 'Employment Schemes'. The Council looks forward to the proposals on Accountable Autonomy in Bill 2 to further clarify the specific employment functions of Governors in what is assumed to be a graduated devolution of responsibilities.

3.2 The Council welcomes and supports the proposal, outlined at paragraph 12 of the paper 'Review of Public Administration (RPA) in Education: Roles and Responsibilities of Sectoral Organisations' submitted by the Department of Education to the Education Committee on 14th January 2009, to make the owner/Trustee of each school the 'submitting authority' in respect of the Scheme of Management addressed at Clause 31 (7). A similar view will be taken here by Council with respect to the Scheme of Employment.

3.3 Since Catholic Maintained Schools are, in effect, voluntary schools and Bill 2 proposes that all schools should be designated as 'grant-aided' the Council considers that throughout this Bill and in keeping with the desires of the Trustees of all Catholic schools that Catholic Managed schools should be referred to collectively as Catholic Grant-Aided Schools. This is an interim terminology to be used in this document to describe the governance model preferred by the Council.

3.4 The Council, in order to retain the ethos of the sector, would wish to ensure that the exemptions from Fair Employment Legislation in relation to the recruitment of teachers is safeguarded. The Council, in particular, wishes to ensure that under Clause 5 (2) the ESA does

not make any provisions contrary to the exemption and the Department of Education acts similarly under its powers described in Clause 12. The current draft does not make clear the limits of these powers but it is assumed that they would not be any detriment to the protection of ethos but further clarification is required on this matter.

3.5 The Council understand that the Department of Education has already proposed an amendment to Clause 11 (5) in relation to the payment of salaries and concurs with this proposed amendment.

4.0 Clauses 21-22 and Schedule 3.5 – Transfer of CCMS

4.1 The Council is broadly content with the intention behind these provision but does require further clarification under Clause 1 of Schedule 4 of the definition of 'transferee' and the implications of this for Clause (6) of the Schedule. The Council believes that the intention of the term is to regard the 'Transferee' primarily as the Catholic Church Authorities or Trustees. However, the reference in Clause 6, particularly in relation to legal proceedings, raises questions in relation to legal matters. The Council believes that the intention here is in relation to assets not to staff and that any legal proceeding with reference to staff will transfer to the ESA.

4.2 Council would wish to ensure that there is equality of treatment of staff transferring from CCMS under Schedule 3 and from the Department of Education under Schedule 5. The Council assumes that transfer in all cases means that only: not secondment. There is already an equality issue in that CCMS has not had a formal organisational review since 1994, a period significantly in excess of normal practice across Government, and one which may have a negative impact on pay scales and on access to application for certain posts for some CCMS staff.

5.0 Clause 23 – General Duty of the Department of Education of Education

5.1 The Council is surprised that there is no reference to strategic development of education provision or development of policy in relation to education in this Clause. This may be deemed to be contained elsewhere, through reference to DE powers to provide regulations and policy; however, it may be desirable to reference the Department's strategic role here.

6.0 Clause 31-36 – Schemes of Management

6.1 Clause 31 (7) refers again (as at 3.2 of this evidence) to the role of the 'submitting authority' with reference to the Scheme of Management and the distinction made between Maintained and Grammar schools in the Catholic managed sector. The term Catholic Grant Aided should be used to reflect the unity of the Catholic sector.

6.2 The Bill identifies a new category of 'community governors'. These will be nominated by ESA and will replace Board and DE nominations on Boards of Governors. Council believes that Trustees/owners should continue be consulted before 'community governors' are appointed to their schools. This is the current position with respect to the appointment of ELB and DE representatives to Catholic Maintained Schools and this arrangement should be retained. Council believes, as a general principle, that the ESA should have regard for the ethos and defining character of any school in the appointment of a 'community governor'. 'Community' is defined, as in previous legislation, as persons living or working in the local community. Council believes it may be worth questioning if this is still a realistic understanding, although this may depend on the definition of 'local'. Council welcomes the provision that part-time teachers can be elected as governors but is disappointed that this recognition has not been extended to other staff working in the school.

6.3 The Council broadly welcomes the proposals for the provision of Schemes of Management outlined in Clause 30 and 31. It considers that the 'descriptions of schools' should be consistent with the proposed provisions envisaged in Bill 2 with respects to all schools being regarded as 'grant aided' and the view of the owners/Trustees of Catholic schools be regarded as 'Catholic Grant-Aided' schools. The Council, with these reservations accepts that the ESA should provide 'model' schemes of management as an aid to 'submitting authorities' in drafting schemes of management.

7.0 Clause 34 – Achievement of High Standards

7.1 The Council particularly welcomes the focus here on 'the achievement of high standards' of education attainment by pupils. Council would again refer to its desire not to have two types of Catholic schools referred to in the Bill and that all Catholic schools should be designated 'Catholic Grant-Aided Schools'.

8.0 Clause 49 – Catholic Maintained Schools

8.1 Clause 49 proposes the establishment by the Department of Education of a register of Catholic Maintained Schools. Council considers this an unnecessary provision given the comments at 3.3 and the Council's understanding of the provisions on Governance in Bill 2.

8.2 CCMS and Trustees believe that all Catholic managed schools are 'voluntary' schools and that the term 'Catholic Maintained' was only a convenience to inform the 'grammar' school definition. Under the proposal of Bill Two, as currently understood, all schools should be regarded as 'granted aided' schools. Council expects that if this remains a transitional arrangement it will be amended as suggested under Bill 2.

9.0 Schedules 7 and 8 – Minor Amendments and Reports

9.1 The Council notes that part of Article 70 of 1998 Order is repealed. This dealt with payment by Boards to teachers in Catholic maintained schools. This has removed the provision that redundancy costs could be paid to CCMS, the definition of teaching costs, and the provision by Boards of liability insurance. The last point seems reasonable however there is no alternative provision regarding the role of the ESA in the definition of teaching costs and payment of redundancy costs. This matter should be addressed and clarified.

9.2 Schedule II of the 1998 Order is removed. This related to staff of controlled and Catholic maintained schools with delegated budgets and covered: discipline and grievance under the Board of Governors control, their right to suspend employees and provisions in relation to dismissals. Council presumes that these functions will be provided for elsewhere; however as yet they are not. This omission may imply a change in the authority of Boards of Governors in respect of discipline, grievance and dismissal. This would in effect remove those employer functions completely from Boards of Governors and presumably pass these functions solely to ESA. There is a need to clarify these points generally and particularly in relation to any 'model' in the Scheme of Management or 'Scheme of Employment'.

9.3 The Council notes that while there is broad political agreement on the desirability of establishing Sectoral Support Bodies there is no reference to these in the draft Bill. Council would seek assurance on the standing of such bodies preferably through some formal recognitions in the Bill. It welcomes the access to such bodies by all sectors.

9.4 There are a number of provisions relating to consultation with Trustees on a range of matters which Council considers need to be clarified or addressed. These are referred to below:

(i) The Education Order (NI) Order 1998 Article 50 and 60 makes provision for trustees to be informed of the suspension of delegation of a schools budget share and to make representations regarding this during a review of suspension. Council would propose that the Sectoral Support Body should represent the interest of owners/Trustees in a similar manner under the new arrangements.

(ii) The Education (NI) Order 1998 Section 11(3) (b) required consultation with CCMS where DE is providing regulations on school performance targets. CCMS and Trustees believe that this is a key factor in raising standards and that the role currently played by CCMS should in future be discharged by the Sectoral Support Body. Section 16(6)(b) regarding Boards directing schools to exceed class size limits, required them to consult CCMS, this could be similarly referred to the Sectoral Support Body as should the 2003 Order requirement to consult CCMS on a common funding scheme and Article 24(4)(b) of The 2006 Order requirement to consult with CCMS regarding regulations on provision of information by schools.

10.0 Bill 2

10.1 The Council understands that the Assembly will have sight of Bill 2 before Bill 1 is approved. This is intended to ensure that the whole package of reform under the Review of Public Administration of Education is interpreted as a single, connected legislative entity even though it is delivered in two Bills. The Council accepts that some matters, for example, the ownership of Controlled schools, Area Based Planning, Accountable Autonomy and School Governance will be considered in Bill 2. It is concerned, however, that issues regarding the nomenclature of Catholic Managed schools (Catholic Maintained and Voluntary grammar) undermines the broad intention of Bill 1 in attempting to reduce bureaucracy and raise standards. The Council would prefer the general nomenclature 'Catholic Grant Aided Schools' or a similar title agreed with the owners/Trustees of Catholic schools to be used throughout.

Department of Education

Area-Based Planning Committee for Education Briefing on 11 February 2009

Appendix 1: List of Respondents to Consultation

Appendix 2: Issues Raised in Consultation

Appendix 3: Issues Raised Earlier by Committee Members

Consultation Exercise

1 Draft RPA Policy Paper 22 on Area-based Planning issued for public consultation on 8 July 2008. The Department received 34 written responses to the consultation, including two from political parties, two from District Councils, three from Education and library Boards, six from schools, and the remainder mainly from education sectoral bodies and voluntary organisations.

2 The responses were broadly positive regarding the approach to area-based planning outlined in the draft Policy Paper. There was a wide consensus, for instance, that the Education and Skills Authority should have lead responsibility for producing Area Plans, and that such plans should look across sectors. There was also agreement that Area Plans should cover a wide range of

provision, and that area-based planning should be about improving provision for children and young people.

3. The consultation identified a number of specific issues and these have been arranged under the following themes:

- Roles and responsibilities
- Anticipating need
- Consultation in area-based planning
- Equality aspects
- Area-planning groups
- Defining areas
- Coverage and scope
- Curriculum, performance & quality
- Development proposals
- Interim (pre-ESA) arrangements
- Post-primary exercise
- Other

4. Appendix 1 lists the consultation respondents, and Appendix 2 provides a summary of the responses received in the consultation against the above themes. Appendix 3 provides responses to the queries raised by the Committee earlier as set out in the Committee Clerk's letter of 16 January.

Next Steps

5 The assessment of all the responses is currently being finalised and it is intended that the revised Policy Paper along with comments on the issues raised will be forwarded to the Committee by 2nd week in March.

Appendix 1

List of Respondents to Consultation

Alliance Party
Antrim Grammar School
Ards Borough Council
Association of School and College Leaders NI
Big Lottery Fund
Council for Catholic Maintained Schools
Children in NI (CiNI)
CnaG
Collegiate GS, Enniskillen
Disability Action
Democratic Unionist Party

Governing Bodies Association
Integrated Education Fund
Institute of Directors
Local Gov Policy Division (DOE)
Magherafelt NS
National Association of Head Teachers
NEELB
Newstart education project
NI Commission for Catholic Education
NICIE
NIPSA
Reform Implementation Team, NI Social Care
Council
Príomhoide Naíscoil Dhoire & Bhunscoil
Cholmcille, Doire Cholmcille
SELB
Sport NI
St Colmcille's HS Crossgar
St Malachy's PS Bangor BOG
Strabane District Council
TRC
Ulster Farmers Union
UTU (Ulster Teachers' Union)
WELB
Youthnet

Appendix 2

Issues Raised in Consultation

The issues raised in responses to the consultation are summarised below under relevant themes and are being considered in revisions to the draft policy paper.

Issues

Roles and Responsibilities

- How the relationships between the various sectoral interests and ESA will play out in decision making; the mechanism for achieving consensus amongst all the interests; or for making decisions in the absence of consensus.
- There is too significant a role for the ESA vis-à-vis the sectoral interests and owners/trustees.
- There is too significant a role for the sectoral interests vis-à-vis the ESA.

- There is not enough consideration of the role of the voluntary organisations and unions in the process.
- There is a need to differentiate the roles of the stakeholders and their relative importance.
- There is a lack of recognition of the role of the controlled sector as a 'sector' in its own right.

Need and Demand

- More detail is required on how needs would be anticipated.
- There is a need for parental input at the beginning in determining need, not as a consultation on already determined need.
- There should be a different approach for the smaller sectors.

Consultation in Area-Based Planning

- Clarification sought on the role of consultation, both on the range of consultees and on what parts of the process they would be consulted on. Also, a range of organisations asked to be involved in consultations within the area-based planning process.
- Concern there may not be a consultation on Strategic Investment Plan (SIP) proposals.
- The Policy should outline ESA's S75 duties on consultation.

Equality Aspects

- How are 'responsibilities' relating to equality for children being carried out in the consultation process?
- The establishment of quality indicators, data and monitoring provides an opportunity to establish an equality monitoring system to support statutory duty requirements.

Area-Planning Groups

- There is a lack of detail on their function, duties, rights and powers.
- The voluntary youth sector should be represented on groups.
- The Policy should outline which sectors are to be involved and whether the groups should include community/voluntary sector and/or parents.

Defining Areas

- The word "area" needs to be more clearly defined.
- Conversely, there needs to be a flexible approach to defining areas.
- The paper appears to give the role of establishing area boundaries de facto to DE and ESA with a minimal role for major stakeholders.
- Area Plans should be based on the proposed 11 councils.

Coverage and Scope

- There is no reference to pre-school provision other than nursery schools.

- No advantage to 'adding further restrictions' by linking with other provision, although others expressed strong support for encapsulating community provision.
- Area-based planning should be linked externally to the Children's Services Planning process; there is a lack of reference to a link with Community Planning.
- Concern at the possible exclusion of Education Other than at School (EOTAS) provision and community based Alternative Education Provision (AEP).
- How will ESA ensure provision can be realised in FE Colleges which have additional demands on them beyond the 14-19 curriculum?

Curriculum, Performance & Quality

- The creation of specialist schools could work against greater collaboration.
- In developing educational quality indicators, the DE and ESA must engage widely with educational sectoral interests and children and young people.
- No reference to the area learning communities in place.

Development Proposals

- Bodies which at present are permitted to raise Development Proposals must still be permitted to do so.

Interim (Pre-ESA) Arrangements

- Question the effectiveness of undertaking even small aspects of area-based planning until the ESA is in place.
- The process could be problematic given current uncertainties on future post primary transfer procedures and admissions criteria.

Post Primary Exercise

- There is a difference in emphasis between what is proposed in this paper and the post primary exercise.
- The make up of the groups is biased against the controlled sector.

Other

- There is an urgent need for sectoral support for the controlled sector.
- There is a need to link with DE corporate vision
- The legal ownership role of Trustees needs to be reflected.
- The implications for Open Enrolment policy are not reflected in the policy document.
- Transport related issues should be considered within the consultation phase of the area-based planning process.

Appendix 3

Issues Raised Earlier by Committee Members

1 Responsibilities between the Department, ESA and Sectoral Representation

This is an important area in the delivery of area-based planning, and the responses to the consultation reflected a number of views regarding this, primarily on the balance between the ESA and the education sectoral interests. ESA will be the only statutory body under the RPA arrangements and will have the central role in the planning work. Whilst sectoral representation has no formal role in the process, the sectoral interests will be clarified further, noting their representation on the area planning groups, and the key responsibilities this entails in relation to making proposals and representing their interests as Area Plans are being developed and monitored. The ESA, in drafting Area Plans, would take cognisance of the views and proposals of the sectors at each stage and also has responsibility for wider consultation on draft Area Plans. As well as consulting with sectors in the preparation of an Area Plan, the ESA should seek views of the sectors and others in Area Plan proposals prior to submission to the Department. Where agreement has not been reached, ESA would note the issues raised and its conclusions as part of that submission.

2 Community Planning

The Bain Review concluded that planning of the education estate could also be related to planning of other fields such as health, social services and sport. There is a strong resonance between area based planning and the proposals for community planning and indeed for the latter it is proposed that ESA would be one of the bodies with a duty to participate and assist in the community planning process.

3 School Sectoral Pre-consultation/Consultation Exercises

Under area-based planning, there would only be one recognised Area Plan for the area, produced by the ESA with its statutory responsibilities and with involvement of the area planning groups (at which the school sectors will be represented), and subject to consultation in draft form. It would be a matter for sectoral interests as to whether or not the sectors may continue to produce their own planning documents but they would have no basic statutory help to inform the relevant sector and the contributions of the sector to the ESA-led planning processes. In the meantime sector bodies are continuing to undertake planning and consultation exercises within their own remits pending the establishment of ESA.

4 Development Proposals

The Committee raised a concern about development proposals being put forward before the establishment of area-based planning that might, if acted upon, run counter to area-based planning, and could potentially lead to "school blighting". The draft Policy Paper set out the proposed relationship between development proposals and Area Plans whenever ESA is established. In the interim the Department cannot prevent the raising of development proposals by particular bodies and groups. However, in advising on the assessments of development proposals, the Department takes into account the consistency of the proposal with the anticipated need for provision in an area.

5 Club Bank and Area-based Planning

The Department does not see the need for a continuance of Club bank-type arrangements once Area Plans are in place across the region. When area-based planning is established, all schemes approved as part of the planning process should be appropriately funded from the outset rather

than have a position as at present where a sector needs to raise its own resources initially to provide accommodation. Therefore, the need for Club bank loans should diminish and become redundant in time as existing schemes are completed.

6 Post Primary Exercise - Progress under current Central and Area Planning Groups

The aim of the post primary exercise is to prepare a regional plan for "the most efficient and effective arrangements to provide access to the Entitlement Framework for young people, from 2013 on a regional basis". It is expected the exercise will test the concept and process of area-based planning and recommend how best to proceed towards full delivery of the Entitlement Framework on an area and regional basis, including opportunities for sharing and collaboration across schools and sectors. A dedicated website was launched on 20 October 2008 which contains the Terms of Reference for the exercise, details of the membership of each group, statistical data on each area, the pro-forma and guidance for making a submission and links to the relevant DE policy documents that provide the context for the exercise. Seventy-six submissions from a range of stakeholders were received by the 30 January 2009 closing date.

The Central Group has met on four occasions and to date has agreed

- Protocols and modus operandi for the group;
- A Pro-forma and Guidance for those wishing to make a submission;
- The structure and content of the dedicated website;
- A timetable for the exercise; and
- A process for dealing with submissions.

A further meeting of the Central Group is arranged for 19 February 2009.

The first meeting of the Area Groups took the form of a residential and all representative bodies attended. All representatives demonstrated a willingness to fully engage in the process. Each Area Group has had further meetings to identify the specific key issues pertaining to their area and to consider the advice from the Central Group on how to deal with the submissions they receive as they develop the timetable of meetings further.

The Central Group submitted an Interim Report to the Minister on 27 October. The report highlighted the positive engagement of all sectors and the launch of the website. It also contained a request from the Central Group to extend the deadline, which was subsequently agreed. The remaining revised time table is as follows:

Activity	Date
Local Groups consideration of the submissions	February 2009
Central Group Progress Report to Minister	27 February 2009
Draft Area Plans to Central Group	Mid March 2009
Central Group initial review of 5 Area Plans	Mid March to late April 2009
Initial Regional Review Report from Central Group to Minister	May 2009

Department of Education

Review of Public Administration (RPA): Education Planning

Introduction

1. This paper describes the approach being taken to develop provisions for inclusion in the second RPA Education Bill, to give effect to the policy proposals on area planning of education. The shape of the actual draft legislation will depend on advice from the department's legal advisors and Legislative Counsel, and will be subject to Ministerial approval.

2. The legislation will be based on linking education area plans to the development proposal process in article 14 of the 1986 Order^[1] (substituted by the Education Bill). Development proposals submitted to the ESA will be assessed for conformity with the education plan for the relevant area, if there is such a plan in operation.

3. Proposals that do not conform to an area plan will be rejected by the ESA at an early stage. They will not be published for consultation, or proceed to the Department for decision. This is to discourage frivolous or unrealistic proposals, and to allow any such proposals that are made to be dealt with expeditiously, and without the need to apply the full article 14 process of consultation.

4. Proposals that are in conformity with an area plan will proceed through the normal article 14 procedures, but with the addition of an assessment by the ESA of the extent to which such proposals would meet the needs identified in the area plan.

5. In the absence of an area plan, the development proposal process would proceed as present.

New provisions sought

6. The provisions likely to be included are described below.

7. The Bill may include:

- a power for the ESA to prepare new or revised education plans for particular areas, and submit them to the Department of Education for approval;
- a power for the ESA to revoke an area plan, subject to Departmental approval;
- a definition of 'area education plans';
- provisions on consultation with, and involvement of, education interests (stakeholders) in the process of preparing education new or revised area plans, or a proposal to revoke a plan;
- a power for the Department to approve education area plans etc., with or without modification;
- a power for the Department to make regulations governing the form and content of education area plans, and the procedures to be followed in preparing such plans etc, and involving education interests;
- amendments to article 14 of the 1986 Order, and various articles in the 1989 Order;

- provisions requiring the Department and the ESA, in exercising relevant functions, to have regard to any area plans in force.

8. These are described in more detail below.

Education area plans

9. The ESA will have the power to prepare a new or revised education plan for any area, and submit it to the Department of Education for approval. The ESA will also have the power to revoke an existing plan, subject to Departmental approval. This is to allow for the evolution of the area planning process, and consequent changes to areas. For example, areas could be combined, split, or otherwise changed, and an existing plan could be revoked and replaced with one or more new plans.

10. The Department will have a power to issue guidance on area planning, and the ESA will be required, in exercising its planning functions, to take into account any such guidance. There will also be a power for the Department to direct the ESA, if necessary.

11. The Department will be permitted to approve plans either with or without modification.

Definitions of 'plan' and 'area'

12. There will be a provision defining an 'education plan' as consisting of:

- a map and a written statement setting out, in such detail as the ESA thinks appropriate -
- an assessment of the need for: primary and secondary education; special educational provision; youth services; and educational services for the area to which the plan relates; and
- an assessment of the adequacy of the current provision of education etc in the area; and
- the developments necessary in order to adequately meet the identified need;
- such descriptive matter as the ESA thinks appropriate to explain or illustrate the proposals in the plan;
- the period of time for which the plan is intended to be in force, and the timescale for any intended review by the ESA of the plan.

Input of education interests – sectoral representatives

13. There will be a duty on the ESA to put in place arrangements with a view to securing that, in preparing plans (or proposals to revoke plans), the ESA involves and consults representatives of:

- controlled schools in the area to which the plan relates;
- transferors of schools in the area to which the plan relates;
- trustees of Catholic schools in the area to which the plan relates;
- Irish-medium schools in the area to which the plan relates;
- integrated schools in the area to which the plan relates;
- voluntary grammar schools in the area to which the plan relates;

- providers of youth services (other than the ESA) in the area to which the plan relates; and
- providers of educational services (other than the ESA) in the area to which the plan relates.

14. In practical terms, the sort of arrangements that we envisage are that the various education sector representatives would be members of area planning groups, to be led by the ESA. This is described in more detail in the policy paper.

15. The stakeholder involvement arrangements will require significant administrative effort, and the provisions will give the ESA the discretion not to apply them in the case of minor alterations to an existing plan.

Input of other education interests

16. The ESA will have a power, when preparing plans, to put in place such arrangements as it considers appropriate, to provide for the involvement of, and consultation with the following (either directly, or through representatives):

- parents living in the area to which the plan relates, or whose children receive education etc. in the area;
- children and young people living in, or receiving education in, the area to which the plan relates;
- persons using youth services provided in the area to which the plan relates;
- staff of grant-aided schools and of providers of educational services and youth services in the area to which the plan relates; and
- boards of governors of grant-aided schools in the area to which the plan relates;

Publicity and consultation

17. In addition to stakeholder involvement in the preparation of plans, the ESA will be under a duty to consult on education plans, prior to submitting them to the Department for approval. Specifically, the provision should require the ESA to consult with the local council(s) for the area(s) or part(s) thereof to which the plan relates.

18. The ESA will also be required to take such steps as it considers necessary to ensure that:

- adequate publicity is given, in the area to which a plan relates;
- persons who may wish to make representations or offer views to the ESA about the plan are made aware that they are entitled to do so; and
- such persons are given an adequate opportunity to make such representations within a consultation period (length to be determined by the ESA).

19. The ESA will be required to consider any representations or views that are offered to it during the consultation period.

Regulations

20. The Bill will include a provision permitting the Department to make regulations^[2] with respect to:

- the form and content of education plans;
- the procedure to be followed in connection with the preparation of plans; and
- the arrangements for securing the involvement of and consultation with education interests in the preparation etc. of education plans.

Amendments to existing legislation

21. The relevant existing legislation is:

- clause 2 (2) (c) of the RPA Education Bill,
- article 14 of the 1986 Order (as substituted by the Bill);
- articles 69 to 71 of the Education Reform (NI) Order 1989 (the 1989 Order);
- article 79 of the 1989 Order;
- article 92 of the 1989 Order; and
- article 17 of the 1998 Order.

22. We do not envisage any change to clause 2 (2) (c). The other articles will require amendment, to allow for the 'filtering' and assessment of development proposals as described above. The changes sought are described in more detail below.

23. There will be further amendments to the following effect:

- The ESA, on receipt of a development proposal under article 14 (2), will be required to consider whether the proposal is in conformity with any education plan in force relating to the area in which the development would be located.
- If the ESA considers that the proposal is not in conformity with an education plan, then will reject the proposal, and will not be required to submit it to the Department under article 14 (2) (ii), or to consult on the proposal under article 14 (8), or furnish and publish the proposal under article 14 (9).
- If the ESA considers that the proposal is in conformity with an education plan, then it will submit it to the Department under article 14 (2) (ii) together with its views thereon, and publish the proposal under article 14 (9). The views submitted by the ESA should include its views on the extent to which the proposal would contribute to securing the development proposed in the education plan. The latter requirement should also apply to any proposal submitted by the ESA under article 14 (1) or 14 (3).
- If no education plan is in force for an area, then any development proposals within that area would be subject to the existing procedures in article 14.

Acquisition of Grant-maintained Integrated (GMI) or controlled integrated (CI) status

24. A key principle of area planning policy is that similar arrangements will apply in respect of every development proposal, including development proposals for controlled, voluntary, or independent schools to acquire GMI or CI status, or the establishment of new GMI or CI schools.

Therefore, it is necessary to ensure that such proposals are subject to consideration by the ESA of conformity with any education area plan in force.

25. The relevant provisions in the 1989 Order will be amended to this effect. These amendments will be similar to the amendments outlined above in relation to article 14 of the 1986 Order. Further amendments will ensure that parents are aware of the content of any area plan in force before any ballot on the acquisition of GMI or CI status.

26. Article 17 of the 1998 Order would require the ESA to make arrangements for planning pre-school provision, which would overlap with the new comprehensive area planning provisions. Therefore it is envisaged that all of article 17 will be repealed except the definition of pre-school education in article 17 (8), which will be required for other provisions on grant-making and inspection.

Department of Education

May 2009

[1] And related provisions in articles 69 to 71, 79, and 92 of the Education Reform (NI) Order 1989.

[2] Subject to the normal Assembly negative resolution arrangements.

Department of Education

Revised Policy Paper

Review of Public Administration Policy Paper 22

Area-Based Planning of Education

Overview

1 The purpose of this Policy Paper is to set out the approach to area-based planning, which is being introduced to improve the strategic planning of education provision. A draft paper was published for consultation in July 2008 and this revised version reflects the outcome of the consultation exercise.

2 This paper deals specifically with the policy relating to area-based planning in anticipation of the establishment of the Education and Skills Authority (ESA) under the Review of Public Administration (RPA). The need to improve the planning of the estate was set out clearly in the Strategic Review of Education undertaken by Professor Bain. The Bain Report identified a lack of integration, co-ordination and consistency in the current planning processes and identified a need for a more strategic approach, involving area-based planning. The approach is fundamentally about planning for and delivering improved educational experiences and outcomes for children and young people, making the best use of resources available. It is therefore relevant to a range of policies aimed at improving education. This paper focuses on area-based planning under the ESA. As an initial step towards better planning, the Education Minister established planning groups for the post primary sector to examine delivery of the Entitlement Framework on an area basis. The recommendations from those groups will help inform the area-based planning work to be led by ESA.

3 The Department of Education's vision for education is "To ensure that every learner achieves his or her full potential at each stage of development." A number of education policies and strategies are aimed at achieving this vision, for example, Every School A Good School, Sustainable Schools Policy, and the Curriculum Entitlement Framework. Area-based planning will be an important driver in helping to achieve the vision for education. It is about ensuring children and young people have the opportunity to access and benefit from services and facilities that can meet their educational needs and enable them to reach their full potential at each stage. Its central objective is the provision of a sufficiency of education places through the appropriate mix of facilities and services, of the right size, in the right locations. It involves working strategically through the interactions between different areas and sectors to inform investment proposals and decisions.

4 A number of important cross-cutting policies and initiatives will also be relevant to the area-based planning approach, such as programmes aimed at tackling area-based poverty and social inclusion issues, and Rural Proofing and Equality policies. In addition, area-based planning has a broad focus of schools/colleges, early years and youth services, and could potentially, in time, encapsulate other community provision. Links with the proposed Community Planning process will be important in this regard.

5 A recommendation of the Strategic Review of Education was that planning of the education estate could also be related to planning of other fields such as health, social services, adult education, youth provision, sports, arts and recreation and community regeneration and development. The community planning process proposed for local government will also have an important role to play in ensuring consistency in planning across different services. Indeed, within the recommendations for the introduction of a council-led community planning framework agreed by the Executive in March 2008, it is anticipated the ESA would be one of the statutory bodies to have a duty to participate in and support the community planning process^[1].

6 It will be important for the ESA to explore the most effective way of engaging with the proposed Community Planning Partnerships within the new eleven council model to be introduced in 2011, ensuring that the community planning process and the development of Area Plans by the ESA are linked and aligned. Linking externally to the children's services planning process should allow for greater co-ordination between education and other providers of children's services.

7 The Bain Report explained that area-based planning is fundamental to a goal of communities served by a set of educationally effective and efficient sustainable schools. When taken together such schools should meet the needs of all pupils in the community by planning to optimise the use of their facilities for the benefit of all, including through sharing and collaboration. The Sustainable Schools Policy will also be an important consideration in area-based planning. It identifies six criteria with associated indicators, and recognises that different areas and circumstances may require different solutions. The ESA will look across the region in considering the viability of schools so as to ensure consistency in approach and taking into account local needs and circumstances. It is recognised small schools can face particular challenges, and where small schools are needed for an area they should be supported.

8 Area-based planning will help to both establish and address the need for provision, looking across sectors, through the identification and procurement of specific solutions and projects. The identification of projects for funding within set allocations will be an output from the process. Area-based planning covers the child's and young person's requirements whilst accounting also for the interdependencies between service providers and areas in meeting needs. This approach should help address a number of problems associated with the traditional processes for planning facilities, including the lack of integration, co-ordination and consistency between the planning

activities of the different authorities, and a focus on the individual facility rather than the wider needs of the area.

Key Components in the Area-based Planning Process

9 The area-based planning process will include a number of key components as follows:

- Asset management information;
- Area Plans;
- Strategic Investment Plans; and
- Economic appraisals for projects.

10 Asset management information, derived from surveys of buildings, will be an important element of strategic planning of the estate. It relates to the physical condition and suitability of the estate in each area on a common basis. Asset information will be important also to the strategic planning of other services. The investment needs of facilities can be categorised broadly in terms of condition, sufficiency and suitability as follows:

- Condition needs focus on the physical state of premises to ensure safe and continuous operation and other requirements that may involve building regulations or other non-educational statutory provision.
- Sufficiency needs focus on the quantity and organisation of pupil places within and across schools in the area i.e. are there sufficient places in the area taking account of anticipated need?
- Suitability needs focus on the ability of premises to meet curriculum and management needs for a particular enrolment and contribute to the raising of education standards.

11 The ESA will have a statutory duty to produce Area Plans, which will be important strategic planning tools informing the content of Strategic Investment Plans. The “educational interests”^[2] will have important roles in inputting to the ESA’s development of these Area Plans. A key focus of area-based planning should be to facilitate access for all to a range of provision appropriate to their needs.

12 Area Plans should result from a process undertaken by the ESA at local level and informed by the views and proposals of the educational interests. The ESA will take views from across the educational interests on types of provision required in determining proposals for the overall Area Plan for an area. There will be one Area Plan for an area at any given time, to cover all sectors, and produced by the ESA within its statutory responsibilities.

13 This Policy represents a major development in the way education is planned in the future. The important roles and responsibilities of the educational interests in estate planning, and the individual and sectoral ethos are not ignored in the new approach. The ESA must consider the views of the educational interests in developing the Area Plans before formal submission to the Department for approval.

14 It will inevitably take time to build up detailed-level plans and the approach will need to be taken forward stage by stage. It cannot be a rigid model for planning but must allow for flexibility in approach and be refined with experience. It is expected that the following types of provision will be included in Area Plans in due course:

- Pre-school and Nursery;

- Primary schools;
- Post-primary schools;
- Special schools;
- Youth facilities; and
- Further Education provision (by reference to the Department for Employment and Learning's plans)[3].

15 Area Plans will be based on an analysis of data which will include the following:

- the numbers of places and spare capacity currently in the area;
- the numbers anticipated to be needed by sector and to meet the needs of children and young people;
- the need for any rationalisation and proposals for new facilities; and
- opportunities for sharing and collaboration to deliver education.

They should demonstrate how the data and other relevant factors have been accounted for in arriving at an overall position in relation to the scale and distribution of need for education places and facilities in each area. The analyses may identify options on how best to address need and the area planning processes will involve determination of the appropriate option to proceed with for each area.

16 Working with the educational interests, the ESA will prepare Area Plans in draft form. There will be a requirement to consult upon draft Area Plans. The post-consultation Area Plans will require Department of Education (DE) approval. The DE will liaise with the Department for Employment and Learning (DEL) to ensure that investments in their respective educational facilities complement and do not duplicate provision.

17 A coherent Area Plan will need to be developed for each area and cover all sectors. A number of factors will help to do this:

- common data sets on numbers and places used by all the sectors;
- common view of sustainability criteria for schools and facilities;
- views of parents/pupils/ young people on preferences;
- the views and advice of the educational interests;
- sharing/ collaboration opportunities and proposals; and
- value for money/ cost effectiveness of options considered.

18 An important aspect of developing robust Area Plans will involve projecting the need for places in an area on a consistent basis. The ESA will provide an overall assessment of need that takes account of the relationships between sectors in provision. There are potentially a number of approaches to projecting need, ranging from high-level modelling to very localised 'bottom-up' approaches. The method will involve elements of both, so that a strategic assessment of need can be taken tying in with the overall projected population in the area (accounting for cross boundary flows), whilst also reflecting preferences and developments at the local level. The method will need to be reviewed and refined to account for experience and new data sets as the area-based planning process beds in.

19 Some of the need identified in Area Plans may be addressed through capital investment. The ESA will therefore prepare Strategic Investment Plans relating to these investment requirements. Strategic Investment Plans will be informed by both Area Plans and the asset management information. They will also depend on the anticipated level of resources available from the Investment Strategy and Budget decisions. The Strategic Investment Plans will need to consider budget impacts and constraints, both in capital and resource terms, and make recommendations regarding prioritisation and profiling of investment.

20 Strategic Investment Plans will reflect the outworking of the recommendations in the Area Plans, which will have been the subject of consultation. The area planning groups will have a role in inputting to the development of the Strategic Investment Plans.

21 The approval of a Strategic Investment Plan by the DE should provide sufficiently robust assurance to allow for project investment and procurement planning. Such commitment at this level is dependent upon approval of projects within the Strategic Investment Plan as economic appraisals are rolled out over the planning period. The Area Plans and Strategic Investment Plans will provide the strategic context within which such appraisals will be undertaken and should lead to more consistent prioritisation and boundary setting for economic appraisals. It is envisaged that work on the relevant individual project appraisals should commence at the time that the Area Plans are being prepared so that they could normally be completed and approved in reasonable timescales after the Strategic Investment Plan has been presented. The ESA would work with the relevant educational interests in developing appraisals.

Steps Involved in the Process

22 There will be a number of steps involved in the area-based planning process.

General

- Establish the detailed departmental policy and strategic context for area-based planning by the ESA;
- Specify areas for area-based planning covering post-primary, primary, pre-school and nursery schools within those areas. It is envisaged that there would be a number of plans covering the region;
- Set out parameters, assumptions and factors which must be taken into account for the planning of areas;
- Review information requirements and identify sources and constraints;
- Establish area planning groups representing the educational interests which should assist in informing the ESA in developing Area Plans.

Specific Area(s)

- Production of a draft Area Plan
- Consultation on draft Area Plan
- Submission of Area Plan to DE for approval
- Approval of Area Plan
- Input to Strategic Investment Plan production, submission and approval
- DE approval of Strategic Investment Plan

- Production and submission of project level economic appraisals
- Quality assurance of economic appraisals
- Approval of economic appraisals.

Development Proposals

23 The purpose of the statutory development proposal has been to ensure that all interested parties are informed about proposed significant changes to schools in the local area and have the opportunity to comment before decisions are taken; this process will not change. The ESA will be the publishing authority for development proposals. Proposers will be required to consult with the ESA on their proposals prior to submitting development proposals. A development proposal should be consistent with an Area Plan and where relevant, a Strategic Investment Plan, where a significant change in a school is proposed. A development proposal should therefore be to support the delivery of an element of an Area Plan at the local level.

24 There will be opportunities for educational interests to raise proposals with the ESA as Area Plans are being developed and reviewed. A change that requires a development proposal should have been identified in the draft Area Plan for consultation, either initially or during reviews, and have been the subject of an approved economic appraisal where required, although it is recognised that exceptionally there may be situations arising where genuinely unforeseen circumstances necessitate a change quickly. The fundamental point is that development proposals should not be independent of the Area Plan production and review processes. The development proposal process will remain in legislation, with the stipulation that any development proposal will be assessed in the light of an Area Plan, and be published through the ESA. A key part of the decision-making process on development proposals will involve consideration of the appraisal of options and the financial and educational consequences of each option.

Areas

25 In planning facilities it is recognised there should not be a rigid application of boundaries since, for instance, enrolment at schools reflects both where children live and parental preferences. The analysis therefore needs to account for this reality and that travel-to-school patterns are fluid, differ by institution, and do not match any fixed administrative boundary pattern. However, in presenting Area Plans a set of delineated areas is required to allow Area Plans to provide complete geographical coverage of the region and it is recognised that the extent of areas will likely be different between urban and rural areas. In view of cross-boundary flows, there will be a need to look across Area Plans to ensure such flows are catered for and that the needs of all children and young people are addressed, irrespective of whether they live in the same area as the facility they attend and/or the services they use. This is likely to be a more significant issue for post-primary school provision, and affects all sectors and services.

26 Recognising that the level of presentation may change as the process beds down, Area Plans will be based initially on present District Council areas, or groups of them, but with the flexibility to review this at a later date. There are a number of advantages to this approach. These include data availability, the clustering of post-primary provision (hubs) around district towns and the establishment of Area Learning Communities which are working towards developing collaborative approaches to meet the requirements of the Entitlement Framework on a District Council basis. The groupings for post-primary provision announced on 4 March 2008 are based on the five Education and Library Board areas which are aggregations of current District Council areas.

27 Area Plans should link in time to the new local council areas in the eleven-council model, although the new council boundaries are still under consideration. This would aid interfacing with other planning processes, such as the community planning process proposed for the new councils and referred to above.

Roles and Responsibilities

28 As the statutory regional authority, the ESA will develop plans across sectors and boundaries in a way the present education bodies are not able to do and therefore bring greater consistency, efficiency and effectiveness to planning. DE and the ESA will have distinct yet complementary roles and responsibilities relating to area-based planning.

29 The Department will be responsible for:-

- setting the policy and strategic framework and ensuring the ESA works within this;
- determining the budget (along with others);
- providing advice and guidance to the ESA on area-based planning;
- challenging and approving Area Plans, Strategic Investment Plans and economic appraisals where relevant;
- establishing and using educational indicators and other criteria (along with the ESA);
- providing the approval interface with the Department of Finance and Personnel for budgets, and appraisals above delegations.

30 The ESA will have:-

- overall operational responsibility for planning of educational provision within the policy and strategic framework set by DE;
- a central role in planning the estate on an area basis engaging with the range of educational interests and stakeholders involved in provision of services to children and young people; acting within the equality provisions of existing legislation and respecting the ethos of others and their roles in education provision and consumption;
- responsibility for the production of asset management information, Area Plans and Strategic Investment Plans;
- responsibility for establishing and using educational indicators and other criteria (along with DE);
- responsibility for facilitating and encouraging cross-sector collaboration;
- responsibility for the production of economic appraisals;
- responsibility for implementation.

31 The educational interests include owners, Boards of Governors, pupils, staff and parents, and also include interests representing the youth and early years sectors. There is a need to represent and reflect the educational interests in the process and the key forum for doing so will be the area planning groups^[4].

32 It is anticipated that the following sectors will be represented by an appropriate body (one per sector) on the area planning groups:

- Controlled Schools

- Voluntary Grammar Schools
- Catholic Maintained Schools
- Integrated Education Schools
- Irish-medium Schools

33 Such bodies will each have a place on the area planning groups and should, in carrying out their roles on these groups, seek to the best of their abilities to reflect the views of the other stakeholders in their respective sectors. These bodies will:-

- represent their interests, ethos, needs and perspectives within the area-based planning process, in the spirit and practice of the approach, considering their contribution to the system as a whole, through ensuring appropriate representation on area planning groups;
- inform policy development through engagement in consultation exercises;
- provide pertinent information, analysis and advice on proposals impacting on their facilities in the draft Area Plans;
- engage with the ESA in monitoring exercises and identifying solutions;
- seek to build consensus with other sectors in the process, with a view to adding to quality and viability;
- Represent the interests of all children experiencing barriers to learning and requiring additional support, either within the mainstream school or through placement in any form of off-site provision^[5].

34 Within the educational interests, the owners of facilities have particular decision-making responsibilities which will need to be recognised. It is important therefore that owners' interests are adequately represented on the area planning groups by the sector bodies.

35 Parental and community preferences are important aspects of the education system, and as noted these should be reflected appropriately by the bodies on the area planning groups. The Bain Report recommended "In area-based planning, the Education and Skills Authority should have the option of consulting directly with communities to ascertain views on options for educational provision, with the information obtained being considered alongside the assessments of need made by the various school sectors." The ESA may consider it appropriate in some cases to elicit information directly through perhaps parental or community audits.

36 The needs of young children availing of early years, pre-school and nursery services should be represented also on the area planning groups. There are a number of organisations presently concerned with these and it will be important to identify a representative voice for these children.

37 The voluntary youth sector, being the main provider of youth facilities, should also be represented on the area planning groups. There are a number of organisations presently representing this sector and it will be important to identify a representative voice for these young people.

38 RPA Policy Paper 21 covers schools sectoral support post-RPA. Specifically in relation to the area-based planning process, Paper 21 notes that sectors would be supported through the provision of funding for professional capacity for:-

"participating in the planning of the schools estate, assessing current and ongoing provision within the sector, participating in area-based planning co-ordinated by the ESA, and engaging where appropriate in strategic planning processes, including community planning."

39 The Education and Training Inspectorate (ETI) also will have an important role, including providing specialist advice as required and attending area planning groups where appropriate in addition to their existing inspection and advisory roles.

40 The roles and responsibilities are set out further in the flowchart and table at Appendix A.

Consultation on Draft Area Plans

41 In developing Area Plans the ESA will use area planning groups and other information sources as required. Following completion of a draft Area Plan it will be appropriate to widen the consultation to cover the relevant stakeholders, including schools leaders, trades unions, employers and skills organisations, and higher education. The views of children and young people are also important, and the ESA must have regard to statutory responsibilities on consultation under Section 75 of the 1998 NI Act and other developments with respect to engaging with children and young people.

42 An analysis of responses to such consultation should be reported in the final Area Plan, including identification of any changes that have been made to the draft Area Plan as a result of the consultation exercise. The finalised Area Plan should then be submitted formally to DE for approval.

Approval of Area Plans

43 DE will need to assess the Area Plan and pending satisfactory resolution of any issues it identifies DE should approve the plan, subject to a proviso relating to the availability of resources to implement it and value for money considerations at project level. The approved Area Plan will provide the direction for investment and procurement planning and decision-making in the area.

Area Planning Cycle

44 Given the dynamics of educational need and provision, Area Plans will need to be reviewed on a regular basis and they should be capable of being reviewed or updated as key data sets become available, perhaps annually. However, there is also a need to balance the desire for the latest position against the effort involved in updating Area Plans which are intended to take a longer term look.

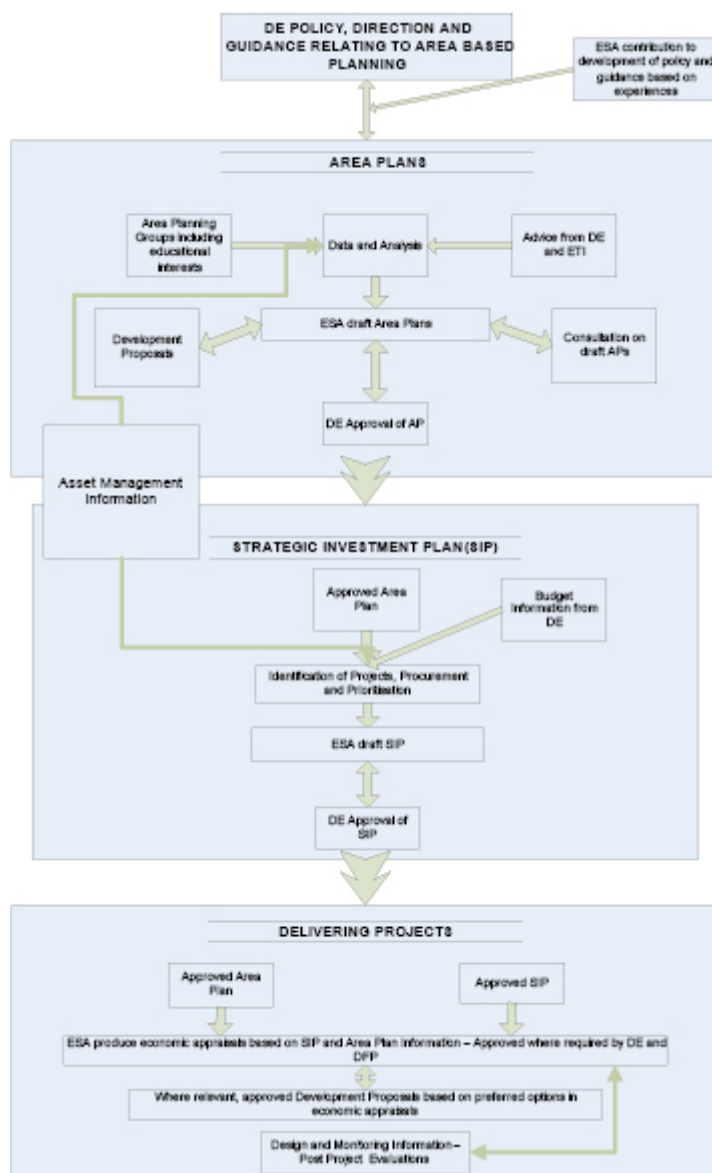
Interim Issues

45 Area-based planning will be the statutory and operational responsibility of the ESA when it is established. Thereafter, it is expected to take some time for Area Plans to be put in place given the detailed processes involved. Some Area Plans may be required much earlier than others because of pressing issues to be addressed. Fully worked up Area Plans may not be needed until later in certain areas, for instance where there is stability in an area's needs.

46 The ESA will be the only publishing authority for development proposals and proposers must consult with the ESA prior to bringing forward development proposals. The ESA will assess the proposal for compatibility with the relevant Area Plan and decide whether it should be published.

In the interim period before an Area Plan is in place for an area, the ESA will advise the proposer, based on the information the ESA has on the area, as to the ESA's view of the merits of the proposal. Following this stage, if the development proposal is subsequently submitted to the ESA for publication, the ESA will assess whether the development proposal has been produced in accordance with procedures before publishing. Where a development proposal does not satisfy procedures, the ESA will return it to the proposer. The proposer will then decide whether to address the deficiencies and having done so to resubmit to the ESA for publication. If a development proposal meets the procedure requirements but an Area Plan is not in place, the ESA will publish it, irrespective of the ESA's view on the merits of the proposal. The ESA's views will be provided in advice to the Department, which will make the decision (post-consultation) on the development proposal.

Appendix A



	Department of Education	Education and Skills Authority	Educational Interests
Policy	Provide policy and strategic planning framework and	Contribute to the development of policy and	Inform policy development through

	<p>Department of Education</p> <p>context reflecting the Bain Report Recommendations, including guidance on local areas and the factors that should be taken into account in compiling an Area Plan.</p>	<p>Education and Skills Authority</p> <p>guidance drawing on the experience of practical work on the ground.</p>	<p>Educational Interests</p> <p>engagement in consultation exercises. The Education Advisory Forum will also advise on policy issues.</p>
Operational	<p>Provide guidance to ESA as necessary on the production of Asset Management Information, Strategic Investment Plans and Area Plans.</p>	<p>Provide overall operational responsibility for planning on an area basis, within the strategic framework and guidance provided by DE.</p>	<p>Contribute to area-based planning process through making proposals appropriate to their sector and involvement in area planning groups.</p>
Production and Approval of Plans	<p>Challenge and approve Area Plans and Strategic Investment Plans, liaising as necessary with others. Undertake proofing/assurance, audit and periodic health checks.</p>	<p>Produce draft Area Plans taking account of the contributions of the interests on the area planning groups and where appropriate elicit information directly from the community. Undertake consultation on Draft Area Plans and submit finalised Area Plans to DE for approval. Submit Strategic Investment Plans (reflecting the proposals in Area Plans) to DE for approval.</p>	<p>Contribute to the production of ESA Area Plans through involvement in local area planning groups. Provide sign-off where possible for any proposals impacting on their facilities in the Draft Area Plans.</p>
Approval of Economic Appraisals	<p>Approve project level economic appraisals and relevant development proposals as the investment period rolls out (subject to the ESA's delegated limits for capital spend – to be determined). DFP will also have an approval role for projects above certain value thresholds.</p>	<p>Undertake project level appraisals on behalf of the sectors and submit those (above ESA's delegation – to be determined) to DE for approval.</p>	<p>Assist with the production of Economic Appraisals for their sector through provision of pertinent information and advice. Sign-off Economic Appraisal options and recommendations impacting on their sector.</p>
Development Proposals	<p>Provide challenge and approval of development proposals. Advise Minister on approvals.</p>	<p>Raise development proposals where appropriate. Consider proposals from others against Area Plans and implications of proposals when reviewing Area Plans. Publish and submit development proposals on behalf of sectors to DE where ESA has approved</p>	<p>Raise proposals with ESA within the area-based planning process.</p>

	Department of Education	Education and Skills Authority	Educational Interests
Specification of Areas	Along with ESA, agree approach to local areas.	Along with DE, agree the approach to local areas.	Provide advice as required.
Area Planning Groups	Ensure area planning groups are representative of the educational interests, including the schools, voluntary/community youth sectors and early years providers	Establish, lead and co-ordinate planning groups that are representative of all the educational interests as required.	Ensure appropriate representation on area planning groups.
Quality Indicators, Data and Monitoring	Establish and use formal and non-formal educational indicators and other criteria (along with ESA). Access data collection and analysis capability availing of modern data gathering technology as a service to all the education partners.	Establish and use formal and non-formal educational indicators and other criteria (along with DE). Undertake a detailed area-based audit of provision (including that in FE), and, having done so, maintain and regularly update the resulting data. Monitor area-based provision against the quality indicators and other criteria, identify factors that suggest a review of provision is required, promote innovative ideas for consideration, prompt and encourage linkages, initiate discussion with the sectors and community interests, and work with others to remove hindrances to desirable developments. Establish and maintain a data collection and analysis capability availing of data gathering technology as a service to all the education partners.	Assist with the provision of information to enable ESA to undertake this task. Engage with ESA in monitoring exercises and identifying solutions.
Sharing/ Collaboration	Along with DEL and others, develop incentives to encourage and support local service providers to build on existing levels of shared facilities and staff and to develop their partnership further across schools, FE and the youth and community sectors.	Facilitate and encourage cross-sector collaboration, including with the voluntary/community sector, and identify opportunities and needs to develop and bring forward innovative ideas for consideration, prompting and proactively encouraging linkages and	Seek to build consensus with other sectors and sign-off where acceptable any such proposals. Engage with and assist ESA with identifying solutions.

Department of Education	Education and Skills Authority	Educational Interests
	working with the education authorities to identify obstacles and ways of mitigating them.	

[1] The precise wording of the duty and the schedule of bodies to which it will apply have still to be finalised and agreed. However, given the ESA's role it is anticipated it will be included in the schedule.

[2] "Educational Interests" and their roles are defined later in this Policy Paper. Educational Interests includes owners, management bodies, Boards of Governors, pupils, staff and parents, and also includes interests representing the youth and early years sectors.

[3] The ESA will need to liaise closely with Further Education providers in the areas to ensure compatibility of plans.

[4] RPA Policy Papers 20 and 21 cover Ownership and Representation of Publically Owned Schools and Sectoral Support Post-RPA, respectively.

[5] Schools are accountable for the educational outcomes of all registered pupils, including those with additional educational needs regardless of how those needs are being met.

Department of Education

Review of Public Administration: Education Bill

1. The Committee has asked for a paper covering clauses 1, 2, 9 and 22 of the Education Bill; and Schedules 1 to 5.

Clause 1 and Schedule 1

2. The clause will establish the Education and Skills Authority (ESA) as a body corporate. The associated Schedule 1 contains a range of standard provisions on the status, membership, employees, governance, proceedings, finance, and accountability arrangements for the organisation. Members may wish to note the following provisions in particular:

Paragraph 2 - membership

3. The majority of the members of the ESA will be district councillors. The appointment arrangements will involve an application process that will reflect the principles in guidance issued by the Commissioner for Public Appointments, particularly the principle of merit.

Paragraphs 7 and 8 - committees

4. These provide for the establishment of Committees of the ESA, including the Committees that will be associated with the local units of the organisation. The provisions include powers to delegate functions of the organisation to Committees or employees.

Paragraph 19 – Assembly disqualification

5. These provisions mean that members of the ESA will be disqualified from being Members of the Legislative Assembly. This stems from the need to avoid the potential for conflict of interest, given that the organisation will be accountable to the Minister and the Assembly.

Paragraphs 20 and 21

6. These provisions will bring the ESA within the ambit of the Commissioner for Complaints (Northern Ireland) Order 1996, and the Freedom of Information Act 2000. As a consequence of the former, the ESA will be designated as a public authority for the purposes of section 75 of the Northern Ireland Act 1998. The ESA will automatically be a public authority for the purposes of the Human Rights Act 1998, as it falls within the definition of 'public authority' in that Act.

7. The provisions are very similar in construction and effect to the provisions in Schedule 1 to the Libraries Act (Northern Ireland) 2008. The differences are summarised in the table in the annex.

Clause 2

8. The clause defines the functions and general duty of the ESA.

9.. Clause 2 (1) is linked to the repeals and amendments in the Bill, and assigns to the ESA those functions in existing legislation that will be transferred, as well as new functions defined elsewhere in the Bill.

10. The provisions in clause 2 (2) (a) and 2 (2) (b) provide an overarching statement of the purpose of the ESA. They focus on six dimensions of the development of children and young people: spiritual; moral; cultural; social; intellectual; and physical, through the provision of the three main forms of education: early years services^[1]; schools; and youth services. The key difference from current legislation^[2] is the addition of the 'social' dimension of development.

11. The Department is considering an amendment to clause 2 (2) (b) on youth services. The effect of the amendment would be to link youth services more explicitly to the development of children and young people, in a similar fashion (and using similar language) to clause 2 (2) (a), which deals with early years services and schools. The Committee may ask why clauses 2 (2) (a) and 2 (2) (b) are not merged into a single provision. This was considered, but would be extremely difficult because of the differing age ranges of the recipients of the services. Primary and secondary education and educational services are provided for 'children and young people'. By definition^[3], this means for people up to the age of 19. The age range for youth services is not defined in legislation but, in practice, includes people up to the age of 25.

12. The clause will also assign to the ESA the functions of:

- planning education - clause 2 (2) (c);
- supporting and challenging education providers - clause 2 (2) (d); and
- providing advice to the Department - clause 2 (2) (e).

13. Clause 2 (3) will place a requirement on the ESA to treat all schools equitably. This is to address concerns that the ESA could have a conflict of interest during the period in which it will own controlled schools.

14. Clause 2 (4) will place a duty on the ESA in relation to raising standards, and is intended to be complementary to the duty on boards of governors in clause 34.

15. Clause 2 (5) and 2 (6) provide for the ESA to carry out administrative functions at the direction of DE or DEL.

16. Clause 2 (8) provides the definition of 'educational services'.

Clause 9 and Schedule 2

17. These provisions deal with the transfer of staff from the employment of boards of governors, to the employment of the ESA by means of staff transfer schemes. Whilst the transfer is intended to take place on the appointed day (1 January 2010), the provisions would be commenced earlier, at Royal Assent. This is to allow the Department to draw up the necessary schemes in time for implementation.

18. Schedule 2 sets out the detailed provisions governing the transfer. These are consistent with similar provisions in other Review of Public Administration legislation, and with the guiding principles issued by the Public Service Commission. The key points to emphasise are:

Paragraph 2 (4) – Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)

19. The TUPE regulations will apply, meaning that staff will transfer on their existing salaries, and terms and conditions of employment.

Paragraphs 2 (6) and (8) - pensions

20. Staff will be afforded pension protection, so that their rights to acquire pension benefits (taken as a whole) are the same as or no less favourable than those enjoyed before the transfer.

Paragraph 3 – continuity of action

21. These provisions ensure continuity of action, that is: legal or other documentary references to former employers will be construed as references to the ESA; actions taken by former employers will remain valid; and actions taken by former employers at the time of transfer can be carried on by the ESA after transfer.

Clause 22 and Schedules 3 to 5

22. The clause sets out the scope of Schedules 3 to 5, which deal with:

- the transfer on the appointed day of assets, liabilities and staff of dissolved bodies to the ESA (Schedule 3);
- the transfer of certain assets and liabilities from the Council for Catholic Maintained Schools (CCMS) to the ESA prior to the appointed day (Schedule 4); and
- the transfer of certain staff from the Department to the ESA on the appointed day (Schedule 5).

23. All of the provisions will commence on Royal Assent, so that the Department can draw up the necessary transfer schemes prior to the appointed day (1 January 2010). However, with the exception of Schedule 4, the schemes will not come into operation, and the transfers will not take place, until the appointed day.

24. The slightly different approach in Schedule 4 stems from the fact that not all of the assets of the CCMS have been publicly funded; some have been funded by or gifted from the Roman Catholic Church, and ought to be transferred to the church when the CCMS is dissolved. The Schedule allows for such assets (and liabilities) to be identified and transferred to the Church prior to the appointed day. All other assets and liabilities of the CCMS will then transfer to the ESA on the appointed day, by means of a Schedule 3 transfer scheme.

Schedule 3

25. The Schedule is similar in construction and effect to Schedule 2. Points to emphasise are:

Paragraphs 1 and 2

26. These provisions transfer assets and liabilities from bodies to be dissolved, other than those assets and liabilities which will transfer to the Northern Ireland Library Authority from Education and Library Boards.

Paragraph 4

27. The continuity of action provisions differ slightly from those in Schedule 2. This is to ensure that actions of the Education and Library Boards in relation to the public library services will be construed and/or continued as actions of the Northern Ireland Library Authority, rather than the ESA.

Schedule 4

28. The provisions are similar in construction and effect to those in Schedules 2 and 3, with the exception of the continuity of action provisions, which relate to the Roman Catholic Church rather than the ESA.

Schedule 5

29. This Schedule is similar in construction and effect to the preceding schedules, but deals only with the transfer of departmental staff to the ESA. The Committee will be aware of the decision by the Executive that civil service staff transferring to new RPA organisations will be offered a choice between permanent transfer and secondment. This does not require a change in the legislation. Permanent transfers will be dealt with under the provisions of Schedule 5, whilst secondments will be dealt with by paragraphs 5 (6) and 5 (7) of Schedule 1.

Department of Education

March 2009

Annex

Differences Between Education Bill and the Libraries Act 2008

Schedule 1 to the Education Bill Vs Schedule 1 to the Libraries Act 2008 (hereafter the Libraries Act)

1. There are 18 members of the Libraries Authority (8 to 12 in the ESA).
2. Unlike the ESA, members of the Libraries Authority are not restricted to 4 year terms of office.
3. There are no specific secondment arrangements from DCAL to the Libraries Authority.
4. Arrangements for Assistance – The Library Authority is allowed to receive assistance (with the approval of DCAL) from anyone (including DCAL or any other government Department). There is no similar provision in the Education Bill.
5. Premises – There is provision that the Headquarters of the Library Authority is to be in a place approved by DCAL.
6. References to Assembly Disqualification, Commissioner for Complaints and Freedom of Information are not specifically mentioned in this schedule, but are in the amendments schedule.

Schedule 2 to the Education Bill

7. There is no direct equivalent in the Libraries Act.

Schedule 3 to the Education Vs Schedule 2 to the Libraries Act

8. These are broadly equivalent.

Schedule 5 to the Education Bill

9. There is no direct equivalent in the Libraries Act – DCAL staff will not be transferring to the new Libraries Authority.

[1] Throughout the Bill the term 'educational services' is used to refer to those services more commonly called 'early years'.

[2] Article 5 (2) of the Education and Libraries (Northern Ireland) Order 1986 defines the general duty of Education and Library Boards

[3] The relevant definitions are of 'children and young people' and 'secondary education' and are contained in article 2 of the Education and Libraries (Northern Ireland) Order 1986.

Department of Education

Review Of Public Administration (RPA): Policy Paper 19

Education Advisory Forum (EAF)

1. This paper presents a summary of RPA Policy Paper 19 which issued for consultation on 1 May 2009.

2. The November 2005 RPA announcement stated that a new statutory Education Advisory Forum (EAF) would be established.

Role and Status of the Forum

3. The Forum's primary focus will be the provision of quality advice to DE and DEL on strategic issues in relation to policy, planning and delivery of education. The Forum will not be a decision making body nor will it be the only source of advice to DE and DEL.

4. It is not intended that the Forum will be a vehicle for "lobby groups". A key feature will be the expectation that, while members will engage in open and robust debate on matters being discussed, they will strive to offer advice which represents the consensus view of the Forum. The Forum will have a participative, rather than representative, culture.

5. Interested groups, outside of the Forum, will still be able to approach and advise the Departments separately.

6. The Forum will be established as an advisory non-departmental public body, with appropriate governance arrangements.

7. It is intended that there will be a provision in the 2nd RPA Bill to provide for the establishment of the Forum and enabling provisions for DE to make regulations covering the composition, role, operation etc of the Forum.

8. It is intended that the Forum will be established at the same time as the ESA, but this will be subject to the timing of the second Bill.

Structure/Membership

9. A key consideration is the need to provide a balance between the customer and supplier sides of education. Also the need to "hear" the voices of those who are not heard through any other formal mechanism.

10. To ensure effective communications, there will be a maximum of 26 core members along with a Chair and Vice Chair – both of whom should not have a vested interest in any education organisation here. Annex A sets out the detail. There will also be a DE observer (drawn from the Inspectorate). DE and DEL will both attend the Forum to contribute and listen to the debates.

11. The Chair and Vice-Chair will be appointed by the Minister for Education, in consultation with the Minister for Employment and Learning, in accordance with the Office of the Commissioner for Public Appointments (OCPA) principles.

12. Members will be drawn from within the groups they represent. However, they will not attend meetings as delegates of their particular group.

13. The term of appointment for members will range from 2 to 4 years. Members can be nominated for a second term provided they continue to have the support of their group.

14. The ESA will not have membership of the Forum and will not be involved in the development of the Forum's annual work plan. DE will involve the ESA in identifying and considering practical implementation issues which need to be taken into account before draft policy documents are passed to the Forum for consideration.

15. The Chair and Vice-Chair will receive an annual allowance. Other members will receive travel, subsistence and other reasonable expenses.

Status of advice provided by EAF and measuring performance

16. The advice and recommendations offered by the Forum will not be binding on DE or DEL.

17. The Forum must demonstrate that it has added value to the policy making process. Therefore, any subsequent policy submissions etc to Ministers, on topics examined by the Forum, will include a copy of the advice and an indication of how it has influenced the policy.

Review

18. The Forum will be subject to informal review during its initial year of operation, and at regular intervals thereafter, to identify any areas where changes (eg in groups represented) might be required.

Department of Education

May 2009

Annex A

Structure/Membership of the Education Advisory Forum

Sector	Number Practitioner		Number Customer	Number
Integrated	1		Parents	2
Irish Medium	1	Head teacher	Children and young people	2
Transferors/public ownership schools ¹	1	Lecturer	Commercial Organisations	2
Trustees	1	Non-teaching staff	International perspective	2
Voluntary Grammar	1	Teacher – Primary (including nursery)	DE representative	1
Further and Higher Education	1	Teacher - Secondary	DEL representative	1
Training	1	Teacher – Special Education	Voluntary – community	1
		Trade Unions	Voluntary - youth	1
Totals	7			12

1. These are currently known as controlled schools.

Department of Education

Review of Public Administration (RPA) In Education: Employment Arrangements

1. The Committee has asked for further information on the employment arrangements to be introduced under the RPA. In particular, the Committee has asked for information on:

- the respective roles of boards of governors and the Education and Skills Authority (ESA); and
- the concerns expressed by the Governing Bodies Association (GBA).

Background

2. The present employment arrangements in education are summarised below:

- Controlled schools – all staff are employed by Education and Library Boards.
- Catholic Maintained schools – teaching staff are employed by the Council for Catholic Maintained Schools; non-teaching staff are employed by Education and Library Boards.
- Voluntary Grammar, Grant-Maintained Integrated; Irish-medium (and other maintained schools) – all staff are employed by the boards of governors.

3. Thus, at present, staff in 86% of schools are part of collective employment arrangements, whilst staff in 14% of schools are employed by individual boards of governors.

4. The role of boards of governors varies greatly according to school type. For example, in Catholic maintained schools boards of governors determine all teaching appointments. By contrast, in the controlled sector, some senior appointments are determined not by the board of governors, but by a committee of the Education and Library Board. These variations are historical, and are not based on evidence of their contribution to effective education.

The proposed new arrangements

5. Under the RPA proposals, all staff in all grant aided schools will be employed by the ESA. This means that formally, for the purposes of both education and employment law, the ESA will be the employer, and contracts of employment will be between the ESA and staff.

6. However, in keeping with the aim of giving autonomy to schools, the intention is that boards of governors will take the day to day decisions on the running of their schools, including employment matters. This means that the RPA employment arrangements are based on boards of governors discharging employment functions, on behalf of the ESA, which will be the employer in law. That is, functions are delegated from the ESA to boards of governors.

7. The delegation arrangements and the detailed roles of boards of governors will be set out in schemes of employment (clauses 3 to 12 of the Education Bill). These schemes will be drawn up by schools, and submitted to the ESA for approval. The purpose of this is to permit schools to decide on the level of delegation. Some schools will wish to carry out the full range of employment functions, with a minimal role for the ESA. Other schools may decide to leave certain functions in the hands of the ESA. The key point to emphasise is that this is a decision for the school. Each school, regardless of sector or type, should have the degree of autonomy that it

wishes to have, and that matches its capacity. Detailed guidance and model schemes will be developed in the coming months, and these will be made available to the Committee.

8. To illustrate how the arrangements would work in practice, Annex A sets the respective roles of a board of governors in relation to:

- determining the staff complement;
- recruiting staff;
- managing staff (including disciplinary action);
- dismissing staff; and
- managing redundancy.

9. The examples relate to a school that has elected to carry out the full range of employment functions. They illustrate that day to day employment decisions will be matters for boards of governors, with the role of the ESA being one of providing support and advice, ratification of procedures, and formal action to put into effect the decisions of boards of governors.

10 Both Boards of Governors and the ESA will be under legal duties. Boards of Governors will be required to comply with their own procedures (clause 8(1) of the Education Bill, and the ESA will be required to give effect to decisions by boards of governors (clause 8 (2)).

11. The ESA's ratification role will be limited to ensuring that the correct procedures have been followed, and that the decision of the board of governors is not manifestly unreasonable. Where this is not the case, the ESA will be able to refer a matter back to a board of governors to be dealt with again. However, the ESA will not be permitted to 'second guess' a decision of a board of governors, or to substitute its own decision for that of a board of governors. The ESA could not lawfully refuse to put into effect any proper decision of a board of governors.

Action initiated by the ESA

12. Normally, employment actions will be initiated and determined by boards of governors, and put into effect by the ESA. However, in very rare and extreme circumstances, it might be necessary for the ESA to initiate action, because it is compelled to do so by law, and/or in order to protect the interests of staff or pupils. For example, if a member of staff was found guilty of a serious criminal offence, or acted in a way that put the wellbeing of other staff or pupils at serious risk, then the board of governors would be expected to take the appropriate action. If it failed or refused to do so, then (and only then) the ESA, as the employer, may initiate action.

Legal liability for employment matters

13. It is important that school governors and the ESA have clarity about the extent of their legal liability for the discharge of their role in employment matters. As noted above, the ESA will be the employer in law, and boards of governors will be acting on behalf of the ESA. However, if a complaint is made to a court or tribunal about an employment matter, the proceedings are likely to include any body that played a role in the matter that is the subject of the complaint. Thus, in practice, both the board of governors and the ESA are likely to be involved in such proceedings. If the complaint is upheld, it would be for the court or tribunal to determine where the responsibility lay, and the remedy or penalty to be applied.

14. In the case of boards of governors, this does alter the position that any liability for board actions or decisions applies collectively to the board, and not to individual governors.

The concerns of the GBA

15. The GBA argues that the employment arrangements will result in a loss of autonomy for some schools, and will dilute the 'voluntary principle'. The Committee will also be aware that the Catholic Trustees have an ongoing concern to ensure that the ethos of Catholic education is reflected in the employment arrangements for Catholic schools; and have indicated that they will take a keen interest in guidance and model schemes of management as they are developed.

16. DE acknowledges that those schools that will no longer be employers in their own right feel a genuine sense of loss. However, the proposed arrangements do not involve any real or practical loss of autonomy, as boards of governors will remain responsible for the exercise of employment functions within their schools, and will take employment decisions that the ESA will be under a legal duty to put into effect.

17. The aim of the policy is to achieve greater consistency, transparency and accountability in the employment arrangements for grant aided schools. The aim is not to reduce autonomy in employment matters, but to ensure that it is available to all schools on the basis of equality, rather than to some schools on the basis of historical differences in ownership, and in a way that reflects the needs and capacity of the school.

18. DE also recognises the positive features of the schools represented by the GBA – which are often described as 'the voluntary principle'. However, in the legal sense, the term 'voluntary school' is a broad one, and includes those that are currently employers in their own right (voluntary grammar schools), as well as schools that are part of collective employment arrangements (Catholic maintained schools).

19. More importantly, the positive aspects of the voluntary principle are not unique to any particular sector or school type. The most successful schools in any sector tend to be those that have a strong sense of belonging to, and being accountable to, the pupils, parents and communities that they serve. Equally, all schools have governors who discharge important and significant responsibilities in a voluntary capacity.

20. All grant-aided schools (including voluntary grammar schools) are funded by the public purse to deliver a public service, and do so on the basis of significant voluntary input from parents and communities. DE does not accept that any strong case has been made for any particular group of grant-aided schools to have separate employment arrangements.

21. DE would welcome the views of the Committee on the content of this paper.

Department of Education January 2009

Annex A

Examples of the Roles of Boards of Governors and the ESA

Function	Role of board of governors¹	Role of the ESA
Staff complement	Determines staff complement	Provides advice and support as requested
Recruitment	Decides to fill post Draws up: terms and conditions; person specification; job description; eligibility, shortlisting and	Provides advice and support on recruitment procedures as requested, which may include provision of an HR

Function	Role of board of governors¹	Role of the ESA
	assessment criteria. Checks with the ESA on availability of redundant staff who may be redeployed ² Invites applications from redundant staff or proceeds to open recruitment Receives applications, carries out eligibility sift and shortlisting Interviews candidates, decides on successful candidate; notifies the ESA Issues letter of offer	practitioner to act as an observer or member of a recruitment panel if desired by the school Ratifies the procedures followed by the board of governors Issues the contract of employment
Management	All day to day management functions	Provides advice and support as requested
Dismissal	Applies procedures in scheme of management Decides that member of staff ought to be dismissed Informs ESA, giving full details of procedures followed, and the reasons for the decision	Provides advice and support as requested Ratifies the procedures followed by the board of governors and the soundness of its decision
Redundancy	Decides to declare a post or posts redundant and advises the ESA	Co-ordinates transfer of redundancy arrangements, and information on teachers at risk of redundancy ³ Puts into effect redundancy decisions

1 A board of governors may delegate functions to the school principal.

2 Under employment law, staff at risk of redundancy must be considered for vacancies before proceeding to open recruitment. The procedure to be followed is the same in either case, with boards of governors assessing the candidates and deciding on the successful candidate. If, having considered applications from redundant staff, a board of governors decides that no candidate is eligible or satisfies the assessment criteria, then the board may proceed to open recruitment.

3 Arrangements exist to 'transfer' redundancies between schools, in order to minimise compulsory redundancy. In the majority of cases each transferred redundancy involves two schools – a school with a member of staff being made redundant and a school with a member of staff who is willing to swap places with the teacher being made redundant. This process is used, eg, when an older teacher swaps places with a younger teacher facing redundancy. The ESA will co-ordinate these arrangements in the future, but final decisions will rest with boards of governors.

Department of Education

Taking Forward the Review of Public Administration (RPA) in Education: Legislation Timetable

1. This paper follows on from the 'stocktake and summary' paper provided for the Education Committee on 26 November 2008. The Committee has asked for further briefing on the timing of the RPA legislative programme.

2. Some members have expressed concern about the implementation of the RPA in education by means of two Bills rather than a single Bill. Their concern reflects a desire to examine and be satisfied with the entire programme of reform, before any part of it becomes law. Some

members may feel that the two-Bill approach carries a risk that the programme may be only partially implemented, or that parts of it could be significantly changed after the first Bill becomes law.

3. The Department of Education (DE) regards the RPA as a single legislative programme. Our intention is that it will be taken forward by means of two Acts, which will be intimately linked. Full implementation of both Acts will be necessary in order to achieve the objectives of the programme. This was reflected in the Executive's decision that the programme in its entirety should be taken forward. The Executive approved the timescale for the programme with a view to ensuring that the two Bills remain in synchronisation.

4. The intended timescale agreed by the Executive was:

- The first Bill would be introduced to the Assembly as soon as possible, with the aim that it would be on the statute books before the 2009 summer recess. However, the substantive provisions of the Act would not be commenced at that point.
- The second Bill would be introduced to the Assembly by June 2009, with the aim that it would be on the statute books by 1 January 2010 if possible, and no later than 1 April 2010.
- The substantive provisions of the first Act would be commenced on 1 January 2010, as would the provisions of the second Act, if complete.
- The Education and Skills Authority (ESA) would be established on 1 January 2010.

5. The timescale and implementation arrangements for the first Bill are intended to address the Committee's concerns. They aim to strike a balance between, on the one hand, ending uncertainty and making early progress on the legislation and, on the other hand, reassuring the Committee that the first Bill will not move too far ahead of the second.

6. This will be achieved primarily through the commencement arrangements, which are atypical. Normally, the whole or the greater part of an Act of the Assembly would come into operation immediately after Royal Assent. In the case of the first RPA Bill, it is hoped that this stage will be reached by the beginning of the summer recess of 2009.

7. However, in order to provide further reassurance to the Committee, the first RPA Bill will not come into effect at that time. Instead, the intention is that it will be brought into operation on 1 January 2010. This will be achieved by means of a Commencement Order made by DE. The relevant provision of the Bill is clause 54.

8. It is intended that the second RPA Bill will have been introduced to the Assembly by the beginning of the 2009 Summer recess, having been developed in an open and transparent manner, with close scrutiny by the Committee. It is intended that by 2010, the second Bill will have either completed, or be nearing completion, of its passage through the Assembly.

9. Ideally, the substantive provisions of both Bills would come into operation at the same time, i.e. on 1 January 2010. The fall-back position is that the second Bill would be implemented within a few months of the first. These arrangements are intended to ensure that, in either case, the Committee will have had an opportunity to scrutinise the entire RPA programme before any part of it is implemented.

10. By way of illustration, if the programme were to be combined into a single Bill, the effect on the timescale would be profound. A single Bill could not be introduced until just before the 2009 summer recess, to allow for the necessary outstanding policy work to be completed. It is difficult

to estimate with accuracy the length of time required for it to complete its passage through the Assembly. However, the most optimistic estimate would be ten months (this assumes that a single Bill could be completed in two months less than the total estimated time for two Bills – seven months plus five months).

11. This would mean that a single Bill would not be on the statute books until July 2010 or later.

RPA Legislation Team

Department of Education

December 2008

Department of Education

Education Bill: Provisions on Employment; Management; and Boards of Governors

1. The Committee has asked for a further paper on the approach to employment in the RPA, with a particular focus on:

- the provisions in the Education Bill on schemes of management and schemes of employment; and
- the provisions in the Education Bill on boards of governors.

Employment and schemes of management

1. These clauses capture the employment arrangements described in the paper considered by the Committee on 21 January. The effect of the clauses is described in the following paragraphs, and relevant existing provisions are listed in table 1.

Clause 3

2. This clause will establish the Education and Skills Authority (ESA) as the employer of all staff (teaching and non-teaching) in all grant-aided schools. Originally, this measure was to have been split between the two Education Bills; with controlled and Catholic maintained schools covered in the first Bill, and the remainder of schools in the second Bill. However, in response to concerns expressed by the Committee and stakeholders, all grant-aided schools are covered in the first Bill.

3. The clause also defines the 'submitting authority' – the body responsible for the preparation of schemes of employment and management for each school. As presently drafted, the submitting authorities for Catholic maintained schools would be the trustees of the schools, whilst the submitting authorities for other schools would be their boards of governors.

4. The Department is considering a possible amendment to this clause, to redefine the submitting authority in all cases as the owners or trustees of schools, with an option to delegate the functions to boards of governors^[1]. This reflects the views of a number of stakeholders, who suggested that school owners should be given the submitting authority role, so that they

can ensure that the ethos of the school is reflected appropriately in the schemes of management and employment.

5. Further consideration is required on whether the submitting authority role ought to be assigned to the new ownership body for controlled schools, or left with boards of governors. The role of developing the ethos of that sector will rest with the representative body rather than the ownership body, and the submitting authority role may not be appropriate for the latter.

Clause 4

6. This clause includes a requirement for each grant-aided school to have an employment scheme, setting out the role of the board of governors in employment matters. Employment schemes can impose duties on the ESA and on boards of governors. They must be consistent with education law, and the schools' schemes of management. The content of schemes of employment is discussed further at paragraphs 35 et seq. below.

Clause 5

7. This clause will place a duty on submitting authorities to prepare schemes and submit them to the ESA for approval. In preparing schemes, submitting authorities must take into account any guidance produced by the ESA. Guidance does not carry the same weight as legislation, nor is there a requirement for absolute adherence. However, it cannot be unreasonably ignored.

8. The clause will place a duty on the ESA to issue and periodically revise guidance on the preparation of schemes. The guidance is to include model schemes. It is likely that a range of model schemes will be offered, to provide for differing levels of autonomy for schools. Some schools may wish to have the maximum autonomy for employment matters, with the role of the ESA limited to ratification, and the provision of advice and support. Other schools may wish to have the ESA exercise more functions on their behalf. For example, some boards of governors might wish to be responsible for the recruitment of teaching staff only, with the ESA responsible for recruiting non-teaching staff.

9. Schools may adopt a model scheme without changes, or may adapt a model scheme to suit their needs (e.g. to reflect ethos), or may produce their own schemes. It is likely that some sectoral bodies will produce schemes for use by schools within their respective sectors. The Department will require the ESA to consult and involve stakeholders in the development of model schemes.

10. The ESA may approve schemes, or modify them if they are not consistent with education law, or if they failed to take account of guidance.

Clause 6

11. This clause contains reserve powers for the ESA to make a scheme if a school fails to do so; or if a school requests the ESA to do so; or if the school produces a scheme that, even after modification, could not be accepted. This power is only to be used in extreme circumstances, and the submitting authority must be consulted before it is used.

Clause 7

12. This clause provides for the revision of schemes by submitting authorities periodically, or at the direction of the ESA. This is to ensure that schemes of employment will reflect developments in law or best practice.

Clause 8

13. This is a very significant clause, as it defines the effect of employment schemes in governing and regulating the actions of the ESA and boards of governors. Boards of governors will be under a statutory duty to comply with their schemes of employment; and the ESA will be under a statutory duty to put into effect any decisions of boards of governors that have been taken in accordance with such schemes.

14. The clause means that, in relation to its ratification role, the powers of the ESA are limited to sending a matter back to a board of governors to be reconsidered if the scheme of employment has not been followed. The ESA will have no powers to change a decision of a board of governors.

Clause 9 and Schedule 2

15. This clause and the associated schedule provide for the transfer of staff from voluntary schools (other than Catholic maintained schools) and Grant Maintained Integrated schools to the ESA. Staff in controlled and Catholic maintained schools will be transferred by other provisions (clause 22 and Schedule 3).

Clause 10

16. This clause will establish the ESA as the employer of peripatetic teachers, and will require the ESA to develop a scheme of employment, similar to those to be developed by schools.

Clause 11

17. The focus of this clause is the Common Funding Scheme, and the payment of salaries and other allowances to staff in schools. Some schools pay their staff direct, whilst others are paid through central arrangements operated by the Department. The aim of the clause is to permit those schools that currently operate their own payment systems to continue to do so if they wish, or to choose to opt in to the central arrangements. This is the effect of clause 11 (1) to 11 (4).

18. However, a complication arises from an earlier piece of legislation. Voluntary Grammar (VG) schools and Grant Maintained Integrated (GMI) schools receive their budget shares in the form of maintenance grants. The Education Reform Order 1998 (articles 61 and 63) defines the purpose of such grants as 'expenditure incurred...in carrying on the school'. As these schools will no longer be employers in their own right, the payment of salaries etc would no longer be considered as falling within 'carrying on the school'. Therefore, without a further change to the legislation, the monies for salaries etc would have to be excluded from the budget shares and maintenance grants of those schools.

19. The solution for VG and GMI schools is provided by clause 11 (5) and (6). These provisions separate the monies from salaries etc from the rest of the schools' budget shares, but also provide for the salaries monies to be included in maintenance grants.

20. However, these provisions do not solve the difficulty entirely. As currently drafted, the provisions would mean that salaries monies could not be included in the delegated budgets for controlled and maintained schools. This runs counter to Departmental policy, and an amendment is being considered to remedy the matter.

Clause 12

21. This clause will permit the Department to modify employment law, but only if (and to the extent that) it is necessary to do so for the operation of the provisions in clauses 3 to 11. The clause does not give the Department the power to alter the fundamental employer responsibilities of the ESA and boards of governors, or the employment rights of employees. This type of provision is not new to education law. Similar powers exist in paragraph 2 of Schedule 9 to the Education (Northern Ireland) Order 1998.

Table 1: Existing Employment Provisions

Provision	Scope	Effect of Education Bill
Education and Libraries (Northern Ireland) Order 1986 Article 65	Employment of teachers in controlled schools by Education and Library Board (ELB)	Repeal
Article 88	Employment of non-teaching staff in controlled and maintained schools by ELBs	Repeal
Article 88A	Power to make regulations on employment of non-teaching staff	Minor amendments
Schedule 3	Teaching Appointments Committees	Repeal
Education Reform (Northern Ireland) Order 1989 Article 143	Employment of teachers in Catholic Maintained schools by Council for Catholic Maintained Schools (CCMS)	Repeal
Article 153	Employment schemes for controlled schools	Repeal
Education (Northern Ireland) Order 1998 Article 58	Role of boards of governors of controlled schools in relation to employment matters	Repeal
Schedule 2	As above	Repeal

Schemes of management (clauses 30 to 33)

22. These clauses focus on schemes of management – the governance arrangements for grant-aided schools. Schemes of management will cover:

- the membership and procedures of boards of governors;
- the management of schools and the respective roles of boards of governors and principals; and
- the composition and role of committees of boards of governors.

23. The clauses are similar in wording and effect to clauses 4 to 7 (employment schemes). They will place similar duties on submitting authorities to prepare and submit management schemes, taking account of guidance and model schemes, which the ESA will be under a duty to prepare.

The ESA will have the power to modify schemes, and a reserve power to impose schemes in default. Boards of governors will be under a duty to follow their schemes of management.

24. The equivalent existing provisions are contained in articles 9A to 9D of the Education and Libraries (Northern Ireland) Order 1986. These provisions will be repealed by the Education Bill.

Boards of Governors (clauses 34 to 36, 47 and 48)

25. These clauses focus on the duties of boards of governors.

Clause 34

26. This clause stems from the Department's policy on raising standards, as set out in Every School a Good School, and the need to ensure clear responsibilities throughout the education system in this regard.

27. The clause will place two duties on boards of governors:

- to exercise their functions with a view to promoting high standards of achievement; and
- to co-operate with the ESA in the exercise of its functions in relation to raising standards

28. It should be emphasised that there is no power for the ESA to direct boards of governors in this regard, or in the related matter of the exercise of their employment functions. This reflects the policy principles in the Review of Public Administration and Every School a Good School that the education system should be founded on autonomous, self-improving schools; supported and challenged by the ESA, but not directed or controlled by it.

Clause 35

29. This clause will amend a number of existing provisions on the composition of boards of governors of various types of schools. The net effect is that, where governors are currently appointed by the Department, or by Education and Library Boards, they will in future be appointed by the ESA. Those governors will be known as 'community governors' and this is defined as persons living or working in the local community. The composition of boards of governors is otherwise unchanged, including the right of the Transferors Representative Council to choose governors for controlled schools.

Clause 36

30. This clause removes the barrier to part-time teachers serving on boards of governors.

Clause 47

31. This clause is related to articles 17 and 18 in the Education (Northern Ireland) Order 2003, which place duties on boards of governors in relation to child protection. The new clause will not change or add to the duties, but gives the ESA the power to direct boards of governors in relation to the discharge of those duties.

32. This is to ensure that there are clear duties and responsibilities on child protection throughout the education system, and an effective means of enforcing those duties and

responsibilities. It should be noted that this is the only provision in the Education Bill (or in any existing legislation) that gives the ESA the power to direct a board of governors.

Clause 48

33. This clause is the companion to clause 47, and will place a duty on boards of governors (and other education providers) to co-operate with the ESA in the discharge of its child protection functions.

34. The main existing provisions on the composition and role of boards of governors are summarised in table 2 in the Annex.

Scope of employment schemes

35. The Committee has asked for further information on the scope and content of the guidance and model employment and management schemes to be produced by the ESA.

36. It may be helpful to set the response to the Committee's request in context, by providing some further background information. The core of the RPA employment model is the discharge by boards of governors of delegated employment functions on behalf of the employer (the ESA). This concept is not new to education law – similar arrangements already exist for controlled and maintained schools, and are covered by primary legislation: Schedule 2 to the Education (Northern Ireland) Order 1998 (the 1998 Order).

37. In the Education Bill, DE is seeking to adopt a similar approach for all grant-aided schools, but will take the detail of the arrangements out of primary legislation, and place it in schemes of employment. This will provide greater flexibility and scope for autonomy, with the role of the Boards of governors determined by the schools.

38. The development of guidance and model schemes is at a very early stage, and is not yet sufficiently advanced to be shared with the Committee. However, clause 4 of the Education Bill and Schedule 2 to the 1998 Order give an indication of the matters to be included, and their likely treatment. They are:

- the determination of the staff complement;
- the appointment of staff (as described in the paper considered on 21 January);
- the regulation of conduct and discipline of staff;
- the suspension and dismissal of staff;
- payments in respect of dismissals or resignations; and
- the general management of staff and the exercise of employer functions by boards of governors.

39. Schedule 2 (attached) describes the current treatment of these matters in some detail. The Schedule assigns the relevant functions to boards of governors, with only a very limited role for the employer. The guidance and model schemes will cover similar areas. The aim will be to provide for no less autonomy for boards of governors than under the current arrangements in schedule 2, and more where possible.

The concerns of the Governing Bodies Association (GBA)

40. The Committee indicated that it wished to return to the subject of the concerns expressed by the GBA about employment arrangements, as addressed in the paper considered by the Committee on 21 January.

41. The GBA objects to the proposed employment arrangements on principle. In addition, its primary concern is that the role proposed for boards of governors would lack any real or meaningful autonomy. The GBA fears that the autonomous role envisaged by DE would not be compatible with the position of the ESA in law as the employer of staff. The GBA contends that, as a consequence, all decision-making power would actually rest with the ESA, with the role of boards of governors being restricted to making suggestions or requests.

42. This is not the case. The Education Bill makes it clear that boards of governors will make decisions, not recommendations, on employment matters (see clause 8 (2)). The ESA will be under a statutory duty to put such decisions into effect, if they have been taken lawfully, and in accordance with the relevant scheme of employment. The Department has already acknowledged the ratification role of the ESA (particularly in relation to dismissal of staff) that stems from employment law. However, this does not equate to a weakening or removal of the decision-making role of boards of governors. The ESA may not lawfully refuse to put into effect any proper decision of a board of governors on employment matters.

43. Schedule 2 demonstrates that these principles are already part of education law, and that boards of governors can and do have an extensive decision-making role. The key points to emphasise in the Schedule are:

- Determination of staff complement – this is a matter solely for boards of governors, with no role for the employer.
- Discipline - boards of governors are responsible for drawing up and implementing the disciplinary rules and procedures, with the role of the employer limited to one of consultee. Where a board of governors takes a decision under those rules, and action is required that is within the power of the employer, then the employer is required to take that action.
- Suspension – boards of governors and principals, not the employer, have the power to suspend staff and to end suspensions.
- Dismissal – if a board of governors determines that a member of staff ought to be dismissed, the employer is under a legal obligation to terminate the contract of employment. In addition, the employer may terminate a contract only if required to do so by a board of governors, or if the member of staff becomes ineligible for employment under other legislation (for example, if an individual's registration to teach was revoked by the General Teaching Council).

44. These provisions should provide reassurance that it is possible to provide in law for an autonomous role for boards of governors in relation to employment matters (including dismissal), and to place clear duties on the employer to put into effect the lawful decisions of a board of governors.

Department of Education

February 2009

Annex

Table 2: Existing Provisions on Boards of Governors

Provision	Scope	Effect of Education Bill
Education and Libraries (Northern Ireland) Order 1986 Article 10	Management of controlled schools	Minor amendments Article 10(5) repealed
Article 11	Management of voluntary schools	Minor amendments
Article 12	Limitation on membership of Boards of Governors	No change
Article 13	Miscellaneous provisions relating to Boards of Governors	Minor amendments
Schedule 4	Membership of Board of Governors of controlled schools	Transfer of functions from ELBs to the ESA. Minor amendments
Schedule 5	Maintained Schools	Transfer of functions from ELBs to the ESA. Minor amendments
Schedule 6	Membership of Board of Governors of voluntary grammar school entering into agreement with Department	Transfer of functions from ELBs to the ESA. Minor amendments
Schedule 7	Membership of Board of Governors of voluntary grammar school not entering into agreement with Department or board	Transfer of functions from ELBs to the ESA. Minor amendments
Education Reform (Northern Ireland) Order 1989 Article 67	Powers of Boards of Governors	Minor amendments and Transfer of Functions from ELBs and CCMS to ESA
Article 72	Incorporation of Board of Governors	No change
Article 75	Transfer of property, etc. to Board of Governors of grant-maintained integrated school	Minor amendments
Article 122	Co-option of person to Board of Governors of grant-aided school	No change
Article 125	Annual report of Board of Governors	Minor amendments
Education (Northern Ireland) Order 1996 Article 40	Incorporation of Boards of Governors	No change
Education (Northern Ireland) Order 1998 Article 3	Responsibility of Board of Governors and principal for discipline	Transfer of Functions from ELBs and CCMS to ESA
Article 14	Appointment of additional governors for school not providing acceptable standard of education	No change

Provision	Scope	Effect of Education Bill
Article 24	Duties of Board of Governors in relation to admission to full-time pre-school education	No change
Article 28	Duties of Board of Governors in relation to admission to part-time pre-school education	No change
Schedule 2	Provisions relating to the staff of controlled and maintained schools with delegated budgets	Repeal
Education (Northern Ireland) Order 2003 Article 17	Duty on Boards of Governors to safeguard and promote the welfare of pupils	No change
Article 18	Child protection measures	Transfer of Functions from ELBs and CCMS to ESA. Addition of new clause 18A in Education Bill.
Article 23	Removal of members of Boards of Governors	No change

[1] For some schools the board of governors is the owner of the school.

SCHEDULE 2

Article 58.

PROVISIONS RELATING TO THE STAFF OF CONTROLLED AND
MAINTAINED SCHOOLS WITH DELEGATED BUDGETS

Application of this Schedule

1. — (1) Subject to sub-paragraph (2), this Schedule applies to a controlled or maintained school at any time when it has a delegated budget.
- (2) Paragraphs 3 to 6 do not apply to teaching staff in a maintained school other than a Catholic maintained school.
- (3) In the application of paragraph 7 to teaching staff in a maintained school, other than a Catholic maintained school, sub-paragraph (5) shall be omitted.

Determination of staff complement

2. Every school to which this Schedule for the time being applies shall have a complement of teaching and non-teaching posts determined by the Board of Governors of the school.

Discipline

3. — (1) The regulation of conduct and discipline in relation to the staff of any school to which this Schedule for the time being applies, and any procedures for affording to members of the staff opportunities for seeking redress of any grievances relating to their employment, shall be under the control of the Board of Governors.
- (2) The Board of Governors of any such school shall, after consultation with the employing authority, establish—
 - (a) disciplinary rules and procedures; and
 - (b) procedures such as are mentioned in sub-paragraph (1),and shall take such steps as appear to it to be appropriate for making them known to the staff at the school.

(3) Where the implementation of any determination made by the Board of Governors in the exercise of its control over the conduct and discipline of the staff of any such school requires any action which—

(a) is not within the functions exercisable by the Board of Governors by virtue of the Education Orders; and

(b) is within the power of the employing authority,

it shall be the duty of the employing authority to take that action at the request of the Board of Governors.

Suspension

4. — (1) In the case of any school to which this Schedule for the time being applies, the Board of Governors and the principal shall both have power to suspend any person employed to work at the school where, in the opinion of the Board of Governors or (as the case may be) of the principal, his exclusion from the school is required.

(2) The Board of Governors or principal, when exercising that power, shall immediately inform the employing authority and the principal or (as the case may be) the Board of Governors.

(3) Any suspension under this paragraph may only be ended by the Board of Governors; and the Board of Governors shall, on ending such a suspension, immediately inform the employing authority and the principal.

(4) In this paragraph "suspend" means suspend without loss of emoluments.

Dismissal, etc.

5. — (1) Where the Board of Governors of any school to which this Schedule for the time being applies determines that any person employed to work at the school under a particular contract of employment should cease to work there under that contract, it shall notify the employing authority in writing of its determination and the reasons for it.

(2) If in a case within sub-paragraph (1)—

(a) the person concerned is employed under the contract of employment in question to work solely at the school; and

(b) he does not resign.

the employing authority shall, before the end of the period of one month beginning with the date on which the notification under sub-paragraph (1) is given in relation to him, either give him such notice terminating that contract with the employing authority as is required under that contract or terminate that contract without notice if the circumstances are such that it is entitled to so do by reason of his conduct.

(3) If in a case within sub-paragraph (1) the person concerned is not employed under the contract of employment in question to work solely at the school the employing authority shall require him to cease to work at the school.

(4) In any case within sub-paragraph (3) no part of the costs incurred by a board in respect of the emoluments of the person concerned under the contract of employment in question, so far as relates to any period falling after the expiration of his contractual notice period, shall be met from the school's budget share.

(5) In relation to any such person, the reference in sub-paragraph (4) to his contractual notice period is a reference to the period of notice that would have been given under the contract of employment in question for termination of that contract if such notice had been given on the date on which the notification under sub-paragraph (1) was given in relation to him.

(6) The Board of Governors of such a school shall make arrangements for affording to any person in respect of whom it proposes to make any determination under sub-paragraph (1) an opportunity of making representations with respect to the action it proposes to take, including (if he so wishes) oral representations to such person or persons as the Board of Governors may appoint for the purpose, and shall have regard to any representation made by him.

(7) The Board of Governors of such a school shall also make arrangements for affording to any person in respect of whom it has made such a determination an opportunity of appealing against it before it notifies the employing authority of the determination.

(8) The relevant officer of the employing authority shall be entitled to attend, for the purpose of giving advice, all proceedings of the Board of Governors relating to any determination under sub-paragraph (1) and the Board of Governors shall consider any advice given by a person entitled to attend such proceedings under this sub-paragraph before making any such determination.

6. — (1) Subject to sub-paragraph (2), the employing authority shall not dismiss a person employed by it to work solely at a school to which this Schedule for the time being applies except as provided by paragraph 5.

(2) Sub-paragraph (1) shall not apply in any case where the dismissal of the person in question is required to comply with—

- (a) Article 35(3); or
- (b) any regulations made under Article 88A of the 1986 Order.

Payments in respect of dismissals, resignations, etc.

7. — (1) Subject to sub-paragraph (2), it shall be for the Board of Governors of any school to which this Schedule for the time being applies to determine—

(a) whether any payment should be made by the relevant board in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of the school; and

(b) the amount of any such payment.

(2) Sub-paragraph (1) does not apply in relation to any payment which is required or authorised to be made—

(a) by virtue of any contract other than one made in contemplation of the impending dismissal or resignation of the member of staff concerned; or

(b) under any statutory provision.

(3) The relevant board—

(a) shall take such steps as may be required for giving effect to any determination of the Board of Governors of any such school under sub-paragraph (1); and

(b) shall not make, or agree to make, any payment to which that sub-paragraph applies in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of any such school otherwise than in accordance with any such determination.

(4) Costs incurred by the relevant board in giving effect to any determination under sub-paragraph (1) in respect of any member of the staff of any such school shall not be met from

the school's budget share for any financial year except in so far as the board has good reason for deducting those costs, or any part of those costs, from that share.

(5) The fact that the employing authority has a policy precluding dismissal of its employees by reason of redundancy is not to be regarded as a good reason for the purposes of subparagraph (4).

(6) In this paragraph "the relevant board" means—

(a) in relation to a member of the staff of a controlled school, the board responsible for the management of the school;

(b) in relation to a member of the staff of a maintained school, the board by which the school is maintained.

School meals staff

8. Nothing in paragraphs 2 to 7 shall apply in relation to a person employed to work at a school to which this Schedule for the time being applies, where—

(a) the person concerned is to be, or is, employed to work solely in connection with the provision of a schools meals service; and

(b) no allowance is made for expenditure on or in connection with the provision of such a service in determining the school's budget share.

Application of employment law

9. — (1) The Department may by order make such modifications in any statutory provision relating to employment and, in particular, in any statutory provision—

(a) conferring powers or imposing duties on employers;

(b) conferring rights on employees; or

(c) otherwise regulating the relations between employers and employees;

as it considers necessary or expedient in consequence of the operation of any of the provisions of this Schedule.

(2) Before making any order under this paragraph, the Department shall consult—

- (a) the boards;
- (b) the Council for Catholic Maintained Schools;
- (c) the Boards of Governors of maintained schools (other than Catholic maintained schools) or any body representing their interests;
- (d) such organisations representing staff in controlled and maintained schools as appear to the Department to be concerned; and
- (e) such other persons as the Department thinks fit.

Interpretation

10. — (1) In this Schedule "employing authority" means—

- (a) in relation to teachers and other staff in a controlled school, the board responsible for the management of the school;
- (b) in relation to teachers in a Catholic maintained school, the Council for Catholic Maintained Schools;
- (c) in relation to other staff in a Catholic maintained school, the board by which the school is maintained; and
- (d) in relation to staff other than teachers in a maintained school other than a Catholic maintained school, the board by which the school is maintained.

(2) In paragraph 5(8) "the relevant officer" of the employing authority means—

- (a) where the employing authority is a board, the chief education officer of the board or another officer of the board nominated by him;
- (b) where the employing authority is the Council for Catholic Maintained Schools, the chief executive of the Council or another officer of the Council nominated by him.

Department of Education

Paper 20

Review of Public Administration (RPA): Publicly Owned Schools – Ownership and Representation

Context

1. Publicly owned schools (currently known as controlled schools) represent the largest group of schools in our education system. The Department recognises the important role controlled schools have played within the education system over the years and wants to ensure that, under the post-RPA arrangements, this sector is empowered and strengthened to enable it to continue to deliver high quality education, accessible by all, meeting the needs and expectations of the communities served by these schools.

2. The earlier RPA policy papers and the recommendations of the Bain review raised a number of issues related to ownership and advocacy in respect of publicly-owned schools. A number of stakeholders have also expressed strong views on this subject. The key issues of concern are described below. The purpose of this paper is to consider the issues raised, and propose possible solutions, while ensuring appropriate accountability arrangements and controls are in place to safeguard what is a very valuable public asset.

Ownership

3. Controlled schools are currently owned and managed by the Education and Library Boards (ELBs). Under the RPA proposals ownership of these schools will transfer to the ESA in April 2009 (along with the other assets of the ELBs). However, for a number of reasons this may not be the most appropriate long-term arrangement.

4. Firstly, it is intended that the operational relationship between publicly-owned schools and the Education and Skills Authority (ESA) will be radically different from the relationship between a controlled school and an Education and Library Board. This relationship will be characterised by 'accountable autonomy' with support provided by the ESA at the request of the schools, rather than 'command and control' – hence these schools will no longer be known as "controlled" although an alternative title has not yet been agreed. Therefore, the ownership arrangements for publicly-owned schools need to be considered carefully, as ownership by the ESA may tend to promote a command and control relationship rather than accountable autonomy.

5. Secondly, notwithstanding the fact that decisions on individual school development proposals will be taken by DE, there is an acknowledged risk of a perceived (or actual) conflict of interest, stemming from the ESA's role in planning the whole schools' estate while owning the block of publicly-owned schools. It has been argued by some stakeholders that this conflict of interest could result in controlled schools receiving more favourable treatment as the ESA may put the interests of its own schools first. Others have made the converse argument – that these schools could receive less favourable treatment because the ESA will be actively trying to demonstrate that it is not showing them any favouritism and it is responding to the strong voices lobbying on behalf of the other sectors. The controlled sector does not have a voice independent of the ELBs/ ESA, and as the ESA must treat all schools on a fair and equitable basis it cannot champion the cause of one group of schools.

6. It has therefore been suggested by both sets of stakeholders that the potential for differential treatment of this group of schools (whether favourable or unfavourable) would best be addressed if ownership of these schools were to be removed from the ESA. This paper will consider where ownership might reside and what should be the functions of the new legal owner.

7. However, given that some stakeholders have highlighted the need for a strong, coherent voice to look after the interests of the sector, it may be appropriate to consider how the controlled sector might be "empowered and strengthened" under the post-RPA arrangements to enable it to engage with government in the same way as the other sectors, before considering the more technical issue of alternative legal ownership arrangements for the controlled schools estate.

Representation/ Advocacy

8. It is recognised that the education sector here remains pluralist, and that there is a strong desire on the part of the various sectors to continue to play a significant role. There are a number of functions, which may be grouped under the heading of "sectoral support", including the following:

- A representational and advocacy role, including advice and support in responding to consultation exercises in respect of education policies, initiatives and schemes, and in regard to relationships with the Department, the ESA, other Departments and the EAF. ;
- Working with schools within the sector to develop and maintain the collective ethos of the sector;
- Identifying/nominating foundation governors and encouraging others to put themselves forward as community governors;
- Participating in the planning of the schools estate (area based planning), and engaging where appropriate in strategic planning processes, including community planning;
- Building co-operation and engaging with other sectors in matters of mutual interest, including promotion of tolerance and understanding, and respect for diversity.

9. It is generally accepted that the effective discharge of these functions, combined with the efforts of Governors, school-based staff, parents and others, can add value to education, and the Minister has agreed that the various sectors will require some professional support capacity in order to discharge this role. However, this raises an issue in relation to publicly-owned schools. The requirement for the ESA to treat all schools equitably means that it could not perform these functions for publicly-owned schools. However, without sectoral representation, publicly-owned schools could be left in the invidious position of being the least coherent 'sector', without an effective mechanism for its governors and principals to provide mutual support, and the only sector without an effective voice in relation to the provision of policy advice to DE, and the planning and development of the schools estate.

Role of the TRC

10. Historically, the Protestant Churches, represented by the Transferors Representative Council (TRC), have been the sectoral voice for the controlled sector, with the seats for foundation governors or former owners filled by nominations from the three main Protestant (or transferor) churches.

11. The Transferor Representative Council (TRC) will remain a prominent voice within the publicly-owned schools sector, and could discharge some of the above functions. However if the TRC were to be the sole voice for the sector, this could be perceived as equating all publicly-owned schools (including those that were not transferred) solely with a Protestant ethos. This sector is clearly very rich in diversity. It serves a wide variety of faiths, beliefs, ethnic backgrounds and a broad cross-section of the section 75 groups; therefore it is important that the arrangements for this sector can reflect this, and cater for all those served by the sector equally. Therefore, while the TRC clearly remains a key voice within this sector, it may be necessary to consider more broadly based arrangements for publicly-owned schools.

Sectoral representation – way forward

12. It is proposed that DE should provide grant aid for a sectoral representative body for the publicly-owned sector, with sufficient professional capacity to discharge the role outlined above,

in the same way as grant aid for sectoral support is to be provided to the other sectoral interests.

13. It is suggested that, whilst the TRC should have membership of such a body, it should also continue to have a direct relationship with government on issues that are of particular interest to the protestant churches. This arrangement would recognise the need for representation and advocacy for the entire publicly-owned sector, whilst also acknowledging that, from time to time and in relation to specific matters (e.g. religious education, or development of a Christian ethos within schools) there may be a need for the Protestant churches to play a complementary, but separate role.

14. As there is no pre-existing organisation that could undertake the envisaged role, it is proposed that a working group, comprising a number of principals and other vested interests from within the controlled sector, be established to develop proposals for an organisation to undertake sectoral representation for controlled schools that can then be put to the whole sector for approval. As this organisation would exist to represent the views of its members it would be best for the members (i.e. those within the controlled sector at present) to design the new organisation. For expediency the Department, in consultation with Education and Library Boards will nominate members of the working group to establish the organisation, but once established it will be for the membership of the organisation to decide who should be on the Board/Executive of the organisation, and represent the views of the organisation publicly.

15. As with the various organisations providing representation for the other sectors, the representative organisation for publicly owned schools should be a voluntary organisation that will receive sectoral support funding from the Department. It will be a condition of the grant that the organisation must be able to demonstrate that the way in which it is structured and operated reflects fully, and takes account of, the broad spectrum of interests and backgrounds of those who are served by the sector. This may include, for example, demonstrating how it will represent those who are served by the sector and come from a range of faiths and ethnic backgrounds, as well as those who fall within the various section 75 categories, taking into account the specific needs and requirements that those groups may have.

16. As a voluntary body it would not be appropriate for this organisation to own these schools as this would not provide adequate security and accountability for such a valuable public asset. However, it would be appropriate to put in place a statutory requirement for the new legal owner to take account of the views of the representative organisation in its management of the assets under its stewardship. In this way, those within the sector would be guaranteed a meaningful role and strong voice in relation to the maintenance and development of high quality facilities necessary to ensure high quality and continuously improving standards of education. While legal ownership may reside elsewhere, this arrangement should allow those in the sector to have a greater sense of ownership of their schools.

Legal Ownership

17. There are over 600 controlled schools, including primary, secondary, some grammar, integrated and Irish Medium schools. The total value of the estate is over £2.3billion (2006 figures), this is currently in the ownership of the Education and Library Boards (ELBs). Due to the legislative timetable, all controlled schools will transfer to the ESA in April 2009 as originally proposed, however, the Minister has taken a decision in principle that as soon as is practicable thereafter, the ESA should divest itself of ownership of these schools. In order to facilitate this, an acceptable alternative ownership arrangement needs to be identified, and to this end the Department has been investigating the implications associated with a full range of options. In order to make an assessment of the suitability of these options we need to be clear about what

we mean by ownership, define the role and remit expected of the legal owner, and also the necessary controls and accountability arrangements required.

Role of Ownership Organisation

18. What do we mean by "ownership" of these schools? They are currently owned by the ELBs who are also the managing authorities for the schools. In future, the Board of Governors for each school will be the managing authority for the school, having responsibility for the day to day management of the school, including its land and assets. The ELBs currently provide landlord maintenance (looking after the physical structure of the school) for both controlled schools and maintained schools; therefore in future the ESA should undertake this role. The new legal owner of controlled schools would therefore appear to have a very limited role – that of simply being the technical legal owner of the schools.

19. Some functions that could be assigned to the new legal owner include, where appropriate, nominating foundation governors, bringing forward development proposals, and the disposal of surplus assets. As these would involve significant changes to the controlled schools estate the legal owner would have to have a close working relationship with the controlled sector representational body. As suggested earlier, those within the sector should be guaranteed a strong voice and this may be facilitated by placing a statutory duty on the legal owner to take account of the views of the representational body before taking any action in relation to the schools estate or the nomination of governors. The relationship may also be strengthened if there was overlap in the membership of the Boards of the two organisations - perhaps there could be a joint chairperson for the two organisations. Whatever the formal arrangement, it is the representational body that will have the relationship with the ESA necessary to voice the needs of that sector in the context of area –based planning of the schools estate. The legal owner could be the vehicle for implementing plans for the sector once the area-based planning process is complete – i.e. ensuring that the necessary development proposals are brought forward within the context of the agreed area plan and in consultation with the representative organisation.

20. However, it is also possible that the ownership organisation could have a more dynamic role, helping to transform the controlled sector from a group of schools owned, managed and controlled from above by the local education authorities, to schools more directly connected to their local communities. A possible long-term vision for the sector is one where the capacity of the staff and governors of the majority of schools is developed to the point where the Board of Governors in each school is able and willing to become the legal owner of the school, thereby increasing the vested interest in the school. The Board of Governors (that may include representatives of staff, parents, employers, churches and the local community etc.) would then own and manage their school, with the full range of support services provided by the ESA at the request of the school. This is a vision where former education authority controlled schools would become truly local schools, owned and managed by local people for the benefit of the local community.

21. This is, of course, a very long term vision and would require the support of those within the sector to work towards it. If this is the direction this group of schools would want to go, the organisation established to own the schools in the short-medium term could have a transformational role, assisting these schools over a number of years to move towards the goal of being owned and managed at a more local level.

Characteristics of the legal owner of publicly owned schools

22. Ownership needs to be vested in some arrangement that is totally separate from the ESA as well as sufficiently arms-length from the Department of Education to avoid any real or perceived conflict of interest, particularly in relation to funding and planning issues.

23. This arrangement needs to have the ability to safeguard both the educational resource (ensuring that there are good quality, well maintained schools to provide educations for all now and for the future) and protect the public purse/public asset by having robust financial and accountability arrangements.

24. From a legal perspective "ownership" is associated with certain rights and duties, and it is essential that the implications of the various types of possible ownership arrangements are fully understood in order to protect the public purse. While we are clear about what we want to achieve by transferring ownership away from the ESA (i.e. removing any perceived or actual conflict of interest), we must be equally clear about what will be required in terms of accountability and control of the assets.

Accountability Arrangements

25. Ownership is more complex than simply holding the title deeds of land and buildings. It confers a range of responsibilities and rights on the legal owner, including the right to use or dispose of the property as the owner sees fit, or being liable for any expenses associated with the property including insurance etc. Regardless of whether these schools are owned by a body established for that purpose, or by individual Boards of Governors they will always be publicly-owned schools and there will need to be certain controls in place to ensure that the legal owner cannot misuse or dispose of these assets inappropriately. There will always have to be a direct line of accountability to the Department, the Minister and the Assembly.

Safeguards

26. This is a hugely valuable asset (the estate is worth over £2.3billion), and wherever legal ownership eventually rests the following should apply:

- These schools should remain publicly owned assets
- The legal owner must be accountable to the Minister and the Assembly for stewardship of the asset;
- The legal owner needs to have well defined relationships with the Department, the ESA and the sectoral representation body;
- The Department should retain some control over the future use, development and disposal of these assets;
- The ownership organisation should be separate from the ESA, but wholly funded by DE;
- DE should have the right to appoint the members of the ownership organisation in accordance with OCPANI principles;
- Bureaucracy should be kept to a minimum.
- The ESA should provide services to all these schools in the same way as it does to schools in other sectors – there should be no overlap or duplication of the activities of the ESA.

Options

27. There are a number of potential options that could achieve this aim,:

- establishing a separate statutory public body to own controlled schools (at odds with a key RPA policy objective);
- ownership by DE (at odds with the Department's future role, and would exacerbate rather than address conflict of interest issues);
- a public Trust (would be subject to Trust law and may not provide adequate protection of the asset);
- the establishment of smaller trusts by individual schools or groups of schools that would allow ownership to pass to the Boards of Governors (most schools in the sector currently lack the capacity to undertake this role);
- A limited company (would be subject to company law and the additional bureaucracy that requires);
- A company with charitable status (would be subject to charities law which may have advantages in relation to exemption from VAT, but disadvantages in that case law suggests the public purse may not be adequately protected).

Cost Considerations

28. The transfer of ownership away from the ESA will inevitably have cost implications. For example there will be additional costs associated with increased administration. The new body will need a publicly appointed Board, staff and premises. It will also have to produce its own accounts, annual reports etc.

Unlike the ELBs, the new body may have to pay VAT. The Department is currently seeking VAT exemption for the ESA, as the direct successor of the ELBs. A second public body, established to accept some of the functions of the ELBs may be granted this dispensation but that cannot be guaranteed at this stage. If VAT exemption is not granted, the VAT costs of the estate would be considerable. For example, the VAT liability on the unitary payment for a single school with a long-term enrolment of 1830, recently built under PPP arrangements, will be approximately £700k per annum for the 25 year life of the contract^[1].

29. Under Public Service Commission principles, existing ELB staff will transfer with their functions to the ESA. If a second public body is set up to assume the ownership function, the staff associated with this function may have to transfer a second time with all the upheaval and additional costs etc that might involve.

30. Although land transfers due to major government re-organisations are exempt from Stamp Duty, it is not yet clear if a second transfer (i.e. from ESA to a second public body) would also be exempt – if not the stamp duty on an estate worth in excess of £2.3billion would be considerable.

31. If any fees are payable (e.g. to the Land Registry) for the transfer to the ESA, they will be payable again upon the second transfer. Likewise, any waiver of fees that might be negotiated for the initial transfer may not apply to a second transfer.

32. The ELBs currently 'self insure' for the controlled schools estate, a new ownership body may need to purchase commercial insurance.

Other Considerations

33. The ESA will be placed under the same legal duty as the ELBs currently are, to provide "sufficient schools" here. This will mean that the ESA must retain the ability to submit development proposals for the estate when necessary, even if it no longer owns controlled schools. For some stakeholders, this may mean that the perceived conflict of interest would not be addressed by removing ownership responsibility from the ESA.

Preferred Option

34. Whether the legal owner was established as a trust, company, charity or any other sort of legal entity, as it will be wholly funded by the Department, and the Department will seek to retain a high degree of control over the body and its assets, it will be classed as a public body. A statutory public body will be subject to clear governance and accountability arrangements, similar to those that will be in place for the ESA. These are likely to be more transparent and flexible than those facilitated by Trust and Company law.

35. On balance, therefore, it would appear that the most appropriate option would be to establish a statutory public body, that would then be automatically subject to the financial controls, governance and accountability arrangements set out in Government Accounting Northern Ireland (GANI), and not to add to the burden of bureaucracy on the organisation by establishing it as a particular type of legal entity, subject to additional legal requirements of specific legislation that governs that type of entity (i.e. Company Law, Trust Law etc.).

Questions

1. Assuming acceptance of the need to transfer ownership of controlled schools out of the ESA while still retaining public ownership, and balancing the need to address the legitimate concerns of stakeholders against the added costs of new ownership arrangements, and the contravention of a key RPA principle, is it appropriate to proceed with the establishment of a statutory ownership body?
2. Would the proposals in this paper address the concerns of stakeholders on this issue?
3. Is there a more appropriate ownership arrangement that would address the concerns of stakeholders while keeping costs and risks to a minimum, and ensuring robust financial controls and accountability arrangements safeguarding this asset for future generations?
4. Should the legal owner simply hold the deeds of these schools, or have a long term transformational role?
5. Do you agree that the ownership body should have a statutory obligation to take account of the views of the representative organisation?

[1] Figure supplied by Schools Finance Branch

REVIEW OF PUBLIC ADMINISTRATION: THE EDUCATION BILL AND RELATED PRIMARY AND SUBORDINATE LEGISLATION

1. The Education Committee has requested a paper addressing three aspects of the RPA Education Bill and its relationship to other legislation, namely:
 - the commencement arrangements;
 - powers to make subordinate legislation; and
 - links to existing primary legislation.

Commencement arrangements

2. Primary legislation can be brought into operation (commenced) in two ways: automatically on the date of Royal Assent; or at a later date by means of a Commencement Order. The Education Bill (like many Bills) includes both mechanisms (for different parts of the resulting Act).
3. The commencement provisions for the Education Bill are contained in clause 54. The clause lists the provisions that will commence on Royal Assent, and provides for the remainder to be the subject of a Commencement Order.
4. Only a few provisions will commence on Royal Assent. These are set out in table 1 at Annex A [Page 137]. All of the substantive provisions (including those to establish the Education and Skills Authority and dissolve existing organisations) will be the subject of Commencement Orders. This reflects the decision of the Minister and the Executive that the RPA is a single legislative programme, and that the two Bills required must remain in synchronisation. The commencement arrangements mean that the timing of the commencement of the first Act can be adjusted if necessary to ensure this.

Powers to make subordinate legislation

5. The Education Bill contains a range of enabling powers to make subordinate legislation. These are set out in table 2 at Annex B. [Page 138]
6. The enabling powers provide for subordinate legislation of three types:
 - regulations – substantive law made by the Department to regulate or govern the exercise of functions on an ongoing basis;
 - orders – made by the Department to exercise executive power or make decisions in particular instances; and
 - bye – laws – made by the ESA to govern a range of local matters.
7. Clause 51 of the Bill sets out the arrangements for Assembly control of the subordinate legislation. All regulations and most orders made under the Act will be subject to the negative resolution control procedure.
8. The exceptions are: modifying orders made under clause 50 (1); commencement orders made under clause 54; and orders to transfer assets made under paragraph 2 (1) of Schedule 4.
9. Modifying orders would be subject to the affirmative resolution procedure. This reflects the fact that they can be used to make or modify primary legislation and ought, therefore, to be subject to the strongest means of Assembly control.
10. Commencement Orders and operational matters such as asset transfer orders would not be subject to Assembly control, as is normal practice.
11. The bye-law provisions in clause 15 are the only provisions in the Bill that involve the creation of offences and penalties.

Links to existing primary legislation

12. Education legislation is amongst the most complex and voluminous on the statute book, and is a challenge for any reader. There are 11 Education Orders at present:

- The Education and Libraries (Northern Ireland) Order 1986;
- The Education (Northern Ireland) Order 1987;
- The Education Reform (Northern Ireland) Order 1989;
- The Youth Service (Northern Ireland) Order 1989;
- The Education and Libraries (Northern Ireland) Order 1993;
- The Education (Northern Ireland) Order 1996;
- The Education (Northern Ireland) Order 1997;
- The Education (Northern Ireland) Order 1998;
- The Education and Libraries (Northern Ireland) Order 2003;
- The Special Educational needs and Disability Order (Northern Ireland) Order 2005; and
- The Education (Northern Ireland) Order 2006.

13. The Education and Libraries (Northern Ireland) Order 1986 (The '86 Order) is sometimes known as the Principal Order, and is the main piece of legislation. Seven of the other orders¹ are linked to the '86 Order by a provision in each stating that they are to be 'construed together' with the '86 Order. There is a similar link in clause 52 (2) of the Education Bill. This means that the definitions and interpretations in the Principal Order apply to the other Orders. Article 2, in particular contains a range of definitions that apply throughout education law. **The net effect is that the eight linked Orders and the Education Bill should be read and interpreted as if they were a single piece of legislation.**

14. As each of the 8 linked Orders was passed, it added to the body of legislation, but also amended some of the existing provisions. Further

¹ The exceptions are: The Education (Northern Ireland) Order 1987; The Youth Service (Northern Ireland) Order 1989; and the Special Educational needs and Disability Order (Northern Ireland) Order 2005, which are of a more specialised 'stand alone' nature.

complications arise from the fact that some provisions (both new and amending) have never been commenced (for a variety of policy reasons).

15. A further complication arises from the fact that, over the years, a number of errors have been made in Commencement Orders, involving new provisions, amendments and repeals which were erroneously not commenced. (DE is presently correcting these errors in a Commencement Order that has been drawn to the Committee's attention).

The Education Bill

16. In preparing the Education Bill, all eleven Orders were scrutinised in detail, to determine the changes necessary in order to meet the objectives of:

- transferring functions from existing education organisations to the ESA;
- eliminating redundant functions;
- resolving any duplication of transferred functions e.g. some Education and Library Board functions overlap with those of the Council for Catholic Maintained Schools (CCMS);
- transforming some functions to meet other policy objectives, e.g. strengthening the duties of boards of governors and the functions transferring to the ESA in relation to child protection; and
- dealing with consequential amendments to non-education legislation.

17. This process identified over 1200 repeals and amendments to be made. Whilst many of these are straightforward, others required complex changes. Many of the simple amendments involved changing references from 'Education and Library Board' to 'Education and Skills Authority'. These are dealt with by a 'catch all' provision in paragraph 1 (1) of Schedule 7. This provision automatically changes all such references, unless they are subject to a bespoke amendment. The remainder of

Schedule 7 deals with other amendments, whilst Schedule 8 deals with repeals.

18. Examples of the treatment of transferred, redundant, overlapping, and transformed functions are described below. In addition, Annex C [Page 140] sets out in tabular form, a summary of the main groups of provisions in each of the eight linked orders, and the effect of the Education Bill on those provisions. Tables have not been included for the Youth Service (Northern Ireland) Order 1989, which will be repealed in its entirety, or for the Education (Northern Ireland) Order 1987, and the Special Educational needs and Disability Order (Northern Ireland) Order 2005, which will be subject to only minor amendment.

Transferred functions

19. The Education (Northern Ireland) Order 1998 (the '98 Order) contains provisions to transfer the functions of paying grants to voluntary grammar schools and Grant Maintained Integrated schools from the Department of Education to Education and Library Boards (articles 61 to 64 and Part II of Schedule 5). However, these provisions were never commenced, and the functions were never transferred. Under the RPA, these functions must transfer to the Education and Skills Authority. Therefore, the Education Bill will amend the functions in the '98 Order to change the Education and Library Board references to references to the ESA. DE will, at the same time, commence those provisions by means of a Commencement Order. The net effect will be that the functions will transfer from DE to the ESA.
20. Schedule 5 to the '86 Order deals with the composition of boards of governors of Catholic maintained schools, including the appointment of governors by the Department, and by Education and Library Boards. These appointment functions will transfer to the ESA by virtue of amendments in clause 35 of and schedule 7 to the Education Bill. By way of illustration, a version of Schedule 5 to the '86 Order showing the effect of the amendments (in struck out and highlighted text) is attached at Annex D. [page 141]

A redundant function

21. Article 62 of the '86 Order gives the Staff Commission the function of 'general oversight and making recommendations' to Education and Library Boards on employment matters. In the context of a single ESA, these functions are no longer required, and the clause will be repealed.

A duplicate function

22. Article 65 (1) of the '86 Order gives Education and Library Boards the function of employing teachers in controlled schools. Article 143 (1) of the '89 Order gives the CCMS the function of employing teachers in Catholic maintained schools. Clause 3(1) of the Education Bill assigns this function to the ESA for all grant-aided schools, so the two earlier provisions will be repealed.

A transformed function

23. Articles 17 and 18 of the Education and Libraries (Northern Ireland) Order 2003 (the '03 Order) place duties on the boards of governors of grant-aided schools in relation to child protection. Clause 47 of the Education Bill inserts a new clause – 18A – into the '03 Order to give the ESA the power to direct boards of governors in the exercise of those duties.

Annex A

Table 1 Education Bill: Provisions to be commenced on Royal Assent

Provision	Scope
clause 9 and Schedule 2 ²	transfer of staff employed by Boards of Governors
clause 12	modification of employment law
clause 22 ³ and Schedules 3 to 5	transfer of assets, liabilities and staff
clauses 50 to 52	supplementary, incidental, consequential and transitional provisions; Assembly control over power to make regulations and orders; and interpretation
clause 54	Power to make Commencement Orders
clause 55	short title

² These provisions will commence on Royal Assent, so that the Department can prepare the necessary transfer scheme. However, the actual transfer of staff will cannot take place until the provisions to establish the ESA are commenced.

³ Once again, these provisions will commence on Royal Assent, to allow for preparation for transfer, but the actual transfer of cannot take place until the provisions to establish the ESA are commenced.

Annex B

TABLE 2 EDUCATION BILL: ENABLING POWERS FOR SUBORDINATE LEGISLATION

Clause	Type of Statutory Rule	Scope
12 Modification of employment law	Order	Allows the Department to make modifications to employment law if necessary in connection with the operation of schemes of employment. This would ensure that employer functions could be discharged by boards of governors or the ESA as required by the schemes.
15(5) ESA power to make bye-laws	Bye-laws	Enables the ESA to make bye-laws regarding the use of its premises, opening hours and admission charges and preservation of order on its premises.
17 ESA to pay superannuation benefits to teachers	Regulations	Permits the Department (with DFP approval) to allow ESA to pay teachers their superannuation benefits on behalf of the Department.
20 Power to confer functions on ESA in relation to civil contingencies	Regulations	Allows the Department to confer powers or impose duties on ESA in relation to emergency preparedness and response.
29(3)36B Code of practice for registered teachers	Regulations	The Department may make regulations to allow the GTC(NI) to issue and revise a code of practice for registered teachers.
43 Grants for educational and youth services, etc.	Regulations	Replaces article 115 of the 1986 Order and allows the Department to make regulations to pay grants in relation to educational and youth services, etc.
50 Supplementary, incidental, consequential, transitional provision, etc.	Order	This allows the Department to make such supplementary, incidental, consequential, transitory, transitional or saving provision as it considers appropriate to give full effect to any provision in the Act.
54 Commencement	Order	Allows the Department to commence provisions which do not come into operation upon Royal Assent of the Bill.

Schedule 1 2(3) Membership	Order	Allows the Department to adjust the number of members of the ESA.
Schedule 1 8(4) Delegation to committees and staff	Regulations	Allows the Department to require particular functions of ESA to be exercised by specific employees of ESA and to regulate those appointments
Schedule 4 2(1) Transfer of certain assets and liabilities of CCMS before appointed day	Order	Allows the Department to transfer any assets or liabilities to which CCMS is entitled immediately before the transfer date to a specific person or body ie it allows the Catholic Church to retain the assets it had in CCMS prior to the transfer of CCMS assets to the ESA
Schedule 6 Disciplinary powers of Council (investigation, hearing and determination of disciplinary cases)	Regulations	Allows the Department to make regulations in relation to the investigation, hearing and determination of disciplinary cases by the GTC(NI)

Annex C

Affected Orders in Council	Page
The Education and Libraries (NI) Order 1986	140 A-C
The Education Reform (NI) Order 1989	140 D-G
The Education and Libraries (NI) Order 1993	140 H-I
The Education (NI) Order 1996	140 J-K
The Education (NI) Order 1997	140 L-M
The Education (NI) Order 1998	140 N-P
The Education (NI) Order 2003	140 Q
The Education (NI) Order 2006	140 R-S

The Education and Libraries (Northern Ireland) Order 1985

PROVISIONS	EFFECT OF RPA LEGISLATION
PART I PRELIMINARY	Minor amendments
PART II EDUCATION AND LIBRARY BOARDS AND COMMITTEES	Repeal
PART III PROVISION OF EDUCATION <ul style="list-style-type: none"> • The statutory system of education • Powers and duties of boards in relation to primary and secondary education • School management • Establishment, recognition and discontinuance of, and effecting of changes to, grant-aided schools • Religious education in schools • Recreational, social, physical, cultural and youth service activities 	Transfer of functions from ELBs to the ESA Provisions on schemes of management, and development proposals repealed and replaced in RPA Education Bill
PART IV INDEPENDENT SCHOOLS	Minor amendments
PART V RIGHTS AND DUTIES OF PARENTS AND PROVISIONS RELATING TO INDIVIDUAL PUPILS <ul style="list-style-type: none"> • General • Provisions to assist persons to take advantage of educational facilities • Provision of food and clothing • Medical and dental inspection and medical examination • Employment of children and young persons 	Transfer of functions from ELBs to the ESA
PART VI TEACHERS	Transfer of functions from ELBs to the ESA
PART VII LIBRARY SERVICES	Repealed by Libraries (NI) Act 2005, but article 73 retained for provision of schools library service.
PART VIII ADMINISTRATION AND FINANCE	Transfer of functions from Education and Library Boards to the ESA
PART X MISCELLANEOUS AND GENERAL	Transfer of functions from ELBs to the ESA

Schedule 1 NAMES & AREAS of EDUCATION and Library Boards	Repeal
Schedule 2 Education and Library Boards Constitution & Proceedings	Repeal
Schedule 3 Teaching Appointments Committees & Library Committees	Repeal
Schedule 4 Membership of Board of Governors of Controlled Schools	Transfer of functions from ELBs to the ESA / Minor amendments
Schedule 5 Maintained Schools	Transfer of functions from ELBs to the ESA / Minor amendments
Schedule 6 Membership of Board of Governors of Voluntary Grammar School entering into agreement with Department	Transfer of functions from ELBs to the ESA / Minor amendments
Schedule 7 Membership of Board of Governors of Voluntary Grammar School not entering into agreement with Department or Board	Transfer of functions from ELBs to the ESA / Minor amendments
Schedule 9 Transfer of Voluntary Schools to Department	Minor amendments
Schedule 13 Education of children of compulsory school age <ul style="list-style-type: none"> • school attendance orders • duty of parent of registered pupil to secure his regular attendance at school • offences, penalties and enforcement 	Transfer of functions from ELBs to the ESA / Minor amendments
Schedule 15 The Staff Commission for Education and Library Boards	Repeal
Schedule 16 Modifications of schedule 6 to the Local Government Act (Northern Ireland)	Minor amendments
Schedule 19 Transitional Provisions	Minor amendments

PROVISIONS	EFFECT OF RPA LEGISLATION
PART I INTRODUCTORY	Minor amendments
PART II FUNDING OF GRANT-AIDED SCHOOLS	Minor amendments
PART III BOARDS: FINANCE AND THE DUTY OF BEST VALUE	
• Financing of boards	Part III repealed as not relevant to ESA
• The duty of best value	
PART IV SCHOOLS	Minor amendments
• Welfare and protection of pupils	
• Admissions	
• Miscellaneous	
PART V MISCELLANEOUS AND SUPPLEMENTARY	
• Amendments to the 1986 Order	Repealed
• Amendments to the 1988 Order	Repealed
• Amendments to the 1996 Order	Minor amendments
• Miscellaneous	Minor amendments
• Supplementary provisions	No changes
SCHEDULES	
Schedule 1	No changes
Schedule 2	Minor amendments
Schedule 3	No changes

The Education Reform (Northern Ireland) Order 1989

PROVISIONS	EFFECT OF RPA LEGISLATION
PART 1 INTRODUCTORY	Minor amendments
PART 2 GENERAL DUTY OF THE DEPARTMENT OF EDUCATION	New Article inserted by Bill (Clause 23)
PART 3 THE CURRICULUM	Repealed by the Education and Libraries (NI) Order 2003
PART 4	Repealed by the Education (NI) Order 1997
PART 5 FINANCING SCHOOLS	
• Financing of controlled and maintained schools	Repealed by the Education and Libraries Order 2003
• Financing of voluntary grammar schools	To be repealed by the Education (NI) Order 1998
PART 6 INTEGRATED EDUCATION	
• Chapter I General Functions of Department and Boards	Minor amendments and Transfer of Functions from Education and Library Boards to ESA
• Chapter II Grant-Maintained Integrated Schools	Minor amendments and Transfer of Functions from Education and Library Boards and CCMS to ESA
• Duty of Department to maintain grant-maintained integrated schools	No changes
• Management of grant-maintained integrated schools	No changes
• Procedure for acquisition of grant-maintained integrated status	Minor amendments and Transfer of Functions from Education and Library Boards to ESA
• Proposals for alteration, etc of schools eligible for grant-maintained integrated status	Minor amendments

<ul style="list-style-type: none"> • Transfer of property and staff 	Transfer of staff to Grant Maintained Integrated Schools Article repealed as ESA will be Single Employing Authority
<ul style="list-style-type: none"> • Financing of grant-maintained integrated schools 	Repealed the Education (NI) Order 1998
<ul style="list-style-type: none"> • Making of significant change of grant-maintained integrated schools 	Minor amendments and Transfer of Functions from Education and Library Boards to ESA
<ul style="list-style-type: none"> • Discontinuance of grant-maintained integrated schools 	Minor amendments and Transfer of Functions from Education and Library Boards to ESA
<ul style="list-style-type: none"> • Winding up and disposal of property 	Minor amendments and Transfer of Functions from Education and Library Boards to ESA
<ul style="list-style-type: none"> • Miscellaneous and supplementary 	Minor amendments and Transfer of Functions from Education and Library Boards to ESA
<ul style="list-style-type: none"> • Chapter III Controlled Integrated Schools 	
<ul style="list-style-type: none"> • Management of controlled integrated schools 	No changes
<ul style="list-style-type: none"> • Procedure for acquisition of controlled integrated status 	Minor amendments and Transfer of Functions from Education and Library Boards to ESA
<ul style="list-style-type: none"> • Proposals for alteration, etc of schools eligible for controlled integrated status 	Minor amendments
<ul style="list-style-type: none"> • Transfer of property and staff 	Transfer of property to Controlled Integrated Schools Article minor amendments and Transfer of Functions from Education and Library Boards to ESA. Transfer of staff to Controlled Integrated Schools Article repealed as ESA will be Single Employing Authority
<ul style="list-style-type: none"> • Significant changes to controlled integrated schools 	No changes
<ul style="list-style-type: none"> • Miscellaneous and supplementary 	Minor amendments
PART VII	Repealed by the Education and Libraries (NI) Order 1997
PART VIII SCHOOLS - GENERAL PROVISION	

• Chapter I Management of Grant-Aided Schools	Minor amendments
	Schemes of management provisions repealed and replaced by Clauses 30-33 of the Education Bill
• Chapter II Charges in Grant-aided Schools	Minor amendments and Transfer of Functions to Education and Library Boards to ESA
• Chapter III Community Use of School Premises	Minor amendments and Transfer of Functions to Education and Library Boards to ESA
PART IX THE COUNCIL FOR CATHOLIC MAINTAINED SCHOOLS	Repealed by the Education Bill - definition of Catholic Maintained Schools retained at Clause 49 of the Education Bill
PART X MISCELLANEOUS AND SUPPLEMENTARY	
• Training	Programmes of training by Boards Article replaced by Clause 13 in the Education Bill
• Miscellaneous	Definition of "employing authority" repealed and replaced Single Education Authority Section (Clauses 30-33) in the Education Bill
• Miscellaneous amendments to the principal Order	Educational Projects Article (152) replaced by new clause in Bill which separates definitions of projects for DE, DEL and DCAL
• Supplementary	Minor amendment
SCHEDULES	
Schedule 1	
• Areas of Study and Listed Contributory Subjects	Repealed
Schedule 2	
• Compulsory Contributory Subjects	Repealed
Schedule 3	Repealed by Education (NI) Order 1998
Schedule 4	

<ul style="list-style-type: none"> • Provisions relating to the Staff of Schools with Delegated Budgets 	Minor amendments
Schedule 5	
<ul style="list-style-type: none"> • Membership of Board of Governors of Grant-Maintained Integrated Schools 	Minor amendments
Schedule 6	
<ul style="list-style-type: none"> • Transition to Grant-Maintained Integrated Status 	Minor amendments
Schedule 7	Repealed by the Education and Libraries (NI) Order 1987
Schedule 8	
<ul style="list-style-type: none"> • The Council for Catholic Maintained Schools 	Repealed
Schedule 9	No changes
<ul style="list-style-type: none"> • Amendments 	
Schedule 10	No changes
<ul style="list-style-type: none"> • Repeals 	

The Education and Libraries (Northern Ireland) Order 1993

PROVISIONS	EFFECT OF RPA LEGISLATION
PART I INTRODUCTORY	No changes
PART II	Repealed by Education and Libraries (NI) Order 2003
PART III PUBLIC SUPPLY OR WORKS CONTRACTS	Part III Repealed by the Education Bill as not relevant to ESA
PART IV MISCELLANEOUS	
• Finance	Minor amendments and transfer of functions from ELB's to ESA
• Commercial activities	Minor amendments and transfer of functions from ELB's to ESA
• Schools established in hospitals	Minor amendments and transfer of functions from ELB's to ESA
• Miscellaneous amendments to the 1986 Order	Minor amendments and transfer of functions from ELB's to ESA
• Miscellaneous amendments to the 1989 Order	Minor amendments and transfer of functions from ELB's to ESA
SCHEDULES	
Schedule 1	Repealed by Education and Libraries (NI) Order 2003
Schedule 2	
• Management of Maintained Schools and Voluntary Grammar Schools	Minor amendments
• Part I Article 11 of the 1986 Order, as substituted	Minor amendments and transfer of functions from ELB's and CCMS to ESA
• Part II Schedule 5 to the 1986 Order, as substituted	Minor amendments and transfer of functions from Department of Education to ESA as per clause 35 of the Education Bill

Part III Schedule 6 to the 1986 Order	Minor amendments and transfer of functions from Department of Education to ESA as per clause 35 of the Education Bill
Schedule 3	Repealed by Education (NI) Order 1986
Schedule 4	No changes
• Amendments	
Schedule 5	No changes
• Repeals	

The Education (Northern Ireland) Order 1996

PROVISIONS	EFFECT OF RPA LEGISLATION
PART I INTRODUCTORY	No changes
PART II CHILDREN WITH SPECIAL EDUCATIONAL NEEDS	
• Introductory	Minor amendments and transfer of functions from ELBs to ESA
• Code of Practice	Minor amendments and transfer of functions from ELBs to ESA
• Special educational provision: general	Minor amendments and transfer of functions from ELBs to ESA
• Special educational provision otherwise than in a grant-aided school	Minor amendments and transfer of functions from ELBs to ESA
• Identification and assessment of children with special educational needs	Minor amendments and transfer of functions from ELBs to ESA
• General duties of boards	Minor amendments and transfer of functions from ELBs to ESA
• Special Educational Needs Tribunal for Northern Ireland	Minor amendments and transfer of functions from ELBs to ESA
• Special schools and other institutions	No changes
• School attendance orders	Minor amendments and transfer of functions from ELBs to ESA
• Supplementary	No changes
PART III MISCELLANEOUS	Minor amendments
PART IV AMENDMENTS AND REPEALS	
SCHEDULES	
Schedule 1	

<ul style="list-style-type: none"> • Making of Assessments under Article 15 	Minor amendments and transfer of functions from ELBs to ESA
Schedule 2	
<ul style="list-style-type: none"> • Making and Maintenance of Statements Under Article 16 	Minor amendments and transfer of functions from ELBs to ESA
Schedule 4	
<ul style="list-style-type: none"> • Incorporation of Boards of Governors 	Minor amendments and transfer of functions from ELBs to ESA

The Education (Northern Ireland) Order 1997

PROVISIONS	EFFECT OF RPA LEGISLATION
PART I INTRODUCTORY	No change
PART II	Repealed by Education (NI) Order 1998
PART III ADMISSION OF CHILDREN TO GRANT-AIDED SCHOOLS	Minor amendments and transfer of functions from ELB's and CCMS to ESA
PART IV MISCELLANEOUS	Minor amendments
SCHEDULES	
Schedule 1 Repeals	No change

The Education (Northern Ireland) Order 1998

PROVISIONS	EFFECT OF RPA LEGISLATION
PART I INTRODUCTORY	Minor amendments
PART II DISCIPLINE	Minor amendments
PART III ASSESSMENT AND PUPILS' PERFORMANCE	Minor amendments
<ul style="list-style-type: none"> • Chapter I Baseline Assessments • Chapter II Assessment Arrangements and Pupils' Performance • Assessment Arrangements • Pupils' performance 	
PART IV PERFORMANCE AND MANAGEMENT OF SCHOOLS	Minor amendments and transfer of functions to ESA from CCMS
PART V PRE-SCHOOL EDUCATION	Minor amendments and transfer of functions to ESA from CCMS
<ul style="list-style-type: none"> • Chapter I Provision of Pre-school Education • Chapter II Admission to Pre-school Education at Grant-aided Schools • Introductory • Admission to full-time pre-school education • Admission to part-time pre-school education • General 	
PART VI TEACHERS	Minor amendments. New powers in relation to Discipline for the General Teaching Council have been added by Clause 29 of Schedule 6 of the Education Bill
<ul style="list-style-type: none"> • Chapter I The General Teaching Council for Northern Ireland • Chapter II Employment of Teachers 	
PART VII FINANCING OF SCHOOLS	

<ul style="list-style-type: none"> Chapter I Financing of Schools by Boards Schemes for financing schools 	Chapter I re-named as "Recurrent Funding"
<ul style="list-style-type: none"> Financing by boards of special schools Financing by boards of voluntary grammar and grant-maintained integrated schools Information 	Minor amendments and transfer of functions to ESA
<ul style="list-style-type: none"> Chapter II Financing of Schools by Department 	Chapter II re-named as "Capital Funding" minor amendments and transfer of functions to ESA
<ul style="list-style-type: none"> Chapter III Miscellaneous Financial Provisions Relating to Schools 	Minor amendments and transfer of functions to ESA
PART VIII THE NORTHERN IRELAND COUNCIL FOR THE CURRICULUM, EXAMINATIONS AND ASSESSMENT	Repealed by Education Bill
PART IX MISCELLANEOUS AND SUPPLEMENTARY	Duties transferred to ESA under the terms of Clauses 24-28
<ul style="list-style-type: none"> Miscellaneous Supplementary 	Minor amendments
SCHEDULES	
Schedule 1	Minor amendments
<ul style="list-style-type: none"> The General Teaching Council for Northern Ireland 	
Schedule 2	Repealed
<ul style="list-style-type: none"> Provisions Relating to the Staff of Controlled and Maintained Schools with Delegated Budgets 	
Schedule 3	Repealed
<ul style="list-style-type: none"> The Northern Ireland Council for the Curriculum, Examinations and Assessment 	

Schedule 4	No changes
• Certified Contracts of a Board	
Schedule 5 Amendments	
Schedule 6 Repeals	

The Education and Libraries (Northern Ireland) Order 2003

PROVISIONS	EFFECT OF RPA LEGISLATION
PART I INTRODUCTORY	Minor amendments
PART II FUNDING OF GRANT-AIDED SCHOOLS	Minor amendments
PART III BOARDS: FINANCE AND THE DUTY OF BEST VALUE	
• Financing of boards	Part III repealed as not relevant to ESA
• The duty of best value	
PART IV SCHOOLS	Minor amendments
• Welfare and protection of pupils	
• Admissions	
• Miscellaneous	
PART V MISCELLANEOUS AND SUPPLEMENTARY	
• Amendments to the 1986 Order	Repealed
• Amendments to the 1986 Order	Repealed
• Amendments to the 1990 Order	Minor amendments
• Miscellaneous	Minor amendments
• Supplementary provisions	No changes
SCHEDULES	
Schedule 1	No changes
Schedule 2	Minor amendments
Schedule 3	No changes

The Education (Northern Ireland) Order 2005

PROVISIONS	EFFECT OF RPA LEGISLATION
PART I INTRODUCTORY	No changes
PART II THE CURRICULUM	
• Interpretation	Minor amendments
• General duty	No changes
• Statutory requirements relating to curriculum	Minor amendments and transfer of functions from NICCEA to ESA
• Duties relating to the curriculum	Minor amendments and transfer of functions from NICCEA to ESA
• Special cases	Minor amendments and transfer of functions from NICCEA to ESA
• Miscellaneous and supplementary	Minor amendments and transfer of functions from NICCEA to ESA. Curriculum advice and support by Boards article repealed and replaced by Clause 13 of the Bill
PART III MISCELLANEOUS AND SUPPLEMENTARY	
• Admissions	Minor amendments
• The General Teaching Council	Removal from register Article 28 repealed and replaced by clause 29 of the Education Bill
• Institutions of further education	No changes
• Miscellaneous	Minor amendments
• Supplementary provisions	No changes
SCHEDULES	
Schedule 1	No changes
• Areas of Learning and the Contributory Elements	
• Part I Foundation Stage	
• Part II Key Stages 1 and 2	

<ul style="list-style-type: none">• Part III Key Stage 3	
<ul style="list-style-type: none">• Part IV Key Stage 4	
Schedule 2	
<ul style="list-style-type: none">• Amendments	No changes

Annex D

Schedule 5 to the Education and Libraries (Northern Ireland) Order 1986 showing the effect of amendments in the Education Bill

PART I

MEMBERSHIP OF BOARD OF GOVERNORS OF MAINTAINED SCHOOL

1. — (1) The trustees of a maintained school shall, notwithstanding anything in any instrument of government of the school, have power to enter into an agreement with the Department that paragraph 2 shall apply in relation to the membership of the Board of Governors of the school; and—

- (a) where an agreement under this paragraph is in force in relation to a school, paragraph 2 shall apply in relation to the membership of the Board of Governors of the school; and
- (b) in any other case, paragraph 3 shall apply in relation to the membership of the Board of Governors of the school.

(2) An agreement under this paragraph shall provide that ~~ESA the Head of the Department~~, before making an appointment to the Board of Governors of the school under paragraph 2 shall consult—

- (a) in the case of a Catholic maintained school, the trustees of the school the Council for Catholic Maintained Schools; and
- (b) in any other case, the Board of Governors of the school.

2. — (1) Where this paragraph applies in relation to the membership of the Board of Governors of a maintained school, the Board of Governors shall, notwithstanding anything in any instrument of government of the school, consist of—

- (a) 9, 18 or 27 persons (in this paragraph referred to as voting members);
- (b) the principal of the school who, subject to sub-paragraph (3), shall be entitled to attend and take part in meetings of the Board of Governors but not to vote on any question; and
- (c) persons co-opted under Articles 122 and 139 of the 1989 Order who shall be entitled to attend and take part in meetings of the Board of Governors but not to vote on any question.

(2) Of the voting members of the Board of Governors--

- (a) four-ninths shall be nominated by the nominating trustees in such manner as the scheme of management of the school may provide, and at least one of the persons so nominated shall, at the time of his nomination, be a parent of a pupil attending the school;
- (b) one third shall be community governors chosen by ESA;
- ~~(b) two-ninths shall be nominated by the board;~~
- ~~(c) one ninth shall be nominated by the Head of the Department;~~
- (d) one-ninth shall be elected by parents of pupils attending the school from amongst the parents of such pupils;
- (e) one-ninth shall be elected by assistant teachers at the school from amongst such assistant teachers.

(3) Where two or more schools are grouped under one Board of Governors, the principal of a school shall not be entitled to attend or take part in any meeting of the

Board of Governors whenever a matter relating exclusively to one or more of the other schools is being discussed.

(4) The Board of Governors shall, with the approval of the Department, make arrangements for the election of persons under sub-paragraph (2)(d) and (e) and such arrangements shall ensure that any vote taken for the purpose of any such election shall be by secret ballot.

3. — (1) Where this paragraph applies in relation to the membership of the Board of Governors of a maintained school, the Board of Governors shall, notwithstanding anything in any instrument of government of the school, consist of—

- (a) 10, 18 or 27 persons (in this paragraph referred to as voting members);
- (b) the principal of the school who, subject to sub-paragraph (4), shall be entitled to attend and take part in meetings of the Board of Governors but not to vote on any question; and
- (c) persons co-opted under Articles 122 and 139 of the 1989 Order who shall be entitled to attend and take part in meetings of the Board of Governors but not to vote on any question.

(2) Where there are 10 voting members of the Board of Governors of a maintained school, then of those members—

- (a) six shall be nominated by the nominating trustees in such manner as the scheme of management of the school may provide, and at least one of the persons so nominated shall, at the time of his nomination, be a parent of a pupil attending the school;

~~(b) — two shall be nominated by the board;~~

(b) two shall be community governors chosen by ESA;

(c) one shall be elected by parents of pupils attending the school from amongst the parents of such pupils;

(d) one shall be elected by assistant teachers at the school from amongst such assistant teachers.

(3) Where there are 18 or 27 voting members of the Board of Governors of a maintained school, sub-paragraph (2) shall apply as if for the numbers mentioned in heads (a), (b), (c) and (d) of that sub-paragraph there were substituted the fractions five-ninths, two-ninths, one-ninth and one-ninth respectively.

(4) Where two or more schools are grouped under one Board of Governors, the principal of a school shall not be entitled to attend or take part in any meeting of the Board of Governors whenever a matter relating exclusively to one or more of the other schools is being discussed.

(5) The Board of Governors shall, with the approval of the Department, make arrangements for the election of persons under sub-paragraph (2)(c) and (d) and such arrangements shall ensure that any vote taken for the purpose of any such election shall be by secret ballot.

4. — (1) The coming into force, or termination, of any agreement under paragraph 1 and any consequential change in the membership of the Board of Governors of a school shall not—

(a) constitute a change for the purposes of Article 14(2)(d) or (e); or

(b) break, or otherwise affect, the continuity of employment of persons employed by the Board of Governors.

(2) Where an agreement under paragraph 1 in relation to a school is terminated, the voting members of the Board of Governors of the school nominated under paragraph 2(2)(a) and (c) shall cease to hold office and such nominations to the Board of Governors shall be made by the nominating trustees as are necessary to ensure that the membership of the Board of Governors complies with paragraph 3.

(3) Where an agreement under paragraph 1 comes into force in relation to a school, the voting members of the Board of Governors of the school nominated under paragraph 3(2)(a) shall cease to hold office and such nominations to the Board of Governors shall be made by the nominating trustees and ESA the Head of the Department as are necessary to ensure that the membership of the Board of Governors complies with paragraph 2.

(4) Persons nominated to the Board of Governors under sub-paragraph (2) or (3) shall hold office for the remainder of the original term of office of those ceasing to hold office under that provision.

(5) The coming into force, or termination, of an agreement under paragraph 1 does not affect the membership of the Board of Governors of any persons other than those mentioned in sub-paragraph (2) or (3).

PART III INTERPRETATION

7. — (1) In this Schedule—

"assistant teacher" has the meaning assigned to it by paragraph 7 of Schedule 4;

"community governors", in relation to a school, means persons living or working in the local community;

~~"board", in relation to a school, means the board for the area in which the school is situated or such other board as the Department may determine;~~

"nominating trustees", in relation to a school, means such persons as the scheme of management may provide.

(2) Where two or more schools are grouped under one Board of Governors this Schedule shall apply to those schools with such modifications as may be necessary and in particular—

- (a) references to the Board of Governors of a school shall be construed as references to the Board of Governors of the group of schools;
- (b) references to a pupil attending, or an assistant teacher at, a school shall be construed as references to a pupil attending, or an assistant teacher at, one of the schools in the group;
- (c) references to the principal or the instrument of government of a school shall be construed as references to the principal or the instrument of government of each of the schools in the group;
- (d) references to the trustees of a school shall be construed as references to the trustees of each of the schools in the group, acting jointly;
- (e) any other references to a school shall be construed as references to the group of schools.]

Department of Education

Review of Public Administration (RPA): Response to Submission from the Association for Quality Education (AQE)

1. This paper responds to the points raised by the AQE in its submission to the Education Committee on the Education Bill.

General comments

2. The Minister welcomes the support of the AQE for the reform of education administration, whilst noting the concerns that the organisation has raised. A number of those concerns, particularly in relation to school governance, may be resolved by an explanation of some key provisions in the Bill.

Constitution of the Education and Skills Authority (ESA)

3. The Department notes the Association's comments on the membership of the ESA. This matter has been raised by a number of stakeholders, and the Committee is familiar with the Minister's position.

4. The AQE has expressed concern that the ESA will be a highly centralised organisation, and that this will impair its effectiveness in delivering key services. The Department emphasises that the ESA will be a single organisation, but with a strong and significant local presence. Back office functions will be centralised in the interests of efficiency and effectiveness. However, the main role of the ESA will be to provide front-line support services to schools and other education providers. These services will continue to be provided locally, and this will be the major factor in determining the structure of the organisation at local level.

Employment arrangements

5. The association has questioned whether the employment arrangements in the Bill provide a proper autonomous decision-making role for boards of governors.

6. The Education Bill makes it clear that boards of governors will make decisions, not recommendations, on employment matters (see clause 8 (2)). The ESA may not lawfully refuse to put into effect any proper decision of a board of governors on employment matters.

7. Existing law (Schedule 2 to the Education (NI) Order 1998) demonstrates that these principles are already part of education law, and that boards of governors can and do have an extensive decision-making role. Key points to emphasise in the Schedule are:

- Determination of staff complement – solely for boards of governors, with no role for the employer.
- Discipline - boards of governors draw up and implement the disciplinary rules and procedures, with the role of the employer limited to one of consultee.
- Suspension – boards of governors and principals, not the employer, have the power to suspend staff and to end suspensions.
- Dismissal – for boards of governors and only for board of governors^[1].

8. These provisions demonstrate that boards of governors can and will be given an autonomous statutory role in relation to employment matters (including dismissal), with clear duties on the employer to put into effect the lawful decisions of a board of governors.

Employment schemes

9. The Department appreciates that the Association opposes the employment arrangements in the Bill on principle, particularly the fact that individual schools will no longer be employers in

their own right for the purposes of education and employment law. However, the Association appears to have misunderstood the nature of the relationship between the ESA and boards of governors, and the purpose of clauses 8 (2) and 8 (3) of the Bill.

10. These clauses will not give the ESA the power to reject any properly taken decision of a board of governors. Their purpose is to permit the ESA to ask a board of governors to reconsider a matter if – and only if – the board of governors has not followed its own procedures.

Schemes of management

11. The Department notes the concerns raised about the requirement for grant-aided schools to draw up schemes of management for approval by the ESA.

12. The Department considers that it is entirely reasonable that grant-aided schools, as publicly funded institutions providing a public service, should have sound governance arrangements in place. This is not, in fact, a new requirement, and similar provisions have been in statute since 1989. The only significant change proposed in the Bill is that schemes of management will be approved by the ESA rather than the Department.

Appointment of governors

13. The concerns expressed by the Association on this matter may be resolved by an explanation of the relevant provisions of the Bill, which need to be read in conjunction with Schedules 4 to 7 to the Education and Libraries (NI) Order 1986 (the 2006 Order), and article 23 of the Education and Libraries (NI) Order 2003 (the 2003 Order).

14. There are no powers in the Education Bill for the ESA to 'remove or restrain' a Board of Governors.

15. The power to remove all of the members of a board of governors is contained in article 23 of the 2003 Order, and is reserved for the Department, not the ESA. The article permits the Department to make regulations for the ESA to remove individual governors from a board, but this is limited to those governors appointed by the ESA. It does not include the principal, staff governors, parent governors or 'foundation' governors i.e. those appointed by the school itself according to the arrangements in its scheme of management.

16. No such regulations have been made to date, and the Department has no plans to do so.

17. The Association also expressed a concern that governors appointed by the ESA could outvote foundation governors. This concern is unfounded, and perhaps reflects a misunderstanding of the effect of the provisions.

18. The Education Bill makes relatively minor changes to the governance of schools. In relation to the appointment of governors, the key change is that appointments that are currently made by Education and Library Boards or the Department will, in future, be made by the ESA.

19. The composition of boards of governors will not change, and the proportion of appointments made by the ESA will be the same as the proportion currently made by the Department and Education and Library Boards. With the exception of controlled grammar schools, ESA appointed governors will be in a minority^[2]. Therefore, the prospect of foundation governors being outvoted by community governors is unlikely, as is the case at present.

20. The Association expressed concern about the definition of 'community governor' as someone living or working in the local community, which it feels may be overly restrictive. In applying the provisions the Department will require the ESA to be sensitive to the needs of the school, and would regard a reasonable definition of 'local community' as being the community served by or potentially served by a school. Given the broad catchment areas served by post-primary schools, the Department does not view the definition as being restrictive.

Payment of staff

21. The Association has concerns about the provisions for the payment of school based staff in clause 11. This has been raised by a number of stakeholders, and the Committee is already aware that the Minister plans to bring forward a substantive amendment.

Questions posed by AQE

22. The Association raised a number of specific questions, which are addressed below.

Why are the proposals contrary to the promises of the policy papers and to developments elsewhere?

23. The Department does not accept that the Bill is contrary to the proposals in its policy papers, or in the policy memorandum agreed by the Executive. Where the legislation differs from that in other jurisdictions, it tends to be the case that the provisions in the Bill are less prescriptive than those in similar legislation elsewhere.

Where is the focus on maximising autonomy at local level?

24. This is reflected in the autonomous decision making role for boards of governors in the employment arrangements, and in the established common funding formula arrangements for schools.

Where are the intermediate structures between the schools and the ESA?

25. The ESA will be a single organisation, but structured on a de-centralised model with a strong local presence. In the interests of flexibility, the Department does not propose to specify the local structure of the ESA on the face of the Bill.

All OECD countries have been making efforts to reduce bureaucracy by forcing decision making down to the lowest level. Why is this not happening here?

26. The Department disagrees with the Association, and contends that the Bill reflects decision making at the appropriate level, which is by school leaders.

Given its success to date, why should the voluntary school model not be extended and greater autonomy given to schools, rather than autonomy being eroded?

27. The employment arrangements proposed in the Bill are, in fact, derived from the current arrangements for Catholic maintained schools, which are voluntary schools.

What evidence is there that this Bill will result in 'improved working of the education administration' and 'achieve better outcomes'?

28. The business case for the RPA demonstrates both the educational and financial case for change. The Committee is familiar with the Department's position on this matter.

Why are the two Bills not being considered together, given the inter-connection of so many issues?

29. The Committee is aware that the Department and the Executive regard the RPA in education as a single legislative programme, and this is reflected in the timing of the two Bills.

The ESA is given the right to engage in commercial activities, and this is likely to relate to examinations. Article 26 (1) (b) gives the ESA the job of ensuring that the standard of its examinations are recognised as equivalent to those elsewhere in the UK. Should this role not be independent of the ESA?

30. The duty on the ESA is similar to the current duty on the NI Council for the Curriculum, Examinations and Assessment. The Department considers it important that the ESA has a duty to ensure that its examinations and assessments are of the required standard. However, the Department agrees that the function of accrediting qualifications should not rest with the ESA, and the Bill assigns that function to the Department.

Article 35 (3) gives the ESA power to appoint community governors, and defines eligible individuals as 'persons living or working in the local area'. Surely this is a very restricting and narrow or parochial view of governance?

31. The Department considers that the inclusion of community governors will strengthen the links between schools and the communities that they serve. The Department does not regard links between schools and communities as narrow or parochial.

Schedule 1 paragraph 2 places the choice of members of the ESA in the hands of the Department. Does this not give the Minister the opportunity to appoint individuals who share the views of this particular person? Where does accountability come in?

32. The Minister has emphasised that the appointment arrangements for the membership of the ESA will reflect the merit principle.

Department of Education
May 2009

[1] The only exception to this is if a member of staff becomes ineligible for employment under other legislation (for example, if an individual's registration to teach was revoked by the General Teaching Council).

[2] Schedules 4, 6 and 7 to the 1986 Order refer. The proportion of community governors will be either 0, two tenths, two ninths, or 1 third. For controlled grammar schools, the proportion is five eighths, other than controlled integrated grammar schools, for which it is three sevenths.

Department of Education

Review of Public Administration (RPA): Response To Submission from Comhairle Na Gaelscolaíochta

1. This paper responds to the points raised by the Comhairle na Gaelscolaíochta (CnaG) in its submission to the Education Committee on the Education Bill. The paper should be read in conjunction with the letter of 19 March to the Deputy Chairperson, which is attached at the Annex.

General comments

2. The Minister welcomes the support of CnaG for the reform of education administration, including the establishment of the Education and Skills Authority (ESA) and its role as the employer of staff in grant-aided schools; and the retention of youth services within education.

Functions and general duty of the ESA (clause 2)

3. The Minister agrees with the suggestion from CnaG that the ESA should have a statutory duty to encourage and facilitate Irish-medium education. The Department is considering how this might be reflected in legislation, and is examining the options suggested by CnaG.

Irish-medium ethos in Irish-medium schools – submitting authority (clause 3 and clause 31)

4. CnaG has suggested that the Bill ought to be amended, to redefine the submitting authorities for schemes of management and employment for Irish-medium schools as the trustees of those schools. Other stakeholders have also suggested this change. The Minister welcomes the suggestion, and is already considering a change to the Bill that would produce the outcome sought by CnaG.

5. The effect of the amendment would be to define the submitting authority for any grant-aided school, as being the owners or trustees of the school, with an option to delegate the function to boards of governors.

Curriculum and examination etc functions (clause 24 to 26)

6. CnaG has suggested the inclusion in clause 26 (2) of a reference to the needs of persons being educated in the Irish language. The Minister recognises the legitimate concern on the part

of CnaG to ensure that curriculum support and similar services are sensitive to the needs of Irish-medium education. We welcome the suggested change, but wish to give further thought as to how best it might be reflected in the legislation.

Designation of Irish-medium schools

7. CnaG has suggested the inclusion of a formal definition and designation scheme for Irish-medium schools, similar to the approach taken in current legislation (and in the Education Bill) to the designation of Catholic maintained schools. The Department understands CnaG's concern to foster the ethos of Irish-medium schools, and ensure that the ethos within such schools is maintained.

8. However, whilst the Minister is committed to supporting each sector in fostering and developing ethos, we do not feel that legislation is the appropriate vehicle for doing so.

9. The purpose of the definition of Catholic maintained school in the legislation is not connected to ethos. It was originally needed in order to delineate the group of schools that were to be the responsibility of the Council for Catholic Maintained Schools (CCMS). The Department envisages removing the definition of Catholic maintained school in the second RPA Bill (or perhaps by amendment to the first Bill), in pursuit of the policy objective of having a common set of administrative arrangements for all grant-aided schools. This would have no bearing on the ownership, character, or ethos of any school.

10. Two other aspects of the administration arrangements ought to provide further reassurance to CnaG. Firstly, as with any grant-aided school, a significant change to the character of the school – such as ceasing to provide Irish-medium education – would be subject to the approval of a development proposal by the Department. The Education Bill contains provisions requiring any person making such a proposal to first consult the board of governors, teachers, parents, and trustees of the school (paragraph 9 (4) of Schedule 7).

11. Secondly, the Department envisages the scope for a school's scheme of management to include a requirement that the board of governors would not be permitted to make a significant change to the character of the school without the agreement of the submitting authority. This will be considered in the development of guidance and model schemes.

Boards of Governors

12. CnaG refers to a number of provisions in existing legislation regarding the appointment and duties of governors of integrated schools:

- Article 66 of the Education Reform (NI) Order 1989 (the 1989 Order) requires that the scheme of management for a grant-maintained integrated school contains a requirement on the board of governors to use its best endeavours, in exercising its functions under the Education Orders, to ensure that the management, control and ethos of the school are such as are likely to attract to the school reasonable numbers of both Protestant and Catholic pupils.
- Article 88 of the 1989 Order contains a similar requirement for controlled integrated schools.
- Paragraph 2 of Schedule 5 to the 1989 Order defines foundation governors of grant-maintained integrated schools as persons who are committed to the 'continuing viability of the school as a grant-maintained integrated school.'

- Paragraph 5 (4) of Schedule 4 to the Education and Libraries (NI) Order 1986 includes a similar provision in the form of a duty on those appointing governors to controlled integrated schools.

13. CnaG has suggested the need for similar provisions in relation to Irish-medium schools. The Minister agrees that there is a strong case for similar provisions in relation to Irish-medium education, and wishes to consider how best to take this forward. As noted above, it is not intended to introduce new legislative definitions of school types. Therefore it is likely that any references in legislation will be to 'Irish-medium education^[1]' rather than to Irish-medium schools.

Transfer of staff

14. It is important to emphasise that the Department is fully committed to taking forward the RPA on the basis of equality. With that in mind, the Minister emphasises that any staff who transfer from CnaG to the ESA will have their terms and conditions of service and pension entitlement protected, on the same basis as staff who transfer from statutory organisations.

15. The Department understands why CnaG has asked for these commitments to be included in the Education Bill, and we have carefully considered the scope for doing so. However, a difficulty stems from the fact that CnaG is a private, non-statutory organisation. The inclusion of the suggested provisions in the Education Bill could render the Bill 'hybrid', that is, a Bill covering both public and private law matters. The Assembly has not yet developed a separate procedure for private and hybrid Bills and there is, therefore, a high risk that the changes sought by CnaG would result in the Bill being significantly delayed. This in turn would risk jeopardising the implementation timetable for the RPA.

16. In these circumstances, the Minister has concluded that the change should not be made, as this would involve considerable risk of delay, whilst offering no real benefit to CnaG staff.

Development of Irish-medium education and the role of Irish-Medium trustees

17. CnaG has suggested the need for a provision giving the trustees of Irish-medium schools a statutory right to be consulted about development proposals in relation to Irish-medium education, on a similar basis to Catholic trustees.

18. The Department understands the wish of the Irish-medium trustees to be able to act collectively to guide the development of Irish-medium education. However, the Education Bill does not, in fact, give such a collective role to Catholic Trustees^[2], nor to any other sector.

19. Paragraph 9(4) of Schedule 7 to the Bill will insert a new article (14) into the 1986 Order, dealing with development proposals. Under that article, the trustees of any school must be consulted about a development proposal that would affect the school. This includes proposals relating directly to an existing school, or proposals for a new school that would affect existing schools (new clause 14 (8)). In these circumstances the Department is satisfied that the Bill contains equitable provisions that ensure that trustees of schools in all sectors will be consulted about development proposals that would affect their schools.

20. The Department also suggests that the 'collective' role for all education sectoral interests would be more appropriately exercised in the area planning process. Proposals for the second

RPA Education Bill will include provisions for sectoral interests (and other interests such as pupils, parents, staff and governors) to input to the area planning process.

Department of Education

April 2009

Annex



Rathgael House
Balloo Road
Bangor
Co Down
BT19 7PR

Dominic Bradley MLA
Northern Ireland Assembly
Parliament Buildings
BELFAST

19 March 2009

Dear Dominic

Follow-up to queries raised in the Education Committee

During a discussion last year on the Education Bill, you asked me to consider a number of points that had been raised with you by Comhairle na Gaelscolaíochta (CnaG). You subsequently raised a number of the points during a meeting of the Executive Committee, and asked me to respond formally, copying the response to Committee members.

Please accept my apologies for the delay in responding. I attach a short paper addressing each of the points. For ease of reference I have included the CnaG comment (in bold and italics) with the Department's response immediately below each point (as agreed by the Minister).

I appreciate that the responses provided to some of these queries are very technical in their nature and I would be happy to discuss them further if that would be helpful.

Yours sincerely

A handwritten signature in black ink, appearing to read "C. Stewart", with a horizontal line underneath.

Chris Stewart

Head of RPA Division
Department of Education
cc John Simmons (Education Committee Clerk)

Education Bill: Response to Points Raised by Dominic Bradley MLA

Schemes of management and employment

Page 17: Preparation and approval of schemes of management

31.- allows the "submitting authority" to submit schemes of management.

The trustees of an IM school should be given the power to act as a submitting authority as in the case of the Catholic maintained school.

Change required under 31. (7) add "(c) in the case of an IM school, the trustees of the school."

This will strengthen the status of IME in legislation and ensure parity with Catholic schools.

1. The Minister welcomes the suggestion, and is already considering a change to the Bill that would produce the outcome sought by CnaG.
2. Schemes of management and employment are central to the Bill and will set out, respectively, the governance arrangements for schools, and the role of boards of governors in employment matters. Significantly, they will be the vehicles by which schools (in any sector) give effect to their ethos.
3. The Bill requires such schemes to be prepared for each school and submitted to the Education and Skills Authority. As presently drafted, the 'submitting authority' would be the trustees of a Catholic maintained school, and the board of governors for any other grant-aided school.
4. The Minister is considering an amendment to the provision. The effect of the amendment would be to define the submitting authority for any grant-aided school, as being the owners or trustees of the school, with an option to delegate the function to boards of governors.
5. I should, however, point out that, where the owners or trustees of a school are the board of governors (which I understand to be the position for Irish-medium schools), such an amendment would have little effect.

Curriculum and examination functions

Page 14: Discharge by ESA of its functions under sections 24 and 25.

26.- (1) (a) "add (iii) the requirements of persons being educated through the medium of Irish"

This will ensure that ESA will be required to meet the needs of IME and will reflect the current onus placed on DE by the GFA.

6. The Minister recognises the legitimate concern on the part of CnaG to ensure that curriculum support and similar services are sensitive to the needs of Irish-medium education. We welcome the suggested change, but wish to give further thought as to how best it might be reflected in the legislation.

Duty to 'encourage and facilitate'

Page 1: Functions and general duty of ESA

This section should include a positive reference to IME under 2.- (2). Under 2.- (2) add " (f) to encourage and facilitate the development of Irish-medium education."

Or

Under 2.- add "(9) It shall be the duty of ESA to encourage and facilitate the development of Irish-medium education (so far as its powers extend)"

This will ensure that ESA will be required to meet the needs of IME and will reflect the current onus placed on DE by the GFA.

7. The Department is considering the options suggested by CnaG.

Boards of governors and ethos

Page 18: Duties of Board of Governors in relation to achievement of high standards of educational achievement

34. – Add "(3) it is the duty of the Board of governors of a grant-aided school to exercise its functions with a view to promoting and preserving the sectoral ethos of the school"

The sectoral ethos of the schools shall be designated in the scheme of management of the school. Ref page 28

IME has no protection in a school beyond the will of the BoG and principal. Therefore practice may be changed at any time in response to the exigencies of the school – e.g. the school budget. The above change will ensure that the IM character of a school is designated in a scheme of management and protected from unilateral change, particularly in the cases of units in EM schools.

8. The Minister recognises the value of the ethos of schools and sectors, and their strong desire to maintain cohesion during a period of unprecedented education reform. It is for that reason that we are committed to supporting the role of sectoral organisations in fostering and developing ethos. We consider that this would be the most effective approach, and see considerable difficulty in attempting to follow the legislative route suggested. The ethos of a school or sector is not something that can be precisely defined, nor can it be easily measured. In these circumstances, whilst CnaG's objective is understandable, we do not think that the proposed duty would be practicable.

Composition of boards of governors

Page 19: Community Governors for controlled, maintained, grant-maintained integrated and certain voluntary grammar schools

Where an IM unit is established in a school the Board of Governors shall be reconstituted to reflect the change in character of the school. 2 ninths shall be nominated by the trustees body of the IM schools or 2 ninths of community governors will be nominated by ESA. Where two or more schools are grouped under one Board of Governors, the principal of a school shall not be entitled to attend or take part in any meeting of the Board of Governors whenever a matter relating exclusively to one or more of the other schools is being discussed.

Provision needs to be made here for governors on the BoG of schools with IM units to allow community governors to be included as a right on the BoG of schools with units.

9. The Minister agrees that, where possible, the composition of a board of governors should change to take account of significant changes to the character of the school. We consider that the best way to achieve this would be through the normal scheduled reconstitution of the board or governors, or as vacancies arise. We understand the desire of CnaG for an earlier change, but view the approach suggested as potentially problematic. It is difficult to see a sound basis for selecting and removing two existing governors that would not be open to challenge.

10. CnaG has also suggested that some governors ought to be chosen by the 'trustees body' (presumably a reference to CnaG). The sectoral support policy envisages all sectoral organisations having a role in nominating potential community governors, for appointment by the ESA. However, the policy makes it clear that this would not be a statutory role.

11. CnaG has also suggested that, where two or more schools are grouped under one Board of Governors, the principal of a school shall not be entitled to attend or take part in any meeting of the Board of Governors whenever a matter relating exclusively to one or more of the other schools is being discussed. This is, in fact, already provided for in paragraphs 2(3) and 3(4) of Schedule 5 to the Education and Libraries (NI) Order 1986.

Definition of Irish-medium school

Page 28: Catholic Maintained schools

This section defines a Catholic maintained school for the purposes of the Education Orders as a "maintained school which is for the time being designated in a scheme under this section.

The Order should also include provision to require the Department to "make a scheme designating those maintained schools which are to be Irish-medium maintained schools for the purposes of the Orders.

This will ensure that IM schools have a legal designation once a scheme has been agreed by DE.

12. CnaG has asked for the inclusion of a definition of an Irish-medium school, similar to that for Catholic maintained schools. CnaG feels that this would underpin the ethos of Irish-medium education.

13. As noted above, the Minister is committed to supporting each sector in fostering and developing each ethos, but we do not feel that legislation is the appropriate vehicle for doing so.

14. The purpose of the definition of Catholic maintained school in the legislation is not connected to ethos. It was originally needed in order to delineate the group of schools that were to be the responsibility of the Council for Catholic Maintained Schools (CCMS). The Department envisages removing the definition of Catholic maintained school in the second RPA Bill (along with other definitions), in pursuit of the policy objective of having a common set of administrative arrangements for all grant-aided schools. (We have not done so in the first Bill simply because of the scale and quantum of other consequential changes that will be required to tidy up the legislation) This would have no bearing on the ownership, character, or ethos of any school.

Protection for CnaG staff

Page 38: Schedule 3 Transfer of Assets, Liabilities and Staff of Dissolved Bodies

This schedule provides for the transfer of staff in the dissolved bodies (CCEA, CCMS, ELBs, etc.) to ESA. The schedule should also include other bodies designated as affected bodies for the purposes of the RPA, namely Comhairle na Gaelscolaíochta and NICIE. This will allow for the transfer of staff to ESA. Schedule 5 provides for the transfer of certain staff of the Department. If necessary an additional schedule should be created to provide for the transfer of certain staff from NICIE and Comhairle na Gaelscolaíochta.

Currently there appears to be a difficulty securing the transfer to ESA of staff currently with Comhairle na Gaelscolaíochta and NICIE, where the revised budget of the two organisations will not be sufficient to employ the staff complement currently employed. A schedule in the bill will provide a basis for such transfer.

15. It is important to emphasise that the Department is fully committed to taking forward the RPA on the basis of equality. With that in mind, the Minister has asked me to emphasise that any staff who transfer from CnaG to the ESA will have their terms and conditions of service and pension entitlement protected, on the same basis as staff who transfer from statutory organisations.

16. The Department understands why CnaG has asked for these commitments to be included in the Education Bill, and we have carefully considered the scope for doing so. However, a difficulty stems from the fact that CnaG is a private, non-statutory organisation. The inclusion of the suggested provisions in the Education Bill could render the Bill 'hybrid', that is, a Bill covering both public and private law matters. The Assembly has not yet developed a separate procedure for private and hybrid Bills and there is, therefore, a high risk that the changes sought by CnaG would result in the Bill being significantly delayed. This in turn would risk jeopardising the implementation timetable for the RPA.

17. In these circumstances, the Minister has concluded that the change should not be made, as this would involve considerable risk of delay, whilst offering no real benefit to CnaG staff.

Department of Education

April 2009

[1] Article 89 of the Education (NI) Order 1998 contains a definition of Irish-medium education.

[2] The only collective reference to Catholic trustees is in clause 49 of the Bill, dealing with consultation with the 'relevant church authorities' (Catholic Trustees) on schemes to designate

schools as Catholic maintained schools. That reference will become redundant, along with the definition of 'Catholic maintained school'.

Department of Education

Review of Public Administration (RPA): Response to Comments on the Education Bill by Education and Library Boards

1. This paper responds to a number of comments on the Education Bill in the submissions from the five Education and Library Boards. The paper focuses on specific concerns raised about the Education Bill. It does not address comments on other policy matters.
2. Where the same matter has been raised by more than one Board, a single response has been included, in the section responding to the Board that first raised the matter.

South Eastern Education and Library Board

References to Pre-School Education (clause 2)

3. The scope of clause 2 (2) (a) includes pre-school education. References in the clause to 'educational services' have been included specifically for that purpose. The term is intentionally broad, reflecting the diversity and evolving nature of early years' services.

Combining Youth Service and Early Years Provisions (clause 2)

4. Youth services and early years' services (educational services) are covered by separate provisions because it would be extremely difficult to combine them in a single provision without unduly restricting the age range for which youth services may be provided.
5. The focus of the provisions on educational services (and school provision) is 'children and young people'. Existing legal definitions set the age boundary for these services at 18 (19 in the case of secondary education). However, youth services are provided for people up to the age of 25. If the provisions were combined as suggested, it would be necessary to limit youth service provision to people not older than 18.

Ownership of Controlled Estate

6. The ESA and the proposed controlled schools ownership body would be separate statutory authorities. The relationship between the ESA and the ownership body would be similar to that between the ESA and other schools owners.

Employment Provisions – Roles of Education and Skills Authority (ESA) and Boards of Governors (clauses 3 to 8)

7. All staff in all grant aided schools will be employed by the ESA. This means that formally, for the purposes of both education and employment law, the ESA will be the employer, and contracts of employment will be between the ESA and staff.

8. Boards of governors will discharge employment functions on behalf of the ESA. The essence of the arrangements is that Boards of governors, in taking the day to day decisions on employment matters, are discharging functions that are delegated to them from the ESA.

9. The delegation arrangements and the detailed roles of boards of governors will be set out in schemes of employment (clauses 3 to 12 of the Education Bill). The Department recognises that a number of stakeholders and the Committee would like greater clarity and certainty about the detail of the arrangements and the content of employment schemes.

10. At present, the intention is that the detail sought would be provided by guidance produced by the ESA. However, in view of the concerns expressed, the Minister is considering the need for subordinate legislation to govern the content of employment schemes.

11. The Bill could be amended to include a provision for DE to make regulations on schemes of employment. Such regulations could be made subject to Assembly control, and would be subject to scrutiny by the Education Committee.

12. The enabling provision in the Bill could state that the regulations may, amongst other things:

- specify matters that must be included in schemes of employment;
- specify the form in which such schemes must be drawn up;
- specify functions that must be carried out by boards of governors, functions that must be carried out by the ESA, and functions that may be carried out by one or the other (according to the schemes);

13. A further provision could be included, permitting a board of governors to make a complaint to the Department if it believed that the ESA had acted in breach of the scheme of employment; and for the Department, if it were satisfied that a breach had occurred, to use its power of direction (article 101 of the Education and Libraries (Northern Ireland) Order 1986) to remedy the matter.

14. The ESA will be the employer of staff in statutory youth service facilities, but will have no employer role whatsoever in relation to non-statutory youth service provision. This is similar to the current arrangements.

Effect of Employment Scheme (clause 8)

15. The suggestion is that, if a matter has not been determined properly in accordance with the employment scheme, then the referral of the matter back to the board of governors should be mandatory, with no discretion for the ESA^[1].

16. The Minister is willing to consider this change if the Committee regards it as necessary, but advises against it. Boards of governors will not be permitted to deviate substantively from their employment schemes. In fact, they will be under a legal duty to give effect to the schemes (clause 8 (1)). The suggested amendment would not alter the scope of that duty. However, it may have the effect of requiring matters to be sent back to boards of governors even for the most minor or trivial procedural error.

Payment of Salaries etc (clause 11)

17. The Department has indicated that it is considering substantive amendments to this clause.

18. The Department notes the comments on the provisions that would permit those schools that currently operate their own payment systems to continue to do so. This has been included in recognition of the desire of those schools to have as much autonomy over their day to day affairs as possible.

19. The Minister would welcome the Committee's view on the suggested change.

Funding of Youth Services and Educational Services (clause 15)

20. It is likely to be technically feasible to combine clauses 15 (1) (a) and 15 (1) (b) as suggested. However, there would be little value in doing so, as there would be no change to the functions of the ESA as a result.

21. If the amendment were made, it would be important to link the references to 'youth services' and 'educational services' with 'and' rather than 'including'. This is to avoid restricting the provision of youth services, as described in paragraphs 3 and 4 above.

Ancillary Powers of ESA (clause 18)

22. Capital budgets across all Departments will be set in accordance with the priorities of the NI Executive. In setting those budgets account will be taken of the level of receipts from the disposal of property across Departments. The Department and therefore ESA will be set a capital budget for the year that will have a built in level of forecast capital receipts, if the level of forecast receipts is not realised then capital expenditure will have to be reduced accordingly to remain with budget. If the level of actual receipts realised in a year exceeds the forecast then the Department will consult with DFP as to the appropriate treatment of those receipts.

Dissolution of Statutory Bodies (clause 21)

23. The Department notes the comments on sectoral support. Policy paper 21 indicates that the policy will apply to all sectors, including the controlled sector.

Examinations and Assessment (clauses 24 to 28)

24. The Department notes the concern raised. The suggested conflict of interest would not arise, as the function of determining the curriculum rests with the Department, not the ESA. The role of the ESA in relation to the determination of the curriculum is to provide advice to the Department.

Code of Practice for Registered Teachers (clause 29 and Schedule 6)

25. Child protection/safeguarding procedures are undergoing significant change with the establishment of the Independent Safeguarding Authority (ISA) and its Vetting and Barring Scheme. Teachers will be required to be members of the Vetting and Barring Scheme. Aspects of

the scheme are in place and it will be fully implemented and operational by November 2010. The rationale that underpins the scheme is that the ISA will make independent judgements about the risk of harm, so it would not be appropriate for the Council to make decisions on safeguarding matters; the Council will, however, make scheme membership a necessary 'suitability' requirement for registration. In the meantime, the Council applies certain criteria, including not being on a barred list, as a condition of offering registration. The Council's 'eligibility for registration' criteria and to be found in Regulation 3 of the Registration of Teachers Regulations (NI) 2004. For the purposes of Article 35 of the 1998 Order, a person is not eligible for registration if: he/she is not eligible to teach; or if he/she is not a qualified teacher; or if he/she is disqualified from being a teacher in any school, by virtue of-

- section 3(3)(d) of the Teaching and Higher Education Act 1998(b);
- section 11 of the Teaching Council (Scotland) Act 1965(c);
- the Teachers' (Eligibility) Regulations (Northern Ireland) 1997(d);
- regulations made under Article 36 of the 1998 Order;
- his/her inclusion on the list kept under regulation 8 of the Education (Prohibition from Teaching or Working Children) Regulations (Northern Ireland) 1997(e); or
- his/her inclusion on either of the barred lists maintained under Article 6 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007(f).

In summary, the Council does currently 'vet' those who seek registration (it does not undertake enhanced disclosure checks), but child protection/safeguarding matters are dealt with by the ISA and this will remain the case.

Powers of Inspectors (clause 38)

26. The provisions on powers of inspectors included in the Bill are similar to those in other jurisdictions. They do not give inspectors a right of access to data that would be prohibited by any other statute, such as the Data Protection Act.

Duties to Promote Welfare of Children (clauses 44 to 48)

27. The Department notes the suggestion, but is satisfied that the meaning of the duty includes 'neglect' and 'emotional abuse'. However there would be merit in ensuring that any guidance issues to boards of governors of staff explains the scope of the duty.

Supplementary etc. Provisions (clause 50)

28. The Minister would welcome the views of the Committee on the suggested duty to consult.

Transfer Schemes (Schedules 2 to 5)

29. The provisions enable but do not require more than one scheme. This is a standard provision and simply provides the flexibility to deal with these transfers in whatever way the Department wishes to. The Department's intention is to have a single scheme.

Annual Accounts (Schedule 3)

30. The Department is considering an amendment to this provision. Advice received from DFP suggests that the requirement to produce audited accounts for the nine month period for laying before the Assembly is over and above what they would expect to happen. Although legacy organisations will be required to produce accounts in a form specified by the Department, it is not necessarily desirable that they should be audited and laid before the Assembly. An amendment to the legislation can be made to allow for this exception, provided we receive written agreement from DFP and the Accounting Officer that they are content with the suggested change.

Effect of General Teaching Council Disciplinary Orders in other Jurisdictions (Schedule 6)

31. The Council's disciplinary functions 'Regulations' will be made to follow the passage of the Education Bill. The draft Regulation 26 states:

'A disciplinary order made by another General Teaching Council or a Committee of those Councils in the United Kingdom shall apply in relation to Northern Ireland as it applies in relation to those countries.'

Therefore it is intended that disciplinary orders made by the Teaching Councils in England, Scotland and Wales will apply in Northern Ireland. There have been no discussions as yet concerning the mutual recognition/application of disciplinary orders made by GTCNI and those made by the Teaching Council in the Republic. However, there is no reason 'in principle' why orders should not be recognised North and South.

North Eastern Education and Library Board

Training, Advisory and Support Services (clause 13)

32. The Department agrees that there is a need to encourage the development of innovative models of service provision, which is the intention behind the clause.

Education and Youth Services and Facilities – Bye Laws (clause 15)

33. The provision giving the ESA the power to make bye-laws carries forward a little used existing power of Education and Library Boards^[2]. The purpose of the power is the local governance of the use of facilities. It is not connected with custodial provision.

Power of ESA to Carry out Commercial Activities (clause 19)

34. The Department agrees with the Board's comments.

Disciplinary Powers of General Teaching Council (clause 29)

35. The Department notes the suggestion, which will be drawn to the attention of the General Teaching Council for action as necessary.

Schemes of Management (clauses 30 to 33)

36. The Department agrees with the Board's comments.

Raising Standards – Duty on Boards of Governors (clause 34)

37. The Department agrees with the Board's comments.

Composition of Boards of Governors (clauses 35 and 36)

38. The Department notes the points made, but emphasises the importance of the provision in promoting equality for part-time teachers. The Department considers that the potential difficulties referred to can be resolved through good governance practice.

Inspections (clauses 37 to 42)

39. The Department notes the comments made, which the Education and Training Inspectorate will consider.

Promotion of Welfare of Children (clauses 44 to 48)

40. The Department agrees that training for school governors in child protection matters is extremely important. However, the Department considers that requirements to undertake training would be better addressed through schools' schemes of management, rather than through primary legislation.

Membership of the ESA (schedule 1)

41. The Department agrees that there is a need to vary the term of appointment of members of the ESA to ensure sufficient continuity. This is provided for in the Bill, as appointments are for a period of 'not more than' four years.

Development Proposals Affecting Existing Schools (schedule 7)

42. The Minister sees value in the suggestion that consultation ought to include all staff and pupils. The Minister would welcome the Committee's views on this suggestion.

Western Education and Library Board

Sectoral Support

43. The Board has suggested that the sectoral representation body for the controlled sector should be referred to in the Bill. However, the Department's policy is that sectoral support bodies should be non-statutory.

Functions of the ESA and Dissolution of Statutory Bodies (clause 2 and clause 21)

44. Clause 21 includes provisions to dissolve all statutory education bodies except the General Teaching Council. It has never been the policy of the Department to dissolve non-statutory

bodies such as Comhairle na Gaelscolaíochta (CnaG) or the NI Council for Integrated Education (NICIE), although some of their functions will transfer to the ESA.

Employment Arrangements and Payment Arrangements (clauses 3 and 11)

45. The Department shares the Board's view on the need for all schools to make comprehensive and accurate employment and payment information available to the ESA.

Employment Schemes (clauses 4 to 8)

46. The Department notes the Board's view. The Department does not consider that the requirement to develop employment schemes will be unduly burdensome for submitting authorities, as model schemes will be made available for schools to adopt if they wish.

47. In relation to the potential for delay in approving schemes, the Department will consider the need for a transitional provision or amendment to apply model schemes to schools until the schools' own schemes are approved.

General Duty of Department of Employment and Learning (DEL) and Lifelong Learning (clause 23)

48. The Department notes the Board's view on the general duty of DEL, which will be brought to that Department's attention.

Schemes of Management (clauses 30 to 33)

49. The Department notes the Board's view. As with schemes of employment, the Department does not consider that the requirement to develop schemes of management will be unduly burdensome for submitting authorities, as model schemes will be made available for schools to adopt if they wish.

50. Under existing provisions, all grant-aided schools, including voluntary grammar schools, are already required to have schemes of management in place.

Consolidation of Existing Legislation

51. The Department shares the Board's desire for consolidation of primary education legislation. However, consolidation exercises are major undertakings, and are normally carried out after, rather than during, major legislative reform.

Transfer of Staff and Guarantee of Continued Employment (Schedule 3)

52. The Board correctly points out that the Transfer of Undertakings and protection of Employment Regulations 2006 (TUPE) do not provide a guarantee of continuing employment. The Department's policy is that every effort will be made to avoid compulsory redundancy. Analysis and planning carried out by the ESA Implementation team suggests that this can be achieved.

Belfast Education and Library Board

Nursery and Pre-school Education (clause 2)

53. The Board suggested that the Bill does not cover pre-school provision or nursery schools. In fact, the Bill includes provisions (clause 2 (2) (a)) on pre-school provision, which are referred to as 'educational services'. Nursery schools fall within the definition of primary schools in the Education and Libraries Order (Northern Ireland) 1986; a definition which applies equally to the Education Bill.

Duty to Provide Efficient and Effective Education (clause 2)

54. The Department notes the Board's comments on the duty to provide efficient and effective education, but considers that the concepts of 'efficiency' and 'effectiveness' are well established in law, and appropriate measures of the performance of the education system.

Employment Arrangements - Special Schools (clauses 3 to 12)

55. The funding arrangements for special schools will be considered as part of the forthcoming review of Special Educational Needs provision.

Employment Arrangements - Education Other than at School

56. Parents can choose to home educate and there is no legal requirement for them to advise their Education and Library Board or the Department of their decision.

57. The relevant legislation is Article 45 of The Education and Libraries (NI) Order 1986:-

"Duties of Parents to Secure Full-time Education for their Children.

58. 45 (1) The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have, either by regular attendance at a school or otherwise."

Employment Arrangements – Peripatetic Teachers and Transfer of Employment Rights (clause 10)

59. All staff employed by Education and Library Boards at the date of transfer will transfer to the employment of the ESA. The rights and safeguards applying to peripatetic teachers will be the same as those of other staff, and are unaffected by this clause.

Employment of Staff in Voluntary Grammar Schools (clause 11)

60. The clause permits those schools that currently operate their own payment systems to continue to do so. The need for such provisions and the scope for amendment are addressed

earlier in the paper. The clause does not permit voluntary grammar schools (or any other school) to employ teaching staff. Clause 3 states that the ESA will be the employer of all staff in all grant-aided schools. Clause 11 states that payments by schools of salaries etc will be made on behalf of the ESA.

Youth Service Provision (clause 15)

61. The clause permits the ESA to provide youth services itself, and to procure or commission them from other (non-statutory) providers. Thus youth services will continue to be provided (as they are at present) by both statutory and non-statutory providers. It is not clear why the Board views this with concern.

Curriculum and Assessment (clauses 24 to 28)

62. The Department notes the Boards comments, but does not agree that the role of the ESA is vague. The Department does not agree that the role of the ESA in relation to school improvement will duplicate that of the Department (exercised by the inspectorate). The powers, duties and functions of the Department and the ESA are separate and distinct in law.

63. It is not clear why the Board has concerns about the integrity of statistics and standards.

Schemes of Management (clauses 30 to 33)

64. It is not clear what the Board means when it refers to 'sectors operating outside ESA.' The provisions on schemes of management apply to all grant-aided schools, as do the current provisions.

Inspections (clauses 37 to 42)

65. The Department notes the boards' views. The concept of a requirement for premises to be 'open at all reasonable times to inspection' is well established in law, and is a standard feature of inspection provisions covering a wide range of services or activities.

66. In the case of schools, the Department would expect schools to be open to inspection whenever teaching and learning, or activities ancillary to teaching and learning (such as preparation), are taking place within the school.

Catholic Maintained Schools (clause 49)

67. The Department has indicated that the inclusion of a definition of Catholic maintained school is a temporary measure. The meaning of the Board's reference to the provision is not clear.

Membership of the ESA

68. The Department notes the Board's view on the membership of the ESA, and has previously indicated that it would welcome the views of the Committee on this matter.

Committees and Local Structure of the ESA

69. The provisions on the establishment of Committees of the ESA are contained in paragraph 8 of Schedule 1 to the Bill. The Department will wish to engage with the Committee on detailed proposals for the ESA's committee and local structure. However, it is not proposed to specify these on the face of the Bill.

Southern Education and Library Board

Employment Schemes (clause 4)

70. The Department notes the Board's view, and confirms that it is expected that many schools will adopt model schemes, and that a significant proportion of schemes will be common to all schools, reflecting best practice in employment procedures.

Transfer of Staff from Voluntary Grammar Schools (clause 9)

71. The Department confirms that the staff transfer provisions in the education Bill will take effect for all schools, including voluntary grammar schools.

Delegated Budgets and Staffing Costs (clause 11)

72. The Board has correctly identified the need for significant amendment of this clause, which the Department is considering.

Training and Support for Boards of Governors (clause 13)

73. The Department notes the Board's concern in relation to the need for boards of governors to have confidence in their competence to discharge their role. This underlines the importance of the ESA giving a very high priority to the provision of advice, support and training to boards of governors.

Youth Services (clause 15)

74. The technical reasons for the particular construction of the clause are set out earlier in the paper. The reason is not to facilitate the transfer of youth services outside education, but to avoid restricting the age range of provision for youth services.

Approval of Courses Leading to External Qualifications (clause 28)

75. The Board's concern – that courses could be provided without approval - is unnecessary. The effect of the clause is that no course of study leading to an external qualification may be provided in a grant-aided school without DE approval. That approval may be given generally, that is, to all schools, or to specified schools.

Schemes of Management (clause 30)

76. The Board's concern is noted. Model schemes will be available by 1 January 2010.

Duties of Boards of Governors (clause 34)

77. The Department agrees with the Board's comments.

Assessors and Lay Persons (article 42)

78. The Board has correctly identified a typographical error in the Explanatory and Financial Memorandum, which will be remedied at the first opportunity.

ESA Membership and Term of Office (Schedule 1)

79. The number of terms that a member of the ESA may serve is not prescribed in legislation, but the Department will adopt the principles set out in guidance produced by the Commissioner for Public Appointments.

Department of Education

March 2009

[1] The necessary wording would, in fact, be 'shall' rather than 'will'.

[2] Article 94 of the Education and Libraries (Northern Ireland) Order 1986.

Department of Education

Review of Public Administration (RPA): Response to Submission from General Teaching Council (GTC)

1. This paper responds to the points raised by the GTC in its submission to the Education Committee on the Education Bill.

Clause 11 – Payment of Salaries etc

2. The Department notes the comments made by the Council in relation to this clause. The Committee is aware that the Minister has already indicated an intention to bring forward a substantive amendment, to ensure that all boards of governors have control over school budgets for salaries.

Clause 13 – Training, Advisory and Support Services for Schools

3. The Department notes the suggested amendments to the effect that the ESA should seek advice from the GTC. The GTC correctly points out that a provision in the Education (NI) Order 1998 (as amended by the Education Bill) already give the GTC the function of advising the ESA. In these circumstances it is considered that the suggested amendment would merely duplicate an existing provision, and is not necessary.

4. The Department agrees with the GTC that there ought to be a 'mixed economy' of provision for such services including the ESA and other providers. The Bill allows for such an approach.

Clause 25 – Curriculum, Examination and Assessment Functions

5. The Department notes the suggestion that the clause ought to include a reference to civic and social well-being. However, whilst the intention behind the suggestion is laudable, the focus of the clause is specific to curriculum, examination, and assessment functions. It is the Department's view that such references would be more appropriate for clauses 2 and 23, which have a broader focus on the general duties of the Department and the ESA, and the fundamental purpose of education. Those clauses already include such references.

Clause 29 and Schedule 6 – Disciplinary Powers of the GTC

6. The Department welcomes the support of the GTC for those important provisions.

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Review of Public Administration (RPA): Response to the Submission from the Governing Bodies Association (GBA)

1. This paper responds to the points made by the GBA in its submission to the Committee on the Education Bill.

Introduction

2. It is important to emphasise that the RPA arrangements are based on autonomy for schools to run their own affairs, with accountability for their actions and the educational outcomes that they produce. The policy is based on schools putting in place the necessary governance and employment arrangements, and the regulatory framework within the Education Bill has been designed with this in mind. The arrangements in the Bill strike the right balance. They will provide, within a single employer framework, the autonomy and flexibility for boards of governors to lead and develop their own schools, as well as a basis for partnership with other schools, for the benefit of all.

Issues Raised by the GBA

3. The paper addresses four main issues:

- the benefits of the RPA employment arrangements;
- the GBA objection to the employment arrangements;
- the GBA objections to the governance arrangements for schools; and
- comparisons with legislation in England and Wales.

School-Based Staff: Benefits of a Single Employer

4. The single employer model offers significant benefits in relation to raising standards; professional development; workforce planning; consistency and equality; and value for money, whilst retaining a powerful role for boards of governors at local level. The benefits include:

- Raising standards The key to raising standards is effective leadership within schools. A single employer will mean that it is easier for schools to work in partnership to raise standards by, e.g. loans or secondments of staff between schools to share experience and transfer good practice.
- Better professional development The quality of our education system depends on the quality of our education workforce. With a single employer it will be easier to develop and retain senior teachers within education, by providing wider opportunities for professional development and more satisfying and fulfilling career pathways. Teachers aiming for senior or principal posts will be able to broaden their experience through placements in other schools. Career development might also include secondment to the professional development and support services of the ESA, followed by a return to teaching. It will be easier for teachers to avail of these opportunities if they do not have to change employer.
- Better workforce planning A single employer will mean strengthened planning capacity in implementing major changes in workforce management including new ways of working, and deployment and utilisation of the workforce. The Public Accounts Committee report on job evaluation highlighted the need for improvement in this regard.
- A single employer will have comprehensive workforce information to better inform managerial decision-making and action in relation to improvements in the development and management of the workforce. This will include key workforce indicators such as productivity, absence and turnover. The Public Accounts Committee has also pointed to the need to secure improvements in the management of absence levels in teaching.
- Equality There will be strengthened capacity to take a strategic overview on equality matters including ensuring consistency in implementing policy decisions relating to terms and conditions of the workforce will ensure that all staff are treated equitably, in all schools sectors.
- Value for money It will be easier for a single employer to minimise the incidence of redundancy, providing better value for money for the taxpayer.

The GBA's Objection to the Employment Arrangements

5. The GBA argues that the employment arrangements will result in a loss of autonomy for some schools, and will dilute the 'voluntary principle'. DE acknowledges that those schools that will no longer be employers in their own right feel a genuine sense of loss. However, the proposed arrangements do not involve any real or practical loss of autonomy, as boards of governors will remain responsible for the exercise of employment functions within their schools, and will take employment decisions that the ESA will be under a legal duty to put into effect.

6. The aim of the policy is to achieve greater consistency, transparency and accountability in the employment arrangements for grant aided schools. The aim is not to reduce autonomy in employment matters, but to ensure that it is available to all schools on the basis of equality, rather than to some schools on the basis of historical differences in ownership, and in a way that reflects the needs and capacity of the school.

7. DE also recognises the positive features of the schools represented by the GBA – which are often described as 'the voluntary principle'. However, in the legal sense, the term 'voluntary school' is a broad one, and includes those that are currently employers in their own right

(voluntary grammar schools), as well as schools that are part of collective employment arrangements (Catholic maintained schools).

8. More importantly, the positive aspects of the voluntary principle are not unique to any particular sector or school type. The most successful schools in any sector tend to be those that have a strong sense of belonging to, and being accountable to, the pupils, parents and communities that they serve. Equally, all schools have governors who discharge important and significant responsibilities in a voluntary capacity.

9. All grant-aided schools (including voluntary grammar schools) are funded by the public purse to deliver a public service, and do so on the basis of significant voluntary input from parents and communities. DE does not accept that any strong case has been made for any particular group of grant-aided schools to have separate employment arrangements.

10. The GBA objects to the proposed employment arrangements on principle. In addition, its primary concern is that the role proposed for boards of governors would lack any real or meaningful autonomy. The GBA contends that all decision-making power would actually rest with the ESA, with the role of boards of governors being restricted to making suggestions or requests.

11. This is not the case. The Education Bill makes it clear that boards of governors will make decisions, not recommendations, on employment matters (see clause 8 (2)). The ESA may not lawfully refuse to put into effect any proper decision of a board of governors on employment matters.

12. Existing law (Schedule 2 to the Education (Northern Ireland) Order 1998) demonstrates that these principles are already part of education law, and that boards of governors can and do have an extensive decision-making role. Key points to emphasise in the Schedule are:

- Determination of staff complement – solely for boards of governors, with no role for the employer.
- Discipline - boards of governors draw up and implement the disciplinary rules and procedures, with the role of the employer limited to one of consultee.
- Suspension – boards of governors and principals, not the employer, have the power to suspend staff and to end suspensions.
- Dismissal – for boards of governors and only for board of governors^[1].

13 These provisions demonstrate that the GBA's assertion is incorrect. Boards of governors can and will be given an autonomous statutory role in relation to employment matters (including dismissal), with clear duties on the employer to put into effect the lawful decisions of a board of governors.

The GBA's Objection to the Governance Arrangements

14. The GBA objects to the proposals on school governance in clauses 30 to 33 of the Education Bill. These clauses require each school to draw up a scheme of management, taking account of guidance produced by the ESA. The schemes must be submitted to the ESA for approval, and the ESA may modify the schemes, or impose a scheme if a school is unable or unwilling to draw one up.

15. It is difficult to understand the GBA's objection to these arrangements, which it describes as a 'striking transfer of power'. Grant-aided schools are publicly funded institutions delivering a key public service. The Department contends that it is both reasonable and necessary to require

each school to have clear governance arrangements in place, and to abide by those arrangements. Equally, it is entirely reasonable for the Education and Skills Authority to have a role in approving such arrangements, and in ensuring that they are in place. This is the effect of clauses 30 to 33.

16. The GBA's objection appears misguided, given that legislative requirements on governance arrangements such as these are not new, but have been in statute since 1989. Articles 9A to 9D of the Education and Libraries (Northern Ireland) Order 1986 require schemes of management to be prepared and submitted to the Department for approval, and contain powers for the Department to modify the schemes and impose schemes in default.

17. The provisions in the Education Bill are similar, but with the approval role resting with the ESA rather than the Department.

Comparison with Legislation in England and Wales

18. The GBA has suggested that the legislative framework in England and Wales – the School Standards and Framework Act 1998 (hereafter, 'the Act') – offers more autonomy to schools; is less prescriptive; and has less scope for intervention by Local Education Authorities (LEAs).

19. However, a comparison of the Education Bill and the Act demonstrates that the latter is, in fact, more prescriptive, and contains a broader range of intervention powers for LEAs than is proposed for the ESA. This is described more fully below in relation to:

- instruments of government (equivalent of schemes of management);
- intervention by LEAs; and
- ethos and fair employment legislation

Instruments of Government

20. The key provisions of the Act are section 37 and Schedule 12. In England and Wales, schools are required to have 'Instruments of Government' which are similar in scope to schemes of management here. Schools are required to draw up the instrument, and submit them to LEAs for approval. Modifications may be made by agreement between the schools and the LEAs, or (in the case of dispute) on the direction of the Secretary of State. LEAs can act in default to impose instruments on schools if the schools fail to draw them up. These provisions are similar in their broad scope to those in clauses 30 to 33 of the Education Bill.

21. The key difference between the Act and the Education Bill is that schools here will have more flexibility in shaping their schemes. The ESA will produce guidance, which schools must take into account, but with no requirement for strict adherence. By contrast, instruments of government are subject to regulations (for which compliance is obligatory) rather than guidance, and schools in England and Wales are legally required to draw up instruments of government in prescribed form, with no scope for variation.

Intervention by LEAs/ESA

22. The emphasis in the Education Bill is on self-improving schools, supported and challenged by the ESA, but not controlled or directed by it.

23. Action to raise standards or tackle underperformance will be schools-led. Following inspection, legislation will require schools (not the ESA) to produce action plans, detailing the action that they will take to address the inspection findings. In the English Act, the intervention regime is somewhat different. There, LEAs may, depending on a school's performance^[2] do the following:

- issue a formal notice, requiring the school to take specified actions;
- appoint additional governors, overriding the school's instrument of government;
- suspend the delegation of the school's budget;
- take over the role of setting a school's staffing complement, and the eligibility criteria for appointing staff;
- remove the school governing body's right to appoint or dismiss staff, by making such actions subject to LEA approval; and
- direct the governing body to dismiss staff.

24. By contrast, the ESA will have none of the above powers. It cannot direct schools in relation to raising standards; cannot withhold grant; cannot interfere in the school's staff complement or appointment of staff; and cannot direct the dismissal of staff. The strongest powers in legislation here (appointment and removal of governors, directing schools, closing schools) are less extensive than those in England and Wales, and are reserved to the Department.

Ethos and Employment

25. The GBA refers to section 60 of the Act, and describes it as allowing schools with a particular religious ethos to derogate from non-discrimination provisions when making appointment provisions. The GBA suggests that similar provisions ought to be introduced to the Education Bill.

26. It is not clear from the GBA's submission which provisions of ant-discrimination or fair employment legislation it is suggesting ought not to apply to schools. Given the Committee's interest in the current exemption from the Fair Employment and Treatment Order (Northern Ireland) 1998, the Department would welcome an opportunity to clarify the GBA's suggestion.

Conclusion

27. The GBA has argued that the current legislation in England and Wales is preferable to the Education Bill. An examination of both demonstrates that the English legislation is more prescriptive, offers less flexibility to schools in determining their governance arrangements, and gives much greater powers of intervention to LEAs than either those in current legislation here, or that are proposed for the ESA in the Education Bill.

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[1] The only exception to this is if a member of staff becomes ineligible for employment under other legislation (for example, if an individual's registration to teach was revoked by the General Teaching Council).

[2] The relevant provisions are in sections 14 to 17, and 55 and schedules 15 and 17 of the Act.

Department of Education

Review of Public Administration (RPA): Responses by the Commission for Catholic Education and the Council for Catholic Maintained Schools to the Education Bill

Introduction

1. This paper responds to the points raised by the Northern Ireland Commission for Catholic Education (NICCE) and the Council for Catholic Maintained Schools (CCMS), in their submissions to the Education Committee.

The Submission from NICCE

2. The Commission posed three key questions about the Education Bill in its submission, relating to:

- the rights of parents;
- provision for the trustees to exercise their rights and duties; and
- structures of support for each education sector.

Each of these matters is addressed below.

The Rights of Parents

3. The Commission has emphasised the importance it places on the rights of parents to have their children educated in a manner consistent with their religious and philosophical convictions.

4. The Minister acknowledges this right, and the need to ensure that it continues to be reflected in legislation. In responding, it is important to emphasise that the Education Bill must be read alongside the eleven existing education orders and, in particular, the legal requirement that it is 'construed as one' with the Education and Libraries (Northern Ireland) Order 1986^[1].

5. Thus, the Education Bill will transfer from Education and Library Boards to the Education and Skills Authority the existing duty to have regard to the principle that pupils should be educated in accordance with the wishes of their parents^[2]. This duty, which also applies to the Department, covers the exercise by the ESA of all powers and duties conferred or imposed on it by education legislation.

6. Therefore, the Minister's view is that the Education Bill satisfactorily preserves the rights of parents.

Provision for the Trustees to Exercise their Rights and Duties

7. In developing the Education Bill and the underlying policy, the Department has acknowledged the concerns expressed by the trustees. A number of measures have been included to ensure that the role of the trustees in fostering and developing the ethos of Catholic education is recognised, supported and, where appropriate, provided for in legislation. Specifically:

- there will be no change to the ownership of Catholic schools;
- the role of the trustees is underpinned in the legislation – as the submitting authorities, they will control the schemes of management and employment for Catholic schools, and have consultation rights on a range of matters affecting those schools ranging from planning through to the appointment of governors;
- boards of governors will make the key employment decisions under the control and direction of the trustees (exercised through the schemes of employment);
- the ESA will be bound by the schemes of employment, and will be under a legal duty to put into effect the lawful decisions of boards of governors;
- there will be no change to lawful employment criteria centred on ethos (e.g. the requirement for a certificate in religious education);
- nothing in the Bill impedes the desire for greater coherence within the Catholic sector, and some provisions will assist it (administration arrangements for Catholic grammar and Catholic maintained schools will become similar); and
- the trustees will continue to have public funding for professional support for the discharge of their roles.

8. The Commission referred to two particular matters in this regard: the connection between employment and ethos; and exemptions from equality legislation.

Employment and Ethos

9. The Commission emphasises the importance of boards of governors taking responsibility for employment decisions within their schools. The Minister agrees with this, and the Bill provides for all boards of governors to discharge employment functions according to their schemes of employment.

10. The Commission has suggested that individual boards of governors, rather than the ESA should be the formal employers of staff. This would depart from the arrangements in the Bill and, in fact, from the current arrangements for Catholic maintained schools, in which teachers are employed by CCMS, and non-teaching staff are employed by Education and Library Boards. It is not clear from the submission why the Commission feels that only individual school employers can safeguard the ethos of Catholic schools, particularly when at present the vast majority of Catholic schools are part of collective employment arrangements. Under the arrangements in the Education Bill, only boards of governors, not the ESA, can decide who is to be appointed to the staff of any grant-aided school.

11. It is important to emphasise that, irrespective of whether individual schools or the ESA employ staff, there would be no change to the responsibilities to be discharged by boards of governors, nor the requirement to act within education and employment law.

12. The Commission has not suggested that it advocates boards of governors acting unlawfully. Nevertheless, it is important to emphasise that, whilst the promotion of the ethos and character of a school is a legitimate aim, all education employers must act within the law in pursuing that aim. If the Department became aware that an education employer intended to act unlawfully, it could use its powers of direction (article 101 of the Education and Libraries Order (Northern Ireland) 1986) to prevent the action. If the Department received a complaint about the matter, it would be legally obliged to issue a direction, and to enforce that direction in the courts if necessary.

13. If the unlawful act (such as dismissal) had already taken place, then a court or tribunal could impose a very substantial fine, and order the reinstatement of the member of staff. In such circumstances, if a board of governors had acted against advice or a Departmental direction, individual school governors may lose the legal protection that they normally enjoy for actions taken 'in good faith' and may become individually liable for the consequences.

14. Thus, every education employer is bound by law, and no employer or board of governors may be given the freedom to act unlawfully. This is the case under current arrangements, and will continue to be the case regardless of whether the ESA or individual schools are the formal employers.

Exemptions from Equality Legislation

15. The Commission has suggested that religious schools should be exempt from the requirements of equality legislation, and has cited examples of legislation from other jurisdictions.

16. Comparisons with other jurisdictions are not straightforward, given the structural differences in education, and the significant differences in equality legislation and the powers of the respective legislatures.

17. At present, the publicly funded education system here is not covered by the full range of equality legislation – schools are not public authorities for the purposes of section 75 of the Northern Ireland Act 1998, and the recruitment of teachers is outside the scope of the Fair Employment and Treatment (Northern Ireland) Order 1998 (FETO).

18. It is not clear why the Commission is arguing for further exemptions, nor which aspects of anti-discrimination or fair employment legislation it wishes to have set aside. Committee members have expressed concern about the exemption from FETO, and the requirement to possess a certificate in religious education in order to be eligible for some teaching posts in Catholic schools. In responding, the Department has recognised the legitimacy of the eligibility criterion, and has focussed its attention on ensuring that there are no barriers to any teacher obtaining such a certificate, regardless of their community background. The Department considers that this approach reflects both the need to maintain the ethos of Catholic education, and the need to promote equality of opportunity.

19. The Department would welcome clarification from the Commission on what it seeks to achieve through the suggested changes no scope for additional delegation how, if its suggestions were accepted, it would ensure equality of opportunity within Catholic education.

20. In relation to the legal soundness of the proposal, legal advice would be required on whether the Assembly could take forward legislation such as that suggested, but it seems questionable that such measures would be within the legislative competence of the Assembly, as defined by section 6 of the Northern Ireland Act 1998.

21. In summary, the Minister considers that the Education Bill recognises and makes effective provision for the trustees to exercise their rights and duties. The Minister remains of the view that the employment arrangements in the Bill are the best option. They will deliver significant benefits in relation to raising standards; professional development; workforce planning; consistency and equality; and value for money. The arrangements also provide an autonomous role for boards of governors on an equitable basis across all sectors, as well as effective safeguards for owners and trustees on ethos.

Structures of Support for each Education Sector

22. The Department is currently considering business cases from a number of education sectors for public funding for sectoral support. Each business case will be assessed for value for money, and against the policy criteria set out in policy paper 21, which the Committee has considered previously.

23. The Commission has suggested that the Education Bill should include references to the various sectoral organisations and their roles. However, the policy approach in paper 21 makes it clear that sectoral organisations will be non-statutory bodies, and will not have any statutory functions. Therefore, it is difficult to find a clear and appropriate rationale for references in legislation.

24 The specific suggestions for legislative references put forward by the Commission would be problematic:

- The role of sectoral bodies in relation to raising standards. One of the key aims of policy on raising standards is to ensure clarity of responsibility throughout the education system. Sectoral bodies will undoubtedly wish to take an interest in the performance of the schools that they represent, and will have a role in promoting high standards generally. However, they will have no formal or statutory role in this regard. Therefore references in legislation are unnecessary, and may risk confusion with the statutory roles and responsibilities of the ESA and boards of governors.
- Consultation between sectoral bodies. The department agrees with the Commission on the importance of fostering partnership and collaboration across education sectors. However, it would be an unusual and somewhat incongruous approach in legislation to place a statutory duty on non-statutory organisations to consult each other about non-statutory matters. This might be better dealt with as a condition of grant.
- A duty on boards of governors to co-operate with sectoral bodies. It is difficult to envisage a sound legislative basis for linking the statutory duties of boards of governors with the non-statutory role of sectoral bodies.
- Duties on the Department of Education and the ESA to consult sectoral bodies. Whilst the sectoral bodies will have an important role to play, the proposed duties would appear to go beyond the Minister's policy, by creating statutory roles or functions for sectoral bodies.

25. The Minister also considers that legislation already contains (or will contain) sufficient duties or other mechanisms to ensure effective consultation with education sectors. The Education Advisory Forum will provide a formal mechanism for the involvement of sectoral bodies and other stakeholders in policy formulation. This will be complemented by existing specific duties to consult trustees on a range of legislative matters, such as development proposals. In relation to the operational functions of the ESA on matters such as raising standards, the Minister considers that any formal duties to consult should refer to boards of governors and/or the owners or trustees of schools, rather than to sectoral bodies. The trustees may, of course, request the sectoral body to provide them with advice and support in relation to such consultations.

26. In summary, the Minister considers that effective arrangements are being made for support for each education sector. In keeping with the policy set out in policy paper 21, the Minister does not see a need for any new legislative provisions in relation to this matter.

Other Matters Raised by the Commission

27. The commission made a number of other suggestions in its submission. The Department's view on each of these is set out below.

Ethos and Schemes of Management/Employment

28. The Department agrees that the schemes of management and employment for schools should appropriately reflect their ethos and character. They must also comply with education and employment law, and take account of guidance produced by the ESA. The Minister is satisfied that the Bill as drafted provides for this.

Consultation on the Appointment of Community Governors

29. The ESA will be under a duty to consult the trustees of Catholic schools before appointing community governors. The Commission has asked for the legislation to be amended to read 'in consultation with'. The Department regards the suggested wording as being too imprecise for use in legislation, and considers that it would risk confusing the respective roles of the ESA in making the appointments, and the trustees as consultees on such appointments.

Designation of Catholic Schools

30. The Minister intends to remove the designation 'Catholic maintained schools' from legislation, either in the first or second Education Bill, as part of the simplification of school types and administrative arrangements. Catholic primary and secondary schools (grammar and non-grammar) could adopt the common descriptor of 'Catholic grant-aided schools' for day to day use. However, there is no rationale for including such a term in legislation, as there is no need to separate these schools in legislation from other schools that would have similar administrative arrangements. Indeed, such an approach might present a barrier to potential cross-sectoral developments, such as joint faith schools. The Catholic church has previously expressed an interest in exploring the scope for such developments.

Membership of the ESA

31. The Minister notes the Commission's comments, but remains of the view that the majority of the members of the ESA should be local councillors, in the interests of local democratic accountability.

Committees of the ESA etc

32. The Minister emphasises that the ESA will be a single organisation, but with a strong local presence. Its Committees and local units will be an integral part of the organisation. Whilst further detail is required on the Committee and local structure for Committee scrutiny, these are implementation matters and it is not the Department's intention to specify them on the face of the legislation.

Matters Raised by CCMS

33. A number of matters raised by the Commission were also raised by CCMS in its submission, and the Department's response need not be repeated. The Department's response to the range of other matters raised by CCMS is given below.

Ownership of Controlled Schools and Conflict of Interest

34. The Minister notes the views of CCMS on the perceived conflict of interest between the role of the ESA in owning controlled schools and its other roles. The Minister considers that this matter has been appropriately dealt with by the decision to minimise the period during which the ESA will own schools, and by the clear and explicit statutory duty on the organisation to treat all schools equitably.

Employment – Clarification of Roles

35. The Department does not agree that there is a lack of clarity in the terminology within the Bill, or in the respective roles of the ESA and boards of governors. The provisions will establish the ESA as the employer of all staff in all-grant-aided schools. Boards of Governors will not be employers in their own right, but will carry out certain employment functions that are delegated to them by the ESA. In discharging these functions, boards of governors will be acting on behalf of the ESA. Further detail on the respective roles of the ESA and boards of governors will be a matter for guidance and schemes of employment rather than statutory provision. The Minister does not envisage any provisions on employment in the second Education Bill.

Employment – modification of employment law

36. The provisions within the Bill do not give the Department the power to modify the Fair Employment and Treatment (Northern Ireland) Order 1998. Modification of this legislation would be a matter for the Office of the First Minister and deputy First Minister. The provisions give the Department limited powers to modify employment law in order to facilitate the operation of the employment arrangements in the Bill. The Department is not aware of any need to modify employment law in this regard, and has no plans to do so.

Transfer schemes

37. The CCMS interpretation of the effect of the provisions on transfer schemes in Schedules 3 to 5 is correct.

General duty of the Department

38. The Department's view is that the general duty in clause 23 includes responsibility for education policy and strategy, and no further provisions are required.

Appointment of Community Governors

39. The Department is satisfied that the definition of 'community governor' as 'a person living or working in the local community' is sufficiently flexible to ensure a broad spread of candidates for appointment to schools.

Amendments and repeals

40. CCMS asked for clarification on the effect of the part repeal of article 70 of the Education (Northern Ireland) Order 1998, dealing with various payments to CCMS in relation to the employment costs of maintained schools. These provisions will not be required, as CCMS will be dissolved, and the ESA will be responsible for meeting the employment costs of maintained schools direct.

41. Schedule 2 to the Education (Northern Ireland) Order 1998, which contains provisions on the role of boards of governors in employment matters is to be repealed. Instead, the respective roles of boards of governors and the ESA will be set out in schemes of employment.

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[1] Clause 52 of the Bill refers.

[2] The duty is in article 44 of the Education and Libraries (Northern Ireland) Order 1986, to be amended by paragraph 1 of Schedule 7 to the Education Bill.

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Review Of Public Administration (RPA): Response to Submission from NI Council for Integrated Education

1. This paper responds to the points raised by NICIE in its submission to the Education Committee on the Education Bill.

General Comments

2. The Minister welcomes the support of NICIE for the reform of education administration, including the establishment of the ESA, and the policy of sectoral support.

Employment role of boards of governors

3. NICIE sought an assurance that, under the employment arrangements in the Bill, boards of governors would continue to take the decisions on the recruitment and dismissal of staff. This has been discussed on a number of occasions, and the Committee is familiar with the Department's position. The Department is happy to give the assurance sought by NICIE.

Training, advice and support (clause 13)

4. NICIE referred to the potential role of sectoral bodies in providing advice, training and support to schools, if commissioned to do so by the ESA. The Committee is familiar with the Department's position on this function, and the intention to have a 'mixed economy' of services, involving the ESA and other providers. It would be a matter for the ESA and schools to determine how such services would best be procured.

General duty of the Department

5. The Department notes the views expressed by NICIE, but would point out that existing duties, such as those in section 75 of the NI Act 1998, and the duty to encourage and facilitate integrated education in the Education (NI) Order 1989, continue to apply.

Membership of the ESA

6. The Department notes the comments made on the membership of the ESA, which are similar to the views of a number of other stakeholders. The Committee is familiar with the Department's views on this matter, and the Minister's willingness to consider the Committee's views.

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Review of Public Administration (RPA): Response to Comments on the Education Bill by Trades Unions

1. This paper responds to a number of comments on the Education Bill in the submissions from: the Irish National Teachers Organisation (INTO); Ulster teachers Union (UTU); National Association of Schoolmasters and Union of Women Teachers (NASUWT); NI Public Service Alliance (NIPSA); Association of Head Teachers in Secondary Schools (AHTSS); Forum of Nursery Teachers (FONT); and the National Association of Head Teachers (NAHT).

2. The paper focuses on specific concerns raised about the Education Bill. It does not address comments on other policy matters.

Employment Arrangements (INTO, UTU, NASUWT)

3. The Minister welcomes the support of the Trades Unions for the role of the Education and Skills Authority (ESA) as the employer of staff in grant-aided schools.

Membership of the ESA (INTO, UTU, NASUWT, NIPSA, AHTSS)

4. The minister notes the views expressed by a number of Trades Unions on the number and composition of the proposed membership of the ESA, and the involvement of district councillors. The Minister remains of the view that a membership of up to 12 is sufficient for effective leadership and governance. The Minister also feels that the proposal for the majority of members to be district councillors is important to ensure local democratic accountability.

5. A number of Trades Unions suggested that a proportion of the ESA membership should be reserved for Trade Union representatives. The appointment arrangements for the membership of the ESA will be based primarily on the merit principle, and Trade Union representatives may apply for appointment^[1]. However, all members will be appointed on the basis of their competence and experience, rather than in a formal representative capacity.

6. The Minister also notes that formally reserving a proportion of the membership for Trades Union representatives could give rise to a conflict of interest for those members in management/trade union matters.

Accountability (INTO)

7. In response to the comments on accountability to the Assembly Committee, paragraph 17 of Schedule 1 to the Bill requires the ESA to produce annual reports, which must be laid before the

Assembly. No provision in the Bill places any limitation on the role of the Assembly Education Committee, which may examine any aspect of the operation and performance of the ESA.

Employment Schemes and Submitting Authority (INTO, UTU, NASUWT, NIPSA)

8. The Minister does not accept that the requirement for schools to produce employment schemes is a bureaucratic burden. The schemes are an essential element of the employment arrangements in the Bill, and will ensure that there is clarity on the respective roles and responsibilities of the ESA and boards of governors. This is in the best interests of staff.

9. The responsibility for preparing and submitting schemes will be given to schools in keeping with the policy aim of allowing schools to determine the degree of autonomy they wish to have over employment matters. The ESA will produce model schemes, which schools will be free to adopt if they wish, thus minimising the administrative burden.

10. The Minister disagrees with the views expressed on the ethos of schools. The Minister has indicated to the Committee that she is minding to propose an amendment to the definition of submitting authority. The effect of the amendment would be to define the submitting authority, in all cases, as the owners or trustees of the school, with an option to delegate the function to boards of governors.

Panels of Teachers (INTO)

11. Clause 10 of the Bill already makes provision for the ESA to employ substitute teachers.

School Development (INTO, NAHT)

12. The Minister agrees that schools should be responsible for determining the professional development needs of their staff, and the advice and support services required to meet those needs. It is important that the ESA has a clear statutory responsibility to ensure that such services are available, and this is addressed in clause 13 of the Bill. However, the clause is intentionally flexible, requiring the ESA to 'provide or secure the provision of' such services. The latter would provide for budgets to be delegated to schools or groups of schools to provide or procure such services themselves. Where the ESA provides such services direct, the Minister sees little purpose in introducing charges for such services. Even if schools received additional delegated budgets for the cost of such services, resources would be wasted in the administration of the charging regime.

Payment of Superannuation (INTO)

13. The minister notes the suggestion that this function ought to be retained within the Department. The Minister points out that it has been a clear objective of the ESA from the outset that all of the Department's operational functions would transfer to the ESA, with the role of the Department focussing on policy, strategy and accountability.

Raising Standards – Duties of Boards of Governors (INTO, UTU)

14. The Minister disagrees with the comments on clause 34 of the Bill. It is essential that there are clear responsibilities throughout the education system in relation to raising standards. The

absence of such clarity is a significant weakness of the current arrangements. It is equally important to ensure that schools co-operate with the ESA in the discharge of its functions.

Role of Inspectors (INTO)

15. The Minister notes the comments made on the powers of inspectors, but points out that the provisions merely bring the powers into line with best practice in other jurisdictions. Inspectors will continue to be employees of the Department. DE has no plans for an independent or privatised inspectorate.

Provisions on Early Years (UTU)

16. The UTU suggested that the Bill does not cover early years, nursery schools, or special schools. In fact, the Bill includes provisions (clause 2 (2) (a)) on early years services, which are referred to as 'educational services. Nursery schools fall within the definition of primary schools in the Education and Libraries Order (Northern Ireland) 1986; a definition which applies equally to the Education Bill. Schedule 7 to the Bill contains extensive amendments to the Special Educational Needs and Disability Order (Northern Ireland) 2005 which, inter alia, transfer to the ESA all functions and duties of Education and Library Boards in relation to special education.

Revision of Schemes of Employment (INTO, UTU)

17. The Minister disagrees with the suggestion that schools should only change their schemes of employment at the direction of the ESA. In keeping with the policy of maximising school autonomy, schools should be able to change their schemes of employment to reflect their ethos or if, for example, they wish to increase their role in employment matters.

Consultation with Trades Unions (UTU, NASUWT)

18. The Minister recognises the importance of consultation with Trades Unions on a range of matters, but wishes to consider further whether there is a need for legislation on such consultation.

Payment Arrangements for School Staff (UTU, NAHT)

19. The Minister has already indicated an intention to bring forward an amendment to clause 11, to ensure that the boards of governors of all schools have control over their staffing budgets on an equitable basis. The provisions in the clause to allow schools that operate their own payment systems to continue to do so have no significant equality implications.

Research (UTU)

20. In commissioning research, the ESA will be expected to ensure quality and value for money. Research would rarely, if ever, be commissioned from commercial companies.

Curriculum, Examinations and Assessment (UTU)

21. It is not clear what the union means when it suggests that the ESA should have regard to the interests of trades unions carrying out its functions in relation to the curriculum, examinations and assessment.

Faith Based Education, & Definition of Catholic Maintained School (UTU)

22. The Minister has indicated that the definition of Catholic maintained school is likely to be removed from legislation. However, this does not effect the ethos of Catholic schools, or the right of parents and children to choose to attend a Catholic school.

Alternative Education Providers (NASUWT)

23. The whole area of alternative education provision (AEP) is currently under review. It is intended that proposals for the future provision of AEP will be the subject of public consultation later this year.

Administrative Functions on Behalf of the Department of Employment and Learning (DEL)

24. The scope for the transfer of functions under clause 2 (5) and 2 (6) is limited, and neither DE nor DEL has any plans to do so at present.

Schools Library Service (NIPSA)

25. It is not clear from the paper why legislative links between the ESA and the NI Library Authority are required. Clause 18 contains provisions allowing the ESA to co-operate with and enter into formal agreements with the Libraries Authority.

Educational and Youth Service Facilities – clause 15 (NIPSA)

26. The focus of the clause is early years services (educational services) and youth services. The reference to 'together with any other person' is to allow for co-operation and partnership between the ESA and voluntary service providers. It is unrelated to the schools estate or procurement policy.

Secondments from the ESA to DE (NIPSA)

27. The Minister agrees that this is desirable, and will consider the need for an amendment.

Schedule 5 – Transfer of Civil Servants (NIPSA)

28. DE is satisfied that the legislation correctly reflects the employment rights of civil service staff.

Training and Support for Nursery School Staff – clause 13 (FONT, NAHT)

29. The duties in clause 13 relate to all grant-aided schools, including nursery schools.

Department of Education

March 2009

[1] It should be noted that paragraph 5 (5) of Schedule 1 to the Bill includes a provision to prevent members of the ESA from being employees of the organisation. This is to address the risk of conflict of interest.

Department of Education

Review of Public Administration (RPA): Response to Submission from Transferor Representatives Council (TRC)

1. This paper responds to the points raised by the TRC in its submission to the Education Committee.

Membership of the Education and Skills Authority (ESA) Clause 1

2. The TRC has suggested that it ought to have a right of membership of the ESA, similar to its current right of membership of Education and Library Boards. The Department acknowledges the contribution that the TRC has made to Education and Library Boards and the controlled sector, and would welcome applications from TRC nominees for membership of the ESA. However, it would not be feasible to offer an automatic right of membership for three reasons.

3. Firstly, the policy is that the appointment arrangements for ESA membership will reflect the principles in the guidance produced by the Commissioner for Public appointments. Appointments will reflect the merit principle, and no organisation will be given automatic membership rights.

4. Secondly, the TRC suggestion is based on the perception that the ESA will succeed Education and Library Boards as the owner and managing authority of transferred schools. However the intention is that the second Education bill will transfer the ownership of controlled schools to a new ownership body, and will make boards of governors the managing authorities of controlled schools. It is difficult to see a rationale for giving the TRC membership rights for the ESA, on the basis of historical ownership and management arrangements that will be ended by the second Education Bill.

5. Thirdly, provisions giving the TRC membership rights are likely to be outside the legislative competence of the Assembly, as defined by section 6 of the N.I. Act 1998. Section 6 is an 'excepted' provision, which could only be amended with the consent of the Secretary of State. Any proposal to amend section 6 would be a cross-cutting matter, for consideration by the Executive.

6. The Department notes the views of the TRC on the proportion of local councillors within the membership of the ESA. The Committee is familiar with the Minister's policy on this matter.

Functions and general duty of the ESA

7. The Department notes the views expressed by the TRC on the ethos of controlled schools, which make a positive contribution to the debate on this important matter. The Department will encourage the controlled sector representative body to give a high priority to developing and celebrating a more recognised ethos and sense of identity for the controlled sector. The Department recognises that the majority of children who attend controlled schools have a

Protestant community background. It is recognised that the ethos of most controlled schools, and the controlled sector generally, has a significant Christian Protestant dimension. Equally, the Department agrees with the TRC that the controlled sector ethos must be based on inclusivity, the recognition of diversity, and the promotion of equality.

8. The Department also emphasises that the principles of respect for diversity and the promotion of equality must apply throughout the education system, and that the rights of all children and young people of whatever religious faith, community or ethnic background must be upheld. This applies to all schools in all sectors.

9. In relation to local delivery, the ESA will be a regional organisation, but with a strong local presence. The Department recognises that the Committee wishes to scrutinise the proposals for the ESA's committee and local delivery structure, and a paper is being prepared. However, it is not thought necessary to specify either the committee structure or the local delivery structure of the ESA on the face of the Bill. The ESA will come into existence with the 'footprint' of the existing organisations that it will succeed. This will change significantly in the following years as the organisation transforms its functions and services. It is important that the legislation is not unduly prescriptive, and provides the flexibility for the ESA to transform services in a way that is sensitive and responsive to local needs.

10. The Department welcomes the TRC's support for the retention of youth services within education.

Employment and ethos

11. The Department notes the views of the TRC on employment and ethos. The employment arrangements within the Bill are not a threat to the ethos of any school or sector. Key safeguards have been included, notably the role of submitting authorities in drawing up schemes of management and employment, and the autonomous decision making role of boards of governors in employment matters. At present, some 86% of schools are already part of collective employment arrangements. The arrangements in the Bill are modelled closely on those within the Catholic maintained sector, which many stakeholders have described as effective and successful, and not unduly burdensome or interventionist.

Training and advice for governors

12. The Department agrees with the TRC on the importance of advice, support and training for school governors. This is reflected in the statutory duty on the ESA in clause 13 of the Bill. The Department values the role of the TRC in encouraging people to serve as school governors, and welcomes the TRC's commitment to continue in that role, in relation to its own nominations, and in advising the ESA on its appointments.

Curriculum support for religious education

13. The Department notes the TRC's views on the need to ensure adequate curriculum support for religious education in schools. This is a matter for implementation rather than the legislation.

Inspection of religious education

14. The Department notes the TRC's views on the frequency of inspection of religious education, and welcomes the TRC's recognition of inspection as a positive process that is focussed on raising standards.

15. The Department agrees that inspection teams require relevant skills and experience. However, this is provided by the professional members of the teams rather than the lay members, whose role is to complement the professional skills of inspectors from a lay perspective.

Department of Education

April 2009

Ownership and Representation for Controlled Schools: Response to the Submission from the Transferors' Representative Council (TRC)

1. The Education Committee has indicated that it wishes to discuss the TRC's views on the Review of Public Administration (RPA) policy paper 20 on ownership and representation of controlled schools. The Department of Education is currently analysing the responses to the consultation, and will bring forward further policy proposals in the near future. This paper provides an initial response to the points raised by the TRC, in order to facilitate discussion by the Committee. The particular focus of the paper is on the future ownership of controlled schools.

Context

2. The issue of future ownership of controlled schools should be viewed in the context of key principles of the RPA:

- The RPA will not reduce or alter the diversity of school ownership and ethos within the education system, which is valued.
- The aim of the RPA is to establish a single system of administration, to support a diversity of schools.
- The RPA is founded on equality. Schools of all types will have the same opportunities, with no school experiencing unfair advantage or disadvantage as a result of ownership.

Background

3. When the Protestant churches transferred their schools to the ownership and management of the state authorities, arrangements were put in place to ensure an ongoing role for the churches, exercised through the TRC. The three dimensions of these arrangements were: school governance; school management; and ownership. There was no formal supported role for the TRC in representation or advocacy for the sector (such a role did not exist), nor any formal role in contributing to education policy.

4. In considering the RPA, the TRC has sought continuity in relation to the three dimensions of its existing role. The Department has aimed to meet the TRC's aspirations where it is possible to do so. It has also sought to ensure that the TRC has a role in representing the sector through participation in the planned sectoral body; and in contributing to policy, through participation in the Education Advisory Forum.

5. In relation to school governance, it was recognised that the TRC role could be maintained only by retaining the legislative provisions that give the TRC rights to choose school governors for controlled schools. The Minister has, therefore, decided to retain these provisions.

6. In relation to school management, the Education and Skills Authority (ESA) will not retain the role of managing authority for controlled schools. That function will be assigned to boards of governors in the second Education Bill. Therefore, the TRC, as a consequence of its right to choose school governors, will continue to have a role in the management of controlled schools.

7 This leaves the challenging issue of school ownership, and the scope for the TRC to be given a role. Policy paper 20 set out the constraining factors on any new arrangements. The paper noted that ownership must rest with a statutory authority. Whilst the TRC can seek membership of the authority, legislation on the membership cannot guarantee TRC representation^[1].

The TRC's concerns on ownership

8. The Department understands the strong desire on the part of the TRC for guaranteed membership of an ownership body. The TRC would view this as a continuation of the agreement reached at the time of the transfer of schools, and enshrined in subsequent legislation. The TRC regards this dimension as the key to its continuing role in education. It would also view the absence of guaranteed membership of an ownership body as inequitable, in the light of the ownership by the Catholic church of its grant-aided schools.

9. The Department fully appreciates these concerns. However, it is not feasible to continue with or replicate the current ownership arrangements under the RPA. Nevertheless, the Department wishes to ensure that the TRC continues to play a leading role in the controlled sector. In relation to ownership, the Department considers that the key to resolving the TRC's concerns may lie in a clearer explanation of the role of 'ownership' in the post RPA education arrangements, and some changes to the proposals for the controlled sector (in policy paper 20) in the light of the TRC's concerns.

Ownership and representation

10. It is important to draw a clear distinction between ownership and representation, as each will be associated with separate and distinct functions. In the case of Catholic education, the ownership and representative functions will both reside with the Catholic trustees. This cannot be replicated exactly for the controlled sector. However, the Department wishes the TRC to continue to be a leading voice for the controlled sector, and for the TRC's role, where possible, to reflect that of the trustees.

11. In relation to ownership, as the membership of the new ownership authority must be based on public appointment rules, it will not be possible to give the TRC guaranteed membership. As such, the ownership authority may not be truly 'representative' of the controlled sector. In view of this, the Department suggests that the role of the ownership body ought to be strictly limited, focussing only on the stewardship of physical assets, and their acquisition and disposal. In addition, it will be important to ensure that the ownership body responds to the needs and views of schools and sectors, that is, ownership should be driven by representation, not the other way round.

12. In paper 20, the Department suggested that some other functions, such as choosing foundation governors, might be placed with the controlled schools ownership body. On reflection, it is considered that this might risk confusing the representation and ownership roles,

and the relationship between them. Therefore, the Department's view is that the role of the ownership body should be limited to ownership only.

13. By contrast, as the representative body will be non-statutory, it will be possible to ensure that the TRC has a leading role. Therefore, the Department sees the need to ensure that the representative role is broader, and more significant than the ownership role. It will include promoting the interests of the sector, representing its views, developing ethos, and participating in area planning.

14. Overall, the Department sees a clear need to ensure that the key roles and functions that will shape the future of the controlled sector rest with the representative body, not the ownership body.

The challenge of the submitting authority role for controlled schools

15. It is acknowledged that there is an important function in the new arrangements that does not fit easily into the logic of the division between ownership and representative functions as set out above, namely the role of submitting authority. Under the legislation, submitting authorities will develop schemes of management and employment for schools. Whilst much of the content of schemes will be common to all schools, the intention behind the submitting authority arrangement is to ensure that the ethos of each of the various types of school is incorporated into the governance and employment arrangements. Therefore, it is important that the submitting authority role is assigned to the custodians of ethos.

16. This is one of the most difficult challenges to be overcome in framing the legislation, as it involves linking a non-statutory concept – ethos – with key statutory arrangements – governance and employment. For most sectors, the best and most straightforward approach is to assign the role of submitting authorities to the owners or trustees of schools (with an option to delegate the function to boards of governors). This reflects the fact that, for most schools, owners or trustees carry the responsibility for maintaining ethos.

17. If precisely the same arrangement were to be adopted for the controlled sector, then the submitting authority role would be assigned to the new ownership body. However, this may not provide a satisfactory solution. As noted above, the ownership body would be a public authority, with membership based on public appointment rules. As there would be no guarantee of membership for the TRC, the ownership authority would not be well placed to foster the ethos of controlled schools.

Options

18. There are two alternative options that may offer a better solution for the controlled sector. The first option would be to place the submitting authority responsibility directly with boards of governors of controlled schools. This would have the advantage of ensuring TRC involvement, as a consequence of the TRC representation on boards of governors. It would be open to boards of governors to arrange for the sectoral representative body to draw up draft schemes on their behalf if they so wished. This would reduce the potential workload for boards of governors, and provide a means of building a more coherent approach to ethos across the sector.

19. The second option would be to place the submitting authority role on the ownership body, but with the addition of a statutory duty on the ownership body to consult the representative body and boards of governors in discharging its role. This option would provide a more coherent

approach within the sector. However, the disadvantage is that it would leave the roles of submitting authority and custodian of ethos in the hands of a body that may not be fully representative of the sector.

20. The Department would welcome the views of the TRC and the Committee on these options.

Summary

21. The Department intends to ensure that, in the new arrangements, the role of the TRC is not diminished, and that all sectors are treated equally irrespective of ownership. The are five key dimensions of the new arrangements for the administration of education that affect the controlled sector and the TRC, namely:

- school governance;
- school management;
- sectoral representation;
- input to policy; and
- ownership.

22. For the first four dimensions, the role of the TRC will be either maintained or significantly enhanced. On the issue of ownership, it is not feasible to replicate the position held by the TRC in the current arrangements. However, the intention is to ensure that the representative role carries greater weight and influence than the ownership role, and that no sector experiences unfair advantage or disadvantage as a consequence of ownership. The role of submitting authority presents a particular challenge, but options to provide for a TRC role have been suggested.

Department of Education

April 2009

[1] A provision to that effect would discriminate in favour of the TRC on grounds of religious belief, and could not become law because it would be outside the legislative competence of the Assembly as defined by section 6 of the N.I. Act 1998.

Department of Education

Review of Employment Opportunities for Teaching Staff

1. The Committee has asked for more information on the review of employment opportunities for teaching staff, to be carried out by the Department of Education (DE).

Background

2. Some Committee members have expressed concern about the exemption of teacher recruitment from the provisions of the Fair Employment and Treatment (NI) Order 1998 (FETO), and the fact that, for some teaching posts in Catholic schools, the eligibility criteria include a requirement to possess a certificate in religious studies. Some members have expressed concern that this gives teachers who have such certificates (mainly teachers from a Catholic community

background) an unfair advantage over other teachers, as they could avail of a wider range of employment opportunities. A number of members have suggested that the exemption ought to be removed, and teacher recruitment brought within the provisions of the legislation.

3. The responsibility for equality legislation rests with the Office of the First Minister and deputy First Minister (OFMDFM), and is not a matter for the Review of Public Administration (RPA).

4. The Minister has advised that any changes to FETO would be a matter for OFMDFM ministers, and that, before any decisions are taken, there should be thorough public consultation, consideration by the Executive, and that advice should be obtained from the Equality Commission.

5. It should also be noted that, even if the exemption of teacher recruitment were to be removed, it is likely that the requirement to possess a certificate in religious studies could continue to be applied lawfully in relation to some posts, where it is a genuine occupational requirement.

6. Taking all of these matters into account, the Minister has decided that there should be a review of employment opportunities for teaching staff. The review will be carried out by DE officials (involving DEL colleagues as appropriate), and will be completed before January 2010.

7. The terms of reference of the review will be:

- To forecast the number of teaching vacancies likely to arise over the next 3 years, analysed by school type and sector.
- To estimate the proportion of those vacancies for which a certificate in religious studies is likely to be an eligibility criterion.
- To identify the routes by which teachers may obtain a certificate, either as part of their initial teacher education, or subsequently.
- To identify any barriers to obtaining a certificate that could give rise to inequality.
- To recommend as appropriate, measures to promote equality of opportunity for teachers.

8. The Minister will advise the Committee of the outcome of the review in due course.

Department of Education

Review of Public Administration (RPA) in Education: Stocktake and Summary Paper for the Education Committee

1. The Committee will be aware that the Executive approved a policy memorandum and draft RPA Bill on 20 November, and that the Bill was introduced to the Assembly on 25 November. This paper summarises developments that have taken place since the Committee's previous consideration of the RPA, and responds to a range of concerns expressed by Committee members.

Key features of the proposed Bills

2. The key features of the two proposed RPA Bills are set out in Annexes A and B.

Scope of the first Bill

3. The key features of the proposed first Bill remain as originally proposed, with four exceptions: the Education Advisory Forum; the membership of the ESA; the employing authority role of the ESA; and early years services.

Education Advisory Forum.

4. Policy work on this important development is not yet sufficiently advanced to engage properly with the Education Committee and other stakeholders. Therefore, the Minister has concluded that it would not be feasible to bring forward policy and legislative proposals within the timescale for the first Bill. However, it is intended that, on completion of the policy development work, the Forum will be established on an interim or pilot basis by 1 April 2009 using existing general powers. This will be followed by specific provisions in the second RPA Bill.

Local democratic accountability and membership of the ESA

5. The original proposal was that the ESA would have between 8 and 12 members, with no positions reserved for local elected representatives. However, the Minister recognises the importance of local democratic accountability for key public services such as education, and has decided that the majority of members of the ESA should be local councillors.

Youth services

6. The Department of Education's RPA proposals have been predicated from the outset on youth services remaining within education. This is in recognition of the value of the youth service within education, and its particular importance for young people at risk of marginalisation and exclusion.

7. During extensive consultation, the Minister did not hear any convincing argument that the needs of children and young people would be better met by transferring the youth service to local government. The Minister remains willing to give the matter further consideration if a case for change can be made, but has decided for the present to transfer youth services to the ESA.

8. Local government stakeholders have emphasised the importance of participation by the ESA in the community planning process, and the Department of Education fully supports this.

Single Employing Authority

9. The Education and Skills Authority will be the employing authority for all staff in all grant-aided schools^[1]. The original intention was to implement this in two phases, with the first phase including controlled and Catholic maintained schools (some 86% of schools); and the second phase including voluntary grammar, grant-maintained integrated, Irish-medium, and other grant-aided schools (14%). Concerns were expressed by some stakeholders, Executive members, and the Education Committee that this might result in an inequality of treatment between different school sectors.

10. The Minister remains of the view that the proposals would not have given rise to inequality, but recognises the clear advantage in completing this necessary reform as early as possible. Therefore, the Minister has decided that the first Bill will establish the ESA as the employing authority for all staff in all grant-aided schools.

Early years services

11. Responsibility for a range of early years services was transferred from the Department of Health, Social Services and Public Safety (DHSSPS) under the previous administration. It was agreed at the time with DHSSPS and the Department of Finance and Personnel that the Department of Education would fund these services on an extra-statutory basis, pending legislation. The RPA Bill provides the first appropriate opportunity to take forward the necessary legislative provisions.

12. The draft Bill would confer statutory duties and functions on the ESA in relation to early years services (referred to in the Bill as 'education services')

13. In addition, Sir Reg Empey has given further consideration to the functions of the ESA in relation to further education, and has proposed that the ESA should have a number of non-regulatory curriculum functions in relation to vocational qualifications. The Minister for Education has agreed to the proposal in principle.

14. Officials from the two Departments will liaise with a view to agreeing provisions to be included by means of amendments tabled at Consideration stage of the Bill.

Scope of the second Bill

15. The intention was that the second RPA Bill would include provisions to reform and simplify the composition of boards of governors of all grant-aided schools. However, as an unintended consequence of that change, it would not have been possible to re-enact, in new provisions, the current right of the Transferors' Representative Council (TRC) to nominate governors for controlled schools. It has not proved possible to find a legislative solution to this difficulty.

16. The Minister recognises the importance of the contribution made by TRC governors, and the need to ensure that their involvement continues. Therefore, the Minister has decided not to proceed with the proposed legislative changes to school governance in the RPA legislation. The relevant legislative provisions will be retained.

Transformation and convergence

17. In preparation for the establishment of the ESA, it will be important to press ahead with the programme of transformation and convergence of administration and support services. Effective leadership will be the key to this. The Chief Executive (designate) of the ESA has already been appointed, with a small support team. It is now proposed to appoint a number of key second tier officers as soon as possible, to accelerate the programme. Looking further ahead, it is proposed to appoint the Chairperson and the other members of the ESA as soon as possible after the first Bill completes its second stage in the Assembly. In practice these appointments are likely to be in the Autumn of next year.

18. The remainder of this paper addresses the areas of concern expressed by Committee members.

Two Bill Legislative Programme

19. Committee members have expressed concern about taking forward the RPA by means of two Bills, and the perceived risk that the second Bill might be abandoned. The rationale for a two Bill approach stems from the fact that some policy strands are not yet sufficiently developed to

proceed to legislation. However, the Minister regards the RPA as a single legislative programme, to be taken forward by means of two Acts, which will be intimately linked. Full implementation of both Acts will be necessary in order to achieve the objectives of the programme. Some key areas of policy – such as area-based planning of the education estate - will span both Acts.

20. The Minister has given particular consideration to the timing of implementation. The Minister remains convinced of the importance and urgency of fundamental reform of education administration. However, a balance must be struck between establishing and maintaining early momentum; and the need for further development of some key policies before structural change is implemented. In view of this, the proposed new timetable is:

- The first Bill was introduced to the Assembly on 25 November, with the aim that it would be on the statute books before the 2009 summer recess. However, the substantive provisions of the Act would not be commenced at that point.
- The second Bill would be introduced to the Assembly by June 2009, with the aim that it would be on the statute books by 1 January 2010 if possible, and no later than 1 April 2010.
- The substantive provisions of the first Act would be commenced on 1 January 2010, as would the provisions of the second Act, if complete.
- The Education and Skills Authority (ESA) would be established on 1 January 2010.

21. The proposed commencement arrangements are intended to ensure that the implementation of both Acts remains in synchronisation.

Structure of the ESA

22. There will be a clear separation between policy and delivery. The Department will be responsible for policy, but delivery will be the responsibility of the ESA. The objective is effective, responsive local delivery of services within a consistent policy framework. The ESA must be a single organisation, but with a strong local presence and a real focus on local delivery. Local managers and delivery units will have the freedom to respond to specific local circumstances and need. They will be sensitive to and receive input from a Committee for that area comprising, amongst others, a number of elected representatives. The role of such Committees would not be that of external consultees, as they would be a formal part of the ESA structure. Provisions for the establishment of such committees have already been included in the first RPA Bill.

23. ESA will therefore be accessible and responsive to local communities, to schools and other key public services, and will play its full part in community planning once it comes into operation.

24. The department acknowledges that more detail is required on the functions of local management units and Committees, and would welcome the advice of the Education Committee.

Sectoral representation

25. Sectoral representation is a key component of the RPA programme. It will provide the means by which a number of non-statutory organisations can discharge advisory, representation, and advocacy roles in respect of schools of a particular character or ethos (including the controlled sector). This will include participation in Education Advisory Forum, and the ESA's area-based planning arrangements.

26. Support for sectoral organisations can be provided using existing grant-making powers, and does not require any new legislation. As with area-based planning, there are a number of key principles that must be reflected in these arrangements:

- No representative group will have statutory functions. They will have advisory, representation, and advocacy roles, with their front-line service provision functions transferred to ESA.
- The groups will have a significant role in providing input to the area-based planning process, which will be operated by the ESA.
- All sectors must be treated in a consistent and equitable manner.
- The full potential benefits from the opportunity to cut bureaucracy must not be lost, and the cost to the public purse should be minimised. Robust business cases for these groups for a three year period will be examined to ensure value for money in the context of the need to prioritise resources for frontline services.
- As the ESA progresses, the current emphasis on different sectors may diminish and, over time and with the probable emergence of an Education Advisory Forum, the role of the sectoral representative bodies may change.

27. The Department regrets that it is not possible at this juncture to provide a comparative analysis of the functions of sectoral organisations before and after implementation of ESA. This will be provided when business cases have been scrutinised and agreed with the various organisations.

Future arrangements for the ownership and representation of controlled schools

28. This is the subject of a separate policy paper (attached) which will be issued for public consultation in the very near future.

The right of Transferors to nominate school governors

29. See paragraphs 15 and 16 above.

Fair Employment and Treatment Order 1998 – Teachers Exemption

30. The Fair Employment and Treatment Order 1998 (FETO) prohibits discrimination by the government and public bodies on the grounds of religious discrimination or political opinion. Under the terms of Article 71 (1) (a) of this legislation this prohibition does not apply to teachers in all schools. The Fair Employment and Treatment Order (Amendment) Regulations 2003 reduced this exemption to the recruitment of Teachers and not their employment.

31. This exemption was allowed so that Catholic Schools could insist that teachers recruited held a certificate in religious education and the vast majority of primary schools and some post primary schools insist on the certificate. It should be noted that Protestant educational interests have from time to time expressed a very different concern. They were concerned that, without an exemption, Protestant teachers would be disadvantaged, as Catholic schools could claim that religion was a bona fide occupational qualification. In other words, Catholics would have a right to equality of opportunity in state schools but Protestants would not have the right to equality of opportunity in Catholic schools.

32. Under the Review of Public Administration, whilst the ESA will be the employer of staff, the responsibility for drawing up the requirements for particular posts will rest with boards of governors. Even if the FETO exemption were removed, a board of governors could legitimately take the view that possession of a certificate is a requirement for certain posts, and a court or tribunal may well uphold that view.

33. With the ESA becoming a single employing authority it is necessary to ensure that no individual would face any disincentive or disadvantage in obtaining a post. The Department of Education will review the existing arrangements with regards to ensuring equal opportunities for all teachers within different schools. This review will be completed before January 2010.

ESA Single Employing Authority role

34. The Department recognises the concerns expressed by some stakeholders that the employer role of the ESA will result in a loss of autonomy for some schools. The proposed arrangements have sought to address this by giving all schools the responsibility for drawing up their own governance and employment arrangements (schemes of management and schemes of employment), and for the day to day running of schools. This will include key employment decisions on: determining the school staffing compliment; recruitment, management; promotion; disciplining and dismissal of staff. Boards of Governors will be under a legal duty to abide by their governance and employment arrangements. Equally, the ESA will be under a legal duty to give effect to decisions of Boards of Governors that have been properly taken under those arrangements.

Responsibilities of Boards of Governors

35. The Department recognises the range of responsibilities that will fall to Boards of Governors under the RPA arrangements, and the need for high quality, professional support and training. In view of this, the legislation will place a statutory duty on the ESA to provide such support.

Disposal of assets

36. Proceeds from the disposal of assets from the education estate will be dealt with in line with DFP guidelines according to assessed need and established educational priorities, and in a manner which is equitable to all sectors.

Area Based Planning

37. A consultation exercise on draft policy proposals for area-based planning has recently been completed by the Department, and the results are currently being analysed. These will inform the development of the interim arrangements (for which no additional legislation is required), and policy and legislative proposals to be included with the second Bill. The policy and legislative proposals will be brought to the Committee as soon as possible.

38. As the policy is developed more fully, it will explicitly include a number of key principles:

- Planning for all grant aided schools will operate within the area planning framework.
- Area based planning arrangements must reflect other education policies, including: raising standards; sustainable schools; the modernisation of the education estate; and delivery of and equality of access to the curriculum.

- Area based planning offers the opportunity to reform the schools estate effectively and efficiently. No sector has any more to fear than any other.
- All sectors will be treated on an equitable basis and area planning cannot be used as a means of penalising particular elements.

Costs of establishing the ESA and potential efficiencies

39. The Department has secured a budget of £50m on an 'invest to save basis' for the education reforms. The ESA Implementation Team has identified the costs and savings to be derived from the establishment of ESA. This exercise was carried out in conjunction with consultants as part of the preparation of the Outline Business Case for the RPA in DE.

40. The exercise focused on the proportion (£135m) of the total education budget (£2b) which funds the management and administration of the education sector outside of DE.

41. The Outline Business Case demonstrates that savings of £20m per annum will be achieved by the end of Year 3 of ESA and that there is potential for further savings thereafter. The bulk of savings will come from releasing staff in identified areas through voluntary severance arrangements, at a cost estimated at a maximum of £43m over 4 years.

42. It should be noted that, in expectation of an implementation date of 1 April 2009, the education budget for 2009/10 and 2010/11 is net of efficiency savings of £8 million and £13 million, respectively. The proposed revised timescale would mean that a proportion of these efficiency savings could not be realised through the RPA. The savings foregone could amount to £6 million in 2009/10 and £5 million in 2010/11. This would place considerable strain on an already stretched budget, and the Minister has asked that the Executive gives this matter its urgent consideration.

Children's services etc

43. These matters are still under consideration within the Department, and fuller information will be provided to the Committee at the earliest possible date.

Proposed Scope of Initial RPA Education Legislation

1. Establish the ESA – including role, remit, constitution, size and balance of the membership of the authority, tenure of office and remuneration; appointment of ESA Chief Executive; Payments to ESA by DE from monies appropriated; and some general provisions regarding Freedom of Information, equality etc.

2. Functions of the Department of Education – transferring certain functions and staff to the ESA.

3. Education and Library Boards – dissolution of the 5 Education and Library Boards and the transfer of duties, functions, assets, liabilities and staff to the ESA.

4. Council for Curriculum Examinations and Assessment (CCEA) – dissolution of CCEA and transfer of the duties, functions, assets, liabilities and staff to the ESA.

5. Staff Commission – dissolution of the Staff Commission and transfer of duties, functions, assets, liabilities and staff to the ESA.

6. Youth Council – dissolution of the Youth Council and transfer of duties, functions, assets, liabilities and staff to the ESA.
7. Council for Catholic Maintained Schools (CCMS) – dissolution of CCMS and transfer of the relevant duties, functions, assets, liabilities and staff to the ESA.
8. Civil Contingencies – the RPA legislation offers the opportunity to strengthen local civil contingencies activities, and as part of the wider introduction of civil contingencies duties for new and restructured organisations. This would include placing a mandatory duty on ESA to undertake civil contingencies activities in relation to its functions.
9. School Library Service (SLS) – the main purpose of this provision is to secure the provision of the SLS within the ESA, and provide scope for service level agreements with the new libraries authority.
10. Employing Authority – the ESA should be the Employing Authority for teaching and non-teaching staff for grant-aided schools. Provisions will set out the respective roles of the ESA and Boards of Governors in relation to employment matters and the management of schools generally.
11. General Teaching Council – an adjustment is required to keep the functions of the General Teaching Council wholly in line with the equivalent body in England and Wales. The adjustment makes provision for the removal of a teacher from the register and the power to call witnesses to elicit evidence and to administer oaths.
12. Child Protection – the ESA should be required to hold schools and other education providers to account in relation to their child protection responsibilities.
13. Improving Education and Raising Standards in Schools (School Improvement) – the legislation will establish powers and duties for boards of governors, the ESA, and the Department of Education, and clarity of accountability arrangements.
14. Inspection powers – the legislation will modernise and strengthen the inspection powers of the Department of Education in relation to schools, and the Department of Culture, Arts and Leisure in relation to libraries. DEL has reviewed the existing legislative provisions in terms of inspection powers, and considers these to be sufficient for the organisations that it funds. The Bill will also address an anomaly in the existing legislation and ensure that all three Departments will be able to authorise members of the Education and Training Inspectorate to exercise these powers on their behalf or to make alternative arrangements if desired.
15. Area-based planning – the legislation will place a duty on the ESA to secure the effective planning of the education estate.
16. Early years services - Responsibility for a range of early years services was transferred from the Department of Health, Social Services and Public Safety (DHSSPS) under the previous administration. The legislation will confer statutory duties and functions on the ESA in relation to early years services (referred to in the Bill as 'education services')

ANNEX B

Proposed Scope of Second RPA Education Bill

1. Area-based planning – Interim administrative arrangements will be introduced prior to the first Bill, followed by legislative provisions in the second Bill.

2. Ownership of publicly-owned (controlled) schools – The ESA will initially take ownership of the current controlled schools, ie those owned by Education and Library Boards. The second Bill will remove the ownership of these schools from the ESA, to avoid any potential conflict of interest the ESA's role as a planner of schools.

3. Education Advisory Forum – The intention of the EAF is to provide a new more effective mechanism through which DE and DEL can commission and receive advice.

[1] This includes all schools other than independent schools.

Department of Education

Review of Public Administration (RPA) in Education: Roles and Responsibilities of Sectoral Organisations

1. The Committee has asked for more information on the roles and responsibilities of the various education sectoral organisations following the implementation of the RPA.

Background and context

2. The policy on sectoral support and representation is set out in policy papers 20 and 21, which the Committee has already received. Paper 21 sets out the key principles that will govern the policy as it is taken forward:

- All front-line support and related services will be transferred to the ESA, and sectoral organisations will no longer be funded to provide these services.
- The ESA must have the capacity and expertise to provide services that are sensitive to, and meet the needs of, schools of all types.
- DE will not support the development or continuation of functions that duplicate or overlap with functions that are the responsibility of the ESA.
- Support for sectoral capacity must be modest, reflecting the need to maximise investment in front-line services.
- DE will expect to see any supported capacity being used to engage with other sectors to explore and develop models of sharing and co-operation.
- None of the sectoral organisations will be statutory bodies, and DE will not fund the establishment of large sectoral organisations of any type.

3. No sectoral group will have statutory functions. They will have advisory, representation, and advocacy roles only, including a significant role in providing input to the area-based planning process, which will be operated by the ESA. All sectors must be treated in a consistent and equitable manner.

4. The Department recognises that the full potential benefits from the opportunity to cut bureaucracy must not be lost, and the cost to the public purse should be minimised. Robust business cases covering a three year period for each organisation will be developed to ensure value for money in the context of the need to prioritise resources for frontline services.

Roles of individual organisations

5. To date, the sectors that have indicated a wish to be included in the arrangements are:

- Irish-medium schools - Comhairle na Gaelscolaíochta (CnaG);
- Integrated schools - Northern Ireland Council for Integrated Education (NICIE);
- voluntary grammar schools – Governing Bodies Association (GBA); and
- Catholic schools (maintained and voluntary grammar) – a new voluntary organisation to be established by the Commission for Catholic Education.

6. The department recognises the importance of - and is committed to – including controlled schools in the sectoral support arrangements. The proposed approach to be taken for this sector is described at paragraphs 16 et seq. below.

7. Initial drafts of business cases have been received from CnaG, NICIE, GBA, and the Catholic Trustees, and these are under consideration within the Department. The Department aims to complete its consideration within 6 to 8 weeks. At that point, it will be possible to brief the Committee in detail on the proposed grant agreement with each organisation, including the level of funding and detailed activities to be supported.

8. At this juncture, the Committee may find it helpful to have a description of the activities and functions that the Department is prepared to consider within the business cases. It should be emphasised that not all of the organisations will wish to engage in the full range of activities described below. In some instances, the sectoral organisations would carry out these functions directly. In other cases, the organisations' role would be to advise and support the owners or trustees of schools in carrying out the functions.

Functions that may be included in business cases

Ethos and identity

- To foster and develop the collective ethos of schools within a sector.
- To identify persons to be appointed as foundation governors by the owners of schools, or for consideration by the ESA, for appointment as community governors.
- To advise the ESA on the nature and delivery of support and training programmes on the ethos of the particular sector for governors and staff, including school leaders.

Employment

9. The RPA legislation includes a requirement for each school to have a scheme of management and a scheme of employment. These will set out, respectively, the governance arrangements for the schools, and the role of the Boards of Governors in employment matters.

10. Such schemes must be submitted to the ESA for approval. At present, the legislation defines the 'submitting authority' as the trustees of a Catholic maintained school, or the Board of Governors of any other grant-aided school.

11. However, the Department is considering a change to this. The amendment, if agreed, would define the submitting authority as the owners or trustees of the school in every case. The

amended provision would, however, permit the owners or trustees to delegate this function to the Board of Governors.

12. The change reflects the Department's recognition of the importance of the ethos of schools, and would underpin the role of the trustees or owners of all schools in ensuring that ethos is appropriately reflected in governance and employment arrangements.

13. In this context, the role of a sectoral body may include:

- To prepare on behalf of the submitting authority, schemes of management and employment, having regard to Departmental policy, employment law, and any guidance provided by the ESA.
- To respond to any consultation on guidance governing the preparation of schemes of management and employment.
- To assist trustees or owners in the discharge of their role under such schemes.
- Ownership, planning and procurement
- To advise the owners or trustees of schools on their roles and responsibilities as owners;
- To assess the current provision and ongoing requirements for education of a particular character or type, (including consultation with communities, the development of options for consideration, and the preparation of proposals), and to participate with other sectoral interests in area-based planning arrangements coordinated by the ESA^[1].
- To enable the owners or trustees of schools, to discharge their role in the procurement arrangements operated by the ESA.
- To engage with statutory planning processes including Community Planning.

Representation and advocacy

- To liaise with schools within the sector.
- To liaise with and advise the ESA on matters relating to education, or the discharge by the ESA of its relevant functions.
- To liaise with and advise DE, the Department for Employment and Learning (DEL) or other new partners; including through participation in the Education Advisory Forum.
- To engage with other education sectoral interests or stakeholders on matters of mutual interest, including the promotion of tolerance and understanding, respect for diversity, equality and good relations.
- To respond to any consultation processes in respect of education policies, initiatives or schemes.

Standards and performance

14. DE and the ESA will be responsible for the raising of standards in all schools, and will be accountable to the Minister for Education and the Assembly for the levels of attainment of all pupils in all schools. In view of this, the ESA will have the formal role of assessing performance, recognising and promoting good practice, and challenging underperformance. DE also recognises that owners or trustees of schools have a strong interest in the performance of those schools. In that context, the role of sectoral organisations may include the following.

- To promote high quality education.

- To advise and support the owners or trustees of schools on strategic issues in relation to promoting effectiveness and raising standards.
- To advise the owners or trustees of schools on reports, data or other information on school performance that they receive.
- To advise and support the owners or trustees of schools when consulted by the ESA in relation to the discharge of its functions in relation to raising standards and challenging underperformance.
- To liaise with the ESA on matters related to the performance of schools within the sector.

The Controlled sector

15. It will be important to ensure that sectoral support arrangements treat all sectors on an equitable basis. The starting point for the controlled sector differs from that of the other sectors, and is in some ways more difficult. There is no existing organisation that could take on the sectoral support role, nor is there any tradition of such an approach within the sector. The sector itself is very large and very diverse. The schools within it vary greatly in size and character, and serve diverse communities.

16. The challenge is to develop, from this base, effective sectoral support arrangements that command the trust and confidence of controlled schools and the communities they serve. This needs to be achieved within the same timeframe as for other education sectors, ie by 1 January 2010.

17. It will be important for the sector to feel that the new arrangements have come from within the sector and are owned by it, and are not merely a creation of the Department or the Education and Skills Authority.

18. As a first step, it is proposed that a small working group should be established to act as interim 'advocates' for the controlled sector, and to develop proposals for more substantive arrangements.

19. It is suggested that, in the interests of effectiveness, the group should be small – ideally comprising 6 to 8 members. It should include some members with a professional background in education. It should also include members who can command the trust and confidence of the sector in championing its cause, and who understand the social, economic and education issues faced by the communities served by controlled schools. The Transferors Representatives' Council (TRC) should be represented on the group.

20. The group should be asked to undertake a short, focussed exercise with the following terms of reference:

- to consult widely within the controlled sector and the communities that it serves on effective sectoral support arrangements for the sector;
- to develop initial proposals, within the identified funding parameters, for a non-statutory sectoral support organisation for the sector: including the nature, constitution, membership (including means of appointment) and functions of such an organisation;
- to further engage within the sector to refine the proposals, with a view to building consensus;
- to make recommendations to the Department on its proposals; and
- to develop a business case for formal consideration by the Department.

21. The Department of Education should support the group, including the provision of a secretariat.

Conclusion

22. The Department would welcome the Committee's views on this paper and, in particular, on the proposals for taking matters forward within the controlled sector.

Department of Education

January 2009

[1] The role of sectoral organisations in the area planning process will be set out in more detail in a policy paper and operational guidance on planning, which will be provided to the Committee in the coming weeks.

Department of Education

Structure of the Education and Skills Authority (ESA) at Regional and Local Levels

Context and Purpose

1. The Committee for Education has asked for an update from the Department on the proposed structure for the ESA at regional and local levels.
2. The Department of Education (DE) commissioned the ESA Implementation Team (ESAIT) to develop structural proposals for consideration. The commissioning brief emphasised that the ESA will be a single, regional organisation, but with a strong local presence. The approach to developing a structure is that its front-line services must be locally-based and accessible; whilst back-office services ought to be centralised to maximise efficiency and value for money.
3. At local level, the ESA must have the flexibility to respond quickly and sensitively to local need, but within clear and consistent policies, strategies and standards; and taking account of the duty to promote equality.
4. The accountability arrangements for the ESA will reflect best practice for public authorities, as set out in guidance from the Department of Finance and Personnel. The Chairperson of the ESA will be formally accountable to the Minister, and the Chief Executive, as the accounting officer, will be formally accountable to the Permanent Secretary of the Department.
5. The Minister, through her Department, will direct the work of the ESA Board. The Board will govern the actions of the Chief Executive and senior staff. Staff operating in local teams will be guided, supported and, where necessary, challenged by senior management in their efforts to achieve the key priority of driving up standards of educational achievement and, in particular, closing the attainment gap.
6. This paper represents current thinking on the possible shape of the organisation. At this stage these proposals are in outline and reflect initial thinking, following the work which was undertaken by the ESAIT up to the Christmas recess 2008. The dialogue with the Committee is a timely and useful opportunity to have input from the Committee to inform thinking on these

proposals. A further opportunity will exist when the ESA Implementation Team undertakes a consultation on the proposed structure.

Process to establish organisational structure

7. In response to the commissioning of proposals by DE, the ESAIT undertook an initial scoping exercise, followed by a series of consultation workshops with staff in the affected organisations. The outcome of these workshops has informed thinking on regional and organisational arrangements for the ESA including a submission to DE on the ESA Director (2nd Tier) structure on which comments have been sought. DE has made a number of comments (reflecting the scope of this paper) and asked for clarification on a small number of issues. Subject to this the Department is satisfied that the paper could form the basis for wider consultation, which will include the Education Committee.

8. For ESA to become operational on 1 January 2010, it is critical to the success of the new organisation that its corporate structure is put in place as soon as possible to lead the planning and make the essential preparatory arrangements. DE aims to finalise the overall proposals for the core structure by mid-February to allow recruitment to begin in early Spring and transition to accelerate in the autumn.

Director structure

9. As befits a regional organisation tasked with delivering local services, the headquarters of the ESA will be a small corporate centre, providing direction on the delivery of consistent services to an organisation that will be predominantly locally-based. At Director level, the ESA will have to take account of seven main functional areas, as described at Annex A, plus the need to manage a very significant business change programme.

10. Each of the seven functional areas will be headed by a Director, with responsibility for the delivery of that service across the system. Whilst all of these posts will report directly to the Chief Executive, the weighting and remuneration of each post will be determined by a rigorous job evaluation process, carried out on a basis consistent with other public sector organisations.

11. Work is in hand to generate detailed arrangements for the delivery of services by the ESA (service delivery models) and the associated organisational structures below Director level. The contraction in posts across these combined levels will deliver efficiency savings.

12. Overall, the numbers of senior posts (equivalent to the Senior Civil Service) will reduce from 80 under the current arrangements, to fewer than 50, generating savings of around £2m per annum. Similar sized organisations in, for example, the health sector, have comparable numbers at the top level but significantly higher staffing at the next level than envisaged for the ESA.

Business change

13. In addition to the seven main operational functions, the ESA will face a significant programme of change, especially during the initial 3-5 year period of operation. It is proposed that this function will manage and drive this change agenda, ensuring successful implementation of new service delivery models and organisational structures, and setting and monitoring achievement of clear performance standards. It is likely that this will be a time-bounded function, rather than a permanent part of the ESA structure

Regional organisation

14. Within the current system there is considerable duplication in administration and management of services. To improve efficiency and effectiveness, a number of the 'back office' activities in each of the functions outlined in Annex A will be consolidated into single regional functions e.g. HR, accounts, payroll, procurement, estates planning and regional aspects of services such as catering, cleaning, transport etc. This will bring consistency to the delivery of policy, support improvements in quality and release resources for use elsewhere.

15. However, this does not mean that all regional functions will be centralised in the ESA Headquarters. The intention is to locate regional functions in the existing education office accommodation, situated at a range of locations. Taken with the development of local area teams, this will help to ensure that the existing wide distribution of posts in the education sector is maintained and, where possible, built upon. The further development of proposals on the location of functions and jobs will, of course, take account of any decisions by the Executive on the Bain report on the location of public sector jobs, and the need to promote equality.

Local Structure

16. Preparation to provide for ESA at the local level is still at an early stage. The objective for ESA is effective, responsive local delivery of services within a consistent policy framework. The model is one based on the identification of need by schools and other institutions themselves. Local managers and service staff will have the flexibility to respond to specific local circumstances and need. They will be sensitive to and receive input from a Committee for that area comprising, amongst others, a number of elected representatives. Provisions for the establishment of such committees have already been included in the Education Bill.

17. The Department would welcome the views of the Committee on the appropriate configuration of the local structure. The Department's initial thinking is that a configuration of six units (one covering the greater Belfast area and five others) would offer the greatest scope for maximising co-terminosity with other public services (including groups of local councils) whilst optimising efficiency and minimising bureaucracy.

18. Within each local team, the configuration and 'footprint' of a number of local services would reflect closely the current arrangements. These are services with a high degree of contact with schools and young people where service continuity is critical, eg transport, cleaning, catering etc. Any changes to local configuration over time would be driven by the priorities set for the ESA by DE, and would reflect the aim of providing better, more responsive services to schools and other education providers.

19. Each local team would be headed by a senior official, with prime responsibility for raising education standards in the area and with delegated authority for operational and service delivery matters (but not on policy or strategy). The local teams will be responsible for delivery of a range of key services including:

- support for schools in raising standards ;
- school management (human resources, finance, etc.);
- strategic planning (including participation in community planning);
- services for children (special needs, educational welfare, educational psychology, behaviour support, child protection, etc.);
- youth services/ early years provision; and
- delivery of operational services (transport, catering, cleaning etc.).

20. The level of delegation would be such that operational decision making would be no less local than under the current arrangements – indeed the intention would be to enhance local responsiveness. The principle of subsidiarity will apply – operational decisions will be taken at as local a level as possible.

21. In this way, ESA will have a local ‘footprint’ and a high level of local delegation for decision-making within clear and consistent regional policies, procedures and standards. At present there are multiple separate organisations pursuing divergent approaches, leading to inconsistency and inequality. By contrast, the ESA will be based on local decision-making, but within a single organisation working to consistent strategies and objectives based on equality.

Supporting education providers

22. A key driver for change was the desire to deliver common, and therefore consistent, service provision of administrative and management services. However, it is equally important that locally needed services are offered in a manner which maintains the flexibility and sensitivity to local circumstance. DE anticipates that a number of local offices will offer local access to decision makers across a range of service provision.

23. For example, locally based teams will be able to advise on staffing and delegated budget matters. Local support for professional development will allow local delivery of the centrally determined policy. For school principals this will mean locally available provision for the practical issues that matter, including support for teaching and learning, advice on HR issues, special needs provision, maintenance services, catering, cleaning etc. It will also offer the assurance that the service provided meets the regional standard and supports the achievement of ESA’s key education targets of raising standards, promoting school improvement and closing the gap between high and low achieving pupils.

24. Local teams will be charged with developing:

- strong local knowledge;
- regular contact with schools and youth providers;
- a named local single point of contact;
- local assessment of needs;
- facilitation of collaboration at local levels; and
- liaison with local councils and other public services.

Addressing possible concerns

How does this improve on the current arrangements?

25. By reducing the number of senior posts from over 80 to fewer than 50, there will be immediate realisation of efficiencies whilst moving to a more consistent, equitable, school-driven and outcomes-focused model of provision.

Will local providers have local support?

26. Yes. The model proposed offers, as a starting point, no less a level of accessibility than available at present. It is expected that efficiency savings will release greater potential to enhance the availability of front-line services.

Where will these senior posts be located?

27. No decision has been made about the location of ESA head-quarters or about the relative merits of the most senior posts being located in local offices. It is likely that regional functions (such as accounts, HR, payroll etc) will be performed at a number of locations. However, it is not necessary for the Head of the function to be on-site at all times. It is likely that, wherever they are based, the most senior officers will operate from more than one location in discharging their functionally specific and corporate roles. Systems will also allow advanced use of video-conferencing and planned senior management scheduling to promote best practice in functional and collective management.

28. No decisions have been made about the location of local offices. In planning for the establishment of ESA, due cognisance will be taken of the Bain recommendations.

Conclusion

29. The Department would welcome the Committee's views on the proposals set out above and in particular on the approach suggested to local provision.

Department of Education

January 2009

Annex B

ESA Structure – brigading of functions

Proposals currently under consideration provide for the following functions:

Education Quality and Standards

1. A substantial part of the rationale for the RPA in education relates to the need to ensure high quality provision, to improve the standards of educational achievement by promoting school improvement, ensuring that literacy and numeracy skills are at the centre of teaching and learning in schools, and developing a much more effective use in schools of the available data. This functional area will work through local area teams to help schools and teachers to raise standards.

Children's and Young People's Services

2. The ESA will bring coherence to the separate distinct approaches currently being implemented across five Education and Library Board areas, bringing together services for educational welfare, behaviour support, special needs, youth and early years. It will also have to engage actively with the other key players in Children's and Young People's services such as DHSSPS and the voluntary sector.

Curriculum and Examinations

3. The ESA will have responsibility for keeping the curriculum under review, for promoting effective models of professional development and for the measurement of educational standards through the delivery of assessment and examinations.

Human Resources (HR)

4. The new organisation will employ circa 50,000 staff. It is envisaged that the function will be headed by a senior officer responsible for the strategic development of human resources across the education sector. DE, in responding to a recommendation from the Public Accounts Committee, is committed to the appointment of a high-calibre director to manage the HR agenda, which is critical to the successful delivery of education.

Finance

5. The ESA will have a budget of circa £2 billion. A senior officer will be responsible to the Chief Executive for sound financial management and the identification of further efficiencies, and the transfer of resources from administration to frontline services. As with HR, DE, in responding to a recommendation from the Public Accounts Committee, is committed to the appointment of a high-calibre director to manage the budget for this key public service.

Strategic Planning of Education delivery (including estate matters)

6. The system will require a lead and co-ordination of the area-based planning process for capital investment, based on the curriculum and on identified need across early years provision, youth services, and schools. The emphasis will be on a strategic approach to ensuring that communities have access to the education curriculum and the full range of education services.

7. In addition, the ESA will disburse an annual budget of c£350m on planning and providing modern and fit-for-purpose capital estate for the education sector. ESA will seek to reflect progress in area-based planning in the provision of appropriate capital resources.

Operational Services

8. The ESA will be responsible for a wide range of operational services including transport, catering, maintenance, cleaning, student finance and school admissions and transfer. These functions will be responsible for substantial resources in excess of £150m, eg transport alone will consume budget equivalent to half the budget for Translink. It is expected that this function will face significant challenges in re-engineering how services are delivered in a unitary regional organisation.

Association of Northern Ireland Education and Library Boards (ANIELB)

Response to Education (Northern Ireland) Bill 2009

The Association of Northern Ireland Education and Library Boards (ANIELB) comprises the board members and senior management teams of the 5 education and library boards and speaks with the authority of unanimity to government and the community on education and library matters.

The association welcomes the invitation to respond to the Education Bill but notes that this Bill is the first of 2 and regrets that the 2 Bills are not available to consider together as this would have enabled a more holistic response. The association is also concerned that no attempt has been made to converge the large number of pieces of core legislation, enacted since 1989, into a single Bill. This would have made comment much simpler and assisted the association in understanding the significance of the proposed changes.^[1]

The association recognises that the second Bill will provide the vision of ESA. However, it would have appreciated sight of this draft Bill to enable a better understanding of the first Bill. As a result, the association feels the first Bill is change for change's sake without any identifiable or stated outcome.^[2]

The association welcomes the fact that ESA is to be the single employing authority for all grant-aided schools. It was on this understanding that the association supported the establishment of ESA.^[3] However, the current vision of ESA is far removed from what the association originally envisaged.

The association is very concerned that there are key elements of education omitted from the Bill ie children educated at home and no specific mention of nursery or pre-school education. By omitting these areas there is a lack of a coherent approach to all educational provision.

The association recognises the aspirational nature of the clauses within the Bill but feels that there needs to be much greater clarification of certain issues, for example, salaries, functions, responsibilities of Boards of Governors, treatment of staff and arrangements for informal education through the youth service.

The association's members to date have been charged to promote the education of the people of Northern Ireland through their functions. Under clause 23 there appears to be no longer any obligation to provide lifelong learning for the whole community ie children, young people and adult learners.

The association notes that within clause 38 inspectors are being given wide- ranging powers regarding access to information. We would suggest that clarification of the legal position in respect of access to data, much of which may be of a personal and sensitive nature, should be sought.^[4]

The Bill, whilst providing some clarity around the role of the ETI, is vague in relation to ESA's role. The association is concerned about the potential for duplication of challenge, between ESA and the inspectorate, thereby creating a punitive and negative environment for schools which is not conducive to school improvement. The inclusion of CCEA and its role within ESA gives rise to possible concern around the integrity of statistics and standards. The Bill needs to clarify and separate these functions to give the public confidence around the independence and rigour of the examinations undertaken by students.^[5]

The association is concerned that by requiring ESA to produce materials for use in connection with the curriculum for 2 year olds, there is a danger that this might formalise their learning experiences. The benefits of formalising the curriculum for children of such a young age are questionable and come at a time when many other countries are introducing children to formal education at a much later age.^[6]

The association has concerns that what is proposed in respect of Boards of Governors is fit for purpose in the 21st century.

The comments relating to the Schemes of Management are similar to the comments made in relation to Employment Schemes (Clause 4 to 9). The association supports the development of these schemes and recognises these are pivotal documents which provide the framework within which Boards of Governors will discharge their duties. These schemes take on added significance when it is widely acknowledged that the responsibilities of Boards of Governors from 1 January 2010 will change fundamentally, yet it is the understanding of the ANIELB that Boards of Governors will be encouraged to operate under existing schemes of management which in the view of the association are 'no longer fit for purpose.' In the view of the association it is essential that model schemes are available to all schools with effect from the introduction of ESA. This is imperative when considering the centrality of Schemes of Management to a number of key processes and responsibilities carried out by Boards of Governors including the appointment of staff which will require to be harmonised across the range of school sectors coming together under ESA.^[7]

The association feels that all this could lead to difficulties of recruitment and retention of suitably qualified and skilled persons to administer these Schemes of Management on Boards of Governors across Northern Ireland.

The association welcomes the establishment of local committees to provide important regional governance within ESA but cannot find any mention of this within the Bill.^[8] Clarification is needed on the composition and functions of local committees. An assurance is sought that local bodies will indeed be sufficiently local to provide appropriate support.^[9]

The association, in considering the governance arrangements for ESA ie a chair and between 7 and 11 members, feels that this does not reflect the potential make up of the new district councils. The members are most likely going to be councillors who must have an educational background. There are implications contained in the schedule for the current board membership across Northern Ireland whereby 5 boards with 35 members each (a total of 175 members) comprising of councillors and other representatives or stakeholders with considerable experience and expertise in the education sector, will be replaced by 7-11 members. The association is concerned that the skills and knowledge base of the current board membership will be lost, diminished or eroded. Within these governance arrangements further consideration must be given to the democratic function and accountability of the new body as, on the one hand, the number of staff, pupils etc for which ESA will be responsible is increasing dramatically, whereas governance and accountability are being significantly reduced.^[10]

The ANIELB, whilst noting that this is an Education Bill, is still dismayed that children are not given the primacy that is required in this legislation.

[1] BELB Response to the Education Bill

[2] SELB Response to the Education Bill

[3] NEELB Response to the Education Bill

[4] SEELB Response to the Education Bill

[5] BELB Response to the Education Bill

[6] SEELB Response to the Education Bill

[7] NEELB Response to the Education Bill

[8] BELB Response to the Education Bill

[9] SELB Response to the Education Bill

[10] BELB Response to the Education Bill

Association of Northern Ireland Education and Library Boards (ANIELB)

Response to Review of Public Administration - Policy Paper 20 - Publicly Owned Schools - Ownership and Representation

The Association of Northern Ireland Education and Library Boards (ANIELB) comprises the board members and senior management teams of the 5 education and library boards and speaks with the authority of unanimity to government and the community on education and library matters.

The association welcomes this opportunity to comment on the Department of Education's Policy Paper 20.

This response includes the definition that Southern Education and Library Board colleagues have given of what constitutes the controlled sector and the ANIELB wishes to endorse this and include it here. This sector is distinguished by its ethos and values comprising:

- community focus;
- encompassing characteristics;
- egalitarianism in its nature;
- shaped by liberal thinking.

It is necessary to trace the antecedents of the controlled sector during the passage of over a century when public elementary schools were established by a range of bodies and persons to meet the needs of local communities and to provide basic education for the poor and frequently neglected in educational terms whether living in the countryside, industrialised housing areas or in the newly emerging market towns. The churches were prominent and included the Reformed Presbyterian and the Society of Friends, the Baptist Church as well as the Roman Catholic and major Protestant Churches. Schools were also founded by charitable trusts, religious orders, local leading families and through funding and legislation associated with the government based in Dublin. In many cases the activity was prompted by the inadequacy of hedge schools and the recognition that free education transformed the quality of life and opened up opportunities for release from poverty and drudgery. The controlled sector continues the tradition of being open to all in the community.

It is encompassing because it has over time translated into its management arrangements the intentions of original providers to exclude no-one seeking to benefit.

It brings a commitment of equality to its provision because it does not identify pupils on the basis of subscribing to a particular faith or to none or holding certain social attitudes or positions or none. It promotes equality among pupils and staff and attitudes that are resonant with that philosophy.

It is liberal because it has been informed by the experiences of former generations who suffered persecution or discrimination on religious or other grounds. It promotes the attitudes underlying a shared future and is well positioned to embark on new structural arrangements embodying its open approach. While it is essentially Christian in its religious tenets it is by nature and by legislation open to ministers of religion in respect of their children but does not offer religious education of a denominational nature. [1]

The association is aware that the original proposal for an all embracing single educational authority has been altered to include other bodies such as CCMS, NICIE and Irish Medium and that the traditional role of the Protestant churches has been changed from a right to an influence only.

When the Protestant churches transferred their schools to the State in the 1950s and 1960s they were given a statutory role in the delivery of the educational process. This is the statutory right that it is now envisaged will be an influence only.

This would seem to be a break with natural justice for the transferring Protestant churches.

As a consequence of RPA, there now appears to be a proliferation of bodies whereas the Education and Skills Authority (ESA), to which the 5 education and library boards agreed, proposed that there would be one body to act as the education authority for Northern Ireland.

As the Western Education and Library Board has already stated in its response, the board members would have concerns that the proposals in Paper 20 are not in accordance with the original ESA proposals, of an all-embracing educational body, and ignore the subsequent evolution of these proposals into a different concept - where only some bodies will be subsumed under ESA whilst other bodies continue to exist as is, and additional bodies are being created.[2]

We in the ANIELB believe that an education authority should have as its primary focus the delivery of education services to our children. This paper appears to have as its primary objective structures and buildings.

The ANIELB welcomes the potentially, coherent nature of proposals on representation and advocacy within the paper. However, the association acknowledges the pluralist nature of the education system in Northern Ireland and would accept that the controlled sector needs to have an appropriate advocacy role with the interests of the sector protected in a manner which ensures parity of treatment with other sectoral interests, while preserving a degree of impartiality.[3]

The association further recognises, however, the value of separate advocacy bodies to represent sectoral interests, and develop a clear sense of mission, values and practice within each. The creation of such a body to carry out these functions for the controlled sector is welcomed by the association as an important act.[4]

The ANIELB, having taken on board all of the responses from the 5 education and library boards, feels that the response from Southern Education and Library Board effectively sums up the association's position.

"The paper is preoccupied with ownership of buildings." The controlled sector is the creation of those who in former times had vision and the energy to establish schools as educational institutions. When the schools transferred to the management of the former county councils the transfer was of ideology and ethos as well as buildings. The commitment which had seen the maintenance of the individual schools was handed over in trust to public bodies comprising elected representatives and the successors of those who had founded the establishments. Those

public bodies assumed responsibility for acting in the interests of the public at large and not of specific interests. The education and library boards have kept faith with that understanding. Responsibility will pass to ESA and should be discharged by ESA and not a distinct body artificially created to hold ownership rights. To do otherwise begs the question as to why arrangements in other parts of the United Kingdom should not apply in Northern Ireland. Suggestions from any other education body that partiality might be shown by ESA towards the controlled sector in the context of area planning are ill-judged and not borne out by the even-handedness shown by the education and library boards over 36 years in their delivery of services to schools in all sectors.^[5]

The association also has concerns that, apart from the additional bureaucracy in the Paper 20 ownership solution, there could be a potential drain in an already strained economic climate which could lead to less funding for front line services.

The association agrees with the WELB when it suggests that Paper 20 is confusing, contradictory and lacking in clarity regarding a range of issues pertaining to the future of the controlled sector.

Belfast Education and Library Board (BELB)

The Belfast Education and Library Board welcomes the opportunity to comment on the Education (NI) Bill 2009 (the Bill) in the knowledge that the proposed legislative changes will have far reaching consequences for the delivery of education. The board notes that this Bill will be one of 2, and regrets that the 2 bills are not available to consider together as this would have enabled a more holistic response. The board is also concerned that no attempt has been made to converge the large number of pieces of core legislation enacted since 1989 into a single Bill. This would have made comment much simpler and assisted the committee in understanding the significance of the proposed changes.

Articles 2 and 3

Article 2 outlines the functions and general duty of ESA to include development of children and young people in Northern Ireland through provision of efficient and effective primary and secondary education and educational services, provision of schools, services and youth services, management of schools and advise the Department of Education on matters relating to areas of responsibility.

The board notes that no specific reference is made to nursery and pre-school education in the Bill. The board considers that it would be appropriate for legislation to be enacted to make this a statutory element thus completing the 0-19 remit of education in Northern Ireland.

The traditional aim of 'efficient and effective education' has been around for a considerable time and is unclear in both meaning and interpretation. More clarification would be needed if a value added and personalised approach to learning is to be used to drive up achievement for all pupils regardless of their ability. This should not just be a statistical performance and cost cutting measure. It would be useful for the Bill to be much clearer in this regard.

Articles 4-9 – Employment Schemes for Grant Aided Schools

ESA will employ all staff in grant aided schools – and a scheme will be drawn up to govern a range of aspects including employment, school staffing, conduct and discipline, suspension and dismissal, payments, general management etc.

Currently special schools are not treated in the same way as other grant maintained schools in that their budget is partially delegated. This does not seem to have been taken account of in the Bill. In addition, there is no reference to arrangements for providers of Education Otherwise than at School.

The board would welcome further clarification in relation to these areas.

Article 10 – Peripatetic Teachers

Currently all boards employ teams of peripatetic teachers for specific learning difficulties, music service and other outreach to pupils in mainstream schools. The Article gives ESA the power to employ peripatetic teachers, but not the duty to do so. Does this suggest that current peripatetic staff will not have the same transfer of employment rights as their mainstream colleagues? The board would welcome greater clarification on this point.

Article 11 – Salaries

Boards of Governors in voluntary grammar can pay staff direct with the approval of the Department of Education. This implies that voluntary grammar schools may continue to employ their own teachers – despite the provisions outlined in Article 4. The board would suggest that it may be preferable that one scheme should be in place for all staff. Furthermore the convergence of services was proposed as a means of cost cutting through economies of scale. In the interests of equity of treatment this would appear to be at variance with a core principle of ESA.

Article 12 – Salaries

The board notes that ESA will determine salaries for all its employees. However, it remains unclear whether this is in line with national salary agreements – for example – Teachers' Negotiating Committee, Soulbury and National Joint Council. Clarification would be welcome as parity issues may emerge between colleagues undertaking similar work in England and Northern Ireland.

Article 13 - Functions

Article 13 makes provision for ESA to provide or secure provision of training and advisory and support services and the current role of the Curriculum Advisory and Support Service (CASS) is thereby transferred to ESA. The wording of this Article allows for schools to be given the option of making their own arrangements for the provision of continuing professional development. The arrangements in Article 13 are similar to the Education Reform (NI) Order 1989 in terms of current CASS responsibilities.

Articles 14 and 15 – School Libraries and Youth Services

The board notes the fact that school libraries and youth services will remain part of ESA. This will allow both the formal and informal sectors to work together in the interests of the young people. The Articles suggest that ESA will provide school library services and secure provision of youth services. The board notes with concern that securing provision is not the same as 'providing' and this could suggest that ESA will commission the youth services rather than provide or run the service itself.

Article 18 – Ancillary Powers of ESA

The board would welcome clarification in relation to the disposal of assets as to whether the full proceeds will return to central government or remain with ESA.

Article 21 – Dissolution of Statutory Bodies

Originally, the Review of Public Administration sought to incorporate all educational bodies and educational management organisations within the new ESA structure. However, the Bill makes clear that whilst boards, CCMS, CCEA, the Staff Commission and the Youth Council for Northern Ireland are to be dissolved, other educational bodies will remain in place albeit with reduced functions. The board notes the inequality in such arrangements and would welcome clarification in relation to a sectoral body for controlled schools as well as a body to represent the interests of transferors. This sectoral fragmentation of the system was not initially envisaged in the review documents. The board is committed to the concept of equality across all sectors and would expect the new arrangements to reflect this.

Articles 24 - 28 - Duty of ESA to conduct examinations and assessments

The current system has clear separation of functions between CASS, CCEA and the Education and Training Inspectorate (ETI). The Bill, whilst providing some clarity around the role of the ETI is vague in relation to ESA's role. The board is concerned about the potential for duplication of challenge, between ESA and the inspectorate thereby creating a punitive and negative environment for schools which is not conducive to school improvement. The inclusion of CCEA and its role within ESA gives rise to possible concern around the integrity of statistics and standards. The Bill needs to clarify and separate these functions to give the public confidence around the independence and rigour of the examinations undertaken by students.

Article 29 – General Teaching Council

Article 29 extends the power of the General Teaching Council (GTC) to include teacher discipline and appears to follow the powers of the English counterpart. The board notes the proposal.

Articles 30 – 34 – Schemes of Management

The board notes the requirement for ESA to consult and write Schemes of Management and considers that it will be necessary for the schemes to be in place prior to the appointed day. However, the board also notes that some sectors may operate outside ESA and has concerns in relation to equality issues.

Article 35-36 – Governors

Schemes of Management are central to the responsibilities and functions of Boards of Governors. This includes the appointment of staff. Harmonisation of Schemes of Management across all sectors will need to be considered in order to maintain equality.

Article 37-42 - Inspections on behalf of the Department

The arrangements for inspections of schools, library premises and further and higher institutions are covered in Articles 37-42. It is interesting to note that the premises must be 'open at all reasonable times to inspection'. Some clarity would be welcome in terms of what 'reasonable' means in this context.

With the current proposal that the Board of Governors hold responsibility for educational standards, the board notes that ESA may be divesting itself of responsibilities currently held by boards.

Article 49 - Catholic Maintained Schools

It is noted that a proposal allows for some schools to become designated as maintained schools. The board would welcome a degree of clarification around this issue especially in the context of area based planning and the use of public resources.

Additional Considerations

1 One area which is in need of legislation is the arrangements for children who are electively home educated to be regulated. This is absent from the Bill and is seen as an opportunity lost. Currently, a regional working group is examining a number of aspects of home education in Northern Ireland and it has already been identified that a change in legislation is required to bring greater clarity to this area.

2 Schedule 1 outlines the form of ESA's Governing Body – a chair and between 7 and 11 members – possibly reflecting the anticipated make-up of the new District Councils. The members are most likely going to be councillors – who must have an educational background. There are implications contained in the schedule for the current board membership across Northern Ireland – whereby 5 boards, with a significant membership of councillors and other representatives or stakeholders will be replaced with 7 members. Additionally, the skills and knowledge base of the current board membership will be considerably eroded. A further consideration relates to the democratic function and accountability of the new body. On one hand the number of staff, pupils etc for which ESA will be responsible is increasing dramatically whereas the governance and accountability is being significantly reduced.

3 There has been much discussion within the assembly at the first and second reading of the Bill regarding the establishment of local committees to provide important school regional governance within ESA. The board welcomes this development but cannot find any mention of this within the Bill. This is a serious omission which requires remediation at committee stage. The role, function and responsibilities of these committees should be contained in legislation.

[1] SELB Response to Policy Paper 20

[2] WELB Response to Policy Paper 20

[3] NEELB Response to Policy Paper 20

[4] BELB Response to Policy Paper 20

[5] SELB Response to Policy Paper 20

North Eastern Education and Library Board (NEELB)

The North Eastern Education and Library Board welcomes this opportunity to make comment on the Education Bill in the knowledge that the proposed changes as set out in the legislation will

have far reaching changes for the delivery of education and in recognition that this particular Board has been acknowledged publicly as an existing provider of quality education.

Clause 2/3

Functions and General Duty of ESA

The general duties are similar in part to the duties placed on Boards in the 1972 Order but are broader in concept to take account of the emerging role envisaged for ESA.

The Board welcomes the fact that ESA is to be the single Employing Authority for all grant aided schools. It was on this understanding that the Board supported the establishment of ESA.

Clause 4 to 9

Employment Schemes for Grant Aided Schools

The Board notes the requirement for the relevant employing authorities to submit employment schemes for approval by ESA with ESA holding reserve powers in this matter to make an appropriate employment scheme.

There is a an issue relating to the availability of model schemes, as and when the legislation becomes operational, although it is noted that ESA retains the powers to determine the date when such schemes have to be submitted for approval. The Board assumes that these schemes/guidance are presently under development.

The transfer of staff to the employment of ESA is a very sensitive issue for some sectors and hence the greater the clarity on this issue the easier the transition.

These paragraphs should set out clearly the nature of the relationship between ESA and all grant aided schools and of the need for all grant aided schools to operate within a strategic framework as laid down in legislation.

Clause 11

The Board notes this proposal and can understand the rationale underpinning it, although if the case for ESA is driven partially by economies of scale then surely this is an area where such a principle should be applied in practice.

Clause 13

The Board notes this proposal although the details are sufficiently vague as to be able to offer only limited comment. The North Eastern Education and Library Board would encourage the Department of Education and ESA to examine innovative models of delivery for in-service and would refer ESA to developments in this Board in respect of NEELB TV which make use of digital technologies i.e. the Creativity Truck. The Board would also wish to place on record the experience and knowledge of the support staff in the Board's Curriculum Advisory and Support Service which was probably the first such service to receive CharterMark status in the United Kingdom.

Clause 15

The Board strongly supports the earlier decision to retain the Youth Service as part of the Education and Skills Authority. In the view of the Board this ensures a continuum of support across the formal and informal education sectors and in time will allow for a greater involvement of Youth personnel in aspects of formal education.

Sub-paragraph 5 of this Clause is an interesting inclusion and seems at variance with the concept of educational activities which at their heart are developmental processes. The approaches advocated in this paragraph seem to be of a more custodial nature.

Clause 19

The Board has had to forego many commercial opportunities in the past where it has been at the cutting edge of developments in relation to curriculum development and the use of technologies. It is important that the legislation facilitates rather than inhibits the marketing of the Northern Ireland educational service in these islands and further afield. There is much to disseminate in Northern Ireland in terms of 'being leaders in the field' and the economy should take every opportunity to generate income from such sources.

Clause 29

The Board has always supported the establishment of a General Teaching Council and notes that this piece of legislation extends the powers of the body in relation to disciplinary matters affecting teachers. As a direct implication however there will be a requirement for clear guidance as to how the GTC's disciplinary powers are to be co-ordinated with those of the ESA and individual Boards of Governors. It would be important to avoid uncertainty for all concerned during what would seem to be the resulting inevitable process of re-negotiating the centrally negotiated Disciplinary Procedure for Teachers in Grant-Maintained Schools.

Clause 30 to 33

The comments relating to the Schemes of Management are similar to the comments made in relation to Employment Schemes (Clause 4 to 9). The Board supports the development of these schemes and recognises these are pivotal documents which provide the framework within which Boards of Governors will discharge their duties. These schemes take on added significance when it is widely acknowledged that the responsibilities of Boards of Governors from 1st January 2010 will change fundamentally, yet it is the understanding of the NEELB that Boards of Governors will be encouraged to operate under existing schemes of management which in the view of this Board are 'no longer fit for purpose.' In the view of the NEELB it is essential that model schemes are available to all schools with effect from the introduction of ESA. This is imperative when considering the centrality of Schemes of Management to a number of key processes and responsibilities carried out by Boards of Governors including the appointment of staff which will require to be harmonised across the range of school sectors coming together under ESA.

Clause 34

This is a brief statement placing responsibility on Boards of Governors re educational attainment but contained within this statement is a fundamental change of emphasis which will require Boards of Governors to exercise a much greater degree of responsibility for standards and to be held accountable for such matters. The Board would suggest that this responsibility needs to be made much more explicit and certainly developed in the Model Scheme of Management for all schools.

Clause 35/36

The NEELB has been supportive of the role played by Transferors in the development of the present day education service and welcomed the recent Ministerial announcement to retain the right of Transferors to nominate school governors. The legislative basis for the nomination of 'community governors' is noted.

The Board supports in principle the inclusion of part time teachers for election as governors. However the implications of extending this right and the related entitlement of part-time teachers to vote in elections for teacher representatives need to be carefully considered. It is common for part-time teachers to teach in a number of schools in a local area meaning that potentially an individual could be elected as a teacher representative to schools that are in direct competition with each other. While this is already the case for other categories of Governors it could be argued that the teacher representative is in a unique position being privy to what a school might consider as confidential information relating to its management and day to day operation. A further concern, depending on the extent of a part-time teacher's employment within a school, centres on how informed the particular individual would be in comparison to a full time colleague.

Clause 37 to 42

These Clauses deal with matters relating to Inspection and appear to reflect the existing responsibilities of the Education and Training Inspectorate (ETI).

If it is envisaged that of the role of the Boards of Governors will include a greater responsibility for educational standards and a commensurate accountability then the Board would argue that the inspection process and in particular the follow up report needs much greater rigour with clear outcomes which will allow those charged with management responsibility at local level to discharge their duties.

Clause 44 to 48

These Clauses address issues at the heart of education and the valuing and protection of children and young people. The Board supports these regulations and endorses the proposals to undertake periodic reviews of how Boards of Governors discharge their duties in respect of this matter.

The legislation does not appear to make reference to the requirement for governors to attend training on Child Protection. The Board would suggest that this should be built in as a legislative requirement and restated in the schemes of management.

Schedule 1 to 7

The Board notes the Schedules and would offer the following observations:

In relation to Schedule 1, it is noted that the tenure of office for members is for a period of four years. In order to avoid a potential loss of expertise every four years, the Board would suggest that consideration should be given to some flexibility in the process which would allow for partial change of membership of ESA every two years.

In relation to Schedules 2, 3, 4 and 5 and the relative transfer of staff assets and liabilities, these are noted by the Board.

In relation to Schedule 7 and proposals relating to controlled primary and secondary education, the Board would wish to reserve its position until the outcome of the consultation on RPA Policy Paper 20 is known. Although the general approach as outlined appears sound there may need to be an accommodation depending on the structures that eventually emerge for the management of the controlled estate and the role of the Transferors.

The Board notes that in relation to the future of a school, the legislation does not include consultation with non-teaching staff and pupils. Is this not a serious omission?

South Eastern Education and Library Board (SEELB)

The SEELB welcomes the opportunity to comment on the 2009 Education Bill which when introduced will establish the new Education and Skills Authority (ESA). The Board notes that this is the first of two Bills and regrets that both are not available at the same time as the content of the second Bill may significantly inform the Board's comments on the first Bill.

As requested, this submission has been structured to address specific clauses of the Bill and its schedules. However the Board is convinced that while this, the first Bill, establishes the legislative framework for ESA it will be absolutely essential that further comprehensive consultation and discussion is undertaken with all stakeholders on the precise details and processes which will be established to enable ESA to successfully undertake the functions assigned to it.

The remainder of this response relates to the individual clause and schedules contained in the draft legislation.

2. Functions and General Duties of ESA.

(2)(a). The Board is of the view that, although non-statutory, reference should be made to the role which ESA will play in the provision of pre-school education.

(2)(a). The Board welcomes that fact Youth is seen as an integral part of ESA and it therefore suggests that (2)(b) should be deleted and instead at (2)(a) it should read ".....by ensuring that efficient and effective primary and secondary education and educational services, including youth services, are available to meet the needs of such children and young persons"

(3). Given policy paper 20 which details proposals for the future management and control of the schools estate, the Board seeks clarification regarding the relationship between ESA and the owners of the estate including the proposed body which is to assume ownership of the former controlled schools estate.

(8). Suggested rewording of this clause is as follows: "In the Education Orders "educational services" means all services which provide educational benefit to children or young persons or which are ancillary to education".

3. ESA to Employ All Staff of Grant-aided Schools.

The Board seeks clarification with regard to the respective roles which ESA and the Board of Governors have as employing authority and employer.

While this clause relates to schools, consideration needs to be given to role which ESA will undertake as the employing authority/employer of staff in grant-aided youth clubs.

8. Effect of Employment Scheme.

(3). It is suggested that the statement that "ESA may require the Board of Governors to reconsider" a matter which fails to be taken in accordance with the scheme should be firmed up to read "ESA will require the Board of Governors" ... as to do otherwise enables Board of Governors to act outside their Scheme of Management.

11. Salaries, etc. of staff: Administrative and Financial Arrangements.

(1). As all staff in grant-aided schools are to transfer to ESA surely it is inefficient to have a different system for the issue of payment to staff in Voluntary and GMI schools? The Board is of the view that the same system should be used for all grant-aided schools irrespective of type.

15. ESA to Secure Provision of Educational and Youth Services and Facilities.

(1). As stated previously the Board is of the opinion that youth is an integral part of education and thus the separation into educational and youth services and facilities is unnecessary. The Board would suggest that (1)(a) and (1)(b) should be combined into a new (1)(a) to read "adequate facilities for educational (including youth) services and activities carried out in connection with those services.

18. Ancillary Powers of ESA.

(2)(b). The Board seeks clarification that if ESA disposes of property will the receipts be returned to a government department, as at present, or will ESA be permitted to retain a proportion of such receipts?

21. Dissolution of Certain Statutory Bodies.

With the dissolution of the ELBs and CCMS , the Board is of the view that should a sectoral support body be available to one sector similar bodies should be available to all sectors.

24. Duty of ESA to Conduct Examinations and Assessments.

While the Board recognizes that this clause directly transfers to ESA duties currently undertaken by CCEA, the framing of new legislation offers an opportunity to address what is sometimes perceived as a "conflict of interest". This is the same body that is be responsible for setting the curriculum and assessing its delivery and yet simultaneously be responsible for raising educational achievement and assessing attainment of pupils.

25. Other Functions of ESA in Relation to the Curriculum, Examination and Assessment.

(2). The Board is concerned that by requiring ESA to produce materials for use in connection with the Curriculum for 2 year olds , there is a danger that this might formalize their learning experiences. The benefits of formalizing the curriculum for children of such a young age are

questionable and come at a time when many other countries are introducing children to formal education at a much later age.

26. Discharge of ESA of its Functions Under Sections 24 and 25.

(i)(a)(ii) and (2)(a). The Board would offer the observation that how ESA might meet the needs of children with special educational needs would be much better informed if the SEN Review was to be published forthwith. Boards which have years of experience in meeting such needs would be in a position to provide much more meaningful advice and support to ESA in planning future SEN provision if the contents of this review were known.

29. Code of Practice for Registered Teachers.

To simplify the current Child Protection vetting procedures and to ensure that all, including long serving, teachers have been vetted the Board would suggest that successful vetting should become a condition of registration with the GTC.

38. Powers of Inspectors.

The Board notes that within this clause inspectors are being given very wide ranging powers regarding access to information. The Board would suggest that clarification of the legal position in respect of access to data much of which may be of a personal and sensitive nature should be sought.

45. Duty on Providers of Funded Pre-school Education to Safeguard and Promote Welfare of Children.

(4). The first line of this article should read, "abuse" includes sexual abuse, neglect and abuse causing physical, emotional or mental harm to a child.

50. Supplementary, Incidental, Consequential, Transitional Provision etc.

(2) The board would contend that the power to "amend, repeal, revoke or otherwise modify any statutory provision (including this order)" should require prior and full consultation with those stakeholders who may be affected by any such change.

Schedule 1. The Education and Skills Authority.

Until the standing rules and orders (SROs) for the new ESA are available it is extremely difficult to make meaningful comments. In the interests of operational efficiency the Board believes the size of ESA should not exceed 12 members, and also welcomes the provision for delegation of functions in 8 (1).

Schedules 2, 3, 4 and 5.

Once again it is difficult to make meaningful comment on staff transfer until the details of the Staff Transfer Scheme are available. Under Schedule 2 clause 2(2), the Board seeks clarification as to why there should be more than one scheme as all staff are employed by the one body, namely the Board of Governors. The same concern is raised in respect of Schedule 3, clause 3(2) and Schedule 5 clause 2(3).

Under Schedule 3 clause 5 which deals with "Accounts and Reports: Transitional Arrangements", the Board seeks clarification if there will be a need for one or two sets of accounts, ie. one for nine and a second for twelve months.

Schedule 6.

When a disciplinary order is made the Board is of the view that such a decision should have force across other jurisdictions, especially G.B. and R.o.I.

Southern Education and Library Board (SELB)

The SELB welcomes the opportunity to comment on this draft legislation. It is convinced of the significance of the proposals in bringing about extensive and notable changes in the nature of education provision. It recognises the implications for the establishment of the Education and Skills Authority. However, the legislation can only indicate a framework for the new body; as details emerge it will be important that they are subject to scrutiny in the consultation process.

Article 2 (2) (a) – Functions and General Duty of ESA

The Board stresses that education is more than the sum of the parts, namely "the spiritual, moral, cultural, social, intellectual and physical development" of children and young persons but provides for their holistic development. The inclusion of 'social' development within ESA's duties to children and young people provides ESA with powers in respect of activities which Boards currently undertake, eg traveller education and extended schools which do not fall within the strict definition of the 1986 Order.

Although non-statutory pre-Board education warrants inclusion in light of ESA's potential role in this sector.

Article 2 (3) – Functions and General Duty of ESA

Paper 20 develops the concept of ESA being only the interim owner of controlled schools.

Article 4 (1) – Employment schemes for grant-aided schools

The Board noted that it is proposed that each school will have its own employment scheme. It recommended that as far as possible and to reflect current practice and the capacity of schools, groups of schools should have common employment schemes to avoid variation leading to confusion of relationships with ESA.

Article 9 (2) – Transfer to ESA of staff employed by Boards of Governors

Since voluntary grammar schools are grant-aided schools the Bill provides for ESA to be the employer of all their staff. The Board, being aware that certain voluntary grammar schools were established by legislation, inquired if the proposed legislation had the force to rescind legislation in respect of individual schools.

Article 13 - ESA to provide or secure provision of training and advisory and support services for schools

The Board noted that provision of training for Boards of Governors or the securing of such training was explicitly included in the duties of ESA and queried if, even with access to such training, Governors would feel competent to undertake enhanced responsibilities notably for the raising of achievements of pupils in their schools.

Article 11 (5) (a) - Delegated Budgets including Staffing Costs

This Article is incorrect in that it removes from Boards of Governors of schools with delegated budgets the inclusion of funding of staff costs.

Article 15 (b) - Youth Service

The Board recognised that the Youth Service is enshrined in the draft legislation but is concerned that it is not subsumed under educational services but is separately designated and is concerned that the arrangement would facilitate its transfer in legislation to local government or future outsourcing of Youth Services. The Board suggests (2) (b) should be deleted and instead (2) (a) should read "by ensuring that efficient and effective primary and secondary education and educational services, including Youth Services, are available to meet the needs of such children and young persons".

Article 17 (1) – ESA to pay Superannuation Benefits of Teachers

The Board noted that the legislation appears to provide for ESA to make the compensation costs of the early retirement of teachers.

Article 19 (8) (c) – Power of ESA to undertake Commercial Activities

The Board urged careful monitoring of developing and exploiting ideas and the exploiting of intellectual property while recognising that the commercial activities may be the conduct of examinations, currently a function of CCEA.

Article 28 (3) - Approval of Courses leading to External Qualifications

This Article appears to open up the possibility of post-primary schools offering approved post 16 courses without specific DE approval in response to Development Proposals as has been required since 2003. Clarification of this Article is required.

Article 29 – Disciplinary Powers of the General Teaching Council

Clarity is required as to whether the General Teaching Council seeks evidence of qualifications in the form of original documentation. It will be important that in giving to the GTC powers in connection with disciplinary matters affecting teachers there is no resulting confusion with the disciplinary roles of Boards of Governors and ESA.

Article 30 (1) – Schemes of Management

Will each school have its own Scheme of Management? The Board assumed there will be a small number of common Schemes. The Board recognised an area of possible confusion when Boards of Governors after 1 January 2010 operate under existing Schemes of Management. To avoid this at least model schemes should be available at that date.

Article 34 – Duties of Boards of Governors in relation to achievement of high standards of educational attainment

The Board noted the challenge function of Governors as enshrined in "Every School A Good School". It considered it important that schemes of management clearly conveyed those responsibilities.

Article 35 – Community governors for controlled, maintained, grant-maintained integrated and certain voluntary grammar schools

While no reference is made to the change in nomenclature from 'transferor responsibilities' and 'Foundation Governors' the Board welcomed the recognition of the continuing rights of the transferors.

Article 36

The Board welcomed the opportunity for part-time teachers to vote for teacher representation and to stand as teacher representatives but recommended that consideration should be given to certain implications such as the circumstance of a part-time teacher being employed in several schools being a Governor in one and the limited understanding of management issues in a school which a part-time teacher might have.

Article 42 (3) - Assessors and Lay Persons

This Article provides for persons appointed to panels not to have "significant personal experience" is as intended; the Explanatory Memorandum on this Article is therefore incorrect. The Board suggests that clarification is necessary to elaborate that a person's expertise could provide an impartial view.

Articles 44 and 45 – Safeguarding and promoting welfare of children and young persons

In recognising the disparity in provision between the statutory and the voluntary / private sectors the Board believed that clarification is necessary in relation to partnership arrangements and overall responsibility given that ESA will be joined with DE.

Article 50 – Supplementary, incidental, consequential, transitional provision etc

The Board noted that the Department is given authority to alter the legislation subsequently.

Schedule 1

Article 2 (1) - ESA Membership

The Board queried whether the proposal that ESA shall consist of 7-11 members is sufficient in number to provide appropriate expertise and whether its membership will be representative of local committees.

Article 3 (2) – Tenure of Office

No mention is made of the number of terms a member can serve.

Committees

Clarification is requested on the composition and the functions of local bodies. An assurance is sought that local bodies will indeed be sufficiently local to provide appropriate support.

Explanatory and Financial Memorandum Curriculum for children and young people aged 14 to 19

While ESA will have responsibility for young people aged between 14 -19 in schools, this clause does not address the issue that young people aged 16+ in Further Education should still have access to the Entitlement Framework.

The Board recognises that the Second Bill will provide the 'vision' of ESA. However it would have appreciated sight of this draft Bill to enable a better understanding of the First Bill. As a result, the Board feels the First Bill is change for change's sake without any identifiable or stated outcome.

Western Education and Library Board (WELB)

Introduction

The Western Education and Library Board welcomes the opportunity to comment on ESA Education Bill I. The Board would make the point that the second Education Bill, which will provide more detail on the vision for ESA, has not yet been made available, and that it is in this context that this response is made.

The Board has concerns that there is an absence in the Bill of a body to promote the interests of the 'Controlled' sector. The Board recognises that issues regarding ownership of 'controlled' schools are covered in RPA Policy Paper 20 and would point to concerns raised in its response to Paper 20.

This Response was agreed at a meeting of the Board's RPA Committee, which consists of the Chairmen and Vice Chairmen of all WELB Committees, on Thursday 19 February 2009.

Clause 2 – Functions and general duty of ESA

Clause 2 provides that the Bill, when passed by the Assembly to become an Act, will create the Education and Skills Authority (ESA). Original proposals intended that ESA, as an all-embracing body, would incorporate (and thereby supposedly streamline) the services currently provided by the Boards (including CASS, C2K and RTU), CCEA, the Staff Commission and the Youth Council for NI, and also deliver the frontline functions currently undertaken by CCMS, NICIE and C na G,

and some carried out by DE. The Board would have concerns that this is no longer the case, with only some bodies being subsumed under ESA whilst others retain their independence. There are concerns that this flies in the face of the original proposals.

Clause 3 – ESA to employ all staff of grant-aided schools

There will be a need for ESA, as the new single employer, to give clear and timely guidance regarding content and format of employment documentation to be provided by each of the existing employing authorities (including the Board). This will be particularly important in the case of voluntary grammar schools, whose teaching staff are currently paid directly, and for whom no employment details are presumably held centrally at present. Section 11 appears to allow Boards of Governors of voluntary grammar schools to continue to pay their staff directly, if they choose to do so (and similarly in the case of Boards of Governors of grant-maintained integrated schools, in respect of non-teaching staff only), but as the employer, ESA would still need to have access to employment details for all staff.

Clauses 4 – 8 - Employment schemes for grant-aided schools

The Board notes that the 'submitting authority' of every grant-aided school (i.e. the Board of Governors in the case of all schools other than Catholic Maintained schools) will be responsible for drawing up its 'employment scheme' specifying the arrangements and procedures for employment and management of its staff (both teaching and non-teaching), and for submitting this to the ESA for approval. ESA guidance and model schemes will be provided, but it would appear that there will be some latitude for schools to 'do their own thing' in relation to employment practices if they wish to do so. There is no indication that schools will be required to operate within and comply with centrally agreed/negotiated procedures e.g. Redundancy, Discipline, Unsatisfactory Teachers.

WELB would be concerned that the requirement for each school to produce its own employment scheme will place an additional burden on Boards of Governors, and create scope for confusion and inconsistency. It will potentially cause problems for ESA in defending the position of management in the event of LRA hearings and industrial tribunals. (As the employer, ESA will inevitably be conjoined with the individual Board of Governors in any cases of employment litigation, particularly in view of Section 8, sub-section 2, which states that it is the duty of ESA to give effect to any decision of the Board of Governors of a grant-aided school which is taken in accordance with its employment scheme.)

The Board would suggest that the task of scrutinising and approving every individual employment scheme will be an enormous time-consuming task for ESA. Section 5 states that an employment scheme shall not come into force until it has been approved by ESA. It is not clear how employment matters (including appointments and dismissals) are to be conducted by a Board of Governors during the interim period, pending receipt of ESA approval.

Clause 11 – Salaries etc of staff – administrative and financial arrangements

Clause 11 provides that voluntary grammar schools may continue to pay staff salaries and contributions on behalf of ESA if they choose to do so. (Similarly grant-maintained integrated schools may do so in respect of their non-teaching staff). As employer of all staff, ESA will have a legal responsibility to account to the Inland Revenue for all 'multi-jobbing' staff, including those who work both in voluntary grammar/integrated and in other schools. ESA will need to address this in the arrangements it makes with schools which are to continue to pay staff directly.

Clause 11(5) states that the budget share of a grant-aided school shall not include any amount in respect of the salaries and allowances of the staff of the school, or their national insurance/superannuation contributions. The Board notes that this represents an enormous departure from the terms of the existing common funding formula, and will have huge significance for Local Management of Schools. The implication is that all schools will be subject to a standard staffing formula, with staffing ratio and funding controlled centrally.

Clause 13 – ESA to provide or secure provision of training and advisory and support services for schools

It is noted that it will be the duty of ESA to provide or secure the provision of training for Boards of Governors, particularly since Boards of Governors will be required to operate with additional autonomy and responsibilities as outlined in some of the RPA Policy Papers.

Clause 15 – ESA to secure provision of educational and youth services and facilities

The Board is concerned that youth and educational services are cited separately, and would suggest that this clause should be amended to cite youth and educational services together.

Clause 23 – General Duty of DE and DEL

Clause 23 replaces Clause 3 of the 1989 Order, which placed a duty on the Department to 'promote the education of the people of Northern Ireland'. Under Section 23, DE's duty is to 'promote the education of children and young persons in Northern Ireland' while DEL's duty is stated to be 'to promote further and higher education in Northern Ireland', without any apparent obligation to consider the educational needs of 'the people of Northern Ireland' of all ages. Does this imply some reluctance to acknowledge the importance of 'lifelong learning'?

Clause 29 – Disciplinary powers of General Teaching Council

Clause 29 amends the 1998 Order by inserting an additional Clause (36A) and Schedule (Schedule 1A, which is included in the Bill as Schedule 6), making provision for certain disciplinary powers to be conferred on the GTC in relation to registered teachers.

There will be a need for clear guidance as to how the GTC's disciplinary powers are to be co-ordinated with those of the ESA and individual Boards of Governors. There may be a need for some re-negotiation of the centrally negotiated Disciplinary Procedure for Teachers in Grant-Maintained Schools.

Clauses 30-33 – Schemes of management for grant-aided schools

Clauses 30 to 33 provide that there shall be a scheme of management for every grant-aided school. The wording is almost identical to that of the comparable section of Clause 123 of the 1989 Order; the only significant difference being that there must be a separate scheme prepared for each school – by the trustees in the case of Catholic maintained schools, and by the Board of Governors in the case of all other schools (i.e. the 'submitting authority'). Previously, it was possible for all controlled schools to be subject to a common scheme.

The requirement for each school to produce its own employment scheme will place a further burden on Boards of Governors, and create scope for confusion and inconsistency. Many governors sit on three Governing Bodies, which would mean in reality working to three different Schemes of Management. There was an assumption that schools will be provided with a common Scheme of Management which would make the role and accountability of Governors much clearer. In addition, the task of scrutinising and approving every individual employment scheme will be an enormous time-consuming task for ESA.

Furthermore, there seems to be an absence/lack of clarity on development of Schemes of Management for Voluntary Grammar Schools.

Clause 34 – Duty of Board of Governors in relation to achievement of high standards of educational attainment

The Board notes that this Clause places a duty and a significant change on Boards of Governors to exercise their functions to maintain educational standards, under the proposed Every School a Good School, with a view to promoting the achievement by pupils of high standards of attainment, and to co-operate with ESA in relation to actions which it takes in promoting such achievement.

Clause 36 – Part-time teachers to be eligible for election as governors

Clause 36 provides that part-time teachers will become eligible for election as governors for the first time. The Board would question the wisdom of this change: part-time teachers often teach in more than one school, and it could be argued that such a teacher could have divided loyalties and should not be privy to the confidential business of one of the schools' Boards of Governors. Furthermore, it could be argued that a part-time teacher is unlikely to be entirely tuned in to the full range of school management issues which a Board of Governors is required to address.

Similarly, should part-time teachers have the right to vote in elections for teacher representatives?

Clause 52 – Interpretation

Clause 52 states that 'This Act shall be construed as one with the 1986 Order'. By dealing with this new legislation in this way, a rare opportunity has been lost to simplify the whole legislative basis for education in Northern Ireland. It is very unfortunate that the Department has not taken this opportunity to introduce a new consolidated Education Bill embracing all of the legislation which has been introduced since 1986 in a systematic format.

Schedule 1 – The Education and Skills Authority

Schedule 1 sets out detailed arrangements for the operation of ESA, including membership complement (Chairman and between 7 and 11 other members, all appointed by DE, all remunerated, and a majority to be councillors). The Board would query whether this will be sufficient to provide adequate representation and the required skills, expertise and time.

Schedule 3 – Transfer of assets, liabilities and staff of dissolved bodies

(a) Transfer of assets and liabilities

Schedule 3 (a) provides for the transfer to ESA of all assets and liabilities of the dissolved bodies listed in Clause 21 (except for the library assets and liabilities of the ELBs which are dealt with under section 1 of the Libraries Act (NI) 2008). The Board would suggest that this could involve a major conveyancing exercise, which will be extremely complex and time-consuming.

(b) Transfer of employed staff

Schedule 3 (b) provides that staff who transfer under this section will be protected by TUPE regulations. The Board would be concerned that this does not provide any guarantee of continued employment in the event of a decision by ESA to introduce a policy of staff rationalisation.

Schedule 6 – Disciplinary powers of General Teaching Council

Schedule 6 contains the wording of a new schedule to be inserted in the Education (NI) Order 1998, prescribing the disciplinary powers of the GTC (see Section 29 above).

The Board would point out that there will be a need for clear guidance as to how the GTC's disciplinary powers are to be co-ordinated with those of the ESA and individual Boards of Governors. There may be a need for some re-negotiation of the centrally negotiated Disciplinary Procedure for Teachers in Grant-Maintained Schools.

Forum of Nursery Teachers (FONT)

Since the Education & Library's Order of the 1970's right through subsequent amendments and additions in the 80s, 90s etc. certain rights of nursery principals and have been teachers ignored. In particular, although they teach a non-statutory curriculum, as qualified teachers, employed by DENI, they are entitled to receive the same training and advisory and support services as teacher of primary/post primary curricula.

Functions and duties of ESA 2.(8) stating

"In the Education Orders "educational services" means services of any kind (except youth services) which provide educational benefit to children or young people or which are ancillary to education", hints of inclusivity, together with 'other functions of ESA :

13.(2)

"it is the duty of ESA to provide or secure the provision of

(a) further training and advisory and support services for teachers in grant-aided schools;

(b) training and advisory and support services for other staff in such schools",

this non-specific language enabled the existing Education & Library Boards to have their own interpretation of their responsibilities re: nursery sector. Several boards were insistent that they only had responsibility for teachers teaching the "statutory" curriculum.

If ESA is adopted a similar approach teachers in 99 nursery schools, plus nursery classes in Primary Schools (450 teachers in total) cannot be sure of continuing professional development in pre-school learning, or access to training in the statutory curriculum.

During the roll out of Revised curriculum training - nursery teachers were not automatically included in the training by the Boards This has disadvantaged the teacher's chance of employment in P1- P7 of Primary School.

Principals of Nursery schools were given a half day overview of the Foundation Stage. A Nursery Principal is thus seriously disadvantaged when applying for principalship in the Primary sector.

The Education Order ESA to provide 13.(2) should state

"teachers in grant-aided school teaching pre-school, primary, post primary curricula".

General Teaching Council for Northern Ireland (GTCNI)

The officers of GTCNI welcome the opportunity to respond to the proposed 2008 Education Bill.

In responding officers have considered the provisions relating to the General Teaching Council for N. Ireland namely Article 29 and Schedule 6 (the proposed additional Schedule for the 1998 Education (NI) Order.) In addition specific reference is made to Article 11 (5) and (6), Article 13 (2) and Article 26 (1) – these are addressed in the order they appear in the draft bill.

Article 11 – (5) & (6)

This article relates to the payment of salaries in grammar schools. Of concern to officers is the apparently clumsy drafting of paragraphs 5 and 6. Paragraph 5 appears to expressly prohibit the payment of salaries from the budget share of any grant aided school. Note the definition of "grant-aided" in the 1986 Education and Libraries Order (NI) is as follows:

"grant aided" when used in relation to a school, institution or establishment, means a school, institution or establishment, as the case may be, to or in respect of which grants are made under this Order, not being a college of education.'

It would seem therefore that the provision as para 5 of Article 11 effectively withdraws salaries from the LMS formula funding regime of any school which is surely not the intention.

Paragraph 6 then notes that "the common funding scheme may include provision" by way of maintenance grant under Article 61 (2) (b) of the 1998 Order. The use of the term "may" suggests that it is at the discretion of the Department of Education. All in all the drafting of these articles seems at best vague and at worst possibly contradictory.

Article 13 (2)

This article relates to the provision of training and advisory and support services.

It is, of course, recognised that legislation offers us no more than an empowering framework to facilitate policy development and implementation, however, GTCNI would wish at this juncture to suggest that the bill should include a reference to the effect that in securing professional

development opportunities (training) for teachers ESA will seek advice from GTCNI whose remit under Article 37 of the Education (N. Ireland) Order 1998 extends to an advisory role on:

"the training, career development and performance management of teachers" Article 37 (3) (b) (1998 Order)

Secondly, in relation to the issue of professional development one would hope that the current proposals are sufficiently robust to allow for the development of a "mixed economy" approach to professional development wherein funding can be directed to specific individuals, schools or group of schools. GTCNI over the past 4 years has operated a most successful bursary scheme facilitating just such an approach.

Article 21 – 1

This relates to the discharge of ESA's function in relation to curriculum, examinations and assessment. Of concern to GTCNI is the provision made under Article 26 (1) (a) (i and ii) and most specifically that under sub para (i) of para (a), which notes that ESA must have regard to –

"the requirements of industry, commerce and the professions regarding education;"

Whilst recognising that education has a pivotal role in ensuring that N. Ireland is well placed to meet the needs of the modern economy. The Council would like to draw attention to other pressing realities not least the specific pressures engendered by globalisation.

It is worth noting the observations of Alain Michel – Inspector General of France's Education System – writing for an OECD publication in 2001 he noted:

"Globalisation, because of the risks it brings of soulless standardization, can lead to fragmentation and a reduced sense of belonging to a wider community. The excesses of unbridled markets, in which prices and the market are more important than social or cultural relationships, are being met with a reaction of narrow nationalism, regionalism and parochialism."

It would seem obvious that some reference of civic and social well being should be included here.

Article 29

Relates to the disciplinary powers of the General Teaching Council. The officers of GTCNI welcome the greater specificity and are content that the new provisions are sufficiently robust to allow the Council to fulfil its regulatory function.

In conclusion, whilst GTCNI welcomes the belated progress made in regard to this bill it would reiterate that it is in the outworkings and interpretation that the culture and shape of the new education system will emerge. Care must be taken that there is a recognition of the need to develop an environment where professional autonomy mediated by robust regulation is the norm with the profession being appropriately trusted and accountable.

Governing Bodies Association (GBA)

1. The GBA wish to invite the Education Committee of the Northern Ireland Assembly to consider the following submissions in relation to the Education Bill.

2. The centerpiece of the Education Bill is the creation of the Education and Skills Authority ("ESA"). The GBA are not opposed to the streamlining of public sector administration per se and have stated this openly in correspondence to the Education Minister. However, it is a matter of some concern to the GBA that the new ESA, responsible for 1300 schools, 333000 pupils and 19000 staff, will be the largest education authority in the United Kingdom and one of the largest in Europe (see Assembly Briefing 89/08).

3. The GBA is very disappointed that no effort has been made to follow the practice in GB to curtail the costs of ESA. In GB DFES sought legislation to ensure that over 80% of the educational budget directly to school's board of governors in the first instance.

4. The creation of such a large scale centralised authority, in and of itself, raises concerns among GBA members about the erosion of individual school ethos and gubernatorial autonomy and independence. Those concerns are underscored when one turns to consider the overall architecture of the proposed Education Bill. Clauses 1-20 of the Bill address the functions and role of ESA.

5. Clause 3 of the Bill appears under the heading "ESA to be single employing authority for grant aided schools". Clause 3 (1) provides that "All teachers and other persons who are appointed to work under a contract of employment on the staff of a grant-aided school shall be employed by ESA." The provisions appear to rob Boards of Governors of the power to appoint and dismiss members of staff. Indeed, such Boards will no longer be considered to be "employers". This is underscored by the terms of Clause 3(2)(b) which provides that "references to staff of a grant-aided school are references to the teachers and other persons employed by ESA on the staff of the school."

6. GBA wrote to the Education Minister on 3rd December 2008 outlining "absolute opposition" to the employment and governance provisions of the draft Bill. The Minister replied on 13th January 2009 and we annex her reply hereto. The response she provided on the employment issue was most alarming. The Minister contended at paragraph 4 of her letter that while ESA "will be the employer of all staff in grant-aided schools, schools will manage the day to day employment arrangements and will decide how much responsibility they wish to take on." We have examined the clauses in the Bill carefully and cannot locate the statutory source for the Minister's claim that schools can electively choose the degree of responsibility they assume for employment issues. We are advised that employment issues are a matter of contract. If the ESA is to be, as Clause 3(1) purports, the employer of "all staff" then contractual responsibility as employer lies with ESA.

7. The Minister's statement that some schools may wish "to be responsible for all employment matters" simply does not sit with the clauses of the draft Bill. GBA would contend that the Bill should make provision for individual schools to contract in or contract out of the ESA employment framework.

8. We submit that the Bill should, in the interests of maximizing autonomy and securing ethos, make provision for all school staff to be employed by the Board of Governors of that school unless the school's Board of Governors chooses to opt into the ESA-employer model and to hence agree to ESA taking responsibility as employer for teachers and key staff. We submit that this could be done by way of the introduction of a saving provision to the present Clause 3(1). Thus, clause 3(1) could be amended to read:

"All teachers and other persons appointed to work under a contract of employment on the staff of a grant-aided school shall be employed by the Board of Governors except where the Board of Governors of a School opts into the ESA-employer model.

Where a school opts to assume responsibility for such employment matters the provisions of clauses 4 to 10 of this bill do not apply."

9. Such a provision would have the effect that those schools who did not wish to assume responsibility for employment matters would have those responsibilities assumed by ESA. Where a school Board of Governors chose not to opt into the ESA infrastructure they would continue to act as employer subject to the normal strictures of employment law.

10. Alternatively the Bill could be amended by an "opt in" provision. We submit that this could be done by way of the introduction of a saving provision to the present Clause 3(1). Thus, clause 3(1) could be amended to read:

"All teachers and other persons appointed to work under a contract of employment on the staff of a grant-aided school shall be employed by ESA except where the submitting authority and /or the Board of Governors of a School opts to assume responsibility for employment matters.

Where a school opts to assume responsibility for such employment matters the provisions of clauses 4 to 10 of this bill do not apply."

11. GBA maintain that the principle of autonomy in school governance arrangements should be enshrined in the Education Bill. Such statutory protection appears, for example, in the School Standards and Framework Act 1998 where express provision is made to protect the religious ethos of "foundation schools". Section 60 allows schools with a particular religious ethos to derogate from the non-discrimination provisions in section 58 when making appointment decisions. In short, Parliament has expressly enshrined "ethos" protecting provisions in the 1998 Act. There is no reason, in principle, why such protections should not be introduced in an Education Bill. E.g. In her letter of 13th January 2009 the Minister has stated:

"The RPA is not about taking autonomy away from any particular group of schools. It is about giving all schools the autonomy to run their own affairs on a day to day basis, including those schools, for example controlled schools, which currently have too little say in staffing matters.....voluntary schools have nothing to fear from these arrangements. Their Boards of Governors will continue to be in charge of the day to day running of the schools, and will take the employment decisions in relation to setting staff complements, recruiting, managing, promoting, disciplining and dismissing staff. For the first time these benefits will extend to all schools, including controlled schools".

As stated above, these assertions are quite simply not provided for in the Bill. E.g. A board of Governors cannot "dismiss" a person whose contract of employment is with another party (ESA). It is important that this be provided in law rather than be non-binding assurances.

12. GBA concurs with the general sentiment expressed by the Minister. Boards of Governor should have the power to make key employment decisions including recruiting and dismissing staff. Moreover, they should be permitted to take such decisions in a manner which reflects the legitimate ethos of the school. The difficulty with the Minister's statement is that it appears to be entirely disconnected from the terms of the Bill which she is promoting. The present Bill expressly removes these powers from Boards of Governors.

13. GBA submits that if the Minister and Department are genuinely committed to the preservation of ethos and maximising autonomy in school governance the present legislative model will require amendment in order to produce that outcome.

14. The key governance provisions in the Bill can be found in Clauses 30-33. The central mechanism for school governance is the "scheme of management". This scheme will regulate

the membership and procedures of Boards of Governors. It will regulate the management of the school and relations between the Board of Governors, principals and any other person specified in the Scheme. Clause 30(5) imposes a positive statutory obligation upon Boards of Governors to "give effect" to the scheme of management presently in place.

15. Clause 31(1) imposes an obligation on Boards of Governors/Trustees ("the submitting authority") to prepare a scheme of management for the approval of ESA. Clause 31(5) provides that a scheme of management "shall not come into force until it has been approved by ESA". This is a striking transfer of power. A school simply cannot, under these provisions, function administratively without the approval of ESA. Boards of Governors are required by this proposed statute to submit a proposal for their future powers which must be ratified by ESA before their governance activities can be discharged. Failure to submit a management scheme will not avail a school who objects to this course because ESA retain a power subject to Clause 32(2) to make such a management scheme as ESA considers "appropriate."

16. GBA consider that this is an oppressive and overly bureaucratic model of schools governance. The objectives outlined in the Minister's letter of 13th January 2009 are unrealizable within this statutory framework. On the proposed model all governance arrangements will require the approval of ESA. Failure to achieve approval, or refusal to engage in the process, will result in the imposition of a scheme of management.

17. The Minister states in her letter of 13th January 2009 that:

"the ESA will not micro-manage schools. The ESA will support first and most, and intervene last and least. Successful well run schools will see little of ESA if that is their wish. Schools that aim to improve and develop themselves will have access to high quality advice and support on demand. It is only those schools that are unsuccessful, and which lack the capacity for self improvement, that would be subject to intervention."

18. Once again GBA members will concur with some of the sentiments expressed by the Minister. However, our analysis is that these objectives find no expression in the present governance arrangements outlined in the draft Bill. The requirement upon Boards/Trustees to submit schemes of management for approval by ESA is indicative of a body which, first and foremost, will intervene in the elementary components of school governance. The present Bill provides a charter for micro-management.

19. GBA submit that schools which are not underperforming against any objective indicia should not be subject to the ESA "scheme of management" arrangements. This can be achieved by further amendment to the present proposed scheme. Undoubtedly, there may be some schools which will welcome centralised control of governance arrangements. There ought, however, to be scope for those schools who simply do not require this degree of regulatory oversight to be subject to a "light touch" system of scrutiny by ESA.

20. GBA suggest that Clause 30(1) should be remodeled to reflect the approach adopted in section 14 and 15 of the School Standards and Framework Act 1998 with these provisions being triggered by DE rather than ESA. The ETI remains under DE control. GBA believes that such grave decisions should only be considered after considerable scrutiny from ETI and other educational professionals rather than a bureaucratic organization such as ESA. LEAs in GB have their own inspectorate. ESA should have no such powers. These provisions were designed to establish a trigger mechanism for intervention which was proportionate and tailored to meet particular identified needs. A similar "trigger" clause of the imposition of "scheme of management" could be readily grafted on to the proposed Education Bill. GBA set out the provisions of section 14 and 15 below to assist the Committee in determining how a

proportionate model of light touch governance regulation can be introduced in a legislative scheme.

Intervention in schools causing concern

Intervention by LEAs

14

Powers of intervention exercisable by LEAs

(1) If at any time section 15 applies to a maintained school by virtue of any of the following provisions of that section, namely—

- (a) subsection (1) (school subject to formal warning),
- (b) subsection (4) (school with serious weaknesses), or
- (c) subsection (6) (school requiring special measures),

the provisions mentioned in subsection (2) below (which confer powers of intervention on local education authorities) shall also apply to the school at that time unless excluded by subsection (3) below (intervention by Secretary of State).

(2) Those provisions are—

- (a) section 16 (power to appoint additional governors); and
- (b) section 17 (power to suspend right to delegated budget).

(3) Those provisions shall not apply to a school to which section 15 applies by virtue of subsection (6) of that section (school requiring special measures) if, in connection with the same report falling within paragraph (a) of that subsection—

- (a) the Secretary of State has exercised in relation to the school his power under section 18 (power to appoint additional governors) and any additional governors appointed in the exercise of that power remain in office; or
- (b) he has exercised in relation to the school his power under section 19 (power to direct closure of school).

15

Cases where LEA may exercise powers of intervention

(1) This section applies to a maintained school by virtue of this subsection if—

(a) the local education authority have—

- (i) given the governing body a warning notice in accordance with subsection (2), and
- (ii) given the head teacher of the school a copy of the notice at the same time as the notice was given to the governing body;

(b) the governing body have failed to comply, or secure compliance, with the notice to the authority's satisfaction within the compliance period; and

(c) the authority have given reasonable notice in writing to the governing body that they propose to exercise their powers under either or both of sections 16 and 17 (whether or not the notice is combined with a notice under section 62(3)(c)).

(2) A local education authority may give a warning notice to the governing body of a maintained school where—

(a) the authority are satisfied—

(i) that the standards of performance of pupils at the school are unacceptably low and are likely to remain so unless the authority exercise their powers under either or both of sections 16 and 17, or

(ii) that there has been a serious breakdown in the way the school is managed or governed which is prejudicing, or likely to prejudice, such standards of performance, or

(iii) that the safety of pupils or staff of the school is threatened (whether by a breakdown of discipline or otherwise); and

(b) the authority have previously informed the governing body and the head teacher of the matters on which that conclusion is based; and

(c) those matters have not been remedied to the authority's satisfaction within a reasonable period.

21. GBA submit that the need for centralised intervention in school governance must be predicated upon an objectively verifiable and continuing need. Moreover, the imposition of a scheme of management should only take place once a school has been given an "unless" warning to enable them to take remedial steps to the satisfaction of the DE. GBA have seen no compelling argument which outlines why the governance oversight arrangements which apply in England and Wales are not appropriate for Northern Ireland. GBA invites the Committee to reflect on the comparative bureaucratic and resource costs involved in the GB scheme as opposed to those arising from the Northern Ireland education bill. It is submitted that the proposals outlined in the Education Bill involve an entirely disproportionate interference with governance arrangements which have never, as yet, been empirically shown to be anything less than fit for purpose.

22. Furthermore, the approach to schools governance which the Minister appears to be advocating in her correspondence with the GBA fits with the model which appears in the 1998 Act. There is virtually no scope for arms-length oversight and autonomous schools governance within the present provisions in Clauses 30-33 of the Education Bill.

National Society for the Prevention of Cruelty to Children (NSPCC)

At the Long Gallery session last week we mentioned to Trevor Lunn and John McCallister about a possible amendment to the Education Bill and I have also previously discussed this with Michelle McIlveen. Members asked that I copy this suggestion to you for wider discussion with members as part of the Committee Stage of the legislation.

The background to our suggested amendment comes from our fairly extensive involvement in child protection arrangements in the education sector where we both provide services and have considerable contact with children through our ChildLine service.

While there is much to commend about the developing good practice by schools and teachers, there is still some work still to be done to ensure schools comply with and are integrated fully into the inter-professional child protection arrangements. Practice examples suggest that in a minority of cases, certain gaps exist between the actions of the school Principal and what is required in guidance, resulting in decisions being made not to refer child protection concerns in line with established procedures and guidance. Boards of Governors may not be made aware of these decisions as they fall within the day to day operational management of the school.

Under Clause 47 of the Bill ESA (through amendment of the 2003 Education and Libraries Order) can direct Boards of Governors to carry out certain actions; from a governance perspective we would suggest that the clause should include also the word 'Principal'. This would facilitate ESA to issue directions to either the Boards of Governors and/or the Principal dependent on the situation or non-compliance with Departmental guidance.

I have taken the liberty of suggesting what this amendment might look like in blue underlined bold italics.

NSPCC would be happy to discuss this matter further with the Committee if you would find that useful.

Protection of children and young persons

Safeguarding and promoting welfare of children and young persons

44. —(1) It is the duty of ESA to ensure that its functions are exercised with a view to safeguarding and promoting the welfare of children and young persons.

(2) In considering how to carry out that duty ESA shall have regard to any guidance given to it by the Department.

(3) In particular ESA shall —

(a) from time to time review —

(i) the exercise by Boards of Governors of their duties under Articles 17 and 18 of the 2003 Order;

(ii) the exercise by providers of funded pre-school education of their duties under Article 21A of the 1998 Order;

(iii) the exercise by persons in receipt of such grants as are mentioned in subsection (1) of section 46 of duties imposed on them by virtue of subsection (2) of that section;

(iv) the exercise by persons who have entered into such agreements or arrangements as are mentioned in subsection (3) of section 46 of duties imposed on them by virtue of subsection (4) of that section;

(b) issue such directions under Article 18A of the 2003 Order as appear to ESA to be necessary to ensure compliance with the duties mentioned in paragraph (a)(i); and

(c) issue such guidance and take such other steps as appear to ESA to be necessary or expedient to ensure compliance with any of the duties mentioned in paragraph (a).

Duty on providers of funded pre-school education to safeguard and promote welfare of children

45. In Part 5 of the 1998 Order at the end of Chapter 1 (provision of pre-school education) insert —

“Duties on providers of funded pre-school education to safeguard and promote welfare of children

21A. —(1) It is the duty of a person providing funded pre-school education for any children to safeguard and promote the welfare of those children at all times when those children are —

(a) on relevant premises; or

(b) in the lawful control or charge of that person or relevant staff.

(2) It is the duty of a person providing funded pre-school education —

(a) to determine the measures to be taken on relevant premises (whether by that person or any other responsible person) with a view to protecting children from abuse (whether on those premises or elsewhere);

(b) to review those measures —

(i) from time to time; and

(ii) (without prejudice to head (i)) at such times as the Department or ESA may direct;

(c) in determining or reviewing those measures to have regard to any guidance given by the Department or ESA;

(d) to prepare a written statement of such measures and to secure that —

(i) a copy of that statement is given (free of charge) to the parents of all children for whom that person provides funded pre-school education and to relevant staff; and

(ii) copies of the statement are available for inspection (at all reasonable times and free of charge) on the relevant premises; and

(e) to secure that such measures are taken.

(3) Directions under paragraph (2)(b)(ii) may be given —

(a) in relation to all persons providing funded pre-school education generally;

(b) in relation to a class or description of such persons; or

(c) in relation to any particular person or persons providing such education.

(4) In this Article —

“abuse” includes sexual abuse and abuse causing physical or mental harm to a child;

“funded pre-school education” has the same meaning as in Article 21;

“relevant premises”, in relation to any person providing funded pre-school education, means any premises used by that person for the provision of that education;

“relevant staff”, in relation to any person providing funded pre-school education, means any person employed by that person for the purposes of, or in connection with, providing that education.”.

Duty of providers of educational and youth services to safeguard and promote welfare of children

46. —(1) Subsection (2) applies where —

(a) ESA proposes to make a grant under section 15; or

(b) the Department proposes to make a grant under Article 115(1)(a) or (b) of the 1986 Order.

(2) It is the duty of ESA or (as the case may be) the Department to ensure that the grant is made subject to such conditions as appear to it to be necessary or expedient to safeguard and protect the welfare of children and young persons.

(3) Subsection (4) applies where ESA or the Department is to enter into an agreement or arrangement with any person —

(a) for the purposes of, or in connection with, the provision (or proposed provision) of educational services or activities carried out in connection with such services; or

(b) for the purposes of, or in connection with, the provision (or proposed provision) of youth services or activities carried out in connection with such services.

(4) It is the duty of ESA or (as the case may be) the Department to ensure that the agreement or arrangement contains such conditions as appear to it to be necessary or expedient to safeguard and protect the welfare of children and young persons.

(5) The conditions mentioned in subsections (2) and (4) may in particular —

(a) impose a duty on a specified person to safeguard and promote the welfare of specified children and young persons at specified times or while they are on specified premises or in the charge of specified persons;

(b) impose other requirements in relation to the measures to be taken for the purposes of implementing that duty;

(c) require specified persons to have regard to any guidance issued by ESA under section 44(3);

and in this subsection "specified" means specified in, or of a class or description specified in, the conditions.

Directions as to exercise of child protection duties by Board of Governors and Principals

47. In the 2003 Order after Article 18 insert the words 'and Principals' after Board of Governors at paragraph (1) and

"Directions as to exercise of duties under Articles 17 and 18

18A. —(1) ESA may give directions to the Board of Governors and/or the Principal of a grant-aided school as to the performance of any duty imposed on that Board under Article 17 or 18; but ESA shall consult the Board of Governors, the Principal and the Department before giving any such direction.

(2) In particular, but without prejudice to the generality of paragraph (1), directions given under that paragraph may require a specified duty—

(a) to be performed;

(b) to be performed in a specified manner;

(c) not to be performed in a specified manner;

and in this paragraph "specified" means specified in directions.

(3) If, on a complaint made to it, ESA is satisfied that a Board of Governors and/or a Principal of a grant-aided school has acted or is proposing to act unreasonably with respect to the performance of any duty imposed on that Board by Article 17 or 18, ESA shall give such directions under paragraph (1) as to the performance of the duty as appear to ESA to be expedient to remedy that complaint.

(4) It is the duty of a Board of Governors or a Principal to comply with any directions given to the Board under paragraph (1) and any such directions may be enforced by mandamus."

Duty of co-operation concerning welfare and protection of children and young persons

48. —(1) It is the duty of —

(a) the Boards of Governors of grant-aided schools,

(b) the providers of funded pre-school education, and

(c) persons on whom a duty is imposed by virtue of section 46(5)(a),

to co-operate with —

(i) ESA in the exercise of its duty under section 44; and

(ii) an authority in the exercise of its functions under Part 6 of the Children (Northern Ireland) Order 1995 (NI 2).

(2) In this section —

“authority” has the same meaning as in the Children (Northern Ireland) Order 1995 (NI 2);

“funded pre-school education” has the same meaning as in Article 21 of the 1998 Order.

NICCY

northern ireland commissioner
for children and young people

patricia lewsley
commissioner

gerard campbell
chief executive

John Simmons
Clerk to the Committee for Education
Room 241 Parliament Buildings
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20th February 2009

Our ref: 09/PD/PL/016

Dear John

Thank you for inviting NICCY to submit written evidence to the Committee. I would like to confirm that I have no issues to raise on the matters arising from the bill. However I would ask for an amendment to be put in the Education Bill making it a statutory obligation for all schools in Northern Ireland, both primary and post primary, to put in place school councils with strong guidelines and standards.

Yours sincerely



Patricia Lewsley
Commissioner



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Northern Ireland Commission for Catholic Education (NICCE)

Summary of Evidence

The Northern Ireland Commission for Catholic Education (NICCE) represents and speaks for the Trustees of the 550 Catholic Schools in Northern Ireland.

The Draft Education Bill poses the following critical questions for Trustees:

- Is there adequate recognition of the rights of parents?
- Is there adequate legislative provision for Trustees to exercise their rights and their duties?
- Are there adequate structures of support for each education sector?

The Trustees therefore highlight the following in their evidence:

- The proposal that the ESA will be the employer of all staff in all schools is a fundamental impediment to the ability of owners/ Trustees to exercise their rights and duties regarding the ethos and defining character of a school. This proposal is contrary to the principle of maximised autonomy for schools.
- The Trustees urge the Education Committee to recommend amendments to the Draft Bill which will affirm the freedom of schools, under the principle of autonomy, to assume full and ultimate responsibility as employer for all staff.
- Schemes of Employment and Management for a school should be consistent with the ethos and defining character of a school. There is explicit legal recognition of this principle in the other jurisdictions of the United Kingdom.
- The current legal requirement on DE & ELB's to consult with the Trustees/ Boards of Governors re their appointees to the Board of Governors of a school will remain in place for the ESA. The Trustees ask that in future legislation the term 'in consultation with' be used in place of 'consult'.
- The Trustees welcome the setting up of support bodies for each sector. The roles and functions of these support bodies will be agreed between DE and the owners/Trustees in each sector and will not duplicate or overlap with functions which are the responsibility of the ESA. There should be a clause or clauses in the Bill on Sectoral Support Bodies.
- These clauses should refer in particular to the role of Sectoral Support Bodies in the raising of standards and on the duty of the Sectoral Support Bodies to consult with one another on matters of common interest, including the promotion of good relationships, reconciliation and peace. These clauses should also include a duty on the Board of Governors of a school to co-operate with the role of the relevant Sectoral Support Body.
- The Bill and subsequent policy documents should designate the single network of Catholic schools (Maintained and Grammar) as 'Catholic Grant-Aided Schools'.
- The Trustees ask that the composition of the ESA should ensure a better balance as between councillors and other members.
- The status of the ESA committees and their relationship to the ESA Board, to 'Local Teams' and to local Councils requires further clarification within the Bill.

Submission

Introduction

1. The Northern Ireland Commission for Catholic Education (NICCE) represents and speaks for the Catholic Bishops and leaders of Religious Congregations in their role as Trustees of the network of 550 Catholic Schools in Northern Ireland.
2. Trusteeship in the long history and international tradition of Catholic education is based on a core principle: that Trustees have received in trust a sacred duty from generations of Catholic parents to provide schools with suitably qualified teachers for those parents who wish to have their children educated according to the philosophy and values of Catholic education.
3. The values of Catholic education are deeply embedded in the principles of religious freedom, respect for diversity and concern for the common good. They include a specific commitment to working in collaboration with others, to reconciliation and to a Christian humanism which defends and promotes the inherent freedom, dignity and rights of every person.
4. Catholic education entails a comprehensive philosophy and a holistic approach to education. It can never be reduced to the provision of religious education alone. Catholic education rests on the principle that the spiritual, moral, social and intellectual character of a child involves close collaboration between the home, the local community of faith in the parish, and the school. It is essential, if parents in Northern Ireland are to continue to have access to Catholic education for their children, that we ensure that each of these elements – the home, the parish and the school – can interact effectively. Ensuring that Catholic Education is available for parents who choose it is integral to a free, diverse and pluralist society.
5. NICCE recognises and values the distinctive role of the State in the provision of education. Acknowledging that Church and State have distinct areas of responsibility and competence in educational matters is also integral to a free, diverse and pluralist society. In relation to schools, it is the Trustees who have the right and competence to determine what constitutes the ethos of a Catholic school and to determine whether or not that ethos is adequately provided for in a particular administrative or legislative framework.

Values: The Primary Duty of Trustees

6. In the Catholic tradition therefore, Trusteeship is first and foremost about the right/duty of Trustees to determine the values which define a Catholic education and their right/duty to ensure that these values are upheld and promoted by the schools they hold in Trust. Rights deriving from the legal ownership of property are secondary to this prior right to determine matters of ethos.
7. Therefore a critical question for the Trustees of Catholic schools in Northern Ireland is whether or not the proposed Education Bill provides:
 - a. Adequate recognition of the rights of parents to have their children educated in a manner consistent with their religious and philosophical convictions, a right recognised in the provision of publicly funded faith based schools in England, Wales, Scotland and the Republic of Ireland, a right upheld in the European Convention on Human Rights (Protocol 1, Article 2) and in other international instruments;

b. Adequate legislative provision for Trustees of all schools to exercise their duty of ensuring the values, structures and practices which characterise a given school are consistent with the rights of parents regarding their religious and philosophical convictions. The employment of teachers and other key staff, membership of Boards of Governors and those aspects of the curriculum which may support or undermine the said values are vital elements in this regard;

c. Adequate structures of support, co-ordination and solidity for each education sector in Northern Ireland.

Based on these criteria the Trustees now present evidence on those aspects of the current draft of the Education Bill (NIA Bill 03/08) which follow.

8. As in previous submissions on the Review of Public Administration, the Trustees accept the general principle underlying the current Bill of establishing a more streamlined, coherent and efficient system of education in Northern Ireland. However further clarification is required on critical areas which impact on the ability of schools in all sectors to support their ethos and defining character.

The critical link between 'Employment' and 'Ethos'

9. Clarity around which body may act as the legal employer of teachers and other key staff in a school is essential if Trustees and Boards of Governors are to have the freedom to exercise their right/ duty to create and maintain a particular ethos and defining character in a school. NICCE wants to make it clear, in the strongest possible terms, that it regards the right of Boards of Governors of Schools to be the legal employer of teachers and other key staff as critical to the future provision of schools of a particular ethos and defining character in Northern Ireland.

10. We note with concern therefore that Article 3 (1) of the draft Bill indicates that the ESA will be the employer for all staff of grant-aided schools. All employer functions shall be delegated from the ESA and can be withdrawn by the ESA. This is a fundamental impediment to the ability of owners/ Trustees and Boards of Governors to exercise their rights and duties regarding the ethos and defining character of a school. It is also completely contrary to the principle of maximised autonomy for schools which we strongly support. It would be fully consistent with this principle for the Board of Governors of a school to be the legal employer for all staff, as is the case at present with voluntary grammar schools.

11. The question must be asked: will the ESA, as employer, have the right to deploy staff between schools? This would be unacceptable if no recognition is given to the rights of the owners/Trustees and/or Boards of Governors to approve of any such redeployment or of the duty on the ESA in effecting such redeployment to act in a manner which respects the ethos and defining character of a particular school.

12. The Trustees therefore urge the Education Committee to recommend amendments to the draft legislation which will affirm the freedom of Boards of Governors, under the principle of autonomy, to assume full and ultimate responsibility as employer for all teachers and key staff. This is essential if they are to fulfil their duty to ensure the ethos and defining character of a school. As Trustees of the largest group of schools in Northern Ireland we find it unacceptable that this right of Boards of Governors is not provided for in the draft Bill. As previously stated, we hold that clear recognition of this right to act as employer is completely consistent with the principle of autonomy of schools affirmed in various Policy Papers from the Department of Education for Northern Ireland.

13. As Trustees we welcome recognition in the Draft Bill that the owner/Trustees will have a key role in determining the Scheme of Employment (Clause 3.2a) and Scheme of Management (Clause 31.7) of each Catholic grant-aided school. Again, this is essential if owners/ Trustees are to fulfil their right/ duty to ensure the ethos and defining character of a school are sufficiently recognised and present. Where the draft Bill is amended to allow a Board of Governors to assume responsibility for employment matters, as proposed in '12' above, it is essential that the right/ duty of the owner/ Trustees to ensure that Schemes of Employment and Schemes of Management are consistent with the ethos and defining character of a school continues to be recognised through appropriate amendments to the current draft of the Bill.

14. In this regard, the Trustees note the explicit legal recognition in the other jurisdictions of the United Kingdom of the principle that Trustees and Governing Bodies must be able to promote and support the ethos and defining character of their school through the employment and management of teachers and key staff. While acknowledging the variation in administrative frameworks through which such legislation is exercised, we draw attention to the principles underpinning legislation such as the Education (Scotland) Act 1980, Section 21, 2, 2A & 2B and the associated Self Governing Schools etc (Scotland) Act 1989, Section 81, 1&2, Schedule 10, par. 8(7a-f) and the School Framework and Standards Act 1998, Section s 58 & 60 in England. Attention is also drawn to similar recognition of the rights of owners/Trustees of schools in the Employment Equality Act 1998 (Ireland), Section 37, (1) & (2).

15. NICCE holds that owners/Trustees and Governors of Schools in Northern Ireland should have no fewer rights or protections in legislation as those provided for faith-based schools in other parts of the United Kingdom or other comparable jurisdictions. For the purposes of supporting the ethos and defining character of a given school or family of schools, this includes ensuring the retention of all existing exemptions to Fair Employment Legislation in Northern Ireland re the recruitment of teachers.

Consultation re Appointment of 'Community Governors'

16. NICCE notes that the Bill also enshrines a new definition of 'community governors', to be chosen by the ESA and to replace Board and DE appointments on Boards of Governors. The current legal requirement on the Boards and on the Department of Education to consult with the Trustees/ Boards of Governors regarding such appointments is stated in Schedules 5 & 6 of the Education and Libraries (Northern Ireland) Order 1986. While NICCE notes that said schedules will remain in force with the new legislation, we ask that the duty on the ESA to appoint the proposed community governors 'in consultation with' Trustees/ Boards of Governors be included in the new legislation. The inclusion of the phrase 'in consultation with' will help to ensure that the nature of this consultation is such that community governors will understand the ethos and defining character of the school on which they will serve as governor. The Trustees regard this as essential.

Representative role of Sectoral Support Bodies

17. NICCE welcomes the setting up of a sectoral support body to assist the owners/ Trustees of the schools in each sector. The roles and functions of each sectoral support body will be as agreed between DE and the owners/ Trustees. These will not duplicate or overlap with functions which are the responsibility of the ESA.

18. We ask that there should be a clause in the Bill on Sectoral Support Bodies.

19. In particular we ask that a clause be included on the duty of Boards of Governors and Senior Management of schools to co-operate with the relevant sectoral support body. We note that

Clause 34(2) of the draft Bill states that 'it is the duty of the Board of Governors to co-operate with the ESA in relation to actions undertaken by the ESA with a view to promoting the achievement of high standards of educational attainment by those pupils.' DE recognises the role which the sectoral support bodies will have in promoting effectiveness and raising standards in schools in their sector. Including a clause on the duty of schools to co-operate with the relevant sectoral support body as well as with the ESA would reinforce the importance of raising standards in all schools.

20. The Education (NI) Order 1998 Section 11(3) (b) currently requires consultation with the Trustees where the Department of Education is providing regulations on school performance targets. Recognising the role of sectoral support bodies in raising standards NICCE therefore asks that the Education Bill confirm a duty on ESA to consult with and have due regard for the advice of each sectoral support body in respect of school performance targets. A similar duty to consult with and have due regard for the advice of the sectoral support body would be appropriate in respect of the direction given to schools in respect of class limits, regulations on the provision of information to schools and other such issues. NICCE further holds that the Education Bill should provide legislation which creates a duty on the sectoral support bodies to consult regularly with one another on matters of common interest, including the duty on schools to promote good relationships, reconciliation and peace.

21. NICCE notes that Schedule II of the 1998 Order is to be removed. This related to staff of Controlled and Catholic Maintained schools with delegated budgets and covered issues such as discipline and grievance under the Board of Governors control, their right to suspend employees and provisions in relation to dismissals. NICCE assumes that the delegation of these areas of responsibility to Boards of Governors is to be repeated in subsequent legislation but notes with concern that as yet they are not provided for. NICCE would hold that the delegation of such functions to Boards of Governors is essential to their ability to manage and promote the ethos and defining character of a school and that therefore at least the option of their being held by Boards of Governors should be retained. This general point is a matter which, as noted already, requires further clarification from the Department of Education, particularly in relation to its impact on the scope of any Scheme of Management or Scheme of Employment.

22. NICCE notes that the Education (NI) Order 1998, Article 50 & 60, makes provision for Trustees to be informed of the suspension of delegation of a schools budget share and to make representations during a review of suspension. This should be included in the new legislation.

The collective designation for Catholic Schools

23. NICCE draws attention to a potential confusion in the use of the phrase 'Catholic Maintained Schools' throughout the draft Bill to describe all schools in the Catholic sector. The distinction between Catholic Maintained and Catholic Voluntary Grammar schools will no longer exist under the proposed legislation. Where this phrase is used in the current draft of the Bill it should therefore be read as referring to all schools in the Catholic Sector, that is Catholic Maintained (Pre-school, Primary and Second Level) and Catholic Voluntary Grammar together.

24. As Trustees we therefore ask that in the final Bill and in subsequent policy documents the single network of Catholic schools (Maintained and Grammar) be in future designated collectively as 'Catholic Grant-Aided Schools'.

Membership of the ESA

25. NICCE has concerns in relation to Clause 2 of Schedule 1 of the Draft Bill. While we welcome that in Clause 2(b) 'each member' appointed will have 'experience in a field of activity relevant to

the discharge of the functions of ESA', we are concerned 'that at any time a majority of members are councillors' (Sch 1, Clause 2(a)). In NICCE our experience of the contribution of elected representatives on such bodies has generally been positive and confirms the importance of having active links between key public bodies and elected representatives with responsibility for public policy and legislation. However, NICCE is concerned about the degree to which, under the proposed arrangement, political rather than educational factors might impact on important educational, planning and other decisions to be made by the ESA. While it is clear that a councillor appointee to the ESA must have relevant experience, NICCE nevertheless asks that the composition of the ESA should ensure a better balance as between councillors and other members.

26. NICCE also notes that the ESA may establish committees (Sch. 1, Clause 7) and that the Minister in her Statement to the Assembly (8th December 2008) said that 'local manager and delivery units... will be sensitive to and receive input from local committees comprising, amongst others, a number of elected representatives'. The status of these Committees and their relationship to the ESA Board, to 'Local Teams' and to local Councils requires further clarification within the Bill.

NICCE willing to discuss evidence with the Education Committee.

28. In conclusion, NICCE welcomes this opportunity to present evidence on the draft Bill. As Trustees of the 550 Catholic schools in Northern Ireland we are happy, if invited, to discuss this submission further with the Education Committee.

Northern Ireland Council for Curriculum Examinations and Assessment (CEA)



Written Evidence to the Committee for Education on the Education Bill

Council strongly supports the need for rationalisation of education in Northern Ireland and the establishment of a single Education and Skills Authority (ESA).

In its response to the consultation on the *Review of Administration (RPA)*, the Council expressed the view that the revised curriculum and assessment arrangements are designed to encourage young people to embrace the richness of learning and prepare them for work in a rapidly changing world. To achieve this, they must develop knowledge, skills and dispositions necessary for them to contribute as local and global citizens.

It remains Council's view that to achieve this objective, strong leadership, clear and consistent policies, appropriate structures and clear lines of accountability are necessary for a quality assured education provision.

Learning is not confined to children and young people in schools. A truly inclusive education service should take account of the needs of all those that engage in learning including outside the classroom, at home and in the workplace. Council is pleased that the synergy between youth services and formal education has been acknowledged and that provision for both will be the responsibility of ESA.

It is Council's view that a single government department should have responsibility for education in order to achieve maximum coherence for all education services. It is disappointing that functions relating to education in Northern Ireland are not transferring to ESA from both DE and DEL.

It is critical that both government departments work as one in agreeing education policies governing the very earliest years, throughout formal education and beyond. Success in improving standards and providing equality of access for all learners is not dependent on a single government department being responsible. However it is dependent on synergy and co-operation between two departments and effective management of interfaces between organisations and agencies delivering services and monitoring outcomes.

Council believes that the establishment of a single Education and Skills Authority will reduce or eliminate duplication, make accountability clearer and create the conditions for improvement in education standards. However, structures alone cannot bring about improved educational experiences and standards.

All provision should have learners at the core. Consideration should be given to the needs of children and young people and how they contribute to their communities and the world. All learners should have equality of access to high quality facilities and an educational experience which meets their needs.

There should be a shared vision for the future of education in Northern Ireland. Policies should be consistent with that vision as well as being clear and consistent over time.

The Education Bill provides the context for a new way of delivering education services in Northern Ireland. The Council strongly supports it.

DRAFT

John Simmons
Committee Clerk
Committee for Education
Room 242 Parliament Buildings
Belfast, BT4 3XX.

20 February 2009

EDUCATION
COMMITTEE
RECORD
23 FEB 2009
247/09/1/01

Dear John

Written submission on the Education Bill

I am writing to you on behalf of the Northern Ireland Council for Integrated Education, a limited company with charitable status, incorporated in 1989 and which exists to facilitate debate and the development of policy on Integrated Education in Northern Ireland, to assist in the provision of adequate finances for schools and to provide support to schools and new parent groups.

May I begin by welcoming the recent decisions to proceed with the establishment of ESA in 2010, as we in the Council have supported a review of educational administration for some considerable time.

We also welcome the fact that there will be a number of sectoral bodies which will exist alongside ESA, with the remit to support ethos within those sectors, and look forward to a positive engagement in the future.

We have a few observations and comments on the Bill, which we will record below.

1. We welcome the idea behind ESA as well as the establishment of the Authority.
2. We welcome the fact that all teachers will now have similar terms and conditions of employment with one employing body, but would like an assurance that the right of the Board of Governors to "hire and fire" staff is retained. This is of particular significance in integrated schools where ethos is a core value.
3. In para 13, reference is made to ESA's provision of training and advisory support services for schools. As an agency which has worked with integrated schools in this area, we would anticipate that there is no overlap or duplication of resources involved. A number of the sectoral support bodies have high levels of competence and expertise in training and advisory support which is specific to their sectors. NICIE is one of these bodies. In our view the support for schools cannot be fragmented and so we would ask that this area of ESA's work is carried out to the benefit of all schools of all sectors, in a way that uses existing expertise and experience to the best impact. This might be best facilitated through buying in of existing expertise.

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Northern Ireland Council for Integrated Education

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4. In para 16, reference is made to ESA assuming the role for capital expenditure of all schools, including integrated schools. We would hope that by this transfer, all schools will now be treated equally in terms of capital build and estate provision. We have a concern over the place of the schools which NICIE and the IEF are currently supporting through the 'Club Bank' and have not as yet met DE criteria for approval, and would ask for early clarity on the role of ESA in this regard as this paragraph does not deal with the matter.

5. In par 23, we observe that there is no mention of good relations or community relations and feel that this is an omission which needs to be addressed if our future is to be really a shared future. There is also no mention of the duty to encourage and facilitate integrated education (ERO, 1989 article 64(1)) which we assume still rests with the Department.

6. We welcome para 36 and the addition of part time teachers to be eligible as governors.

7. We have grave concern about the membership of the ESA as outlined under Schedule 1:para 2 (2a). We do not feel that locally elected councillors should be the majority on the Board of ESA, as it is our view that ESA should be beyond politics. It is our view that the Board membership should be made up of the best and most competent members, selected through a transparent process and public advert, as is normal in such appointments. Although not precluding any elected members from applying, this would ensure the principles of equity and equality of access to such positions are maintained.

8. We welcome the payment to such members, as highlighted under para 4 of Schedule 1, as this will go some way to indicating the high levels of responsibility which membership of the Board carries.

So, in conclusion, we are positively disposed to the idea underlying the establishment of ESA and with the exception of the membership quotas and with our observations noted, we support the Bill in principle.

Yours sincerely



Michael Wardlow
Chief Executive Officer

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Northern Ireland Voluntary Grammar Schools' Bursars Association (NIVGSBA)

The Northern Ireland Voluntary Grammar Schools' Bursars Association (NIVGSBA) has reviewed the draft Education Bill 2008 and the Policy Papers which have been issued in relation to the Review of Public Administration (RPA) and it is the conclusion of the Association that the proposals are too wide-ranging and ambitious to be effective.

Voluntary Grammar schools are owned by Trustees, Church Foundations established under statute or corporate entities, and are directly funded by the Department of Education by way of

a common formula allocation. Each Board of Governors has the autonomy to administer these delegated funds to meet the specific educational needs within their individual schools.

There are currently fifty-two voluntary grammar schools across Northern Ireland. Thirty two of these are owned and governed by Trustees of the Catholic Church and the remaining twenty are owned by their own trustees and run by their Boards of Governors.

The chief characteristics of these schools and of the voluntary principle are:

- The trustees own their school land and buildings;
- The responsibilities of the trustees are commonly set down in a foundation deed of trust which sets out the aims of the school and the obligations that fall on the trustee governors;
- The trustees make up either the entire membership (apart from elected teacher and parent representatives) or comprise the largest group of each school's governing body;
- The schools recurrent funding comes directly from - and they are therefore directly accountable to - the Department of Education: there is no intervening body;
- Their approved capital expenditure comes from the Department of Education, the percentage payable varying from one voluntary school to another;
- Very importantly their governing bodies employ all members of staff and are responsible therefore for recruiting, deploying, managing and paying all those working for the school concerned;
- The governing bodies are also responsible for entering into contracts or the making of arrangements for the services required to run the schools, the ordering of materials and equipment and protecting and insuring all pupils, members of staff and the public together with buildings, facilities and equipment;
- The governing bodies are responsible for the financial management of the schools including dealing with any financial issues that arise;
- In addition to the duties laid down in their foundation documents they are charged with carrying out exactly the same statutory duties and responsibilities as every other grant aided school;
- They have the right to determine the ethos, character and activities of their schools.

The present system provides clear lines of responsibility and accountability for the delivery of education to a high standard.

The Education Bill, in establishing a single Education Authority will:-

- reduce the existing autonomy of schools, by transferring significant control to a centralised body to manage all types of schools,
- remove the employer and contracting function from Boards of Governors,
- undermine the voluntary principle of school governance,
- dilute the autonomy of voluntary schools so as to make them voluntary in name only,
- introduce a one-size-fits-all nationalised education system, despite the stated government desire that there should be a diversity of school management,
- contradict ongoing developments in Great Britain where the focus is on maximising autonomy at a local level in schools,

- increase bureaucracy and 'red-tape'.

The Board of Governors of a voluntary school is currently the employing authority, and, as such, is responsible for the employment of all staff in their school. One of the key roles proposed for the Education and Skills Authority is being responsible for the employment of all staff in grant aided schools. This will result in a dilution in the role and very importantly the direct interest of Boards of Governors of individual schools and will significantly undermine the voluntary principle. The loss of the granting of contracts and purchasing will similarly reduce the autonomy of these schools.

The loss of such autonomy will greatly undermine what has become a highly envied sector within education in Northern Ireland and beyond, where professional and enthusiastic Governors representing the foundation of the school together with parental, teacher and in many cases Department of Education interests, are prepared to give of their time and energy for the benefit of their school. Clearly no-one is better placed to meet a school's needs than school Governors who are personally dedicated to its success and who are selected, by virtue of their personal and professional qualities, to provide leadership, direction and guidance. We would argue that such Governors are ideally placed to make key decisions for the school for which they are responsible in the best interests of that school.

We also believe that in practical terms if the ESA takes control of the voluntary sector there has been a serious underestimation of the challenges which lie ahead. If the ESA were to become the employing authority, the Transfer of Undertaking (Protection of Employment) Regulations (TUPE) preserves employees' existing terms and conditions of employment in each of the individual voluntary grammar schools. The Regulations have the effect that employees employed by their respective Board of Governors would automatically become employees of the ESA on the same terms and conditions. As each voluntary school is autonomous there is little read-across in terms of salary and conditions etc, which will ultimately be difficult to administer for the new umbrella organisation. This will very likely raise further issues of equality and job evaluation at a time when the new agency is only bedding in.

The strategic planning currently undertaken by Governors ensures the efficient delivery of education. The present structure of school management within the Voluntary Grammar sector has proved to be successful in managing and determining the direction of individual schools in the past and hence should not be undermined by an umbrella body with no connection or vested interest in individual schools.

The initial proposals highlighted the importance of maximising the autonomy of schools, whereas in reality the content of the proposed Bill would, in fact, reduce the existing autonomy of schools, by transferring significant control to a centralised body.

The proposed role of the ESA with respect to the procurement of all capital and maintenance projects is impractical and there is no evidence that centralised control of building maintenance and procurement can deliver economies of scale. The proposal that the ESA will assume the current role of 'Contracting Authority' removes a further key area of decision making for schools.

We would maintain that the voluntary principle, which is closely linked to autonomy, must be extended, rather than being eroded. The voluntary model is admired across the education sector and as such schools should be given greater autonomy and be "empowered" rather than have existing powers removed.

The Bursars Association is concerned that this extensive programme of rationalisation of administration has not been properly costed and that projected cost savings are overstated.

Whilst there can be an argument that there may be economies of scale by reducing the number of Education and Library Boards, there can be no coherent rationale for the proposal to envelop all schools into a single education support body and erode the benefits associated with our present autonomy and replace it with the inevitable administrative burden created by central control. The operational aspects of schools within the voluntary grammar sector have proven that they offer value for money and operate at levels of efficiency beyond those in the controlled sector.

A single administrative body will increase bureaucracy and hence will undoubtedly be less efficient and less cost effective than a system of administration which delegates control to individual schools.

In conclusion, there should, therefore, be no alteration to the role of Boards of Governors as the sole managing authorities for voluntary schools.

The Association cannot support those aspects of the review of public administration that jeopardise the effectiveness, efficiency and continuance of Voluntary Grammar Schools and believes that if the proposals are implemented they will impact negatively on the education provision in Northern Ireland.

I have tried in this letter to set out a few of the major issues of concern, but the Committee of the NIVGSBA would be delighted, if given the opportunity, to discuss this topic in more detail.

Northern Ireland Voluntary Grammar Schools' Bursars Association (NIVGSBA)

1. The NIVGSBA represents bursars in the fifty-two voluntary grammar schools across Northern Ireland. The bursar is normally responsible to the Governing Body for the conduct of their schools financial affairs, business management and material state of the premises and grounds. Bursars are professionals who possess a range of qualifications mostly in business management, accountancy and/or law. The bursar has many responsibilities but, perhaps above all, the bursar's role in voluntary schools is an enabling one which allows the school to carry out its function of educating children. From the outset we must say that the NIVGSBA is in favour of achieving greater efficiencies within the education sector and in seeing the achievement of greater educational outcomes. However, there are aspects of the proposed Education Bill which, as an Association, we believe, will lead to greater inefficiencies and will be counter-productive.

Voluntary Grammar school Sector

2. Of the fifty-two voluntary grammar schools, thirty two are owned and governed by Trustees of the Catholic Church and the remaining twenty are owned by their own trustees and run by their Boards of Governors. Most, if not all, of these schools are long established and have an enviable record of educational outcomes over many years.

3. The chief characteristics of these schools and of the voluntary principle are:

- The trustees own their school land and buildings;
- The responsibilities of the trustees are commonly set down in a foundation deed of trust which sets out the aims of the school and the obligations that fall on the trustee governors;

- The trustees make up either the entire membership (apart from elected teacher and parent representatives) or comprise the largest group of each school's governing body;
- The schools recurrent funding comes directly from - and they are therefore directly accountable to - the Department of Education: there is no intermediate body;
- Their approved capital expenditure comes from the Department of Education, the percentage payable varying from one voluntary school to another;
- Their governing bodies employ all members of staff and are responsible therefore for recruiting, deploying, managing and paying all those working for the school concerned;
- The governing bodies are also responsible for entering into contracts or the making of arrangements for the services required to run the schools, the ordering of materials and equipment and protecting and insuring all pupils, members of staff and the public together with buildings, facilities and equipment;
- The governing bodies are responsible for the financial management of the schools including dealing with any financial issues that arise;
- In addition to the duties laid down in their foundation documents they are charged with carrying out exactly the same statutory duties and responsibilities as every other grant aided school;
- They have the right to determine the ethos, character and activities of their schools.

4. The present system provides clear lines of responsibility and accountability for the delivery of education to a high standard. It avoids unnecessary levels of bureaucracy between the funder and the provider. Over the many years that these schools have been in existence they have demonstrated that they can use public funds effectively and efficiently for the benefit of the pupils.

Draft Education Bill

5. The original proposals contained within the Review of Public Administration policy papers, for example paragraph 4 of policy paper 2, highlights the fact that for schools, the relationship with the ESA should be characterised by "maximised supported autonomy" and paragraph 5 also indicates that the new arrangements must have sufficient flexibility to accommodate schools wishing to avail of differing degrees of autonomy. These papers therefore highlight the importance of maximising the autonomy of schools, whereas, in contrast, the content of the proposed Education Bill will reduce the existing autonomy of voluntary schools, by transferring significant control to a centralised body.

The proposed body is now referred to as the Education and Skills Authority (in the original policy papers it was known as the Education Support Body) and presumably as its powers have been extended, the name has changed to 'Authority'.

6. The Education Bill, in establishing a single Education Authority will:-

- remove the employing authority role from Boards of Governors,
- undermine the voluntary principle of school governance due to the command and control structure proposed for the ESA through the Bill,
- dilute the autonomy of voluntary schools so as to make them voluntary in name only,
- introduce a one-size-fits-all education system, despite the UK government's stated desire that there should be a diversity of school management structures,

- contradict ongoing developments in Great Britain where the focus is on maximising autonomy at a local level in schools, where the growth of City Technology schools, Trust Schools and City Academies is encouraged and where the focus is on maximising autonomy at local level,
- increase bureaucracy and 'red-tape'.

Indeed, Clause 18 (1) gives all embracing powers to the ESA stating that "ESA may do anything that appears to it to be conducive or incidental to the discharge of its functions".

Key Issues

Removal of the employing authority function from Boards of Governors

7. The Board of Governors of a voluntary school is currently the employing authority, and, as such, is responsible for the employment of all staff in their school. One of the key issues which enable such schools to develop and maintain a distinctive ethos is the right of Boards of Governors to appoint, promote, discipline and carry out employment law functions for their own staff within a policy framework set by the Board of Governors.

One of the key roles proposed for the Education and Skills Authority is being responsible for the employment of all staff in grant aided schools. Under Clause 3 (1), the ESA is to employ all staff in grant-aided schools and provides that "All teachers and other persons who are appointed to work under a contract of employment on the staff of a grant-aided school shall be employed by the ESA."

8. Contracts of employment of all staff in voluntary schools are currently with the Board of Governors of each school. This means that Board members are responsible for the key decisions of appointing and dismissing staff. The staff appointed are selected on the basis that they will support the existing ethos of the school (in some cases this may be an academic ethos or the ethos may be linked to a particular religious denomination). Staff members appointed have an affinity and loyalty to a particular school and seek to uphold its values, ethos and traditions. The Governing Body of a voluntary school is wholly responsible for the appointment of its principal and other senior staff, which is not the case in other sectors.

A Board of Governors, as a single legal entity, is collectively responsible for any disciplinary action taken and therefore care is taken in ensuring the appropriate decisions are made. This power of the Governors to exercise sanctions and to discipline staff engenders respect on the part of staff to the Governing Body as the Employing Authority.

9. However, Boards of Governors will no longer be considered to be "employers". This is underscored by the terms of Clause 3(2)(b) which provides that "references to staff of a grant-aided school are references to the teachers and other persons employed by ESA on the staff of the school." If the ESA is to be the employer of "all staff" then contractual responsibility as employer lies with the ESA and not with Boards of Governors.

10. Under the terms of the legislation, the ESA, as employer, will be able to re-deploy staff between institutions, so that staff may have no affinity or loyalty to any particular school. They may not, therefore have the same motivation as at present to drive up standards of attainment or to enforce discipline.

11. Clause 4 contains provisions for the preparation of employment schemes for all grant-aided schools. These schemes must be approved by the ESA and, under Clause 6, if the scheme is not considered to be in line with guidance issued by the ESA, then this body has the reserve power to make an employment scheme for the school "which shall be treated for all purposes as if it had been prepared by the submitting authority of the school". This is in itself very prescriptive and dictatorial and further dilutes autonomy of the Board of Governors.

12. All staff will have a standard contract of employment with the ESA and because they may well have no affinity to a body employing in excess of 50,000 staff, will only carry out duties outlined in their standard terms and conditions of employment. Staff may, for example, no longer carry out sporting activities or organise school trips on a voluntary basis.

13. It would be considered imperative that the Boards of Governors of voluntary schools have the right to retain staff contracts of employment as the employing authority. It is accepted that some schools may wish to opt to have the ESA as the employer whilst others may wish the ESA to provide a support role in assisting with drawing up of contractual terms and providing legal advice only as and when required.

14. We are of the view that it is essential that the legislation as currently drafted is amended so as to give Boards of Governors of schools the key rights of employing and managing staff, with the ESA being given a supportive function in this context if required.

15. We also believe that, in practical terms, if the ESA takes control of the voluntary sector there is a serious underestimation of the challenges which lie ahead.

16. If the ESA were to become the employing authority, whilst it is understood that the Transfer of Undertakings (Protection of Employment) Regulations 2006 are not strictly applicable in this instance, in practice, the ESA will take over the employees from the various current employers under their existing terms and conditions of employment in each of the individual schools.

17. The TUPE Regulations preserve employees' terms and conditions when a business or undertaking, or part of one, is transferred to a new employer.

The new employer takes over the contracts of employment of all employees who were employed in the undertaking immediately before the transfer. The new employer takes over all rights and obligations arising from those contracts of employment and any collective agreements made on behalf of the employees and in force immediately before the transfer.

18. At present, non-teaching and support staff within the voluntary sector have widely differing roles and responsibilities. To transfer all these staff to one employer will leave the ESA open to a potential raft of legal challenges, as staff will compare differing terms and conditions of employment throughout the sector under one employer. This will apply equally to teaching staff, who will expect to be awarded the same responsibility points as staff at other schools for carrying out similar duties, when under one employer.

As each voluntary school is autonomous there is little read-across in terms of salary and conditions of service, which will ultimately be difficult to administer for the new umbrella organisation. This will very likely raise further issues of equality and job evaluation at a time when the new agency is only bedding in.

Undermining of the voluntary principle of school governance

19. The initial proposals highlighted the importance of maximising the autonomy of schools, whereas in reality the content of the proposed Bill will reduce the existing autonomy of voluntary schools, by transferring significant control to a centralised body. Schools will lose their existing autonomy and, by virtue of standardised schemes of management, will become institutions of uniformity.

20. Another key benefit of the existing model is the ability of schools within the voluntary sector to attract Governors from a wide range of professional backgrounds, who serve on the Board on a voluntary basis. Many of these Governors have a long standing relationship with a particular school together with specific expertise which adds greatly to the management of the school.

21. The key governance provisions in the Bill can be found in Clauses 30-33.

Under Clause 30, schools are required to prepare a "scheme of management", outlining procedures relative to governance and management issues. The central mechanism for school governance is the "scheme of management". This scheme must be approved by the ESA. If the scheme is not considered to be in accord with guidance issued by the ESA, under Clause 32, the ESA can make a scheme of management which shall be treated as if prepared by the submitting authority.

22. This scheme will regulate the membership and procedures of Boards of Governors. It will regulate the management of the school and relations between the Board of Governors, principals and any other person specified in the Scheme. Clause 30(5) imposes a positive statutory obligation upon Boards of Governors to "give effect" to the scheme of management presently in place.

23. It is the Association's opinion that this is likely to be a prescriptive and bureaucratic model of schools' governance containing for example, a code of practice for the appointment of Governors in all categories, covering appointment and re-appointment procedures. In addition, ESA will have the power to appoint Governors as considered necessary and have the power to choose Community Governors who may not be approved by individual Boards of Governors.

24. The Policy papers suggest that there will be a 'continuum of autonomy' and reference is made to 'maximised supported autonomy' for schools. This is not, however, reflected in the legislation, which, as drafted, will dilute these key powers of Boards of Governors. In the future, Governors will not give of their time and expertise freely, when the main managing authority will be the ESA and when they will be required to operate within a framework of stringent rules, which may not be in the best interests of individual schools. Furthermore, under these conditions it is likely that schools will have great difficulty in attracting Governors with the relevant expertise.

Financial Management and Procurement

25. In terms of accountability, all our schools are held accountable to the Department of Education with each being subject to the Department's Financial and Audit Arrangements and are rigorously audited with the production of internal and external audit reports prepared by independent professionals.

26. In addition to funds received from the Department of Education many voluntary schools receive additional funding through parental and other benefactors contributions. These funds are utilised for the good of pupils who attend these schools. With the standardisation that will inevitably come from this legislation it is believed there will be much less incentive for gifts such as these in the future. This will ultimately put an additional strain on the 'public purse'.

27. A number of voluntary schools also carry out additional educational activities outside those which are directly grant aided by the Department of Education. These activities generate non-public funds which should not be under the proposed legislative framework.

28. On procurement, whilst this Bill is largely silent on the matter, it is understood that when the second Bill is brought forward there will be further legislation which will considerably reduce the autonomy of voluntary schools by centralising this function which could undoubtedly lead to increased costs and inefficiencies.

29. In summary, if the Minister and Department are genuinely committed to the preservation of ethos and maximising autonomy in school governance the proposed legislative model will require amendment in order to produce that outcome. There should, therefore, be no alteration to the role of Boards of Governors as the sole employing authority for voluntary schools. Individual Boards of Governors must retain the autonomy to make decisions in the best interests of the schools they represent and this must be reflected in the legislation.

30. Finally, as an Association we would say that we cannot find any evidence to suggest that the proposal to enable the ESA in the management of voluntary schools as outlined in the Education Bill will result in "improved working of the education administration" and achieve "better outcomes".

Northern Ireland Youth Forum (NIYF)



Northern Ireland Youth Forum

Report to:	Committee for Education, Northern Ireland Assembly
Subject:	Education Bill
Date:	February 2009
Reporting Officer:	Chris Quinn, On behalf of the NI Youth Forum
Contact Officer:	The name of the Officer who will be carrying out the actions arising from the Committee/Sub-Committee decision, if different from that of the Reporting Officer.

Relevant Background Information
<p>Having received correspondence from the Clerk of the Committee for education requesting feedback from key stakeholders the NIYF put together this response.</p> <p>In doing so we have engaged with staff, our executive committee (made up of young people), and NI Youth Forum members (also young people).</p> <p>We welcome the opportunity to respond to such an important piece of legislation, but should highlight that it is often challenging for us to translate such complex literature into language that young people understand. In addition we are required to provide other relevant background information, which requires a significant amount of resources.</p>

Key Issues
<p>Having worked with the key stakeholders as outlined above, and having used methodology which helped us to articulate the views of young people, we have come up with the following response.</p> <ul style="list-style-type: none">> The NIYF welcome the fact that young work (/ youth services) is included in the bill.> However, the NIYF also recommends that the second bill should go one step further and include details of entitlement for all young people to have the opportunity to access youth provision.> It is further recommended legislation should include statutory duty for

young people to have a right to access youth provision.

- It was noted that the report does not detail structures nor does it detail resources.
- It is therefore recommended that a ring fenced budget be established for 'youth services'— this could be separate to the overall education budget.
- It is also recommended that there should be more clarity on where youth services will lie and the structures within which it will operate.
- It is recommended that the second bill should detail a definition of what 'youth services' means. However, the NIYF believe that the term youth services may be not be appropriate and that youth work is a much more complex discipline than simply service provision.
- It is strongly recommended that the YSLF have a key role on shaping the 2nd Bill.
- It is also recommended that young people should be central to the process and that the NIYF can facilitate this.

- The NIYF recommends the following alterations to the wording of the Bill:
 - Para 2.(2)(a) should be amended to include a reference to 'youth services' alongside primary and secondary education and educational services.
 - This approach should be repeated in respect of Para 15.(1)(a) and Para 43.(1)(a).

 - If the arrangement described above is not achievable, then the wording of Para 2.(2)(b) should replicate that of Para 2.(2)(a), i.e. 'to ensure efficient and effective youth services are available to meet the needs of such children and young people'.

Key to Abbreviations

NIYF

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Transferor Representatives' Council (TRC)

The TRC welcomes this opportunity to make a submission to the Committee, outlining comments and concerns regarding the Education Bill 2008.

Introduction

In previous submissions to this Bill, the TRC drew attention to the impact of earlier proposals regarding future governance of schools on existing transferors' rights. The TRC now welcomes the reassurance of the minister in November 2008, introducing this legislation to the Assembly, that 'the right of the transferors to nominate school governors will remain'. The Protestant churches had made representations to MLAs from all the political parties arguing that their long standing right to nominate governors for controlled schools should be retained on the basis of fairness and equality. The TRC is grateful to the political parties for listening to its case and to those making representations on its behalf.

This principle of fairness and equality in dealing with transferors does however arise in new issues under the RPA, particularly around Policy paper 20: publicly owned schools – ownership and representation. Transferors will have more to say about these matters in a separate consultation on this paper and will brief MLAs in advance of any draft of the second Bill. However we have real concerns that the principles of fairness and equality are not applying for members of the protestant community in certain aspects of the current Bill and will outline these as relevant sections of the bill are addressed below.

Clause 1.2 Schedule 1

The ESA –membership

Schedule 2.1

Membership

2.(1) ESA shall consist of

- (a) a Chair, and
- (b) not fewer than 7 or more than 11 other members, appointed by the Department.

In existing legislation, transferring churches have historic rights to nominate a certain proportion of governors of controlled schools and members of Education and Library Boards (ELBs). These important rights, enshrined in legislation, safeguarded the transferring churches' guardianship of the schools which they transferred and enabled transferors to have a continuing decision-making role in the provision of schools within a local area.

This Bill provides for an interim transfer of ownership of the controlled schools' estate to the ESA; a body with no transferor representation upon its Board. The TRC believes this to be a serious injustice to transferors who in consequence have legitimate rights of decision-making about schools they established, taken from them. Transferors seek their continuing rights to act as guardians for the schools they transferred, rights granted by Government at the time of transfer and legislated for, and also believe they have a justifiable case for continuing their historic role as a major stakeholder within the controlled sector, at both primary and secondary levels.

Schedule 2.2

(2) In making appointments under sub-paragraph (1), the Department shall so far as practicable secure

(a) that at any time a majority of members are councillors (within the meaning of the Local Government Act (Northern Ireland) 1972 (c. 9));

and

(b) that each member has experience in a field of activity relevant to the discharge of the functions of ESA.

The TRC recognizes that politicians believe that this provision safeguards democratic accountability. Transferors have found however from experience of working alongside councillors on ELBs that often when difficult decisions are to be taken regarding closures of schools or reorganization of schools, that councillors can be caught between the balancing the desires of constituents with their responsibilities in delivering the most effective education service.

Transferors reiterate the point above that the legal agreements made at the time of transfer when churches were given rights of nomination to area management committees (now ELBs), must not be disregarded. Transferors believe that a great injustice is being served by their omission from membership of the ESA Board by right. Transferors believe they have a continuing right within the new administrative arrangements, to guard and oversee the schools which they established and transferred to the control of the state. They believe this is a huge inequality of treatment, in the context of all schools in NI being fully funded by the state regardless of legal ownership. If membership of the ESA Board is not permissible then there must be full recognition of transferors continuing role in oversight of property in any ownership body established for the former controlled schools.

Clause 2.2a Functions and general duty of the ESA

It shall be the duty of ESA (so far as its powers extend)

(a) to contribute towards the spiritual, moral, cultural, social, intellectual and physical development of children and young persons in Northern Ireland and thereby of the community at large ...

The TRC welcomes the intentions of this clause expressing the aim of the ESA to contribute to a holistic view of education which includes the spiritual development of children and young persons. Transferors believe this to be an expression of the wishes of the community to ensure that children have an education within a faith context. Transferors have a particular commitment to presently designated controlled schools, and believe such schools should offer an understanding of the world and the place of humanity in it within the context of belief in God and the Christian faith. Schools should also foster tolerance of and respect for the beliefs of others and should also respect the rights of those with no religious belief.

...by ensuring that efficient and effective primary and secondary education and educational services are available to meet the needs of such children and young persons;

Transferors have long experience of delivery of services to schools by the present ELBs. The TRC welcomes the potential within a single education authority to deliver a comprehensive and consistent service across NI. However it is concerned that over-centralisation may endanger the efficiency of local delivery. MLAs must be assured by clearer detail on the local presence of the ESA for schools before proceeding with this Bill.

Clause 2.2(b) to ensure the provision of efficient and effective youth services;

The various youth departments of transferor churches urge that the youth service remains under the remit of the ESA. Churches view youth services as an essential educational provision although carried on in an informal setting. It is an extension of the holistic education of the person as underlined in 2.1a. It is the churches' contention that any move to shift its setting away from an educational basis would be detrimental to the service which they believe should be strongly linked with the revised curriculum.

Clause 2.3 In exercising its duty under subsection (2) in relation to schools, ESA shall ensure that schools whose premises are not vested in ESA are treated on the same basis as schools whose premises are vested in ESA.

The TRC understands that according to proposals in RPA policy paper 20, initially ownership of publicly owned schools will transfer to ESA and in the longer term an ownership body is proposed. The TRC has indicated at 1.2 above that it believes that transferors should have ownership rights extended to them in oversight of these schools by representation on the ESA Board and/or within any ownership body established for publicly owned schools.

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

Transferors historically are focussed upon issues relating to the presently designated controlled sector; however as churches, their Boards of Education have links with schools in the voluntary sector. Such schools perceive within this clause a loss of autonomy and freedom which is currently enjoyed and which underpins their essential ethos and rationale.

It is important that schools in all sectors are enabled and empowered by the ESA to provide an education which is consonant with their particular ethos. Transferors share with many schools an ethos with an historic Christian faith core and essential values. They believe that no school should feel that its ethos is threatened or disabled by the powers of a central employing authority.

Other functions of ESA

ESA to provide or secure provision of training and advisory and support services for schools

Clause 13.(1) It is the duty of ESA to provide or secure the provision of
(a) such training, and
(b) such advisory and support services, for the Boards of Governors of grant-aided schools as is necessary for the effective discharge of their functions.

Transferors welcome the continued provision of governor training and support services. Such support will be all the more important given an enhanced role for governors in employment of staff and raising of standards. In the controlled sector at present general HR support from ELBs is available for governors in the employment of staff and a specific HR presence is required for appointments of principals and vice-principals. It is vital that such a level of local support and advice continues to be made available.

Under the duty of governors regarding the raising of school standards, transferors have a concern that unless adequately supported the intended challenge role envisaged will undermine the confidence of many potential governors in fulfilling the role. The perceived increase in responsibility may prove too great a disincentive and may deter many suitable volunteers.

Transferor governors have particular needs and interests relevant to the provision of religious education, assembly worship, and ethos support within the school. It is vital that a specific transferor governor support is resourced by the Department through a newly created support body to enable a programme of training to be provided on an ongoing basis for such governors.

Clause 13.(2) It is the duty of ESA to provide or secure the provision of
(a) further training and advisory and support services for teachers in grant aided schools;
(b) training and advisory and support services for other staff in such schools.

The TRC seeks clarity on the methodology of delivery of teacher advisory and support services. As Religious Education (RE) is a compulsory part of the curriculum it is vital that an adequately resourced service and accessible service is available for teachers in all areas of NI. We understand that an important component of advice and support will concern raising of standards, however it is vital that a curriculum support service is maintained which not only address the provision of RE but promotes relevant linkages with other aspects of the revised curriculum. It is to be regretted that in this period prior to the transfer of responsibilities to ESA the level of such support provided through ELBs has in fact decreased. An appropriate level of curricular support must be re-established and indeed further developed.

Boards of Governors

Duties of Board of Governors in relation to achievement of high standards of educational attainment

34.(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 co-operate 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.

Transferors agree that it is an important role of ESA to improve standards of attainment in schools. The TRC has responded to two recent DE policies under the theme 'Every School a Good School'. A key critique made by transferors was that many aspects of the educative process cannot easily be reduced to measurable outcomes. Unfortunately the approach of much of the school improvement policy Every School a Good School suggests a rather functional and utilitarian view of education and at odds with the holistic aims in clause 2.2 of this Bill. It is wrong in our view to see the pupil as a learning object in a classroom where inputs and outputs can be measured, assessed and compared.

With reference to this specific clause, it is of concern to transferors that a challenge role may be difficult for many governors to undertake. Lay governors challenging professional teachers in their work could lead to a breakdown of trust, the work of the Board of Governors destabilised and the customary trust and courtesies undermined. Governors will require exceptional professional support at these moments of challenge. It is unclear whether this support will be available from the ESA or delivered through the relevant support body.

As mentioned at 13.1 above transferors have a concern that increasing the burden of responsibility for school improvement may appear off-putting and prove detrimental to the recruitment of skilled and well motivated governors.

Inspections

Clause 42 Assessors and lay persons

42.(1) Inspectors conducting the inspection of an establishment under section 37 or 41 or by virtue of paragraph 14 of Schedule 1 to the Libraries Act (Northern Ireland) 2008 (c. 8) may be accompanied and assisted in the inspection by

(a) assessors appointed for the purposes of that inspection by the Department;

and

(b) lay persons assigned for the purposes of that inspection under the following provisions of this section.

TRC believes this to be a positive clause and could be of assistance in the inspection of RE.

Transferors have a particular interest in the provision of RE and would encourage the inspection of standards of teaching and learning in the subject. This would not only provide governors with

an evaluation of the teaching of RE in the school but would also have the effect of raising the esteem of the subject among teachers.

Over the years it is our perception that only a small number of RE departments in schools have received an inspection. This is partly caused by the application of present legislation which requires a Board of Governors to pass a resolution to request the inspection of the subject in advance of the next inspection of the school. It is noted that in some instances when this resolution is passed it has not in fact been actioned, especially when an inspection perhaps takes place a number of years later.

Transferors believe that it would be of assistance to the inspection process if a person with appropriate experience and skills in religious education could be assigned to accompany the Department's inspectors during a school inspection of the subject. However clarity is required on this matter as clause 42 (3) seems to preclude such a person being appointed.

42 (2) The Department may appoint a panel of persons to act as lay persons in inspections conducted under section 37 or 41 or by virtue of paragraph 14 of Schedule 1 to the Libraries Act (Northern Ireland) 2008.

(3) A person shall not be appointed to the panel unless that person is, in the opinion of the Department, without significant personal experience in (a) the management of establishments to which those provisions apply; and

(b) the provision of education (otherwise than as a member of the governing body of such an educational establishment or in any other voluntary capacity)

Notes:

- The Transferor Representatives' Council (TRC) represents the Church of Ireland, Presbyterian Church in Ireland, and Methodist Church in Ireland in matters of educational policy in Northern Ireland.
- In the 1930s, 40s and 50s the Church of Ireland, Presbyterian and Methodist churches transferred their school buildings, pupils and staff into state control on the understanding that the Christian ethos of these schools was maintained. This agreed principle was enshrined in an Act of Parliament.
- As a result, Transferors were given rights of representation on school management committees (equivalent now to Boards of Governors) and Education Authorities (now Education and Library Boards). They were also given rights of representation in the management of new Controlled schools built subsequently by the state.
- Transferors currently have rights of representation on Boards of Governors of Primary and Secondary schools.
- The contact person for the TRC is the Revd Ian Ellis,

Tel: 028 90231202, Email: edunorth@ireland.anglican.org

Transferor Representatives' Council (TRC)

Response to Policy Paper 20: Publicly Owned Schools – Ownership and Representation

In its responses to the various policy papers issued by Government in relation to the reorganisation of education the Transferor Representatives' Council has continued to argue that the proposals made by Government based on legal ownership fail to provide parity of treatment in terms of protection of a Christian ethos to children from Protestant backgrounds by comparison with those from a Catholic background. Policy paper 20 merely replicates the same position and yet again marginalises the Protestant community. The Council has repeatedly argued that this lack of parity of treatment arises from a fixation by Government on a flawed ownership model of the schools estate which ignores the 100% funding of the Catholic maintained sector. Previous responses by the Council to policy papers remain applicable.

The TRC submits that government has not set out the full picture in respect of the ownership of the controlled sector. It is estimated by the Transferor Representatives' Council that between 1926 and 1947 approximately 500 schools established by the churches were transferred into state control. Schemes were framed under the Educational Endowments Ireland Act 1885 which set up endowment boards in which endowments were vested. Schools were transferred to local education authorities and contained re-transfer provisions to permit reversions of the schools estates to the endowment boards. In recognition of this important educational resource from the transferring churches and to secure the Christian ethos in the schools a statutory role for the churches on the governing bodies of controlled schools was established. The department has not, despite TRC requests, identified how many original church schools remain within the controlled sector. The TRC however considers it has a continuing interest in contributing to the ethos of those schools which are attended by pupils from a predominantly Protestant background and ensuring the protection of its remaining reversionary interests in those schools within the controlled sector.

Churches were also given a right to oversee and safeguard their interests in the future controlled schools' estate by membership of Education and Library Boards. The proportion of their membership on such Boards is determined by the number of pupils enrolled in the controlled school population of the relevant Board area. (1986 Order Schedule 1). This provision demonstrates the clear link between ownership and representation of a protestant ethos.

Paper 20 proposes to rupture fundamentally the trust and indeed agreement between the churches and the State by the elimination of its governance role as of right in transferring the legal ownership of the schools in the Education and Library Board sector to the Education and Skills Authority. This will deny a voice as of right to the Protestant community of Northern Ireland in maintaining the educational ethos of schools which the vast majority of children from that background attend.

The government seeks to use equality arguments to betray its agreement and the principles underpinning its contract with the Churches and the Protestant Community. It fails to respect the principle of parity of esteem enshrined in the Belfast Agreement between the Protestant and Catholic communities of Northern Ireland.

The Ownership Body will have no place for Transferors as of right to whom the beneficial ownership of a proportion of schools in the controlled sector reverts. The new ESA board members will be appointed by the public appointments process and will have a majority membership of local councillors. The paper argues that the ESA could not act impartially if it was also the legal owner of one sector of schools. The view of the TRC is that the proposals for the ownership of publicly owned schools do not deliver equitable treatment for transferors. This is a matter on which the TRC will seek legal advice in the proposed trammelling of its reversionary interest in order to safeguard their interests.

Paper 20 advises that the Representative Body will broadly have a role in leading for the sector in planning discussions, developing and maintaining the ethos of the schools, nominating

foundation governors and building engagement with other sectors. It has been suggested that this body will become the 'champion' of the publicly owned schools.

The basis for the composition of the Representative Body is set out in paragraph 9 and 10 of Policy Paper 20 and refers to

"the requirement for the ESA to treat all schools equitably means it could not perform these functions for publicly owned schools. However without sectoral representation publicly owned schools could be left in the invidious position of being the least coherent "sector" without an effective mechanism for its governors and principles to provide mutual support and the only sector without an effective voice in relation to the provision of policy advice to DE and the planning and development of the schools estate".

The paper specially addresses the role of the TRC and states:-

"10. Historically the Protestant Churches, represented by the Transferors Representatives Council (TRC) have been the sectoral voice for the controlled sector, with the seats for Foundation Governors or former owners filled by nominations from the 3 main Protestant (or Transferor) Churches.

11. The TRC will remain a prominent voice within the publicly owned school sector, and could discharge some of the above functions. However if the TRC were to be the sole voice of the sector, this could be perceived as equating all publicly – owned schools (including those that were not transferred solely with a Protestant ethos. This sector is clearly very rich in diversity. It serves a wide variety of faiths, beliefs, ethnic backgrounds and a broad cross section of the Section 75 Groups; therefore it is important that the arrangements for this sector can reflect this and cater for all those served by the sector equally. Therefore while the TRC clearly remains a key voice within this sector, it may be necessary to consider more broadly based arrangements for publicly owned schools."

The TRC has never argued that it should be the only voice to represent the controlled sector but rather that it should have a voice along with other stakeholders in the sector and that this voice should be as of right. Policy Paper 20 however proposes a "voluntary organisation" of which the TRC would have membership. It is also suggested that "there may be a need for Protestant Churches to play a complementary but separate role" (paragraph 13) and have a "direct relationship with government on issues that are of particular interest to the Protestant Churches".

The problem with such a representative body is that it will only receive sectoral support funding from the Department if it fulfils conditions of a "grant" which requires "the organisation must be able to demonstrate that the way in which it is structured and operated reflects fully, and takes account of the broad spectrum of interest and backgrounds of those who are served by the sector. This may include for example demonstrating how it will represent those who are served by the sector and come from a range of faiths and ethnic backgrounds as well as those who fall within the various Section 75 categories taking into account the specific needs and requirements that those groups may have".

In effect the life of the Representative Body is dependant on the grace and favour of a government which in the eyes of the Council has breached its agreement and trust. The lack of a statutory role for the TRC is unacceptable in light of its representation of the vast majority of the Protestant community.

However, it should be noted that the statistics from the 2001 Census and data in respect of the pupils attending schools in 2007/8 do not reveal the diverse richness emphasised in Policy Paper 20 as the rationale for its denial of any voice as of right to the Protestant community.

The population in Northern Ireland according to the 2001 Census was 1,685,267 people. Of that population 1,446,386 declared themselves to be of a Christian Denomination (85.8%). Whilst the Roman Catholic Sector is a homogenous group the Protestant community is by the very nature of its Reformed tradition, fragmented. However within the Protestant grouping of 45.5% the vast majority of those in Northern Ireland with a Protestant faith fall within the 3 churches (86.68%) which make up the Transferor Representatives' Council (Presbyterian, Church of Ireland and Methodist). This leaves a small but significant proportion (14.1%) of the total population of Northern Ireland as members of a category expressing no religious affiliation and a small number from other religions.

The figures for 2007/2008 available from the Department of Education in respect of the religion of pupils by school and management type confirm the de facto segregation of the education system of Northern Ireland. Extracted from the data are the figures in respect of primary schools, secondary (non grammar) and grammar schools which make up the bulk of the school population. The vast majority of children from a Roman Catholic background attend a school under Catholic management if not ownership which few Protestant children attend. Further the vast majority of all children from Protestant backgrounds attend a school in the state or controlled sector which few Catholic children attend.

The total number of children attending all schools in Northern Ireland is 325,047 pupils. The numbers of children attending grammar, secondary and primary schools is 303,442 (93.35%). 78.5% of the pupil population of the controlled sector comes from the Protestant Community with at least 86.68% of that group made up of members of the three churches which comprise the TRC.

The Government is concerned to ensure its governance arrangements represent the diversity of its pupil population in the controlled sector. 4.1% of that population is Catholic. Pupils recorded as "other Christian, non Christian or religion not recorded" are more likely to attend schools in the controlled sector than Catholic sector make up 17.4% of the total attendees. It is believed that the 17.4% includes a significant number of members of the Protestant community and hence the figure is in all likelihood considerably smaller.

There is no doubt that these other groups amounting to 21.5% of the controlled sector population must be represented in any governance arrangements. However to deny any representation in the controlled sector to the 78.5% of the Protestant Community of Northern Ireland as of right is to deny parity of treatment between the two majority cultural and religious traditions in Northern Ireland. This is not the intention underpinning the Northern Ireland Act and indeed government has taken action to secure that parity of treatment in some of its legislative provisions.

Once again the Policy Screening Form from the Department of Education fails to identify the blindingly obvious inequity of treatment between Protestant and Catholic communities and other groups in its focus on the controlled sector in the context of the segregated education system of Northern Ireland. Set out below is the statistical basis from which it is believed that the Department's Screening document misleads as to the impact of the government's proposed policy.

Religious background of Citizens of Northern Ireland Appendix 5 Northern Ireland Census 2001 Table KS07C Religion

All Persons	1,685,267	100%
Catholic	678462	40.25%
Transferors (PCI +CI+ MCI)	665703	39.5%
Presbyterian Church in Ireland (PCI)	348742	20.69%
Church of Ireland (CI)	257788	15.29%
Methodist Church in Ireland(MCI)	59173	3.51%
Other Christian (including Christian related) (vast majority Protestant faith)	102221	6%
All Protestant Faiths	767924	45.5%
All Christian Faiths	1446566	85.8%
Other religions and Philosophies includes: Muslim Hindu Buddhist Jewish	5028 1943 825 533 365	00.29%
Religion not stated or no religion	233853	13.87%

Religion of pupils by school and management type (2007/2008 DE)

	Protestant	Catholic	Other Christian	Non Christian	Other no religion not recorded	Total
Primary Schools						
Controlled Schools	55,881	3,506	2,797	467	10,796	73,447
Catholic Maintained /Other Maintained	747	73,248	197	159	525	74,876
Controlled Integrated	1,007	627	94	31	450	2,209
Grant Maintained Integrated.	1,732	2,109	271	50	806	4,968
Total	59,367	79,490	3,359	707	12,577	155,500

	Protestant	Catholic	Other Christian	Non Christian	Other no religion not recorded	Total
Non Grammar						
Controlled	28,098	503	967	82	3,497	33,147
Catholic Maintained (other maintained)	240	40,739	64	52	174	41,269
Controlled Integrated	1,390	490	68	17	339	2,303

Grant Maintained Integrated	3,556	4,001	461	83	842	8,943
Total	33,284	45,733	1,560	234	4,852	85,663

	Protestant	Catholic	Other Christian	Non Christian	Other no religion not recorded	Total
Grammar Schools						
Controlled Grammar Schools	11,363	978	900	62	1,546	14,849
Voluntary Schools under Catholic Management	235	27,056	77	36	91	27,495
Voluntary Schools under other Management	13,571	1,958	1,065	154	3,187	19,935
Total	25,167	29,992	2,042	252	4824	62,279

This stark statistical data underlines why the government needs to consider alternative proposals which address the rights of all members of the community of Northern Ireland and secure continued respect for an ethos reflective of the Protestant community as the vast bulk of users of schools in a controlled sector which has ensured the delivery of a high educational standard of education.

The TRC's views of the consultation questions are set out below:

1. Assuming acceptance of the need to transfer ownership of controlled schools out of the ESA while still retaining public ownership, and balancing the need to address the legitimate concerns of stakeholders against the added costs of new ownership arrangements, and the contravention of a key RPA principle, is it appropriate to proceed with the establishment of a statutory ownership body?

The premise of this question is fundamentally flawed and the inevitable outcome fails to provide parity of treatment for the Protestant community.

2. Would the proposals in this paper address the concerns of stakeholders on this issue?

Regrettably not, for the reasons outlined above.

3. Is there a more appropriate ownership arrangement that would address the concerns of stakeholders while keeping costs and risks to a minimum, and ensuring robust financial controls and accountability arrangements safeguarding this asset for future generations?

The creation of two bodies would appear to be a poor use of resources and contrary to the RPA principles of rationalisation. There also seems within the papers to be a duplication of functions e.g. around planning and nomination of governors. However, it is difficult to see how a single body could be created when one is voluntary and the other is statutory. The TRC is not convinced that the proposals address fully the future support and ownership requirements of publicly owned schools. It has argued for a model based on public funding which could address both the schools estate and governance.

4 Should the legal owner simply hold the deeds of these schools, or have a long term transformational role?

The suggestion within the papers is that the ownership body in the long term facilitates school boards of governors taking on their own legal ownership. The paper indicates clearly that this is a most onerous role and not to be taken lightly. It raises accountability challenges which are difficult to fully quantify at this stage. The TRC does not believe this would be a realistic proposal.

5 Do you agree that the ownership body should have a statutory obligation to take account of the views of the representative organisation?

The TRC considers that the current proposals for these two bodies present too many unresolved difficulties.

Concluding Comment

The TRC continues to assert an alternative funding rather than legal ownership model as the basis on which to determine governance arrangements. It believes this model could also secure protection of ownership rights. Further it argues that whatever model is used it must secure protection of ethos as of right.

Ulster Farmers' Union (UFU)

The Ulster Farmers' Union (UFU) is the largest farming organisation in Northern Ireland representing nearly 13,000 farming families. As such, we welcome the opportunity to provide our views on the above consultation.

Rural schools are very often the heart of rural communities. They play a very important role in developing communities, and shaping the lives of rural children. Many rural schools tend to be smaller schools, which build closer relationships and familiarity with pupils enabling easier recognition of needs and the potential to work with parents to address them. Smaller schools also mean smaller classes, a policy which parents sending their children to private schools pay for! Some reports have suggested that small schools get better results and there is an enormous long-term significance in the worth of keeping early education close to home, enriched by access to the local neighborhood. Small rural schools give rural children a greater sense of identity, make them part of the local ethos and represent an option that is for the greater good of rural children.

The Department must ensure that there is adequate provision of schools in rural areas which are of sufficient size to be able to meet the needs of the rural area. The needs of the children must be given priority, and NI must continue to educate our young people to the highest possible standard providing equality and easy access for all.

The local rural school is much more than bricks and mortar; it can have many functions, if its potential is used to the full. In many areas, the school is the heart of the community and can act as a focal point for the development and attractiveness of an area. It has long been recognised that school buildings represent a potential community resource, and should undoubtedly be used through the summer months and evenings. The UFU would urge the Department to encourage extended schools, especially within rural areas through the creation of breakfast clubs, after schools clubs and encouraging community use of school facilities. Considering rural schools this would be a means of supporting the long term sustainability of these schools and strengthen its links to the local rural community.

There UFU would stress that if a schools viability is looked at purely on analysis of enrolment trends this should be applied with caution on Rural Schools. Any decline in pupil numbers has an automatic effect on school budgets and small rural schools are more likely to experience such fluctuations. A schools projected enrolment must be taken into consideration. The UFU stress there needs to be a stronger focus on rural childcare. There is a big disparity in childcare provision in Rural Areas, particularly provision of statutory nursery care. It is important that Rural Schools coexist with rural childcare so that both can flourish in the local community.

Travel

Without rural schools there are likely to be greater travel and transport issues for pupils living in rural communities. A limit must be placed on the distance a young person should have to travel to attend school, not only in relation to the health and well being of that young person but also the associated travel costs that increased travel distances will incur.

Rural issues

The Ulster Farmers Union wants to ensure that we create a vibrant rural countryside, and encourage our families and children to remain in the rural area in which they were raised. It is vital that an evaluation takes place of the loss to the local community a school closure will make.

As the Sustainable Schools policy stated NI has a higher proportion of small schools than the rest of the UK, and the vast majority of these small schools are located in rural areas, making these schools more expensive to run. If a school is meeting a community's needs, the children deserve the same access to capital expenditure as any other school, and such rural children should not be disadvantaged because of this.

The UFU would like to highlight the Schools (consultation) bill that is being processed in Scotland. The Scottish legislation would introduce a presumption against the closure of rural schools- not to prevent any or all such closures in future, but to seek to ensure that a closure decision is only taken as a last resort and not until all the alternatives have been explored and the potential impact on the community fully considered.

The overarching objective of this is to update and strengthen the consultation practices and procedures applied to all school closures and other proposals. They are proposing a three-fold system-

- To establish a consultation process for all school closures and other proposals affecting schools that is coherent, easy to understand, fair, workable, open and transparent and above all which commands the trust and confidence of the public
- To safeguard rural schools by exploring all possible alternatives and assessing the likely implications of closure

- To replace their current system for referring certain local authority decisions for Ministerial consent with a new system of 'call-in'.

The UFU feel that this is a pragmatic approach and could help safeguard small fragile economies. The problem in Northern Ireland is that each decision is taken in the absence of any consideration of their overall effect and this is nowhere more true than in the case of a school.

The recent Rural Development Council (RDC) report set out a range of options to consider in rural areas including collaboration, clustering and federation. The UFU believe that federated schools could be beneficial in rural areas allowing small schools to combine to form a single school in law, with a single principal and single governing body, but operating on two or more sites. As the RDC report highlights federated schools could attract better qualified principals and make governors easier to recruit as there is only one governing body.

Extended schools could assist in providing a backbone to establishing rural communities, and could be further used to provide facilities for both the school and the community in which they are situated.

Rural children should not be denied a quality education because they live in a rural area. The Department must recognise that currently rural children are already disadvantaged spending more time travelling to and from school than urban children.

The needs of the children must be paramount, and if a rural school is meeting the needs of a community such a school should be retained and encouraged to further develop.

Federated and extended schools have a role to play especially in rural areas, as sharing of facilities can encourage greater social interaction as well as proving economically favourable for the school.

Such sharing of facilities and resources are favoured compared to transporting a child greater distances. The UFU believe that the introduction and funding of extended and federated schools will assist in preventing the closure of many rural schools, and at the same time reducing the financial burden of such schools by employing one principal and electing one board of governors. Such an approach will avoid young people being transported long distances and will maintain the school as the centre of village life, leading to enhanced resources and greater opportunities for the pupils.

Association of Professionals in Education and Children's Trusts (ASPECT)

ASPECT, as the professional association for specialist personnel engaged in educational improvement and children's services, welcomes this opportunity to comment on the Education Bill 2009 now before the Northern Ireland Assembly.

Aspect particularly welcomes:

- (i) The establishment of a single Education and Skills Authority for N.I.
- (ii) The protection of employment under TUPE for personnel transferring to this new authority.

(iii) The provision in Section 13 for advisory and support services for schools and the requirement that these services will be free at the point of delivery. Aspect supports the concept of a strong school improvement service and holds the opinion that such a service can only deliver effectively on goals and targets by being directly involved with the high-quality professional development of Principals, Governors and teachers at all levels in schools.

Such a service requires a structure that provides single access to schools and Governing Bodies, to ensure coherence and continuity of professional support. It is important that advice and support to Principals, Governors and teachers always remains impartial and is not influenced by any proposed commercial activity of ESA in relation to other services or areas of activity. The potential for conflict of interests between certain functions (Section 24 and 25) and the power to undertake commercial activities (Section 19) needs to be suitably addressed.

ASPECT further welcomes the enhanced role of Boards of Governors in ensuring standards of educational provision and outcomes for all pupils. Aspect has been closely involved over many years in supporting many Local Authorities in the UK, and the Education and Library Boards in Northern Ireland, in enhancing school improvement machinery.

Aspect supports the roles and functions of the new Authority set out in Section 2, on functions and general duties of ESA, and in particular welcomes the centrality of children and young people's interests for the organisation as a whole and the structure it may evolve. Aspect believes that the final structure of ESA services and of overall ESA planning and decision making should duly prioritise the facilitation of the frontline services that directly impact upon the education and support of children and young people.

Section 2 confirms the role of ESA in the education of children and young people. It emphasises the importance of the educational process over other considerations. This pre-eminent position of education should be properly reflected within a permanent structure for ESA. This should include senior leadership positions for education being at a higher level within the authority to reflect their responsibility for educational achievement and outcomes.

ASPECT is willing to support reorganisation and new structures that bring about real improvement in educational outcomes and life opportunities for our children and young people, and looks forward to working with ESA in representing our members engaged in the key role of providing high-quality direct support to schools, teachers and children.

Irish National Teachers Organisation (INTO)

1 INTO welcomes the establishment of a single employing authority for all teachers. This will bring teachers onto a par with teachers in Catholic Maintained Schools – with benefits in the employment, recruitment and redeployment of teachers and support staff. INTO urges the Education Committee to support the establishment of one single employing authority.

2 The key function of this Bill is to establish the Education and Skills Authority as the single employing authority. There is an important issue with the democratic accountability of the proposed ESA which is poorly addressed by the provision requiring the majority of members of the proposed ESA Board to be councillors. INTO doubts the capability of these councillors to influence the day to day operations of the ESA Chief Executive and his proposed 9 Directors – all of whom will be employed on the same salary range as the 5 existing Chief Executives of the Education and Library Boards.

INTO is underwhelmed by the lack of accountability proposed for ESA being accountable only to the Permanent Secretary of the Department of Education and the Education Minister. ESA should report and be subject to scrutiny to the Assembly Education Committee.

3 A concern is the requirement for every grant aided school to produce an employment scheme [clause 4]. This is a new bureaucratic burden on schools.

4 INTO has a concern about the new creation of a 'submitting authority' clause 5 (i). There is a disparity between Controlled schools and Catholic grant aided schools. In schools other than Catholic, the submitting authority is the Board of Governors of the school – in catholic schools the submitting authority is the trustee governors only. INTO is of the view that all Boards of Governors –with no distinction for spurious ethos - should be 'submitting authorities.'

5 In the new savage climate of cutbacks proposed by DE on teachers' being made redundant and their access to pension, INTO seeks an amendment or addendum to clause 10 enabling ESA to employ panels of teachers. These teachers could be experienced teachers who are made compulsorily redundant as a result of the application of the Department of Education's 'Sustainable Schools' policy or young teachers unable to secure full-time teaching. They could be used to reduce the current heavy substitute teacher substitute teaching bill or to enable in-school professional teacher development.

6 INTO has been assured by DE that clause 12 'Modification of Employment Law ' does not have the draconian meaning implied in the clause and accepts this. The Assembly Education committee should seek an assurance also on this.

7 INTO has a concern about clause 13 which gives ESA the duty to provide or secure provision of training and advisory support services for schools. In line with proposed accountable autonomy, this clause should be amended to ensure that the resource for training, advisory and support services is delegated to each school's budget. Only this proviso will ensure that the defined professional development needs of teachers, as compiled by the Performance Management Staff Development agreed scheme, on a school by school basis, in line with their School Development Plans can be effectively implemented. This measure should also drive up the quality of such provision. It would also be open to schools to cluster and collaborate in this area to ensure their genuine professional development needs can be met.

8 INTO remains unconvinced that it is necessary to transfer the payment of superannuation benefits or indeed teacher salaries from DE to ESA clause 15. The present arrangement is perfectly fit for purpose.

9 There is a problem with the lack of integration between DE and DEL in the 14/19 age range. There is a case for one department being responsible for education in this vital post-primary phase.

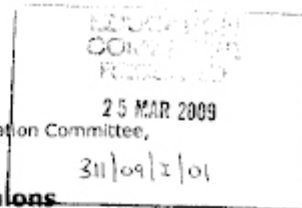
10 INTO has a concern with the principles underlying the new duty on Boards of Governors in clause 34 to exercise their functions with a view to promoting the achievement of high standards of educational attainment clause 34 (i) and then in 34 (ii) to cooperate with ESA in relation to actions undertaken by ESA with a view to promoting the achievement of high standards. This is the underbelly of the New Labour School Improvement Agenda which is now being replicated in Northern Ireland under the guise of 'Every School a Good School.' INTO seeks the deletion of clause 34.

11 INTO welcomes clause 36 in relation to part-time teachers being made eligible to be elected as governors.

12 INTO sees no need for clauses 37 to 41 defining the role of the Education and Training Inspectorate [ETI]. ETI work reasonably well and these clauses add little if anything to their role. INTO supports the current role of the ETI and would be opposed to ETI being made independent of the Department of Education or privatised.

13 INTO is of the view that it is impossible to comment further on education Bill 1 without seeing education Bill 2 as both are inextricably linked

To: Press / Media, Northern Ireland Assembly Education Committee,
Educational Stakeholders.



Joint Statement by the 5 teachers unions

In response to the comments of Cardinal Sean Brady to the Northern Ireland Assembly Education Committee on 18 March 2009, the five teaching unions, representative of all teachers and Principals in Northern Ireland, issued the following statement.

The five teaching unions have supported the principle of a single employing education authority from the outset. The advantages inherent in a single authority approach are:

- that administrative savings can be redirected to frontline classroom services;
- the ease of dealing with a single body, rather than a multiplicity of educational administrations;
- fairness for teachers through uniformity of practice and procedure in regard to terms and conditions;
- the flexibility within a single authority with regard to redundancy and redeployment, with a single redundancy trawl pool;
- the flexibility to broker family friendly working practice through part time work, job sharing, career breaks, particularly at a time of a shrinking workforce, and
- the establishment of a single, autonomous, teacher welfare service.

We are at a loss to understand the logic of Cardinal Brady's position. Catholic school governors do not currently employ teachers. Administering pay at school level is wasteful and inefficient. Under the new Authority, school governors would have the right, within the law, to 'hire and fire'. Governors would also have the right to determine their own schemes of Management for their schools.

Taxpayers will not understand the logic of collapsing Education & Library Boards, only to resurrect a wasteful multiplicity of employing schools and sectoral bodies. If Catholic schools 'peel off' from the new authority, why not Integrated schools, Irish Medium schools or Voluntary Grammar Schools?

Such a multiplicity of individual employers is not just inefficient, be assured that it will raise myriad Equal Pay claims and consequences.

Our collective experience through extensive trade union casework, regrettable to note, is that the 'freedom' of Boards of Governors to employ means – in effect, the 'freedom' to lower standards! "Autonomous" schools, for instance, pay less to ancillary staff – the lowest paid staff in the educational work force. In a significant minority of autonomous schools, teachers unions regularly encounter an aloofness bordering on arrogance, and a "traditional" ethos which sits uneasily with the mores of the modern world. In such autonomous schools, the most common problems encountered are:

- lack of clarity, particularly in salary policy
- pension difficulties resulting from unconsolidated 'discretionary' awards (Honoraria, Governors Allowances and the like)
- a lack of transparency in policy generally
- an ethos which responds poorly to reasonable challenge, interpreting such as a transgression or act of disloyalty – often leading to the unnecessary escalation of disputes
- Human Resources policy implementation unlikely to facilitate flexible working, part time working, job-sharing and career breaks.

In addition, within "autonomous" schools, there is steady feedback from female members that career progression is often stymied in establishments where the requirements of 'ethos' and where extra curricular (often sports based) duties – however positive for pupils – have particular sway, directly or indirectly, on promotional success.

Before the Catholic Bishops are joined by others aiming to unravel the logic and efficiency of a single employing authority, the trade union representatives of teachers and principals would urge - Think again!

Signed,

ATL Mark Langhammer
INTO Frank Bunting
NAHT David Canning
NASUWT Seamus Searson
UTU Avril Hall Callaghan

**Joint Submissions from
NAHT, INTO and UTU**

Education Bill (for Education Act (NI) 2009)

Amendment Proposed By Teaching Associations: NAHT, INTO, UTU

Section 13: ESA to provide or secure provision of training and advisory and support services for schools

Staff development is a crucial component in improving the quality of teaching and learning in schools. This is recognised within the Performance Review and Staff Development (PRSD) scheme operating in all schools. Teachers individually and school communities annually identify their learning needs. These needs are frequently unique to the teacher or the school. However, it is often the case that these training needs are not fully provided for by the current CASS and RTU services organised by the ELBs. These services tend to offer a set menu of training which may or may not meet the needs of individual schools and teachers. Currently, schools do not have the delegated resources to provide the training and opportunities are lost for staff improvement; yet at the same time schools are increasingly accountable through inspection for ensuring that teachers receive relevant and appropriate staff development. It is unfair to increase school accountability without increasing delegation of decision making and budgets to schools.

The Teacher Associations, listed below, are agreed that schools themselves should be empowered to make decisions about the training that teachers need. To do this the budget for staff development must be delegated to schools. Such a move is entirely in keeping with the DENI and Government policy of maximising local autonomy and decision making in schools. On this, the Education Bill runs counter to agreed policy.

Clause 13(4) prevents the ESA from charging schools for training and support services. Rather they are to be "provided free of charge". Superficially this appears generous to schools but it really only serves to perpetuate the relationship that now exists between ELBs and schools i.e. the CASS service and RTU do not charge for services, rather the finance is retained by the ELBs and their services are provided "free". Schools have no choice but to take what ever is on offer, as the money for training and services is not delegated to schools.

If ESA is to provide services "free of charge" then it, too, must retain the finance for this at centre, it cannot delegate it to schools. The old relationships will continue and schools will lack authority and control of their own training and development needs. And as new policy such as "Every School A Good School" is implemented and schools become ever more accountable for their own self-evaluation the old situation will remain: schools will not control the resources necessary to ensure adequate, appropriate and relevant staff training and development.

In a system that supports maximised autonomy and local control of schools this arrangement should not be perpetuated into the new ESA. There is an opportunity to give schools control of their own development, it should not be missed.

The Teacher Associations are not proposing that ESA should not provide services and it should be noted that schools will generally choose to use services provided by ESA.

The training budget, delegated to schools, should be ring fenced for training and support. It should not be possible for schools to vire the resources to other budget areas. This will give schools local control of training; they will be better placed to match the training provided in particular schools to the needs of teachers in those schools.

Conclusion:

The Teacher Associations and Unions propose the Clause 13(4) be deleted from the bill and replaced by a clause delegating, ring fenced, finance for training and services to schools.

13 March 2009

Aidan Dolan, National Association of Head Teachers
Frank Bunting, Irish National teachers Organisation
Avril Hall-Callaghan, Ulster teachers Union

National Association of Head Teachers (NAHT)

The National Association of Head Teachers (NI), representing most school principals In Northern Ireland, has a number of serious concerns about aspects of the Education Bill, currently passing through the NI Assembly.

1/ Clause 11-(5) The budget share of a grant- aided school shall not include any amount in respect of- (a) the salaries and allowances of the staff of the school; or (b) the relevant contributions of such staff.

Following the 1989 Education Reform Order most schools in NI have had delegated budgets for staffing. This clause, if enacted, will remove this power from schools and would be totally contrary to the policy of maximising local autonomy. The clause if enacted would be a negative and retrograde step that will make it even more difficult for schools to manage their own affairs. There is absolutely no rationale for this proposal and no desire by principals, Governors, the DENI or the Inspectorate for it.

(NAHT (NI) understands that the DENI- RPA branch is aware of the inconsistency between the clause and current policy and will seek to have it amended at the committee stage)

NAHT (NI) proposes that Clause 11(5) be deleted from the bill and replaced by a clause delegating staff salaries, allowances and contributions to grant-aided schools.

2/ Clause 13- (4) Documents, training and advisory or support services provided by ESA under this section and materials provided under subsection (3) (b) are to provided free of charge.

Staff development is a crucial component in improving the quality of teaching and learning in schools. This is recognised within the Performance Review and Staff Development (PRSD) scheme operating in all schools. Teachers and school communities annually identify their learning needs. These needs are frequently unique to the teacher and/or the school. However, it is often the case that these training needs are not fully provided for by the current CASS and RTU services organised by the ELBs. These services offer a set menu of training which may or may not meet the needs of individual schools and teachers. Currently, schools do not have the delegated resources to provide bespoke training and opportunities are lost for staff improvement; yet at the same time schools are increasingly accountable through inspection for ensuring that teachers receive relevant and appropriate staff development. It is unfair to increase school accountability without increasing delegation of decision making and budgets to schools.

Schools should be empowered to make decisions about the training that teachers need. To do this the budget for staff development must be delegated to schools. Such a move is entirely in keeping with the DENI and Government policy of maximising local autonomy and decision making in schools. On this, the Education Bill runs counter to education policy.

Clause 13(4) prevents the ESA from charging schools for training and support services. Rather they are to be "provided free of charge". Superficially this appears generous to schools but it really only serves to perpetuate the relationship that now exists between ELBs and schools i.e. the CASS service and RTU do not charge for services, rather the finance is retained by the ELBs and their services are provided "free". Schools have no choice but to take what ever is on offer, as the money for training and services is not delegated to schools.

If ESA is to provide services "free of charge" then it, too, must retain the finance for this at centre, it cannot delegate it to schools. The old relationships will continue and schools will lack authority and control of their own training and development needs.

As new policy, such as "Every School A Good School", is implemented and schools become ever more accountable for their own self-evaluation the old central control model cannot remain;

schools need to control the resources necessary to ensure adequate, appropriate and relevant staff training and development. In a system that supports maximised autonomy and local control of schools current arrangements should not be perpetuated into the new ESA. There is an opportunity to give schools control of their own development, it should not be missed.

NAHT (NI) is not proposing that ESA should not provide services and it should be noted that schools will generally choose to use services provided by ESA but the relationship should be that of customer (school) to supplier (ESA).

The recent OECD report "Improving School Leadership" (2008) which analysed 22 international education systems, including NI, recommends increased school autonomy. Such autonomy is based on resource control at a local level – the proposed clause 13(4) runs counter to this.

The training budget, if delegated to schools, will give schools local control of training; they will be better placed to match the training provided in individual schools to the needs of teachers in those schools. School leaders and teachers will be much better placed to meet needs identified through school self-evaluation and staff performance review. The potential, positive effects for children's education will be greatly enhanced compared to the discredited, centrist approach in current use.

NAHT (NI) proposes that Clause 13(4) be deleted from the bill and replaced by a clause delegating finance for training and services to grant-aided schools.

3/ Nursery Sector Support

Currently the Education and library Boards do not have a statutory duty to provide training and support for the nursery sector. This anomaly should be addressed in this legislation; all leaders and teachers should have access to resources for staff training and support services.

NAHT (NI) proposes that a clause be added to the bill to ensure provision of training and support service resources for the nursery sector

4/ Special Schools Delegated Budgets

Special schools have only partly delegated budgets, unlike other grant aided schools who receive fully delegated budgets. Full delegation brings decision making to the, local level and is agreed public policy and endorsed by OECD and supported by NAHT (NI).

The anomaly should be removed by the new legislation.

NAHT (NI) proposes that a clause be added to the bill giving ESA powers to create fully delegated budgets for special schools.

**National Association of
Schoolmasters Union of
Women Teachers (NASUWT)**

1. NASUWT welcomes the opportunity to give written evidence on the First Education Bill 2009.
2. The NASUWT is the largest teachers' union in Northern Ireland and the United Kingdom representing Teachers and Principals. The NASUWT has members in all sectors and phases of education in Northern Ireland.

General Comments

3. NASUWT supports the Education Bill and the establishment of Education and Skills Authority (ESA).
4. The NASUWT supports the creation of the ESA as a single employing authority for all teachers and education support staff.
5. The NASUWT believes the establishment of ESA will centralise the administration and regulation of education in Northern Ireland. The NASUWT believes the creation of ESA provides an opportunity to reduce duplication, improve operational efficiency and enable funding to reach the "frontline" of education service delivery.
6. The ESA has a crucial role to play in the maintenance and promotion of the public service ethos in Northern Ireland education. The formation of the ESA affords Northern Ireland the long overdue possibility of moving towards a system of education integration.
7. The NASUWT believes it is possible and desirable, for the ESA to deliver high quality education across all sectional interests, ensuring all individuals and communities access equality of opportunity to meet their needs and aspirations.

NASUWT intends only to focus on issues that are of concern.

Clause 4 - employment schemes

8. The NASUWT has concerns regarding the necessity of Boards of Governors setting out the schemes of employment when ESA can fulfil that function centrally as the single employer.

Clause 23 – DE and DEL

9. The NASUWT believes that there is a necessity for the Department of Education to oversee the developments and provision of 14-19 education. This important area should have a single department committed to providing a vital coherent provision to meet the needs of all young people.

Alternative Education Providers (AEP's)

10. The NASUWT believes that provision should be made to include all providers of education including the Alternative Education Providers (AEP's) that provide a valuable and complimentary service to schools. ESA should be the single employer for all staff in this service.

Schedule 1

Membership of ESA

11. The NASUWT recommends that the recognised trade unions should be represented on the ESA

Northern Ireland Public Service Alliance (NIPSA)

1. Introduction

1.1 NIPSA is the largest public sector trade union in Northern Ireland and represents over 7500 non-teaching staff across all the Education Sector employers due to transfer to the Education and Skills Authority. We are therefore well placed to represent the interests of all staff in the biggest reorganisation of the Education Sector since 1972 and we welcome the opportunity to respond to the Draft Education Bill including the Explanatory and Financial Memorandum.

1.2 At the outset NIPSA would wish to place on record that the Education and Skills Authority should not be seen purely in the context of saving money and diverting this to the "front line". With the proposed savings of £20m per annum over a 3 year period it is clear the resources are being stripped from education and not re-diverted to the "front line", although NIPSA takes the view that the "front line" should not be narrowly defined to focus solely on the classroom. We are opposed to the drive to shape the new ESA in a way which delivers these CSR savings and in particular the projected loss of around 460 jobs over the next 3 year period.

1.3 NIPSA has a number of concerns that the Education Minister decided to split the legislation into 2 Bills. Given the delays in the implementation NIPSA would wish to see all of the legislative proposals in at least draft form before the first Bill is enacted. NIPSA's strong preference remains for one Bill encompassing all legislative proposals.

2. COMMENTS ON DRAFT BILL

2.1 Paragraph 2 (5) & (6): Given the size of the task of setting up of ESA and the many facets to this, NIPSA does not believe that the transfer of administrative functions from DEL to ESA is appropriate at this time and propose these paragraphs be deleted.

2.2 Paragraph 4(1) – (3): NIPSA has major concerns over the provision of a scheme such as an 'employment scheme'. Every grant-aided school will be required to devise a scheme which will provide for among other things, the appointment of staff (a recruitment policy), the regulation of conduct and discipline of staff (disciplinary procedures) and the suspension and dismissal of staff. These are matters which are best addressed through the provision of centrally agreed policies and procedures arrived at through the collective negotiating machinery.

Paragraph 5(1) – (6): It is proposed that ESA should approve all schemes. Paragraph 2 states "the submitting authority shall take into account any guidance issued by ESA under sub-section (3). NIPSA believes that if employment schemes are required then there should be one Scheme which would be centrally negotiated with the Trade Union Side and ESA and then adopted by each grant aid school. This would ensure commonality across and between schools which would lead to uniform treatment of staff. If any school subsequently wished to add or amend the "model scheme" this would then need to be negotiated with the Trade Union Side and approved by ESA.

Paragraph 9(1) – (3): NIPSA fully supports the legislative provision for the transfer of staff employed by Board of Governors of voluntary schools and grant-maintained integrated schools

to the Education Skills Authority. This will lead to all school based staff being treated equitably in respect of pay, terms and conditions of employment.

Paragraph 11: NIPSA would propose the removal of paragraph 11 in totality. The salaries, allowances and relevant contributions of all staff employed by voluntary grammar schools and grant-maintained integrated schools should be paid directly by ESA. This is the most cost effective way to administer salaries across the whole school sector. NIPSA sees no good reason why individual schools should retain this function and our strong views supports uniformity in the application of pay policies.

Paragraph 12(2)(b)(ii): After "staff in such schools" insert "and their representatives".

Paragraph 14: ESA should also work to create links with the NI Library Authority to enhance the provision of the schools library service. NIPSA is concerned that without formal legislative links the schools library service will not be in a position to develop sufficiently the appropriate level of staff with the right skills and competences to ensure the schools library service is a first class service given this will be a relatively small group of staff (approximately 50).

Paragraph 15 (2): Line 2 delete "or together with any other person". This would allow for the privatisation of functions or for continuing of PPP/PFI school build projects. There is clear evidence that the PPP/PFI route does not deliver in a timely fashion the rebuilding of the schools and youth estate. NIPSA firmly believes the traditional design and build will prove in the long term the most efficient and cost effective method of reshaping and upgrading the estate.

Schedule 1 – Membership Paragraph 2(1)(b): NIPSA does not believe 7 to 11 members is adequate to properly reflect the size and diversity of the Education Skills Authority. NIPSA believe the membership needs to be large enough to ensure appropriate and acceptable representation from across Northern Ireland. Given that ESA will be the Employing Authority for 60,000 staff NIPSA firmly believes the make up of the Board of ESA should comprise of one-third elected representatives, one-third community representatives and one-third employee representatives and would seek the assurance of the Education Committee will seriously address all aspects of this to ensure all sectors are appropriately and adequately represented.

Schedule 1 – Paragraph 5(6): In addition NIPSA believes the legislation should provide for secondments between ESA and a Northern Ireland department. This would allow for exchanges of experience and skills which would in NIPSA's view benefit both ESA and the NI Civil Service departments.

Schedules 2 and 3 – Transfer Schemes: NIPSA would seek an absolute assurance that the Transfer of Undertakings Protection of Employment Regulations (2006) TUPE would apply in full to all staff transfers.

Schedule 5 – Transfer Scheme – Civil Servants: NIPSA requests that the Committee should review the provisions of this Schedule taking account of the particular procedures required to address the employment rights of NI Civil Service staff.

NIPSA also reserves the right to seek alternative arrangements or appropriate negotiations with the Department.

Ulster Teachers' Union (UTU)

The Ulster Teachers' Union (UTU) is the only teachers' union with its headquarters in Northern Ireland. It represents the interests of local teachers in nursery, primary, secondary (including

grammar) and special education schools and has members in the controlled, maintained, voluntary and integrated sectors. Its current membership is approximately 6,500. The union only accepts into full membership teachers who are currently registered with the General Teaching Council. It also has an associate membership category for teachers who are now working as Educational Psychologists.

The Ulster Teachers' Union in its initial response to the proposals for the setting up of a single educational body to subsume the existing plethora of employing authorities welcomed this as a positive step forward. In the intervening protracted period leading up to the proposed establishment of the Education and Skills Authority (ESA) on 1st January 2010 the UTU has had growing concerns about the ability of ESA to fulfil its functions in an acceptable and accountable manner. Nevertheless, UTU still believes that if the Education Bill can be amended in a satisfactory way then it is possible that ESA can deliver what was promised initially.

One of the glaring omissions within the Bill is any reference in paragraph 2 of the Bill to ESA's responsibility for early years education. Apart from one reference to its obligation to provide teaching materials for children from the age of 2 (paragraph 25(2)) there is no mention of nursery education. This omission may be accidental or it may be deemed that "primary" covers early years, but in the absence of the publication of the Report of the review of 0-6 provision the UTU has concerns.

The other omission at this paragraph is reference to special needs provision, although it is presumed that this could again be subsumed under "primary and secondary". Passing reference is made to "the requirements of persons with special learning needs" in paragraph 26(1)(ii). Again, with no sight as yet of the Report on the Special Needs review UTU has concerns. Presently mainstream schools are accepting pupils with special needs but the UTU feels there is still a place for Special Schools as separate entities for those pupils who benefit most from this type of educational setting.

The UTU welcomes the statement contained in paragraph 2(3) that all school premises will be "treated on the same basis". The UTU believes that it is essential that all schools are treated equally in all respects, and that should include all aspects of funding. At present there is total inequity in funding, particularly between the primary and secondary sectors, but also at second level between the secondary and grammar sector.

The UTU wholeheartedly welcomes the statement in paragraph 3(1) which confirms that "all teachers and other persons who are appointed to work under a contract of employment on the staff of a grant-aided school shall be employed by ESA".

The UTU has concerns, however, when in paragraph 4(2)(d) there is reference to a controlled or maintained school either having or not having a delegated budget. At present there are controlled schools that do not have full delegation of funding and it has created inequities in the operation of negotiated procedures. The UTU would be satisfied if the delegation of funds was a partial one, with salaries remaining a central cost with ESA, providing all schools are treated in a similar manner.

The UTU welcomes the reference in paragraph 5(3) to the fact that a submitting authority must provide information to ESA concerning the extent to which the submitted scheme differs from the model scheme. The UTU would expect ESA to ensure that there should be commonality for all schools unless there is a very compelling reason for difference. There should be a reference made to consultation with the trade unions where an employment scheme does not follow the prescribed model.

The UTU is satisfied with the reserve power stated at paragraph 6(1) but is very concerned about paragraph 7. While it could be argued that it might be necessary to amend the employment scheme for very valid reasons the UTU believes that paragraph 7(1)(a) provides adequately for this and would suggest the deletion of paragraph 7(1)(b). There should be no need for the submitting authority to alter its employment scheme. The UTU has concerns that the inclusion of this clause might give scope for schools to opt out of the common system and set up an alternative arrangement that does not give equality of treatment to all employees in the education service (as has occurred in England and Wales with the establishment of academies).

The UTU welcomes paragraph 8(3) which allows ESA to intervene to ensure that Boards of Governors comply with the employment schemes.

The UTU also welcomes paragraph 9 which confirms that all staff in voluntary schools and grant-maintained integrated schools will transfer on the appointed day to ESA on the same day as all other staff in grant-maintained schools.

The UTU is pleased to note that paragraph 10(4)(a) provides for consultation with Boards of Governors regarding preparation or revision of a scheme for the employment of peripatetic teachers. The UTU questions why there is no provision for consultation with trade unions written into the Bill, either here or elsewhere.

The UTU is concerned regarding paragraph 11 which provides for the payment of staff in voluntary grammar and grant-maintained integrated schools to be made by other arrangements. The UTU believes that there should be no need for this if we are attempting to ensure equality for all schools.

In paragraph 18(d) reference is made to the commissioning of research. Whilst the UTU accepts that it may be necessary on some occasions to commission research it would state its very strong reservations about the amount of public funds currently used in employing commercial companies to carry out research.

The UTU welcomes the dissolution of the bodies listed in paragraph 21 as a means of streamlining the education service and ensuring greater equality throughout the system.

The UTU is concerned regarding the duty of ESA in paragraph 26 to have regard to "the requirements of industry, commerce and the professions" with respect to curriculum, examinations and assessment. The UTU believes that there are other interests who should be "regarded", not least the trade unions.

The UTU is concerned that paragraph 28 may limit schools and FE colleges from providing innovative courses of study, but appreciates that ESA needs to be able to prevent schools from offering unacceptable courses.

The UTU notes the implementation of the disciplinary powers of the General Teaching Council and welcomes the process whereby teachers will assume authority for regulating the profession. The UTU also welcomes the introduction of a statutory professional code of conduct and expects there to be full consultation with the teacher unions before such a code is agreed.

The UTU would reiterate its concerns about any need for a revision of a scheme of management under paragraph 33(1)(b).

While the UTU agrees with the sentiments contained in paragraph 34 in terms of promoting the achievement of high standards of educational attainment by pupils it believes that there is absolutely no need for this paragraph to be included and recommends its deletion. The UTU is particularly concerned about the consequences of paragraph 34(2) and how that might be interpreted.

The UTU is concerned about the inclusion of such a wide statement as "such other persons as that person thinks appropriate" in paragraph 39(1)(b).

The UTU acknowledges that there are those who would wish to retain faith-based schools, however the UTU believes that in the interests of unifying our society schools should be encouraged to operate on a multi-cultural basis with all young people being educated together in schools with a broadly Christian ethos. Paragraph 49 allows for the continuation of a segregated education system and the UTU believe that this paragraph should be deleted.

Schedule 1, paragraph 2(b) provides for what the UTU believes to be an unacceptably low number of members of the Education and Skills Authority. The UTU would suggest that ESA should have a Board of not less than 15 and not more than 19 members.

In addition the UTU believes that councillors should make up not less than 25% of the membership. To dedicate more than 50% of the membership to councillors does not leave sufficient representation for other interests. The UTU suggests that there should be guaranteed places for trade union representatives on the body.

Schedule 1, paragraph 9, allows for ESA to make provision for its own standing orders. The UTU believes that there should be some regulatory body ensuring that such standing orders are acceptable.

Schedule 2, paragraph 2(2) refers to the making of "one or more schemes". The UTU believes that in the interests of equality there should be a common scheme.

The UTU is pleased to note Schedule 6, paragraph (2)(c) which allows a teacher to request a statement to be made in the event that a case against the teacher is not proven.

The UTU notes paragraph 3(b) of Schedule 6 which refers to the possible expenditure a teacher may be involved in.

Paragraph 8(1) of Schedule 6 mentions "material fitness to be a registered teacher" and the UTU expects that the GTC should enter into negotiations with the teacher unions to define this concept at an early stage.

Similarly, the UTU would expect negotiations to take place on an agreement regarding the definition of "unacceptable professional conduct" as referred to in paragraph 8(b) of Schedule 6.

The UTU would request that an alternative wording be found to ensure the inclusion of trade unions in the consultation referred to in paragraph 14(5). While the current wording refers to "representatives of..." it would be preferable if "including the teacher unions" could be inserted.

The UTU welcomes the retention of Article 101 which allows for the Department of Education to direct ESA in certain circumstances.

**Youth Council for
Northern Ireland (YCNI)**

3rd Feb 09.



04 February 2009

Mr John Simmons
Northern Ireland Assembly
Committee for Education
Room 241
Parliament Buildings
Stormont
BELFAST BT4 3XX

Dear Mr Simmons

Education Bill

The proposed amendments, detailed below, to the Education Bill are submitted on behalf of a group comprising staff drawn from the following bodies:

- Northern Ireland Youth Forum;
- Education and Library Board Youth Services;
- YouthNet;
- Youth Council for Northern Ireland.

CLAUSE	
2.(2)(a)	The preferred amendment of this clause is: <i>"to contribute towards the spiritual, moral, cultural, social, intellectual and physical development of children and young persons in Northern Ireland and thereby of the community at large by ensuring that efficient and effective primary and secondary education, youth services, and educational services are available to meet the needs of such children and young persons;"</i>
2.(2)(b)	If Clause 2.(2)(a) is amended as above, clause 2.(2)(b) would then be removed.
15.(1)(a)	The preferred amendment of this clause is: <i>"adequate facilities for youth services and educational services and activities carried out in connection with these services;"</i>
15.(1)(b)	If Clause 15.(1)(a) is amended as above, clause 15.(1)(b) would then be removed.
43.(1)(a)	The preferred amendment of this clause is: <i>"for the purposes of, or in connection with, the provision (or proposed provision) of youth services and educational services and activities carried out in connection with such services;"</i>
43.(1)(b)	If Clause 43.(1)(a) is amended as above, clause 43.(1)(b) would then be removed.

.../2

- 2 -

04 February 2009

Mr John Simmons, Northern Ireland Assembly - Committee for Education

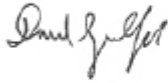
While the amendments set out above are the preferred position of the group, it is recognised that these amendments may not be achievable. Therefore, the group has an alternative amendment for **Clause 2.(2)(b)**:

"To ensure efficient and effective youth services are available to meet the needs of such children and young persons, as described in 2.(2)(a)."

Under this alternative amendment, **Clause 15.(1)(b)** and **Clause 43.(1)(b)** would remain unchanged.

The rationale for the proposed amendments described above is to ensure that youth services are treated in exactly the same manner as any other service for which ESA will be responsible.

Yours sincerely



David Gullfoyle

Youthnet

As the representative body for the Voluntary Youth Sector in Northern Ireland, Youthnet welcomes the opportunity to respond to the Education Bill.

Youthnet is the voluntary youth network for Northern Ireland. It is an independent agency which represents the interests and aspirations of voluntary youth organisations. Our 75 member organisations cover a broad range of activity for young people across Northern Ireland, including front line delivery of youth work in small community groups, local youth projects and regional and national organisations for young people.

We would propose the following amendments:-

Clause 2.(2)(a)

The preferred amendment of this clause is:

"to contribute towards the spiritual, moral, cultural, social, intellectual and physical development of Children and Young persons in Northern Ireland and thereby of the community at large by ensuring that efficient and effective primary and secondary education, youth, services and educational services are available to meet the needs of such children and young persons."

Clause 2. (2) (b)

If Clause 2. (2) (a) is amended as above then Clause 2. (2)(b) would then be removed.

Clause 15 (1) (a)

The preferred amendment of this clause is:

"adequate facilities for youth services and educational services and activities carried out in connection with those activities"

Clause 15 (1) (b)

If Clause 15 (1) (a) is amended as above, Clause 15 (1)(b) would then be removed.

43.(1)(a)

The preferred amendment of this clause is:

"for the purpose of, or in connection with, the provision (or proposed provision) of youth services and educational services and activities carried out in connection with such activities"

43.(1)(b)

If Clause 43. (1) (a) is amended as above then Clause 43.(1)(b) would then be removed

While the amendments set out above are the preferred position of Youthnet, it is recognised that these amendments may not be achievable. Therefore, the group has an alternative amendment for Clause 2. (2) (b):

"To ensure efficient and effective youth services are available to meet the needs of such children and young persons, as described in 2. (2) (a)."

Under this alternative amendment, Clause 15. (1) (b) and Clause 43. (1) (b) would remain unchanged.

The rationale for the proposed amendments described above is to ensure that youth services are treated in exactly the same manner as any other service for which ESA will be responsible.

Other Correspondence and Written Submissions Relating to the Report

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Committee Correspondence to Education Stakeholders	12 January 2009
ESAIT Briefing Paper - Designing Modern Education Services	26 January 2009
Committee Correspondence to the Department of Education - Concerns and Information Requests	19 March 2009
Correspondence from Department of Education to Dominic Bradley MLA	19 March 2009
NI Assembly Research Paper - Religious Ethos in Schools in Scotland, England and Wales and the ROI	April 2009
Correspondence from the Department of Education - Concerns and Information Requests	5 May 2009
Committee Correspondence to the Minister of Education - Concerns Potential Amendments to the Education Bill	20 May 2009
ESAIT Briefing Paper - ESA Director Structure	27 May 2009
Correspondence from CnaG	11 June 2009
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Correspondence from the Minister for Education - Scrutiny of the Education Bill	17 June 2009
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Committee Correspondence to the Minister of Education - Scrutiny of the Education Bill	29 June 2009
Correspondence from Minister of State for NI	27 July 2009
Correspondence from the Department of Education - Outstanding Responses	31 July 2009
Correspondence from the Minister of Education - Model Schemes, Local Committees and ESA Members	5 August 2009
Correspondence from the Department of Education - Departmental Amendments	4 September 2009
Correspondence from the Department of Education - ESA Members	4 September 2009
Committee Correspondence to the Minister of Education - Membership, Local Committees and Schemes of Employment	9 September 2009
Briefing Paper from the Department of Education - Employment Arrangements	10 September 2009
Correspondence from the Department of Education - Outstanding Correspondence	15 September 2009

Correspondence from the Minister of Education - Membership, Local Committees and Employment Arrangements	16 September 2009
Correspondence from Committee for Employment and Learning – DEL Amendments	16 September 2009
Assembly Research Briefing Paper ‘Comparable Issues from Library, Health and Education Bills’	16 September 2009
Correspondence from Department of Education - Controlled Schools Sector Meeting	18 September 2009
Correspondence from the Department of Education - Schedules 3, 4 and 7 of the Education Bill	22 September 2009
Correspondence from the Minister of Education - possible further amendments and suggestions on the Education Bill	22 September 2009
Correspondence from the Department of Education - Further Two Amendments	30 September 2009
Education (No 2) Bill	30 September 2009

NI Assembly Research Paper - Scale of the Education and Skills Authority

SCALE OF THE EDUCATION AND SKILLS AUTHORITY

Tim Moore
Research and Library Services

Introduction

1. The 'Final Decisions of RPA' document,¹ published in March 2006, stated that an Education and Skills Authority (ESA) would be established to support the operational delivery of Education across Northern Ireland and across all sectors of Education. In relation to the ESA the statement added that:
 - o It will have responsibility for the functions performed currently by the five Education and Library Boards (ELBs), the Council for the Curriculum Examinations and Assessment, and the Regional Training Unit.
 - o It will also have responsibility for the front-line support and related functions currently undertaken by the Council for Catholic Maintained Schools, the Northern Ireland Council for Integrated Education and Comhairle na Gaelscolaíochta.
 - o It will be the employing authority for all teaching and other support staff employed in grant-aided schools, and this will result in greater coherence and consistency in how things are done.
 - o Some of the operational functions currently performed by the Department of Education will also transfer to the new Authority. The ownership of the controlled schools estate, currently with the ELBs, will transfer to the new Authority.
 - o A Director of Children's Services will be appointed to co-ordinate the Authority's responsibilities for children.
 - o The Authority will play a key role in taking forward the curriculum for 14- to 19- year-olds.
2. The recently published draft Programme for Government² has underscored the Executive's commitment to the creation of the ESA. A specific objective under the key priority 'Deliver High Quality and Efficient Public Services' is to have it established by 2009.³

¹ Better Government for Northern Ireland - Final Decisions of the Review of Public Administration (March 2006) http://www.rpa.ni.gov.uk/pdf/raa_21_march_dec.pdf

² <http://www.plgbudgetni.gov.uk/plg241007new.pdf>

³ Website <http://www.esani.org.uk/>

3. This briefing note is designed to provide information against which to benchmark the potential scale of the ESA. Strict comparisons of the size of education authorities within the UK and more widely are not possible for a number of reasons. These include the differing functions undertaken by authorities and the differing levels of education which they administer (e.g. nursery or higher education). For the purposes of enabling a broad comparison, a focus on the size of the school sector which falls within the authorities' remit is possible. This comparison will may produce different results however, depending on whether one considers school budgets; number of teaching staff; number of schools; number of pupils; or number of support staff (or any combination of these factors). As data is most readily available on number of schools falling within an authority's remit, this has been used as a basis upon which to make broad comparisons.
4. Comparison based on the number of schools falling within the remit of an authority indicates that under current proposals the ESA will become the largest education authority in the United Kingdom. It appears, however, that it will not be the largest education authority in Europe. At least in respect of some functions, France (a highly centralised state) and Catalonia (a region within Spain's devolved government system) appear to have larger authorities. In each of these two cases, however, geographic divisions exist within authorities in relation to a number of functions.

Northern Ireland

5. The Northern Ireland School Census 2005/06 reports that in Northern Ireland there are just over 1,300 schools (100 nursery schools, 900 primary schools, 17 preparatory departments of grammar schools, 230 post-primary schools, 45 special schools, 19 independent schools and 3 hospital schools).⁴ These schools cater for around 330,000 pupils⁵ with just over 19,000 full-time equivalent teaching posts.⁶

England and Scotland

6. In UK terms, the ESA, which will potentially have approximately 1,300 schools within its remit, will become the largest education authority. Administration of education in England and Scotland is a local government function. In England, Kent is the largest education authority with just over 700 schools⁷ and 232,000 pupils.⁸ In Scotland, Glasgow is the largest authority with just over 350 schools and just over 74,000 pupils.⁹ Scotland no longer has a regional tier of local

⁴ Northern Ireland School Census 2005/06

<http://www.statistics.gov.uk/STATBASE/Source.asp?vlnk=1028&More=Y>

⁵ http://www.deni.gov.uk/enrolment_time_series-10.xls

⁶ http://www.deni.gov.uk/te_teachers_by_board_and_mantype-5.xls

⁷ <http://www.dfes.gov.uk/rspalway/DB/SFRs000602/SFR39-2006web1.xls>

⁸ <http://www.dfes.gov.uk/rspalway/DB/SFRs000602/SFR39-2006web1.xls>

⁹ 108 nursery schools (6,680); 170 primary schools (37,831); 30 secondary schools (27,878);

46 special schools (1,685)

School and Pupil Numbers by Sector and Local Authority, 2007

<http://www.scotland.gov.uk/Publications/2008/02/25145216/59>

government with responsibility for education. The 12 Regional and Island Authorities (one of which was Strathclyde), which were responsible for education in Scotland until 1 April 1996, handed over their responsibilities to 32 local (district) authorities following a reorganisation of local government.

7. In terms of the number of school establishments within its remit, the scale of ESA would be largely comparable with the area covered by the North East Government Office Region. In England, there are nine Government Offices for the Regions each headed by a regional director. They aim to ensure the effective delivery of government programmes regionally and locally, working with regional partners, including local authorities regional development agencies and other organisations to achieve the Government's aims. They have only a limited role, however, in delivering some government plans and programmes within the field of education and skills. The Government Office for the North East covers 12 local authorities (including Newcastle Upon Tyne and Sunderland) which in total have responsibility for 1,300 schools (Nursery 40 - Primary 930 - Secondary 206 - Other 124) and 414,000 pupils.¹⁰

France

8. France has historically been a highly centralised state and one would, therefore, expect to see administration of the education system on a relatively large scale. To some extent this is true. The Ministry for Education recruits, trains, and manages the teaching staff in public education, which admits more than 80% of pupils. Clearly, therefore, the Ministry will employ more teachers than the ESA might employ. Furthermore, the Ministry for Education functions (including what are described as 'numerous management tasks')¹¹ would also relate to a larger number of schools than those that might be administered by ESA. In this context, however, it is worth noting that in order to implement policy and accomplish its numerous management tasks:

...the ministry has 'external' administrative departments known as *académies*. France is thus divided into 30 such *académies* each headed by a *rector* acting directly on behalf of the minister. An *académie* is the administrative level enabling the regional application of education policies as defined by the government. It allows action to be taken according to local contexts in collaboration with regional groups: *communes* for primary education, *départements* for *collèges* and *régions* for *lycées*. Within the overall system established at national level, schools are to some extent independent as regards their administrative and teaching activity and, at secondary level (in *collèges* and *lycées*), their financial affairs too. In practice, this relative independence is expressed in a plan for each school,

Number of local authority and partnership pre-school education providers by type of centre and local authority, January 2007

<http://www.scotland.gov.uk/Publications/2007/09/26094517/28>

Number of children registered for local authority and partnership pre-school education by pre-school centre type and local authority, excluding children under 3 years old, January 2007

<http://www.scotland.gov.uk/Publications/2007/09/26094517/28>

¹⁰ <http://www.dfes.gov.uk/sqgateway/DB/SFR/s000682/SFR38-2006web1.xls>

¹¹ Eurydice (2007) National Summary Sheet on Education Systems in Europe and Ongoing Reforms - France

known as a *projet d'école* and *projet d'établissement* at primary and secondary levels respectively.¹²

9. By way of example of scale, the *Académie de Paris* contains a total of 842 of schools within its geographical limits.
- Nursery (Maternelles) 322
 - Primary (Elementaires) 337
 - Colleges (First 4 years of Secondary Education) 110
 - Lycees (Next 3 years of Secondary Education) 73¹³

Spain – Catalonia¹⁴

10. Spain provides an example of a state which, like the United Kingdom, has devolved power to 'regional' levels. The Spanish Constitution provides for the creation of 17 'Autonomous Communities' which have wide legislative and executive autonomy, with their own parliaments and regional governments. The distribution of powers, as laid out in an 'autonomy statute' (*estatuto de autonomia*), is different for every autonomous community.
11. At state level, the Ministry of Education, Culture and Sport (MECD) is the State body that has the power to, amongst other things, set the basic standards underpinning the constitutional right to education through the general organisation of the education system. The government of each Autonomous Community, however, has '...administrative authority over the establishments in its region and the functions deriving from it and is empowered to create, authorise and administer public and private educational establishments and to administer the personnel, construction, infrastructure and reform of such establishments'. As regards 'local' authorities, legislation does not grant them Education Authority status, but rather recognises their capacity to cooperate with the State and the Autonomous Communities in the field of education. There is no common body in all Town Councils in charge of such tasks but they generally assume powers related to the following:
- o granting land for the building of public establishments,
 - o the payment of expenses for the maintenance, repair,
 - o monitoring and upkeep of pre-primary and primary education establishments, the monitoring of compulsory education and educational services; and the provision of complementary services and activities.
12. Catalonia with a population of approximately 7 million people is the second largest Autonomous Community in Spain and it is governed by the *Generalitat*. The Department d'Educació (Department of Education) is responsible for the proposal and execution of education and learning policy below university level. In regards to a number of functions, including employing authority for teachers, the number of schools within its remit is greater than the number which will fall within the remit of the ESA. Details of the number and type of schools in Catalonia are set out in the table below.

¹² http://www.eurydice.org/resources/eurydice/pd/0947DN/047_FR_EN.pdf

¹³ http://www.ac-paris.fr/article.php?id_article=99

¹⁴ Eurydice (2003)

<http://www.eurydice.org/portal/page/portal/Eurydice/ByCountryResults?countryCode=ES>

Schools	Total	Nursery	Primary	Secondary	Child Primary Secondary	Special Education
Public	2,809	592	1,624	529	2	62
Private	1,360	571	127	119	476	67
Total	4,169	1,163	1,751	648	478	129

Source: Departament d'Educació. Servei d'Estadística, Informació i Documentació. Estadística de l'Educació.¹⁵

13. Within the *Departament d'Educació* there are, however, eight units which relate to specific geographic areas and which carry out the following functions: schools and pupils; information; teaching Staff; buildings and works; training; inspection; and health and safety.

November 2007

¹⁵ <http://www.gencat.net/educacio/centres/centres.htm>

Committee Correspondence to Education Stakeholders



12 January 2009

Dear Stakeholder

Education Bill

As you may be aware the Education Bill passed its Second Stage in the Assembly on 8 December 2008 and the Committee Stage of the Bill has now commenced.

The Committee is writing to you as a key stakeholder to invite you to submit written evidence to the Committee, preferably by e-mail to: committee.education@niassembly.gov.uk , or, by post, to: The Committee Clerk, Room 242, Parliament Buildings, Belfast, BT4 3XX.

Your written submission should be structured to address specific clauses of the Bill and its schedules and should include any amendments you are proposing to the text. Information regarding the Bill can be obtained from the Assembly's website -

http://archive.niassembly.gov.uk/legislation/primary/2008/nia3_08.htm.

If you have any other queries, please contact the Committee office on 028 9052 1787.

Please note that the closing date for submissions is Friday 20 February 2009.

Yours sincerely

John Simmons

Clerk to the Committee for Education

ESAIT Briefing Paper - Designing Modern Education Services

ASSEMBLY EDUCATION COMMITTEE

WEDNESDAY 28th JANUARY 2009

DESIGNING MODERN EDUCATION SERVICES

EDUCATION
COMMITTEE
RECEIVED

26 JAN 2009

108/09/I/08

1.0 Introduction

- 1.1 The principal focus of the Education and Skills Authority (ESA) will be on improving education outcomes and access to excellent education and personal development opportunities for all children and young people. However, the creation of ESA also provides the opportunity to design a modern system of educational support services taking account of technical and technological developments which have occurred since the sector was last reformed in 1973.
- 1.2 This is a complex change process, drawing staff and functions from 12 different organisations. The ESA Implementation Team (ESAIT) has created change management and organisational design programmes which are structured, evidence based and which draw on both international best practice and the detailed knowledge of the sector. These programmes are also engineered to identify and mitigate, potential risks.

2.0 Change Programme

2.1 ESAIT has identified 20 key service areas (listed at Annex A). Having considered:

- the risks associated with change
- the benefits to be realised from change
- the pace at which change might be delivered

ESAIT placed each service in one of three broad categories:

- a) Those services to **Transfer** into ESA with minimal change (except at management level). These are typically services which directly support children or schools and where continuity is vital, e.g. transport, school meals. However, it is likely that a more detailed review of these services will take place in the medium term
- b) Those services which will **Transform** as a direct result of creating ESA. These are typically organisation support services like finance, human resources, ICT. In the new organisation a single function will replace multiple functions in existing organisations e.g. a single finance function for ESA in place of 6 major finance functions throughout the sector.

- c) These services where we must **Innovate** i.e. where there will be radical change, probably over a longer timescale. These services support educational outcomes and encompass education quality, children's services and education estates. The requirement to innovate reflects the increased focus on raising standards and closing the performance gap.

3.0 Design Process

- 3.1 This model formed the basis part of the ESA Change Management Strategy which was launched in April 2008 with a Conference entitled 'Preparing Together for ESA'. In designing each service under ESA, ESAIT set out a 4 stage approach:

Stage 1 - Clarifying the Vision, Aims and Objectives for each service area;

Stage 2 – Developing the Future Service Delivery Models;

Stage 3 - Identifying the People, Skills and Resources needed to deliver services effectively; and

Stage 4 - Creating an appropriate organisational structure

- 3.2 **Stage 1** of the design process took place in May and June 2008, when 20 workshops were held involving 350 service managers across the sector to assist in the development of the vision and objectives for their respective services in ESA. Managers were asked to identify potential improvements for their service under ESA and the risks and obstacles likely to be encountered.
- 3.3 At **Stage 2** of the design process, ESAIT drew upon the workshop information to draft models of current service delivery. This then informed ESAIT's work on the development of Future Service Delivery Models. ESAIT continued to engage with colleagues in the various service areas in developing the models, to get their input to the process.
- 3.4 During November and December, ESAIT held a second series of 11 workshops with 450 senior and middle management staff from existing organisations. The purpose of the workshops was to test the draft Future Service Delivery Models for each service area, with a particular emphasis on **regional and local functions**. A list of these workshops is included at Appendix B.

4.0 Regional and Local Delivery

- 4.1 A challenge for ESA is to ensure regional consistency of approach in delivering education policies and services whilst being responsive to local needs and circumstances.
- 4.2 On the one hand the reorganisation of a number of organisation support services including payroll, finance, procurement and human resources into single regional functions will deliver both greater effectiveness and real savings – these savings are reflected in the Outline Business Case. It should be noted that there is no intention to locate all of these single regional functions in the same place.

- 4.3 On the other hand a number of services must be delivered locally if they are to be effective. These will be services which directly support the education and personal development of children including education welfare, psychology, youth support, and those services which directly support school principals and Boards of Governors.
- 4.4 As it has worked through the process with stakeholders, ESAIT has also identified a number of services which should be regionally managed but locally supervised and delivered including catering, cleaning, building maintenance and transport. Such an approach will ensure regional consistency but also reflects the practical reality of locally delivered support.
- 4.5 In terms of local delivery, a key feature will be the formation of Local Area Teams, managed locally and providing an integrated, multi-disciplinary service to the local area. Local ESA managers and service staff will have the flexibility to respond to specific local circumstances and need within an agreed regional framework and standards. They will be sensitive to, and receive input from, a Committee for that area comprising, amongst others, a number of elected representatives.

5.0 Next Steps

- 5.1 ESAIT has now completed Stage 2 of the four stage process. The next step is to look in detail at the skills and resources required throughout the organisation.

Transfer	Transform	Innovate
Catering Cleaning Transport/Vehicle Maintenance Examinations & Assessment Internal Audit Transfer and Open Enrolment Awards/Grants/Benefits	Accounts Payable & Receivable Financial Reporting & Budgeting LMS Teachers' Pay & Pensions/ Payroll HR ICT Corporate Development Music School Library Services Youth	Children's Services Education Quality Education Estates

ESA SERVICE DELIVERY MODEL WORKSHOPS

QUALITY ASSURANCE WORKSHOP	14 Nov 08
<ul style="list-style-type: none"> • Finance • ICT 	
QUALITY ASSURANCE WORKSHOP	17 Nov 08
<ul style="list-style-type: none"> • HR • Education Estates • Operational Services 	
QUALITY ASSURANCE WORKSHOP	21 Nov 08
<ul style="list-style-type: none"> • Education Quality • Children's Services • Curriculum • Professional Development 	

The Quality Assurance Workshops were attended by the most senior managers/directors in organisations only, and were used to quality assure at a high level the thinking behind the principles being developed by ESAIT.

WORKSHOP 1 – Education Estates	28 Nov 08
<ul style="list-style-type: none"> • Area Planning • Asset Management • Procurement and Delivery 	
WORKSHOP 2 – Children's Services	1 Dec 08
<ul style="list-style-type: none"> • Additional Educational Needs • Youth • Early Years 	
WORKSHOP 3 – Finance and ICT	5 Dec 08
<ul style="list-style-type: none"> • Financial Reporting and Budgeting • LMS • Teachers Pay and Pensions/Payroll • Accounts Receivable and Payable • ICT • Procurement of Goods and Services 	
WORKSHOP 4 – Business Change	10 Dec 08
<ul style="list-style-type: none"> • Communications • Corporate Development • Internal Audit 	
WORKSHOP 5 – Curriculum, Examinations & Assessment and Professional Development	12 Dec 08
<ul style="list-style-type: none"> • Curriculum • Examinations and Assessment • Professional Development of Teachers 	

APPENDIX B

WORKSHOP 6 – Operational Services	15 Dec 08
• Catering	
• Cleaning	
• Transport/Vehicle Maintenance	
• Transfer and Open Enrolment	
• Awards/Grants/Benefits	
WORKSHOP 7 – Education Quality	16 Dec 08
• School Improvement	
WORKSHOP 8 – HR	18 Dec 08
• HR	
• Industrial Relations/Negotiating machinery	

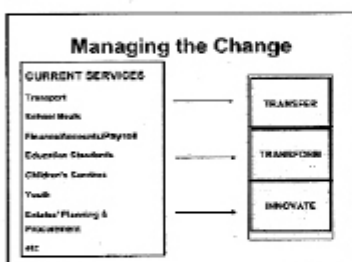
The ESA Change Management Strategy (see Appendix 3)



- A half day conference entitled 'Preparing Together for ESA' was held on 4 April, to begin the process of engagement with senior and middle managers. Over 200 managers from all the affected organisations attended. This was the first major conference focused on preparations for ESA and feedback was very positive. Copies of the presentations from key speakers and detailed feedback from the conference evaluation sheets are available on the ESAT website (esani.org.uk)
 - This will be followed by around 20 Workshops during May and June with managers from the existing organisations. Each workshop will focus on a particular service area. The purpose of the workshops is to draw on the expertise and knowledge of the staff currently involved in the service areas to inform thinking on how services should be delivered by ESA.
 - During the summer months, we will develop new delivery models for each service area, drawing on the output from the workshops and ongoing input from staff in the existing organisations.
 - This work will feed into the development of a detailed organisation structure for ESA, including the sub-regional structure required to deliver services which are responsive to local needs.
 - Work on service delivery models and organisational structures will form key components of an initial location strategy.
-
- The detailed work to determine the organisational structure, service delivery models and location of jobs will provide the necessary information required for the staff transfer scheme. This will inform all staff, well in advance of ESA being established, of their post within ESA, location, management structure etc.
 - Detailed planning for Day 1 will begin during the summer to ensure that services will operate effectively from Day 1.

Managing the Change to ESA

Mark Browne
Programme Director
ESAIT



Implications for Services

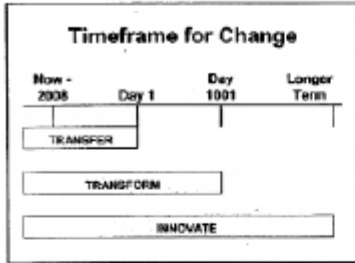
Transfer
Come into ESA largely in line with current arrangements but with assumed management to create regional structures

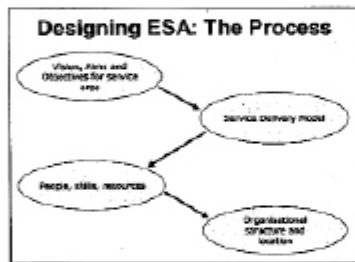
Transition

- Will change significantly
- Move to standard, integrated systems
- Removal of duplication
- Grouping of functions

Isolate

- Radical change
- Focus on essential activities
- Enhance responsiveness, effectiveness and flexibility
- Greater integration of service delivery
- Strong area delineation

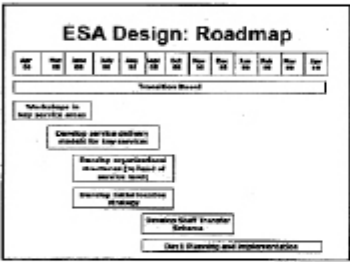




- ### Designing ESA: Workshops
- Around 20 workshops over May and June
 - To develop the vision and delivery arrangements for services under ESA
 - Draw on knowledge and expertise of staff in existing organisations
 - Engage staff and increase "buy-in"

**'Preparing Together for ESA' -
4th April 2008**

- Major conference to launch programme of engagement
- 200 delegates – senior managers and heads of service delivery
- All organisations across the education service represented
- Historic event
 - First time staff at this level together from across the education service
 - First major ESA conference



**Committee Correspondence to
the Department of Education -
Concerns and Information Requests**



John Leonard
Departmental Assembly Liaison Officer
Department of Education
Rathgael House
Balloo Road
Bangor
BT19 7PR

Our Ref: 025/09/C/01 19 March 2009

Dear John

Education Bill – Committee Concerns & Information Requests

At its meeting on 18 March 2009, the Committee for Education reviewed the issues of concerns it has to date in relation to its scrutiny of the Education Bill, which have been communicated to officials during evidence sessions and through weekly follow-up correspondence to you as the Departmental Assembly Liaison Officer. The Committee also reviewed requests it has made to officials on the provision of further information on the topics covered during these evidence sessions. A table detailing the concerns and specific information requests of the Committee, highlighting the absence of any departmental response to date on these, is attached for your consideration and action.

The Committee agreed to write to the Department to express its concerns at the lack of response from officials to the issues raised and particularly the information requested. It is imperative to the work of the Committee in its scrutiny of the Bill to receive the Department's timely response to the concerns raised and any information requested.

The Committee have requested that you give this matter your urgent attention.

Yours sincerely

John Simmons
Clerk to the Committee

Committee for Education Concerns and Information Requests to the Department of Education on its Scrutiny of the Education Bill up to and including its Meeting of 11 March 2009

Follow Up from Committee for Education Meeting of 14 January 2009 on the proposed structure of the Education & Skills Authority (ESA) at regional and local levels (Ref. Committee's letter of 16 January 2009)

Concerns	Information requested	Department Response
	provide a paper to include a worked up example of (a) what the envisaged change in structure and approximate staffing levels would look like, from the	Response outstanding.

Concerns	Information requested	Department Response
	current structure to an ESA Regional and Sub Regional structure. and a further paper on the proposed powers, responsibilities and make up of a Local Committee, (b) including how members of a Local Committee would be appointed.	

Follow Up from Committee for Education Meeting of 21 January 2009 on Sectoral Representation and ESA Single Employing Authority (Ref. Committee's letter of 23 January 2009)

Concerns	Information requested	Department Response
	(c) forward a copy of EQIA/screening being prepared by the RPA Team. copies of draft Employment Scheme and guidance (d) and details of the steps the Department proposes or takes to engage with stakeholders. to be kept informed on the progress of 'Review of Employment Opportunities for Teaching Staff and in the interim to provide the following information:	
	<ul style="list-style-type: none"> ▪ Forecasts of the number of teaching vacancies likely to arise over the next three years (analysed by school type and sector); 	Response outstanding.
	(e) <ul style="list-style-type: none"> ▪ estimating the proportion of those vacancies for which a certificate in religious studies is likely to be an eligibility criterion; ▪ identify the routes by which teachers may obtain a certificate, either as part of their initial teacher education, or subsequently. 	
	<ul style="list-style-type: none"> ▪ (f) sight of the Second Bill in draft in order to effectively carry out scrutiny of the First Bill. 	

Follow Up from Committee for Education Meeting of 28 January 2009 on Designing Modern Education Services and the ESA Outline Business Case (Ref. Committee's letter of 29 January 2009)

Concerns	Information requested	Department Response
1. The need for clarity on not simply the ESA's regional/local structure but on the structure of ESA's decision taking, to include which decisions will be	(g) copy of Full Business Case on completion by summer 2009. best estimate of the costs involved (h) (including the time of both Departmental Officials and others, plus Principals/Vice Principals etc in	Response outstanding.

Concerns	Information requested	Department Response
<p>taken locally; 2. The expertise and experience which will be lost to ESA as a result of the redundancies which are envisaged - particularly in the context of risk management of the merger of multiple IT systems against a background of some less than successful public sector IT projects; 3. The potential for much greater future savings through rationalisation of other services which will be within ESA's remit;</p>	<p>schools) in the full range of educational initiatives which are currently in train and the savings which could be achieved through rationalisation of such initiatives.</p> <p>provide a breakdown of the different types of roles included in 'Middle Management/Professions' category which appears in Table 6.8 on page 46 of the OBC.</p> <p>provide more information in relation to the six possible costs and benefits listed on page 48 of the OBC, to include approximate amounts for each of the listed savings/costs.</p> <p>Finally, in the context of the redundancies envisaged in the OBC, provide a detailed paper on the position of teachers who have already applied for early retirement, to include the position of teachers who applied before and after November 2008. The paper would include reference to the bids registered in the Strategic Stocktake exercise, including the implications of the bids not being met or only partly met.</p>	

Follow Up from Committee for Education Meeting of 4 February 2009 on the Ownership of Controlled Schools Estate (Ref. Committee's letter of 6 February 2009)

Concerns	Information requested	Department Response
<p>4. the Committee was concerned that the Department's Paper 20 had gone out to public consultation without seeking views on how appointments to and membership of the Ownership Body might be made reflective and representative of the section of the population which controlled schools predominantly catered for. This was raised in the context that the Department has rights of appointment to this public body. The Committee was also concerned that if there were to</p>	<p>provide a more detailed account of the arrangements for 'claw-back' of public monies where, through school closure, amalgamation etc, an asset in which public monies have been invested is disposed of by the owners of that asset, such as Trustees or the Board of Governors. Officials indicated that these arrangements for claw-back pro-rata of relative share of public monies have changed over the years, eg, pre and post 1978, and the Committee would request a</p>	<p>Response outstanding.</p>

Concerns	Information requested	Department Response
<p>be an overlap between the membership of the controlled sector Representative Body and the publicly appointed membership of Ownership Body, the independence of the Representative Body would not be affected. Officials agreed that they would give consideration to how the Committee's concerns could be addressed and provide the Committee with a paper on this*.</p>	<p>summary of the arrangements which have operated during each period, the nature of the changes in such arrangements and the reasons for the change.</p> <p>(m) an analysis of how the disposal of assets, in both the maintained and controlled sectors, has worked in practice in recent years and the amounts recovered from Trustees or Boards of Governors. Including in this details of any arrangements for writing down of the value of the public investment as the asset depreciates and how this affects the amount of public money recouped.</p> <p>(n) a separate paper providing more detail on the subject of 'accountable autonomy' of controlled schools and the possible transformation of and vision for these schools moving on a pathway to 'become truly local schools, owned and managed by local people for the benefit of the local community'.</p> <p>(o) See 'concerns' – paper requested*</p>	

Follow Up from Committee for Education Meeting of 11 February 2009 on Area Based Planning (Ref. Committee's letter of 13 February 2009)

Concerns	Information requested	Department Response
<p>5. The need for clarity on the roles of the different bodies involved in the Area Based Planning process, particularly the Department, ESA and bodies putting forward development proposals; 6. The need to reference Sustainable Schools Policy as a key element in Area Based Planning; in particular, the need to recognise that 'one size doesn't fit all' and the dangers of being driven entirely by pupil 'numbers' in relation to reaching decisions on the future of small rural schools; 7. The danger of sectors moving ahead with development proposals for their own particular sector and pre-empting Area</p>		<p>Response outstanding.</p>

Concerns	Information requested	Department Response
Plans still to be agreed; 8. Concern that Area Based Planning work around delivery of the entitlement framework at age 14 should not be used as a means of achieving some other policy aims, such as Post Primary transfer; 9. The need to engage the pre-school sector, special education and youth provision in the development of Area Plans.		

Follow Up from Committee for Education Meeting of 25 February 2009 on Employment Schemes, Schemes of Management, Boards of Governors (Ref. Committee's letter of 6 March 2009)

Concerns	Information requested	Department Response
10. whether Clause 8 goes against the ethos of RPA and enables ESA to micro-manage schools, and the inclusion of an appeals mechanism; 11. ensuring equality within the sectors in education and the perceived disparity in treatment of the Controlled sector in comparison to that of the Irish Medium and Maintained sectors; 12. the lack of progress in establishing the Sectoral Body representing the Controlled Sector resulting in the Sector not being able to influence fundamental issues in the Bill, such as the Ownership Body for controlled schools; and 13. Members were particularly concerned that the intentions of the Bill are not adequately reflected within the detail of the legislation.	(p) Information on the legislative changes required to ensure that the Controlled Schools Ownership Body is representative of the community served by the Controlled schools.	Response outstanding.

Follow Up from Committee for Education Meeting of 4 March 2009 on Schedules and related Clauses (Ref. Committee's letter of 6 March 2009)

Concerns	Information requested	Department Response
14. Concerns regarding the number of members who would sit on the ESA and whether the membership of 'no more than 11 other members' would provide sufficient scope for the required breadth of knowledge and experience. 15. The Committee	(q) Proposals on how to ensure a balance between the merit principle and the need to ensure an appropriate spread of representation within the membership of the ESA. (r) Details of the investment formula for clawback.	Response outstanding.

Concerns	Information requested	Department Response
<p>also discussed the representation of members who sit on the ESA and it was agreed that the Department would want to seek advice from the Commissioner for Public Appointments as to the best way of reflecting appropriately the merit principle and the need to ensure an appropriate spread of representation (cross-party, gender, geographical etc) within the body so that it enjoys widespread trust and confidence.</p> <p>16. A member also raised concerns that the Bill should ensure adequate representation of statutory and non statutory nursery provision.</p>	<p>(s) Details on the position of ESA Designate planning for asset transfers, harmonisation of staff salaries and terms and conditions and the relationship with the Education Workforce Review.</p> <p>(t) Receipt of an outstanding paper on the local structures of ESA which will include reference to the role and composition of sub committees and indicate the number of committees that will be needed and include reference to the time commitment that will be involved for ESA members.</p> <p>(u) An explanation for why finance provisions within Clause 15 (4) of the Libraries Act (NI) 2008 are not provided for under ESA; and similarly why term of office provisions within Clause 5 (2)(a) of the Health and Social Care (Reform) Bill are not provided for under ESA.</p>	

Follow Up from Committee for Education Meeting of 11 March 2009 on GBA and NIVGSBA responses to the Bill (Ref. Committee’s letter of 16 March 2009)

Concerns	Information requested	Department Response
<p>17. the ‘catch all’ provisions within the Bill; 18. whether the provisions in clause 8, including employment schemes and guidance, should and can be subject to mechanisms for appeal and/or regulation by the Assembly; 19. concerns that detail in relation to employment arrangements does not appear on the face of the Bill but in the accompanying guidance and schemes of employment; 20. Article 101 and the powers of the Department to direct; 21. lack of clarity in the legislation regarding employment rights between staff across the education sectors; 22.</p>	<p>(v) Proposals to address the GBA and NIVGSBA concerns regarding the effect of Clause 8 (2) in relation to schemes of employment and management, perhaps to include a direction to Article 101, and mechanisms of appeal and/or regulation and control by the Assembly.</p> <p>(w) An indication of the benefit of the ESA in financial terms in relation to a figure or target in the form of an estimate of the percentage increase in the education budget going directly to schools.</p>	<p>Response outstanding.</p>

Concerns**Information requested****Department Response**

concerns that the ethos of the schools would be undermined by ESA becoming the employing authority; 23. who has lead responsibility for employment matters at tribunal and who pays for this process; 24. whether ESA will provide equality between the different education sectors; 25. concerns regarding the Ancillary powers of ESA within Clause 18; 26. concerns about increased bureaucracy of ESA and whether a substantial proportion of budget would be spent within ESA and not directly on schools; 27. savings targets regarding management costs and bureaucracy; targets relating to percentage of budget directed to schools; 28. the timescale of budgetary objectives and targets; 29. timescale of rationalisation process; 30. when the full costs of the new regime will be known; and 31. of the outline business case and final business case for ESA.

Follow Up from Committee for Education Meeting of 18 March 2009**Concerns****Information requested****Department Response**

Department Officials mentioned on a number of occasions that the Department would be bringing its own amendments to the Bill. At its meeting on 18 (x) March, the Committee agreed to request details of any Bill amendments that the Department are proposing to make to be provided to the Committee as soon as possible.

Correspondence from the Department of Education to Dominic Bradley MLA

Rathgael House
Balloo Road
Bangor
Co Down
BT19 7PR

Dominic Bradley MLA
Northern Ireland Assembly
Parliament Buildings
Belfast

19 March 2009

Dear Dominic

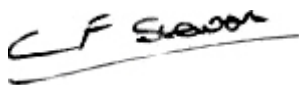
Follow-up to queries raised in the Education Committee

During a discussion last year on the Education Bill, you asked me to consider a number of points that had been raised with you by Comhairle na Gaelscolaíochta (CnaG). You subsequently raised a number of the points during a meeting of the Executive Committee, and asked me to respond formally, copying the response to Committee members.

Please accept my apologies for the delay in responding. I attach a short paper addressing each of the points. For ease of reference I have included the CnaG comment (in bold and italics) with the Department's response immediately below each point (as agreed by the Minister).

I appreciate that the responses provided to some of these queries are very technical in their nature and I would be happy to discuss them further if that would be helpful.

Yours sincerely



Chris Stewart
Head of RPA Division
Department of Education
cc John Simmons (Education Committee Clerk)

Education Bill: Response To Points Raised By Dominic Bradley MLA

Schemes of management and employment

Page 17: Preparation and Approval of Schemes of Management

31.- allows the "submitting authority" to submit schemes of management.

The trustees of an IM school should be given the power to act as a submitting authority as in the case of the Catholic maintained school.

Change required under 31. (7) add "(c) in the case of an IM school, the trustees of the school."

This will strengthen the status of IME in legislation and ensure parity with Catholic schools.

1. The Minister welcomes the suggestion, and is already considering a change to the Bill that would produce the outcome sought by CnaG.
2. Schemes of management and employment are central to the Bill and will set out, respectively, the governance arrangements for schools, and the role of boards of governors in employment matters. Significantly, they will be the vehicles by which schools (in any sector) give effect to their ethos.
3. The Bill requires such schemes to be prepared for each school and submitted to the Education and Skills Authority. As presently drafted, the 'submitting authority' would be the trustees of a Catholic maintained school, and the board of governors for any other grant-aided school.
4. The Minister is considering an amendment to the provision. The effect of the amendment would be to define the submitting authority for any grant-aided school, as being the owners or trustees of the school, with an option to delegate the function to boards of governors.
5. I should, however, point out that, where the owners or trustees of a school are the board of governors (which I understand to be the position for Irish-medium schools), such an amendment would have little effect.

Curriculum and examination functions

Page 14: Discharge by ESA of its functions under sections 24 and 25.

26.- (1) (a) "add (iii) the requirements of persons being educated through the medium of Irish"

This will ensure that ESA will be required to meet the needs of IME and will reflect the current onus placed on DE by the GFA.

6. The Minister recognises the legitimate concern on the part of CnaG to ensure that curriculum support and similar services are sensitive to the needs of Irish-medium education. We welcome the suggested change, but wish to give further thought as to how best it might be reflected in the legislation.

Duty to 'encourage and facilitate'

Page 1: Functions and General Duty of ESA

This section should include a positive reference to IME under 2.- (2). Under 2.- (2) add " (f) to encourage and facilitate the development of Irish-medium education."

Or

Under 2.- add "(9) It shall be the duty of ESA to encourage and facilitate the development of Irish-medium education (so far as its powers extend)"

This will ensure that ESA will be required to meet the needs of IME and will reflect the current onus placed on DE by the GFA.

7. The Department is considering the options suggested by CnaG.

Boards of governors and ethos

Page 18: Duties of Board of Governors in Relation to Achievement of High Standards of Educational Achievement

34. – Add "(3) it is the duty of the Board of governors of a grant-aided school to exercise its functions with a view to promoting and preserving the sectoral ethos of the school"

The sectoral ethos of the schools shall be designated in the scheme of management of the school. Ref page 28

IME has no protection in a school beyond the will of the BoG and principal. Therefore practice may be changed at any time in response to the exigencies of the school – e.g. the school budget. The above change will ensure that the IM character of a school is designated in a scheme of management and protected from unilateral change, particularly in the cases of units in EM schools.

8. The Minister recognises the value of the ethos of schools and sectors, and their strong desire to maintain cohesion during a period of unprecedented education reform. It is for that reason that we are committed to supporting the role of sectoral organisations in fostering and developing ethos. We consider that this would be the most effective approach, and see considerable difficulty in attempting to follow the legislative route suggested. The ethos of a school or sector is not something that can be precisely defined, nor can it be easily measured. In these circumstances, whilst CnaG's objective is understandable, we do not think that the proposed duty would be practicable.

Composition of boards of governors

Page 19: Community Governors for Controlled, Maintained, Grant-Maintained Integrated and Certain Voluntary Grammar Schools

Where an IM unit is established in a school the Board of Governors shall be reconstituted to reflect the change in character of the school. 2 ninths shall be nominated by the trustees body of the IM schools or 2 ninths of community governors will be nominated by ESA. Where two or more schools are grouped under one Board of Governors, the principal of a school shall not be entitled to attend or take part in any meeting of the Board of Governors whenever a matter relating exclusively to one or more of the other schools is being discussed.

Provision needs to be made here for governors on the BoG of schools with IM units to allow community governors to be included as a right on the BoG of schools with units.

9. The Minister agrees that, where possible, the composition of a board of governors should change to take account of significant changes to the character of the school. We consider that the best way to achieve this would be through the normal scheduled reconstitution of the board or governors, or as vacancies arise. We understand the desire of CnaG for an earlier change, but view the approach suggested as potentially problematic. It is difficult to see a sound basis for selecting and removing two existing governors that would not be open to challenge.

10. CnaG has also suggested that some governors ought to be chosen by the 'trustees body' (presumably a reference to CnaG). The sectoral support policy envisages all sectoral organisations having a role in nominating potential community governors, for appointment by the ESA. However, the policy makes it clear that this would not be a statutory role.

11. CnaG has also suggested that, where two or more schools are grouped under one Board of Governors, the principal of a school shall not be entitled to attend or take part in any meeting of the Board of Governors whenever a matter relating exclusively to one or more of the other schools is being discussed. This is, in fact, already provided for in paragraphs 2(3) and 3(4) of Schedule 5 to the Education and Libraries (NI) Order 1986.

Definition of Irish-medium school

Page 28: Catholic Maintained Schools

This section defines a Catholic maintained school for the purposes of the Education Orders as a "maintained school which is for the time being designated in a scheme under this section.

The Order should also include provision to require the Department to "make a scheme designating those maintained schools which are to be Irish-medium maintained schools for the purposes of the Orders.

This will ensure that IM schools have a legal designation once a scheme has been agreed by DE.

12. CnaG has asked for the inclusion of a definition of an Irish-medium school, similar to that for Catholic maintained schools. CnaG feels that this would underpin the ethos of Irish-medium education.

13. As noted above, the Minister is committed to supporting each sector in fostering and developing each ethos, but we do not feel that legislation is the appropriate vehicle for doing so.

14. The purpose of the definition of Catholic maintained school in the legislation is not connected to ethos. It was originally needed in order to delineate the group of schools that were to be the responsibility of the Council for Catholic Maintained Schools (CCMS). The Department envisages removing the definition of Catholic maintained school in the second RPA Bill (along with other definitions), in pursuit of the policy objective of having a common set of administrative arrangements for all grant-aided schools. (We have not done so in the first Bill simply because of the scale and quantum of other consequential changes that will be required to tidy up the legislation) This would have no bearing on the ownership, character, or ethos of any school.

Protection for CnaG staff

Page 38: Schedule 3 Transfer of Assets, Liabilities and Staff of Dissolved Bodies

This schedule provides for the transfer of staff in the dissolved bodies (CCEA, CCMS, ELBs, etc.) to ESA. The schedule should also include other bodies designated as affected bodies for the purposes of the RPA, namely Comhairle na Gaelscolaíochta and NICIE. This will allow for the transfer of staff to ESA. Schedule 5 provides for the transfer of certain staff of the Department. If necessary an additional schedule should be created to provide for the transfer of certain staff from NICIE and Comhairle na Gaelscolaíochta.

Currently there appears to be a difficulty securing the transfer to ESA of staff currently with Comhairle na Gaelscolaíochta and NICIE, where the revised budget of the two organisations will not be sufficient to employ the staff complement currently employed. A schedule in the bill will provide a basis for such transfer.

15. It is important to emphasise that the Department is fully committed to taking forward the RPA on the basis of equality. With that in mind, the Minister has asked me to emphasise that any staff who transfer from CnaG to the ESA will have their terms and conditions of service and pension entitlement protected, on the same basis as staff who transfer from statutory organisations.

16. The Department understands why CnaG has asked for these commitments to be included in the Education Bill, and we have carefully considered the scope for doing so. However, a difficulty stems from the fact that CnaG is a private, non-statutory organisation. The inclusion of the suggested provisions in the Education Bill could render the Bill 'hybrid', that is, a Bill covering both public and private law matters. The Assembly has not yet developed a separate procedure for private and hybrid Bills and there is, therefore, a high risk that the changes sought by CnaG would result in the Bill being significantly delayed. This in turn would risk jeopardising the implementation timetable for the RPA.

17. In these circumstances, the Minister has concluded that the change should not be made, as this would involve considerable risk of delay, whilst offering no real benefit to CnaG staff.

NI Assembly Research Paper



Research and Library Service

Religious Ethos in Schools in Scotland, England and Wales and the Republic of Ireland

Briefing Paper Prepared for the Education Committee Jennifer Betts, Research Officer (April 2009)

Background

The introduction of the Education Bill establishing the Education and Skills Authority (ESA) in Northern Ireland has led to the leaders of the Catholic Church expressing fears for the ethos of Catholic schools. The ESA will become the employers of all teaching and non-teaching staff in all grant-aided schools including Catholic maintained schools.

A different, but similar issue has arisen for the controlled sector where a new body will be formed to take ownership of this sector from the five Education and Library Boards that will cease to exist when the ESA is established. The controlled sector does not at present have an identifiable ethos nor as yet a body to represent their sector.

This Research Briefing provides an overview of legislation that was put in place in Scotland, England and the Republic of Ireland (RoI) to protect the ethos of the Catholic sector where the management of their schools passed to state control. It includes provision for the employment of teaching staff who will uphold the Catholic ethos.

Scotland

Any discussion on a model for faith based schools in Scotland has, by definition, to be referring to Catholic faith-based schools since of the 389 state-funded faith schools in Scotland, 385 are Catholic^[1]. Of the others, one is Jewish and three are Episcopalian. A comparison published in 2004 of education systems in Europe^[2] found that in Scotland:

The Roman Catholic Church retains considerable influence over the appointment of staff, the teaching of religious education and the ethos of the schools. Like the Church of Scotland it has the right of representation on education committees. It has a committee, the Catholic Education Commission (CEC) which concerns itself with matters in Scottish education which affect the Church. In addition to various other Christian denominations, several other world faiths (notably Chinese, Jewish, Moslem, Hindu and Sikh) are practiced, in the main by ethnic minority groups.

Local authorities directly employ teachers who work in Catholic schools in Scotland. However, the Catholic Church has a statutory role in the appointment of teachers in Catholic schools and statutory representation on school boards^[3].

The Education (Scotland) Act 1918

The Education (Scotland) Act 1918 provided full state funding to Catholic schools in Scotland. The Government wanted to achieve equality of provision for all pupils in Scotland and Catholic schools had been unable to afford to provide the range of education provided to state school pupils. In bringing Catholic schools into the state system the following rights were guaranteed to the Catholic sector in the 1918 Act:

- Catholic schools were to be fully funded by the state and open to inspection by Her Majesty's Inspectors;
- As public schools Catholic schools were to be open to all, but provided primarily to serve the needs of the Catholic community;
- The Church was expected to approve all teachers in Catholic schools as to their 'religious belief and character'; and
- The local education authority was to appoint, with the approval of the Church, a supervisor for religious education in Catholic schools.

Unlike England, Wales and Ireland, Catholic schools in Scotland in 1918 were not offered the option of being voluntary providers sanctioned and financed by the state. In Scotland Catholic schools had to accept transfer to the education authorities if they were to continue to receive public money^[4].

The Education (Scotland) Act 1980

The Education (Scotland) Act 1980^[5] ("the Act") requires education authorities and schools to make provision for Religious Education and Religious Observance and includes provision for parents to withdraw their children from them if they wish. The Act also provides for the employment of teachers in denominational schools.

Section 16 of the Act refers to schools to which the 1918 Act would apply for the 'Transference of denominational schools to education authorities'. Section 16 (3) states:

The existing staff of teachers in a school transferred under this section shall be taken over by the education authority and shall as from the date of transfer be placed upon the same scale of salaries as teachers of corresponding qualifications appointed to corresponding positions in other schools of the same authority; and any question which may arise as to the due fulfilment or observance of any provision or requirement of this subsection shall be determined by the Secretary of State.

There are provisions in the Act requiring teacher appointments to denominational schools to be approved by the relevant church or denominational body. The relevant provisions in the Act are contained in Section 21 'Management of denominational schools':

(2) Subject to subsections (2A) and (2C) below, in any such schools the education authority shall have the sole power of regulating the curriculum and of appointing teachers;

(2A) A teacher appointed to any post on the staff of any such school by the education authority shall ...satisfy the Secretary of State as to qualification, and shall be required to be approved as regards his religious belief and character by representatives of the church or denominational body in whose interest the school has been conducted;

(2B) Where the said representatives of a church or denominational body refuse to give the approval mentioned in subsection (2A) above they shall state their reasons for such a refusal in writing.

This does not mean, however, that all teachers in Catholic schools have to be Catholic, but they do need to be approved by the church. There is no requirement for teachers in Scotland to have a Certificate in Religious Education, as is the case in Northern Ireland for Catholic maintained nursery and primary schools[6].

Catholic Education Representative Bodies

The Catholic Education Commission in Scotland is a body constituted by the Bishops' Conference of Scotland to advise and assist the Bishops in educational matters and promote its development. Membership of the Commission comprises a representative from each Diocese, representatives from the Catholic Head Teachers Association, A Church Representative on a local authority, a representative from the Religious Education Advisers and Faculty of Education of the University of Glasgow, and a parent representative.

The Scottish Catholic Education Service (SCES) is an agency of the Catholic Education Commission and develops and implements its policies. The Director of SCES reports to the Chairperson of the Commission[7].

Charter for Catholic Schools in Scotland

A Charter for Catholic Schools in Scotland[8] was launched in 2004 by the SCES. It outlines ten essential elements of the Catholic Church's philosophy for education and is included at Annex A of this briefing paper. The Catholic Church requires that all teachers applying for posts in Catholic schools are committed to the promotion and support of the Catholic school's mission, aims, values and ethos. When applying for a teaching post, applicants must provide evidence that they are committed to the Charter.

Approval of Teachers in Catholic Schools: Guidance for Teachers is published by the SCES on behalf of the Bishops' Conference of Scotland. The Guidance does not preclude applications from non-Catholic teachers, but requires applicants to submit references to the Bishop of the Diocese where the vacancy has occurred. The Guide includes the following information:

When seeking approval, a teacher must demonstrate how his/her personal "religious belief and character" enables him/her to undertake the duties of the particular teaching post within the context of a Catholic school, with its particular mission, values and ethos, as outlined in A Charter for Catholic Schools in Scotland. All teachers who seek approval must provide a reference from a suitable person who can testify to the teacher's personal "religious belief and character". The reference for a Catholic teacher should be provided by the teacher's parish priest who should be able to testify to the teacher's personal "religious belief and character".

North Lanarkshire Council: Learning and Leisure Services provide Notes of Guidance on the Recruitment Process for a Post in Teaching covers all teaching appointments in the Council area. Instruction for applicants states that if the post is in a Catholic school they must "...provide a letter of approval from the diocesan office responsible for the area in which the school is located.

(This does not apply to posts in non-denominational schools.) You are advised to seek approval sufficiently early in the process to meet this condition." The Guidance goes on to say that the council will be unable to make appointments unless all the conditions in the Guide are met.

England and Wales

Historically in England schools founded by private bodies included 'voluntary controlled schools' which were mainly established by the Church of England and 'voluntary-aided schools' set up by either the Catholic Church or the Church of England^[9]. The School Standards and Framework Act 1998 meant that secondary schools could opt for 'Community', 'Foundation', 'Voluntary', 'Community Special', or 'Foundation Special' status. Schools that were previously funded by Local Education Authorities, churches, or central government (grant-maintained) would be newly designated as 'Community', 'Voluntary' and 'Foundation' schools. It was following the 1998 Act that 'Muslim Faith Schools were first established^[10]. In the Education Act 2002^[11] a 'maintained' school means a community, foundation or voluntary school or a community or foundation special school.

Schools that have a designated faith character of any denomination are able to ask for faith commitment as one of the criteria used in making staff appointments, in order to maintain the faith character of the school. In voluntary controlled and foundation schools, school governors are able to ask how potential head teachers will maintain and develop the religious character of the school. Criticism of faith schools in England from some politicians and a teaching union prompted the issuing of a press release by faith school leaders^[12]. They argued that legislation in place to protect the ethos of faith schools does not necessarily mean that only members of the faith can be appointed to leadership roles in their schools. They claim there are examples of members of other faiths or no faith teaching in faith schools.

School Standards and Framework Act 1998

Section 60(4) and 60(5) of the School Standards and Framework Act 1998^[13] allowed the Governing Bodies of foundation or voluntary faith schools to give preference in appointments to those whose religious faith accords with that of the school. Staff at foundation or voluntary schools with a religious character could appoint a head teacher having regard to their 'ability and fitness to preserve and develop the religious character of the school'.

In the case of a voluntary-aided school preference could also be given in the appointment, promotion or remuneration of teachers whose religious opinions were in accordance with the tenets of the religion or religious denomination, attend religious worship in accordance with those tenets and who give or are willing to give religious education in the school in accordance with those tenets. Regard could also be given if dismissing a teacher if their conduct was incompatible with the 'precepts, or with the upholding of the tenets, of the religion or religious denomination so specified'.

Section 60(6) specifies that if the school is a voluntary aided school no one, other than a teacher, can be disqualified because of their religious opinions or their attendance or non-attendance at religious worship.

Education Act 2002

The Education Act 2002 came into force in July 2002 and repeals some of the legislation with regard to faith schools that were in the School Standards and Framework Act 1998. Section 49 of the 2002 Act repeals Section 91 of the 1998 Act allowing schools with a religious character to

agree special arrangements with their Local Education Authority to preserve their religious character when admitting pupils^[14].

Section 58 of the School Standards and Framework Act 1998 allows for what are known as 'reserved teachers' in foundation, voluntary and controlled schools with a religious character. These schools are allowed to 'reserve' up to a fifth of their teaching posts for teachers selected on the basis of their competence to teach religious education in accordance with the tenets of the school faith. Section 37 of the Education and Inspections Act 2006 has amended these provisions to allow head teachers at such schools to also be reserved teachers.

Sections 35(4) and 36(4) of the 2002 Act refer to staff appointments and provide for the Secretary of State to make regulations with further provisions on the staffing of schools. Sections 35(6) and 36(6) refer to reserved teachers whereby regulations made by the Secretary of State regarding the appointment and dismissal of certain teachers at schools with a religious character shall have effect subject to the provisions applying to reserved teachers.

Provision applying to reserved teachers^[15] means that if a school considers that a reserved teacher has failed to give religious education efficiently and suitably they may require the appropriate body to dismiss them. In relation to a foundation school this will be the governing body and in a voluntary controlled school the local education authority.

In the event of the delegated budget being suspended by the Local Education Authority for a community, voluntary controlled, community special or maintained nursery school, the 2002 Act allows for particular arrangements to be put in place for the Local Education Authority to appoint, suspend and dismiss staff as it sees fit. However, in relation to reserved teachers, this can only be done in consultation with the governing body and in line with arrangements for the appointment and dismissal of reserved teachers in voluntary controlled schools.

Government Staffing Guidance (Education Act 2002)

Staffing guidance under sections 35(8) and 36(8) of the Education Act 2002^[16] contains information on Diocesan authority attendance and advisory rights in relation to voluntary controlled and foundation schools which are Church of England or Roman Catholic Church schools. The guidance states that the governing body of such a school may, as opposed to must, accord advisory rights to the Diocese in relation to the appointment, engagement or dismissal of teaching staff. These rights would apply in the same way as those of the Local Education Authority and would include a right of an appropriate diocesan officer to attend and offer advice at all proceedings relating to the appointment or dismissal of any teachers. The governing body must consider any advice offered and provide agreement or withdrawal of agreement to the diocesan authority in writing.

RoI

The education system in the RoI is a partnership between the State and various private entities. As the State gives explicit recognition to the denominational character of the schools, there is not the same perception of a need for the ethos of different denominational schools to need protection.

In the case of Roman Catholic and Church of Ireland schools the owners are usually the diocesan trustees. Other denominational schools usually have a board of trustees nominated by the church authority, with multi-denominational schools owned by a limited company or board of trustees. Irish medium schools may come under the patronage of the Catholic Church, although some are owned by a limited company. The state pays for most of the building and running

costs with a local or patron contribution. This contribution is limited to 5% of the total cost of building or renovation and a cap on the final amount payable. Grants are also provided by the state for the running costs of schools^[17].

Education Act 1988

The Education Act 1988^[18] 'respects the diversity of values, beliefs, languages and traditions in Irish society and is conducted in a spirit of partnership between schools, patrons, students, parents, teachers and other school staff, the community served by the school, and the State.' Under the Irish Constitution it is acknowledged that 'the primary and natural educator of the child is the Family and guarantees to parents the freedom to decide where that education should take place. The State shall provide free primary education, supplement and give reasonable aid to private and corporate educational initiatives and if necessary provide other educational facilities and institutions'^[19].

The Education Act 1988 9(d) states that schools shall promote the moral, spiritual, social and personal development of students and provide health education for them, in consultation with their parents, having regard to the characteristic spirit of the school.

Under the functions of a school board the 1988 Act 15(2) states that in carrying out its functions the board shall:

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

April 2009

Annex A

Scottish Catholic Education Service

Published by the Scottish Catholic Education Service on behalf of the Bishops' Conference of Scotland

A Charter for Catholic Schools in Scotland

The mission of the Catholic school is to develop as a community of faith and learning, providing the highest quality of education, and offering formation through the promotion of Gospel values, through celebration and worship, and through service to the common good.

All Catholic schools in Scotland, in honouring Jesus Christ as the Way, the Truth and the Life, will feature the following characteristics:

- a commitment to the integrated education and formation of the whole person, in close partnership with parents as the first educators of their children;
- an inclusive ethos which aims to honour the life, dignity and voice of each person, made in the image of God;

- a commitment to the search for wisdom in life and to the pursuit of excellence, through the development of each person's unique God-given talents;
- a commitment to the spiritual formation of the school community, through the shared experience of prayer and liturgy, and in partnership with local parishes;
- the provision of religious education programmes which will enable young people to develop their understanding of Gospel values and of how to apply them to life;
- a commitment to uphold the moral teaching, faith tradition and sacramental life of the Catholic Church;
- a commitment to communicate Catholic social teaching and thereby to promote social justice and opportunity for all;
- a commitment to ecumenical action and the unity of Christians;
- the promotion of respect for different beliefs and cultures and for inter-faith dialogue;
- a commitment to support the continuing professional and spiritual development of staff.

All staff appointed to a Catholic school are expected to support and promote the aims, mission, values and ethos of the school, as illustrated in this Charter.

[1] <http://www.scotland.gov.uk/Topics/Education/Schools/FAQs>

[2] Hofman R.H. et al (2004) Institutional Context of Educational Systems in Europe: A Cross Country Comparison on Quality and Equity; Kulwer Academic Publishers: Norway.

[3] Scottish Catholic Education Service website at: <http://www.sces.uk.com>

[4] From the Learning and teaching Scotland (LTS) website at: <http://www.ltscotland.org.uk/antisectarian/whatIsSectarianism/legislation/legislationAndEducation/index.asp>

[5] The Education (Scotland) Act 1980 available at: http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1980/cukpga_19800044_en_1

[6] Email correspondence with Senior Research Specialist in 'Spice' (Scottish Parliament Research Service) 20.4.2009.

[7] SCES website is at: <http://www.sces.uk.com>

[8] A Charter for Catholic Schools in Scotland (June 2004) available at: <http://www.sces.uk.com/Download/Documents/SCESCharter.pdf>

[9] Hofman R.H. et al (2004) Institutional Context of Educational Systems in Europe: A Cross Country Comparison on Quality and Equity; Kulwer Academic Publishers: Norway.

[10] Homer, W. et al (eds), 2007 The Education Systems of Europe.

[11] Education Act 2002 available at: http://www.opsi.gov.uk/acts/acts2002/ukpga_20020032_en_1

[12] Available at: <http://www.catholicchurch.org.uk/ccb/content/pdf/3702>

[13] School Standards and Framework Act 1998 available at:
http://www.opsi.gov.uk/acts/acts1998/ukpga_19980031_en_1

[14] Explanatory Notes Education Act 2002 at:
<http://www.opsi.gov.uk/ACTS/acts2002/en/02en32-a.htm>

[15] In Section 58 of the School Standards and Framework Act 1998.

[16] Available at: <http://www.governornet.co.uk/linkAttachments/ACF3B38.doc>

[17] Citizens' Information at: <http://www.citizensinformation.ie/categories/education/primary-and-post-primary-education/going-to-primary-school/ownership-of-primary-schools>

[18] Education Act 1988 available at:
<http://www.irishstatutebook.ie/1998/en/act/pub/0051/sec0008.html>

[19] Hofman R.H. et al (2004) Institutional Context of Educational Systems in Europe: A Cross Country Comparison on Quality and Equity; Kulwer Academic Publishers: Norway.

Correspondence from the Department of Education - Concerns and Information Requests

John Simmons
Clerk to the Committee for Education
Room 241
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Belfast
BT4 3XX

Your Ref: 025/09/C/01

5 May 2009

Dear John

Education Bill – Committee Concerns & Information Requests

I refer to your letter dated 19th March and subsequent letters dated 30th March, 2nd April and 10th April in which you detailed the various requests for information and concerns raised by the Committee during the evidence sessions. The purpose of this letter is to mop up any outstanding issues.

I apologise for the delay in replying, but I hope the Committee will appreciate that we had to consult and gather information from colleagues within DE and ESAIT on many of the issues.

The attached table deals with the issues raised in your letter of 19th March, which summarised the outstanding matters at that date. The further issues raised letters of 30th March 2nd April and 10th April are addressed below

Letter of 30th March

All of the issues have been addressed, and the information sought has been provided to the Committee.

Letter of 2nd April

You asked for a response to the comments made by the National Association of Head Teachers (NAHT) on clause 23 of the Bill. As we discussed, this point was addressed in the paper provided to the Committee for its meeting on 25 March, and again on 29 April.

Letter of 10th April

You raise four issues in this letter and I will deal with each in turn;

- clarification on the status of the Education and Library Boards after 1 January 2010, if ESA is not established until April 2010,

It remains the intention of the Department that the Boards will be dissolved on 1 January 2010. If, for any reason, that were not to occur, a difficulty would arise over the membership of the Boards. The terms of office of current members will expire on 31 December 2009, and it would be necessary to carry out an appointments process in order to reconstitute the Boards if it were necessary for them to remain in existence into 2010. However it would not be possible to complete such a process in time. If such circumstances arose, it would be necessary to bring forward legislation to extend the appointment of current Board members.

- further information on the Department's powers of intervention within Article 158 and Article 101

Article 158 of the Education Reform (Northern Ireland) Order 1989 substituted a new and updated Article 101 for the existing Article 101 of the Education (Northern Ireland) Order 1986. There is, therefore, only one such provision in force, ie the current Article 101 of the 1986 Order.

- details of the terms of draft subordinate legislation to govern the content of employment schemes

For the avoidance of misunderstanding, it may be helpful if I explain the Department's position on this matter, and the authority that officials have to act.

Following concerns expressed by witnesses and members, the Chairman asked if a mechanism could be found to provide greater clarity and certainty on the respective roles of the ESA and boards of governors in employment matters. In response, I indicated that one potential mechanism might be the use of subordinate legislation rather than guidance to govern the content of schemes of employment. Subsequently, in oral evidence and in the paper provided for the Committee meeting of 1 April, the suggestion was described in more detail. I also indicated that the Minister is willing to consider this approach, and that she would welcome the Committee's views on whether it would address satisfactorily the concerns that have been raised.

The position at present is that the Committee has not yet expressed a formal view to the Minister on the suggestion, and the Minister has not decided whether to proceed with the

suggestion. In these circumstances, you will appreciate that officials have no authority at present to prepare draft regulations.

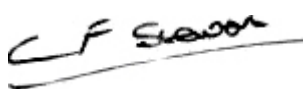
I should also explain that the use of subordinate legislation rather than guidance would be an alternative approach to the implementation of the employment arrangements, but those arrangements themselves would not change. The Department's policy position on the respective roles of the ESA and boards of governors remains as set out in detail in the paper provided for the Committee meeting of 25 February (attached for convenience). I should be happy to assist the Committee further in its deliberations, but I am not sure what additional information I could provide at this time.

- more detailed comment on the suggestion to retain an element of the Education and Library Boards (and legislation) to become the 'ownership body' for controlled/public schools.

As I indicated in oral evidence, the Minister has been made aware of this suggestion, and has indicated that she is not minded to adopt it, as it would be at odds with a key objective of the RPA on the modernisation and rationalisation of education administration.

I am conscious that there are a number of matters on which Committee requests for further papers remain outstanding. I have summarised these below, together with an estimate of when we hope to provide the information sought, to allow you to factor these into the Committee's work programme if appropriate.

Yours sincerely



Chris Stewart

PAPERS REQUESTED BY EDUCATION COMMITTEE

Item	Timescale
Committee and local structure of the ESA	3 to 4 weeks
Controlled schools ownership and representation: analysis of consultation responses revised policy paper	2 to 3 weeks
Accountable autonomy policy paper	4 weeks
Protection of ethos	2 to 4 weeks
Review of employment opportunities for teachers and equality	Uncertain. It has not been possible to commence the review as yet, due to limited resources and competing priorities
Full business case	September 2009
Proposed amendments to first RPA Education Bill	Within 2 weeks

Item	Timescale
Scope of second RPA Education Bill	Information on entire Bill before summer recess, with information on area planning in time for 3 June Committee meeting

Follow Up from Committee for Education Meeting of 14 January 2009 on the proposed structure of the Education & Skills Authority (ESA) at regional and local levels (Ref. Committee's letter of 16 January 2009)

Concerns	Information requested	Department Response
	provide a paper to include a worked up example of what the envisaged change in structure and	
(a)	approximate staffing levels would look like, from the current structure to an ESA Regional and Sub Regional structure.	(a) and (b) We will provide papers on both structures and Local Committees as soon as is practicable. The Department will wish to engage with the Committee on detailed proposals for the ESA's committee and local structure.
(b)	and a further paper on the proposed powers, responsibilities and make up of a Local Committee, including how members of a Local Committee would be appointed.	

Follow Up from Committee for Education Meeting of 21 January 2009 on Sectoral Representation and ESA Single Employing Authority (Ref. Committee's letter of 23 January 2009)

Concerns	Information requested	Department Response
(c)	forward a copy of EQIA/screening being prepared by the RPA Team.	(c) This is not yet complete, but will be forwarded to the Committee within 2 weeks.
(d)	copies of draft Employment Scheme and guidance and details of the steps the Department proposes or takes to engage with stakeholders.	(d) Schemes of Employment are currently being developed and will be made available to the Committee as soon as is practicable, but this is likely to take several months.
(e)	to be kept informed on the progress of 'Review of Employment Opportunities for Teaching Staff and in the interim to provide the following information:	(e) It is not possible to give a timescale at present. The review has not yet commenced, due to limited resources and competing pressures.
	<ul style="list-style-type: none"> ▪ Forecasts of the number of teaching vacancies likely to arise over the next three 	

Concerns	Information requested	Department Response
	<p>years (analysed by school type and sector);</p> <ul style="list-style-type: none"> ▪ estimating the proportion of those vacancies for which a certificate in religious studies is likely to be an eligibility criterion; ▪ identify the routes by which teachers may obtain a certificate, either as part of their initial teacher education, or subsequently. 	
(f) order to effectively carry out scrutiny of the First Bill.	sight of the Second Bill in draft in	(f) Information on entire Bill will be available before summer recess, with information on area planning in time for 3 June Committee meeting

Follow Up from Committee for Education Meeting of 28 January 2009 on Designing Modern Education Services and the ESA Outline Business Case (Ref. Committee's letter of 29 January 2009)

Concerns	Information requested	Department Response
<p>1. The need for clarity on not simply the ESA's regional/local structure but on the structure of ESA's decision taking, to include which decisions will be taken locally; 2. The expertise and experience which will be lost to ESA as a result of the redundancies which are envisaged - particularly in the context of risk management of the merger of multiple IT systems against a background of some less than successful public sector IT projects; 3. The potential for much greater future savings through rationalisation of other services which will be within ESA's remit;</p>	(g) copy of Full Business Case on completion by summer 2009.	(g) This will be forwarded by September 2009.
	(h) best estimate of the costs involved (including the time of both Departmental Officials and others, plus Principals/Vice Principals etc in schools) in the full range of educational initiatives which are currently in train and the savings which could be achieved through rationalisation of such initiatives.	(h) It would not be practicable to estimate these costs in any meaningful or rigorous way, and the Department considers that such an exercise is unlikely to provide any reliable information.
	(i) provide a breakdown of the different types of roles included in 'Middle Management/Professions' category which appears in Table 6.8 on page 46 of the OBC.	(i) See table at Annex A.
	(j) provide more information in relation to the six possible costs and benefits listed on page 48 of the OBC, to include approximate amounts for each of the listed savings/costs.	(j) See attached Annex B
	(k) Finally, in the context of the redundancies envisaged in the OBC,	(k) See attached Annex C

Concerns	Information requested	Department Response
	provide a detailed paper on the position of teachers who have already applied for early retirement, to include the position of teachers who applied before and after November 2008. The paper would include reference to the bids registered in the Strategic Stocktake exercise, including the implications of the bids not being met or only partly met.	
	provide a more detailed account of the arrangements for 'claw-back' of public monies where, through school closure, amalgamation etc, an asset in which public monies have been invested is disposed of by the owners of that asset, such as Trustees or the Board of Governors. Officials indicated that these arrangements for claw-back pro-rata of relative share of public monies have changed over the years, eg, pre and post 1978, and the Committee would request a summary of the arrangements which have operated during each period, the nature of the changes in such arrangements and the reasons for the change.	(l) & (m) See attached Annex D
	an analysis of how the disposal of assets, in both the maintained and controlled sectors, has worked in practice in recent years and the amounts recovered from Trustees or Boards of Governors. Including in this details of any arrangements for writing down of the value of the public investment as the asset depreciates and how this affects the amount of public money recouped.	
	a separate paper providing more detail on the subject of 'accountable autonomy' of controlled schools and the possible transformation of and vision for these schools moving on a pathway to 'become truly local schools, owned and managed by local people for the benefit of the local community'.	(n) A policy paper is being prepared, but is not yet complete.

Follow Up from Committee for Education Meeting of 4 February 2009 on the Ownership of Controlled Schools Estate (Ref. Committee's letter of 6 February 2009)

Concerns	Information requested	Department Response
<p>4. the Committee was concerned that the Department's Paper 20 had gone out to public consultation without seeking views on how appointments to and membership of the Ownership Body might be made reflective and representative of the section of the population which controlled schools predominantly catered for. This was raised in the context that the Department has rights of appointment to this public body. The Committee was also concerned that if there were to be an overlap between the membership of the controlled sector Representative Body and the publicly appointed membership of Ownership Body, the independence of the Representative Body would not be affected. Officials agreed that they would give consideration to how the Committee's concerns could be addressed and provide the Committee with a paper on this*.</p>	<p>(o) See 'concerns' – paper requested*</p> <p>(p) Information on the legislative changes required to ensure that the Controlled Schools Ownership Body is representative of the community served by the Controlled schools.</p>	<p>(o) Consultation has ended and responses are being analysed. A revised policy paper will be provided as soon as is practicable.</p> <p>(p) A provision which would, in effect, discriminate in favour of one section of the community on the grounds of religious belief could not become law because it would be outside the legislative competence of the Assembly, as defined by Article 6 of the Northern Ireland Act 1998. (This matter has been covered extensively in oral and written evidence, and members will be familiar with the position).</p>

Follow Up from Committee for Education Meeting of 11 February 2009 on Area Based Planning (Ref. Committee's letter of 13 February 2009)

Concerns	Information requested	Department Response
<p>5. The need for clarity on the roles of the different bodies involved in the Area Based Planning process, particularly the Department, ESA and bodies putting forward development proposals; 6. The need to reference Sustainable Schools Policy as a key element in Area Based Planning; in particular, the need to recognise that 'one size doesn't fit all' and the dangers of being driven entirely by pupil 'numbers' in relation to reaching decisions on the future of</p>		<p>5. to 9. A paper will be provided for the Committee's meeting on 3 June.</p>

Concerns**Information requested Department Response**

small rural schools; 7. The danger of sectors moving ahead with development proposals for their own particular sector and pre-empting Area Plans still to be agreed; 8. Concern that Area Based Planning work around delivery of the entitlement framework at age 14 should not be used as a means of achieving some other policy aims, such as Post Primary transfer; 9. The need to engage the pre-school sector, special education and youth provision in the development of Area Plans.

**Follow Up from Committee for Education Meeting of 25 February 2009 on Employment Schemes, Schemes of Management, Boards of Governors
(Ref. Committee's letter of 6 March 2009)**

Concerns**Information requested Department Response**

10. whether Clause 8 goes against the ethos of RPA and enables ESA to micro-manage schools, and the inclusion of an appeals mechanism; 11. ensuring equality within the sectors in education and the perceived disparity in treatment of the Controlled sector in comparison to that of the Irish Medium and Maintained sectors; 12. the lack of progress in establishing the Sectoral Body representing the Controlled Sector resulting in the Sector not being able to influence fundamental issues in the Bill, such as the Ownership Body for controlled schools; and 13. Members were particularly concerned that the intentions of the Bill are not adequately reflected within the detail of the legislation.

Follow Up from Committee for Education Meeting of 4 March 2009 on Schedules and related Clauses (Ref. Committee's letter of 6 March 2009)

Concerns**Information requested****Department Response**

14. Concerns regarding the number of members who would sit on the ESA and whether the membership of 'no more than 11 other members' would provide sufficient scope for the required breadth of knowledge and experience.

Proposals on how to ensure a balance between the merit principle and the (q) need to ensure an appropriate spread of representation within the membership of the ESA.

(q) All appointments to the new ESA Board will be made within the regulatory framework set out for all public appointment processes i.e. the Office for the Commissioner for Public Appointments (OCPA) Code of Practice. This process is

Concerns	Information requested	Department Response
<p>15. The Committee also discussed the representation of members who sit on the ESA and it was agreed that the Department would want to seek advice from the Commissioner for Public Appointments as to the best way of reflecting appropriately the merit principle and the need to ensure an appropriate spread of representation (cross-party, gender, geographical etc) within the body so that it enjoys widespread trust and confidence. 16. A member also raised concerns that the Bill should ensure adequate representation of statutory and non statutory nursery provision.</p>	<p>Details of the (r) investment formula for clawback.</p>	<p>intended to ensure a fair, open and transparent process that produces a quality outcome with the overriding principle of appointment on merit. It also takes account of the need to appoint boards which include a balance of skills and experience. This process will be fully applied to the eleven appointments to the ESA Board to ensure that the required breadth of knowledge and experience is obtained. The appointment process includes a person specification, in line with OCPA guidelines, which will address the qualities, experience, background and competencies sought and which will also allow for equal opportunity and diversity. The specification, which has been approved by the OCPA Independent Assessor (whose role is to assist Ministers in the task of making effective public appointments that command public confidence), will be advertised in a spread of publications.</p>
		<p>(r) This is covered in the paper at Annex D.</p>

Follow Up from Committee for Education Meeting of 4 March 2009 on Schedules and related Clauses (Ref. Committee's letter of 6 March 2009) (continued)

Concerns	Information requested	Department Response
<p>(s) harmonisation of staff salaries and terms and conditions and the relationship with the</p>	<p>Details on the position of ESA Designate planning for asset transfers,</p>	<p>(s) In discussion with NILA and the 5 Education and Library Boards, Public Library Service assets were identified and transferred to NILA on 1 April 2009. All other assets will transfer to ESA (in accordance with the provisions of Schedules 3 and 4 of the draft</p>

Concerns	Information requested	Department Response
	Education Workforce Review.	legislation). ESAIT is in discussion with HR representatives from the legacy organisations and with TUS on the terms and conditions of staff who will be newly appointed to ESA (ie those appointed 1 January 2010 onwards) and on the protection arrangements and harmonisation issues for staff that will TUPE into ESA. The Department will progress the planned School Workforce Review in the context of the internal reorganisation of the Department which will see the establishment in the near future of a dedicated Workforce Development Directorate and the establishment of ESA. This will allow the Department to give workforce issues the priority they deserve and integrate consideration of them into other major policy initiatives. The Education and Skills Authority, as the body responsible for any Pay and Workforce Strategy developed on foot of the Review, will also be central to the process. The Department is currently revisiting the terms of reference for the School Workforce Review to ensure that they reflect the up-to-date policy context, including the need to drive up standards and to have outcomes that are workable in the changed economic climate. The Department will undertake a renewed consultation with stakeholders as soon this initial work is completed.

Follow Up from Committee for Education Meeting of 4 March 2009 on Schedules and related Clauses (Ref. Committee's letter of 6 March 2009) (continued)

Concerns	Information requested	Department Response
(t)	Receipt of an outstanding paper on the local structures of ESA which will include reference to the role and composition of sub committees and indicate the number of committees that will be needed and include reference to the time commitment that will be involved for ESA members.	(t) Please see (a) and (b) above.
(u)	An explanation for why finance provisions within Clause 15 (4)	(u) It is understood that the Committee is referring to paragraph

Concerns	Information requested	Department Response
	of the Libraries Act (NI) 2008 are not provided for under ESA; and similarly why term of office provisions within Clause 5 (2)(a) of the Health and Social Care (Reform) Bill are not provided for under ESA.	15 (4) of schedule 1, and paragraph 5 (2) (a) of Schedule 1, to the Act and Bill (now an Act), respectively. A provision similar to that in that in the Libraries Act is not required. The necessary requirement to pay to the Department any monies received by the ESA is contained in the organisation's financial memorandum. A provision similar to that in the Health and Social Care reform Act is not required, as the ESA will not have members appointed on the basis of holding a 'qualifying office'.

Follow Up from Committee for Education Meeting of 11 March 2009 on GBA and NIVGSBA responses to the Bill (Ref. Committee's letter of 16 March 2009)

Concerns	Information requested	Department Response
17. the 'catch all' provisions within the Bill; 18. whether the provisions in clause 8, including employment schemes and guidance, should and can be subject to mechanisms for appeal and/or regulation by the Assembly; 19. concerns that detail in relation to employment arrangements does not appear on the face of the Bill but in the accompanying guidance and schemes of employment; 20. Article 101 and the powers of the Department to direct; 21. lack of clarity in the legislation regarding employment rights between staff across the education sectors; 22. concerns that the ethos of the schools would be undermined by ESA becoming the employing authority; 23. who has lead responsibility for employment matters at	<p>(v) Proposals to address the GBA and NIVGSBA concerns regarding the effect of Clause 8 (2) in relation to schemes of employment and management, perhaps to include a direction to Article 101, and mechanisms of appeal and/or regulation and control by the Assembly.</p> <p>(w) An indication of the benefit of the ESA in financial terms in relation to a figure or target in the form of an estimate of the percentage increase in the education budget going directly to schools.</p>	<p>(v) This is covered in the paper provided for the Committee meeting of 1 April.</p> <p>(w) The Review of Public Administration in education is fundamentally about improving educational outcomes and equality of provision. In doing so, there must be a focus on ensuring resources are efficiently and effectively used for improving the most important service that shapes and guides the development and life chances of our young people and builds strong and cohesive communities.</p>

Concerns	Information requested	Department Response
<p>tribunal and who pays for this process; 24. whether ESA will provide equality between the different education sectors; 25. concerns regarding the Ancillary powers of ESA within Clause 18; 26. concerns about increased bureaucracy of ESA and whether a substantial proportion of budget would be spent within ESA and not directly on schools; 27. savings targets regarding management costs and bureaucracy; targets relating to percentage of budget directed to schools; 28. the timescale of budgetary objectives and targets; 29. timescale of rationalisation process; 30. when the full costs of the new regime will be known; and 31. of the outline business case and final business case for ESA.</p>		<p>The anticipated efficiency savings arising from the establishment of the Education and Skills Authority (ESA) are £8.3 million and £13 million in 2009-10 and 2010-11 respectively. These efficiency savings have already been taken into consideration by the Executive in determining the budget for Education in each of those years. From 2011-12, the level of anticipated efficiency savings is estimated to be in the region of £20 million.</p>

Follow Up from Committee for Education Meeting of 18 March 2009

Concerns	Information requested	Department Response
	<p>Department Officials mentioned on a number of occasions that the Department would be bringing its own amendments to the Bill. At its meeting (x) on 18 March, the Committee agreed to request details of any Bill amendments that the Department are proposing to make to be provided to the Committee as soon as possible.</p>	<p>(x) These proposed amendments are currently with the Minister for consideration. They will be forwarded to the Committee as soon as the Minister confirms her agreement to the suggested amendments.</p>

Annex A

(i) Officials also agreed to provide the Committee with a breakdown of the different types of roles included in 'Middle Management/Professions' category which appears in Table 6.8 on page 46 of the OBC

The 4 categories of analysis detailed in the OBC are:

	Grade Range	Salary Range (as at January 2007)*	No. of Posts deemed within scope
Senior Management	Assistant Senior Education Officer and above	Above £51,189	80
Middle Management/Profession	Assistant Principal Officer through to Education Officer	£33,315 - £50,376	762
Supervisory Management	Executive Officer through to Senior Administrative Officer	£16,137 - £32,487	1684
Clerical and Support	Senior Clerical Officer and below	Below £15,825	1624

* Note these are the basic salaries exclusive of employers costs – the OBC however makes allowance for the employers superannuation and national insurance costs.

Annex B

Outline Business Case –Costs and Benefits

1. As noted in oral evidence, much of the information sought is outwith the business case for the establishment of the ESA, and will be contained in the organisations operational plans.
2. Costs of re-branding and of winding-up legacy organisations. ESAIT will be taking forward the re-branding work. DE will be responsible for winding up the legacy organisations. No costs are available at this stage.
3. Costs of implementing other measures that will occur as part of the RPA in education – rationalising the schools estate, standardising policies across the education landscape eg school meals pricing. The costs and benefits of these measures have not been quantified in the OBC. Substantial savings are anticipated from rationalisation of the schools’ estate, removal of duplication and implementation of consistent approaches in the delivery of policy. The key benefits will arise from equality of access for all children to high quality services. Measures to standardise policies will be costed before implementation.
4. Costs and associated benefits from the design and implementation of revised service delivery models for those functions and services included within the Innovate category. The main costs arising from new service delivery models will relate to severance, estimated in the OBC at a total cost of £43m. Funds of £50m have been secured to cover these and other costs related to the change. The key benefits will include better education outcomes through improved education support services to schools including professional staff development, more integrated delivery of higher quality children’s services and quicker and more cost-effective delivery of high quality education infrastructure.
5. The impact of existing vacancies which have arisen as a result of vacancy control. The aim of vacancy control is to minimise redundancies and vacant posts will contribute to the reduction of

463 posts identified in the OBC. The policy has resulted in significant proportions of staff acting up or on fixed term contracts and, together with the difficulty in attracting applicants, this has put substantial pressure on the current organisations.

Annex C

Teachers' Pensions

1. The Department is currently consulting on draft regulations which will bring teachers' premature retirement provisions broadly into line with arrangements in Scotland and in England and Wales, where similar changes were made over a decade ago. Officials are due to make a presentation to the Committee on 29 April.
2. The Premature Retirement Compensation Scheme has not been withdrawn and employers still have available to them all the options which previously existed to enable them to secure the early release of teachers where necessary. In addition, the new regulations will allow employers to make an enhanced severance payment as an alternative to granting premature retirement. In recognition that employers have not had to budget for these costs in the past a business case was developed to support expenditure by employing authorities on compensation payments to ensure the early release of teachers where necessary. This formed the basis of an unsuccessful bid in the Strategic Stocktake.
3. In light of the anticipated legislative position at the end of the current academic year, the employing authorities have determined that they will not be able to afford to grant premature retirement terms to teachers whose employment is terminated on grounds of redundancy in 2009. Where a post is declared redundant, the employing authority in consultation with schools will consider whether it is possible to arrange redeployment of the teacher by agreement either into a vacant post or a post currently filled by a teacher volunteering for transferred redundancy.
4. However, any teacher who volunteers for redundancy will be advised that the employing authority will not be in a position to pay an unreduced pension and lump sum (although a teacher aged 55-60 may opt for immediate payment of actuarially reduced pension). Teachers made redundant will be entitled to the minimum statutory and improved redundancy payment (up to 30 weeks' salary depending on age and length of service). Caitriona Ruane has set aside £6m in 2009-10 to help employers ensure that compulsory redundancies are kept to a minimum. This is a significant amount of discretionary compensation which should allow employing authorities to double the statutory and improved payments for which they are liable in 2009.
5. Consultation with the employing authorities (and teacher unions) on the arrangements for teachers' premature retirement compensation has been ongoing since 2006, and on these specific proposals since early 2008. Any commitments given to teachers in relation to premature retirement benefits, whether given before or after November 2008, are a matter for the compensating authority (the relevant Education & Library Board).

Annex D

Arrangements for the Disposal of Surplus Property and the 'Claw-Back' of Public Monies

Introduction

1. The general principle which is applied is that when a non-exchequer body disposes of assets which were wholly or partly funded by Government grants, the proceeds or an appropriate proportion them should be repaid to Government. The department distinguishes between cases where there is a school closure without replacement, and where a replacement school is provided. The arrangements for each in regard to voluntary and maintained sectors are set out below.

2. In the case of the controlled sector, it is the responsibility of each Education and Library Board (ELB) to identify surplus land and under the terms of Article 106 (1) of the Education and Libraries (Northern Ireland) Order 1986, ELBs are required to obtain DE approval to dispose of surplus land. The arrangements for the disposal of ELB land must adhere to the guidance issued by the DFP's Central Advisory Unit (CAU) of the Land and Property Services (formerly the Valuation & Lands Agency).

3. The ELBs will notify the CAU of surplus land. The CAU will, where appropriate, trawl government departments and associated NDPBs to determine if there is any interest in retaining the land within the public sector. Approval must be sought by the government department (or parent government department in the case of a NDPB) to acquire the land and, in the case of surplus ELB property, DE must approve the disposal. This is known as a Public Sector Transfer and Ministerial approval is required for property valued at over £100,000. The valuation is assessed by the Land and Property Services.

If the land is not required to be retained within the public sector, DE will normally approve an ELB proposal to dispose of the asset on the open market. Placing a property on the open market however does not guarantee a sale and properties may remain unsold for a number of years. The market conditions at present for disposal are particularly difficult. Some of the older controlled schools were originally provided by churches, mill owners or other benefactors and are bound by a lease agreement under which the property reverts back to successors-in-title if it ceases to function as a school. It means therefore that Board surplus assets will not necessarily mean a receipt to the public purse.

4. The proceeds from those assets which can be disposed of, be it via a Public Sector Transfer or an open market sale are returned to the Department. Controlled schools built and funded 100% from public funds are public assets and they are therefore subject to surrender of disposal receipts.

Grant Recovery and Replacement School Arrangements for the Voluntary (including maintained) Sectors

General Points

5. DE has paid grants to voluntary (including maintained) schools that are owned by Trustees in accordance with Article 116 of the Education & Libraries (NI) Order 1986 (as amended by Article 28 of the Education and Libraries (NI) Order 1993) and associated regulations i.e. the Voluntary Schools Building Grant regulations (Northern Ireland) 1993. Where public monies have contributed to building a voluntary school then the public purse should share in the manner defined in legislation in the proceeds from the subsequent disposal of the school. Where the Trustees of a voluntary school have also contributed to its building they should also be entitled to an equitable share of such proceeds.

6. In recovering grants the main principles followed are:

- Subject to any legal impediments in a trust deed or other legal document, when a school which was grant-aided ceases to be used for that purpose, then the public purse is entitled to recover public funds.
- The amount of grant recovered by DE and the amount retained by trustees should be commensurate with the original contribution from both parties.
- On closure of a grant-aided property the public purse is entitled to recovery based on the value of the property as assessed by the District Valuer at the date of closure.

7. When an existing school is to be replaced in a new building, the proceeds from the sale of the old property will be used to off-set the costs of the new school. Any monies originally contributed to the development of the old school by the Trustees themselves are preserved in their having an equity share in the new school.

Legislation

8. The Education and Libraries (Northern Ireland) Order 1972 forms the main starting point of the Grant Recovery Legislation which DE is presently operating. Article 106 provided for the payment of grants on the building of and equipment for voluntary schools.

9. The Regulations made in connection with the payment of grants could make provision for the repayment of same in the event of a school ceasing to be maintained or carried on as a school. The maximum recovery amount was limited, however, to the amount of grants actually paid and to a 50-year rule (i.e. grants paid more than 50 years before the school ceased to operate could not be recovered). The principle was introduced that since both parties had made a significant contribution to the cost of the school each should share the proceeds in proportion to the original contributions.

10. The Education (Northern Ireland) Order 1978 made the following main changes:-

- For new grants, removal of the rule whereby the department's right of grant recovery expired after 50 years;
- Introduction of recovery on the basis of a percentage of the current value (rather than only the amount of the original grant) ;
- Introduction of netting-off of proceeds for replacement schools.

11. The Order enabled the Department to relate the amount of grant recoverable to the enhanced value of the premises on which it was originally paid. Article 11(2) recognised for the first time that since both voluntary and public funds were combining to pay for school premises that both were deserving of a share in the eventual disposal of premises when they ceased to be used as schools. In order to be equitable to both the voluntary authorities and the public purse Article 11(2) (6) resulted in both sharing the proceeds in proportion to the share in which they contributed to the cost of the school – eg 85% public purse and 15% voluntary authorities. From November 1992 100% grant-aid became available and the Department was able to recoup 100% of the assessed open market value on all grants paid.

Closures (without replacement)

12. When a school closes, the Department recovers grants paid out of the proceeds from the disposal of the former premises, in accordance with Department of Finance and Personnel guidelines and with Regulations made under the Education Libraries (NI) Order 1986. In the voluntary sector all properties are owned by trustees and would have been provided originally by

contributions from the trustees as well as from public grants paid at various rates over the years (50%, 65%, 80%, 85%, 100%). When premises are being disposed of, the amount recovered by DE will depend on the date the grants were paid.

13. For grants paid before 9 August 1978 (when the 1978 Order came into effect) , then the amount of grant recovered is the amount of the grants paid out in monetary terms. For property disposals where grants have been awarded after August 1978, the Department is entitled to recover the same percentage as the original grants based on the valuation of the property at the date of disposal. Therefore grants paid after August 1978 are based on the current enhanced value of the property and proceeds are divided between the Trustees and the Department in the same percentage as their respective contributions over the years.

Replacement of existing schools

14. When an existing school building has to be replaced, the proceeds from the sale of the old premises go towards the cost of the new building so that the net cost falls to be met by both government and trustees. The 1978 Order introduced the concept that the Department and the voluntary school authorities share the cost of replacing an existing school in the same way as they would share the cost of building a new school and that grant would be paid on the net cost of providing the replacement after off-setting the proceeds from the sale of the former property.

15. In the case of a replacement building, the proceeds from the former building must be repaid to the Department to off-set the amount of grant which the Department has advanced for the new replacement school. While the Department would take account of the circumstances of each individual case, including what contribution the trustees made, it would normally consider it to be equitable that unless there were exceptional circumstances:

a. in cases where 100% grant is provided by the Department to build the replacement school, all of the proceeds from the old off-set the cost of the new building;

b. in cases where the trustees have opted to pay 15% of the cost of the new building (the Department's grant being 85%), the sum for re-investment in the new property would be in the same proportion as the grants to the new building i.e. 85% of the proceeds.

16. The trustee's entitlement from the proceeds of the old school (i.e. a sum representing their original contribution at today's valuation) is carried forward in an equity share in the new building; and both government and the trustees remain eligible for their appropriate shares from the sale of the new school in the event of its disposal at some future stage.

Use of Capital Receipts

17. Under the DFP rules on the disposal of surplus assets departments may retain the proceeds from disposal up to the value agreed as part of the Budget and ISNI process or the in-year monitoring process. Departments are allocated gross capital allocations and the value of planned asset disposals is deducted from the gross allocation thus providing an incentive to deliver their planned disposals. An inability to deliver on the planned level of disposals reduces the overall capital programme. Receipts are not hypothecated within the programme to projects or sectors but to support the overall programme. The ability to retain receipts above the overall level planned for the programme for us in Education would need to have the agreement of DFP.

18. At the beginning of each financial year each ELB is required to provide DE with a disposal schedule for the current financial year and the two subsequent years. The schedule details the surplus property, its anticipated sale value and the anticipated date of disposal. The schedule for

the current financial year is monitored by DE and the ELBs are requested to advise of and account for any slippage in timescales or revisions in anticipated sale values.

19. The Department maintains a record of school closures and amalgamations on which grant recovery or replacement costs would apply and takes forward the appropriate action with the relevant school Trustees or their legal representatives. Any amounts due to the Trustees are paid to the Trustees for general educational purposes.

Breakdown Of Receipts For Sale Of Land And Buildings 2000/01 – 2008/09 Incl.

Financial Year	Controlled Sector (£000's)	Voluntary Sector (£000's)
2000/01	1,405 k	779 k
2001/02	1,615 k	77 k
2002/03	3,529 k	1.7 k
2003/04	2,498 k	290 k
2004/05	2,702 k	1,634 k
2005/06	4,771 k	2,998 k
2006/07	14,163 k	240 k
2007/08	8,226 k	79 k
2008/09 (anticipated)	3,919 k	0.7 k

Committee Correspondence to the Minister of Education - Concerns Potential Amendments to the Education Bill



Ms Caitriona Ruane
Minister of Education
Department of Education
Rathgael House
Balloo Road
Bangor
BT19 7PR

Ref: 036/09/C/01

20 May 2009

Dear Minister

Education Bill - Committee for Education Concerns with and Potential Amendments to the Education Bill

1. You will be aware that during the Committee stage of this Bill to date, that senior departmental officials have routinely appeared before the Committee to brief and answer Members questions on important aspects of the Bill. Your officials have usefully provided response papers on concerns raised by a number of key education stakeholders in submissions to the Committee on the Bill. The Committee has taken oral evidence from 13 key education stakeholders, having received specific written submissions from 38 stakeholders. The Committee would take this opportunity to thank those officials for their work to date.

2. However, you will be aware that the Committee has requested specific information and a number of papers from officials during its weekly meetings from mid January 2009 to date, and unfortunately has yet to receive definitive responses on some very important items to the Committee.

3. Chris Stewart, Head of RPA wrote to the Committee on 5 May 2009 responding to the Committee's requests from mid January up to the 10 April 2009. Some very useful information was provided, but the letter concluded 'I am conscious that there are a number of matters on which the Committee requests for further papers remain outstanding' and gave estimates (between 2 to 4 weeks) of when the Department hopes to provide the information. Also, this letter provided worrying responses on two very central areas of concern to the Committee, namely:

- The request for proposals to address concerns on employment provisions (clauses 3 to 12) and follow up request for details on the draft subordinate legislation to govern the content of employment schemes

On the former, this was addressed in very general terms in relation to an enabling provision in the Bill in the Department's paper provided for the Committee meeting of 1 April, and the latter was formally requested at that meeting and in the Committee's follow up letter of 10 April. However, the letter of 5 May from the Department states 'the position at present is that the Committee has not expressed a formal view to the Minister on the suggestion'. The Committee discussed this point at its meeting 20 May and agreed it is clear that it would wish to see the draft amendment(s) to the Bill to make such regulations on schemes of employment (subject to Assembly control) and see the terms of the draft subordinate legislation as soon as possible. This would be on the basis of the broad content of the regulations set out on the Department's paper put to the Committee on 1 April. When received, the Committee will scrutinise these proposals, in the same way as it is scrutinising the rest of the Bill. The Committee sees this as an urgent issue, since it has been informed that draft Employment Schemes and guidance are not likely to be available for 'several months'.

- The request for more detailed comment on the suggestion to retain an element of the E&LBs legislative provision to become the 'ownership body' for controlled/public schools

The Committee noted the line in the Department's paper to the Committee's meeting of 22 April 2009 'it is not feasible to continue with or replicate the current ownership arrangements under the RPA and now reads in 5 May letter you are 'not minded to adopt it...'. The Committee discussed this at its meeting on 20 May and an important point here is that a mechanism needs to be found to ensure that the Controlled Sector Ownership Body is representative of the community served by the Controlled Sector. Officials raised on 1 April another option to address this by strengthening of statutory linkages between the Controlled Sector Ownership Body and

the Sectoral Support Body. The Committee's letter of 27 April has asked for further information on both options. It now appears from the 5 May letter that a revised policy paper on Controlled Schools Ownership and Representation will be provided 'as soon as is practical' and an 'analysis of consultation responses' in '2 to 3 weeks'.

4. On 20 May the Committee discussed its position on this Bill on the above two areas and indeed other key areas of concern, such as its requests for information on Local Committees and local ESA structures (requested on 14 January and now informed by the Department's 5 May letter that it will be 3-4 weeks before any response is provided). The Committee agreed that I write to you and illustrate through these examples that an urgent way forward must be found to expedite the situation with regard to the Committee scrutiny of this important Bill.

5. I can assure you that the Committee is taking its statutory role to scrutinise this Bill very seriously. The Committee has three options :

- Agree a clause or schedule when scrutinising a Bill at Committee stage as drafted
- Propose and agree an amendment of a clause or schedule with the Department
- In the absence of agreement with the Department put down its own amendments

6. To date the Committee, having identified concerns, has put these to officials during its formal evidence sessions and raised questions and information requests where it considered necessary to inform its scrutiny on the need for any amendments. The Committee has routinely followed this up with letters confirming both concerns and information requests. The Committee is clear that it needs to be adequately informed on certain important aspects of this Bill to fulfil its statutory role and come to decisions on whether amendments or indeed additional clauses to the Bill are necessary, and report to the Assembly on or before 30 September 2009. Without that clarity and certainty, for example on the three key areas mentioned above – which many key education stakeholders have also requested – the Committee finds it difficult to come to informed decisions on some of key clauses of the Bill.

7. The Committee's desired approach is to agree the amendments of the clauses or schedules of the Bill with the Department and you, the Minister. This has proven to be the best approach for both Statutory Committees and Departments. As set out in the Agreement and the Northern Ireland Act 1998, Statutory Committees of the Assembly have a scrutiny, policy development and consultation role. Its role is to take the Committee stage of primary legislation by scrutinising the legislation before it. With a Bill of the size and complexity of the Education Bill, the Committee would not normally come up with detailed proposals to address its concerns or provide detailed directions to Departmental officials. Therefore, in the situation of attempting to reach a position where it can agree amendments on this Bill with the Department, the Committee in the first instance raises its concerns and puts forward requests for clarification and information as appropriate. It is for Departmental officials (on agreement with Minister) to put proposals and draft amendments to the Committee and for the Committee to scrutinise them. This may well in practice be an iterative process between the Committee and the Department and could, as appropriate, involve consultation with key stakeholders – either by the Department and/or the Committee.

8. The Committee wishes to provide effective scrutiny of the Bill. As clearly exemplified earlier in this letter, the clarification and information requested by the Committee on some key issues has not been forthcoming within a reasonable timescale and there appears to be an expectation that the Committee must express more detailed views and proposals to the Department, which would include a formal view to you as Minister. With the Committee due to report on the Committee stage of this Bill on or before 30 September 2009, the former begins to present a serious problem for the Committee, and as explained on the latter, the Committee will not be in a

position to express definitive views (not detailed views) on proposals to address concerns until it receives the necessary clarification and information.

9. As highlighted earlier in this letter, the Committee's desired approach is to work with the Department and you as Minister, to agree amendments to clauses and the schedules of this Bill, as appropriate. However, if key information is not forthcoming in a timely manner, including as appropriate draft amendments to the clauses and schedules to this Bill for Committee scrutiny and agreement with you, the Committee will have to consider putting down its own amendments to this Bill.

10 However, clearly the best approach for all, is for the Department to work closely with the Committee over the next six weeks in the manner reflected above- particularly on the need for timely information in key areas. The Committee considers that urgency and priority needs to be given to certain responses and the Committee is ready and willing to work with you and your officials to clearly identify urgent issues. To make clear the Committee's position at this point on some key areas, I attach a table setting out a record of some of the Committee's key concerns, the position as of today, what information the Committee needs and the clause and schedules of the Bill where potential amendments arise.

11. Finally, the Committee is willing to meet with you to clarify any points in this letter and to discuss the best way forward.

Yours sincerely



Mervyn Storey, MLA

Chairperson, Committee for Education

Clause/Schedule	Committee Concerns (The concerns listed below have been raised by some, but not necessarily all Committee Members) 'Membership'	Implications for the Education Bill
Clause 1 - Schedule 1	<ul style="list-style-type: none">▪ Concerns regarding the number of Members who would sit on the ESA and whether the membership of no 'more than 11 other Members' would provide sufficient scope for the required breath of knowledge and experience required on the ESA;▪ Concerns regarding the need to have appointments reflect appropriately the merit principle and the need to ensure an appropriate spread of representation (cross-	2. – (1) (b) – amendment

Clause/Schedule	Committee Concerns (The concerns listed below have been raised by some, but not necessarily all Committee Members)	Implications for the Education Bill
- Schedule 1	<p>party, gender, geographical etc.) within the ESA so that it enjoys widespread trust and confidence;</p> <ul style="list-style-type: none"> ▪ Concerns that the requirement that 'at any time a majority of Members are councilors' and the requirement 'that each Member has experience in a field of activity relevant to the discharge of the functions of ESA', will result in limited range of educational and other necessary experience and competence might not be represented on the ESA <p>These concerns and a request on how to ensure a balance between the merit principle and the need to ensure an appropriate spread of representation within the ESA was included in the Committee's letter of 6 March 2009 to the Department. The Committee notes the Department's response within its letter of 5 May on the appointment process planned. However, the other concerns remained to be addressed.</p> <p>'Committees and Delegation to Committees and Staff' Concerns on the proposed powers, responsibilities and make up of a Local Committee and how it would be appointed This was raised with officials at the Committee meeting of 14 January 2009 and requested in the follow-up letter of 16 January to DE – alongside a request for a worked up example of what the envisaged change in structure and approx. staffing levels would look like, from the current structure to the ESA Regional and Sub-Regional structure. This issue was also raised at the 4 March 2009 Committee meeting and a reminder of these requests included in the 6 March letter to DE. The Committee notes that the 5 May letter simply stated that a response paper would be provided in 3 to 4 weeks.</p>	2. – (2) (a) - amendment
Clauses 3 - 12	<p>'ESA to employ all staff of grant-aided schools' In raising these concerns the Committee is mindful that other educational stakeholders have been very supportive of the concept of a Single Employing Authority.</p>	

Clause/Schedule	Committee Concerns (The concerns listed below have been raised by some, but not necessarily all Committee Members)	Implications for the Education Bill
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- Concerns to address issues raised by the GBA, NIVGSBA, NICCE and CCMS. regarding the effect of Clause 8 (2) in relation to schemes of employment and management. Requested proposals to address such concerns at the Committee meeting of 11 March 2009 (and Committee's letter of 16 March) which may include a direction to Article 101, and mechanism of appeal and/or regulation and control by the Assembly. Requested copies of draft employment schemes and guidance in Committee's follow up letter 16 January 2009, from 14 January Committee meeting. Reminder of the importance of this request made to DE senior officials at the Committee's meeting of 25 March 2009, and in follow-up letter of 30 March to DE. Raised again at Committee's meeting of 1 April 2009, and in follow-up letter of 10 April which requested details of the terms of the subordinate legislation to govern the content of employment schemes at the earliest opportunity The Committee welcomes the statements on this subject in the Department's paper to the Committee meeting of 1 April 2009 and some of the comments made by DE officials at this meeting.

Eg. "The Department recognises that a number of stakeholders and the Committee would like greater clarity and certainty about the detail of the arrangements and the content of employment schemes The Bill could be amended to include a provision for DE to make regulations on schemes of employment. Such regulations could be made subject to Assembly control, and would be subject to scrutiny by the Education Committee The enabling provisions in the Bill could state that the regulations may, amongst other things;

Clause/Schedule	Committee Concerns (The concerns listed below have been raised by some, but not necessarily all Committee Members)	Implications for the Education Bill
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- specify matters that must be included in schemes of employment;
- specify the form in which such schemes must be drawn up;
- specify functions that must be carried out by boards of governors, functions that must be carried out by the ESA, and functions that may be carried out by one or the other (according to the schemes);

A further provision could be included, permitting a board of governors to make a complaint to the Department if it believed that the ESA had acted in breach of the scheme of employment; and for the Department, if it were satisfied that a breach had occurred, to use its power of direction (article 101 of the Education and Libraries (Northern Ireland) Order 1986) to remedy the matter. At the Committee's 1 April meeting DE officials said "that the Minister would consider a suggestion from the Committee that we should have subordinate legislation, rather than relying merely on guidance.....As regards the appeal or challenge mechanism, the suggestion that we floated earlier, which can be developed if it would be helpful, would be a specific link between the Departments power to direct in article 101 of the Education and Libraries (Northern Ireland) Order 1986 and a complaint by a board of governors that the ESA was somehow behaving improperly in relation to the discharge of its functions. That would not be a terribly difficult technical challenge, as there is a precedent for it in the legislation. It could be argued that existing legislation already allows for that. However, there would be value in bringing the respective provisions very closely together and associating them with the employment provisions in the Education Bill. The Minister would be willing to consider a suggestion from the Committee to that end." The Chairperson concluded "The Committee has put those matters in the letter which has now gone, and it will await a response".

Clause/Schedule	Committee Concerns (The concerns listed below have been raised by some, but not necessarily all Committee Members)	Implications for the Education Bill
Clauses 21 & 22 Schedule 3	<p>The Committee notes the response on this very important subject in the Department's letter of 5 May and has specifically commented on this in the Chairperson's letter to the Minister. If an enabling provision for regulations is agreed by the Committee, this would have consequential amendments and possibly additional clauses to the Bill – within Clauses 3-12 and in particular Clause 8 – which the Committee needs to scrutinise as a matter of urgency. This confirms this Committee request/suggestion and the Committee urgently awaits this all-important detailed response on the Bill regarding the terms of an enabling provision and more specific details on the terms of the regulations 'Transfer of Assets, Liabilities and Staff of Dissolved Bodies' The important subject of the ownership of the 600 controlled schools was discussed at the Committee's meeting of 4 February 2009 and DE Officials agreed to consider how a number of the Committee's concerns could be addressed and provide a paper to the Committee on this – as requested in the Committee's letter of 6 February. The subject was raised again at the Committee's meeting of 25 February, particularly in the context of the lack of progress in establishing the Sectoral Body representing the Controlled Sector, resulting in the sector not being able to influence fundamental issues in the Bill, such as the Ownership Body for Controlled Schools (reference the Committee's letter to DE on 6 March). Information was also specifically requested on the legislative changes required to ensure that the Controlled Schools Ownership Body is representative of the community served by the Controlled Sector.</p> <p>The Committee commented specifically on this important issue in the Chairperson's letter to the Minister. The Committee welcomes some of the points raised in the Department's response paper to a submission from the TRC discussed at the Committee meeting of 22 April 2009. The response paper and officials outlined an alternative approach to the issue in relation</p>	<p>Clauses 3-12 – amendments and additional clauses – in particular regarding Clause 8</p> <p>Schedule 3 amendments and consequential clause amendments and/or additional clauses</p>

Clause/Schedule	Committee Concerns (The concerns listed below have been raised by some, but not necessarily all Committee Members)	Implications for the Education Bill
	<p>to a broader role for the non-statutory Representative Body for the Controlled Sector (eg. including participation in area planning), with limited role for the Ownership Body (only physical assets). The Committee notes the one line response to this issue in the Department's letter of 5 May, but until the matter is satisfactorily resolved requests further detailed information on the retention of an element of the Education and Library Boards to become the Ownership Body for Controlled/Public Sector schools and on the strengthening of statutory linkages between the Ownership Body and the Sectoral Support Body – reference the Committee's letter of 27 April. The Committee needs to consider the detail on these and other options as a matter of urgency – including any consequential amendments and/or additional clauses or paragraphs to the schedules of the Bill.</p>	

ESAIT Briefing Paper - ESA Director Structure

Contents

1. Introduction
2. The Context for Organisation Design
3. Roles and Responsibilities of DE and ESA under the RPA
4. Developing an Organisation Structure
5. The Director Posts
6. The Purpose and Responsibilities of the Director Posts
7. Conclusion

Appendices:

Appendix 1: Department of Education Criteria

Appendix 2: Local Teams

Appendix 3: Director Structure for ESA

1. Introduction

1.1 The Minister for Education, Ms Caitríona Ruane, has proposed the creation of the Education and Skills Authority (ESA) and the Executive has agreed that ESA should be established on 1 January 2010. The legislation to establish ESA passed second reading in the Assembly on 8 December 2008 and is currently being considered by the Education Committee. The creation of ESA was one of the main proposals arising out of the Review of Public Administration (RPA), and has been amended by the Minister to reflect her greater emphasis on equality, social inclusion and improving educational outcomes.

1.2 ESA will have responsibility for the functions performed currently by the five Education and Library Boards (ELBs), the Council for the Curriculum Examinations and Assessment (CCEA) and the Youth Council. It will also have responsibility for the frontline support and related functions currently undertaken by the Council for Catholic Maintained Schools (CCMS), the NI Council for Integrated Education (NICIE) and Comhairle na Gaelscolaíochta (CnaG). It will absorb some of the functions of the Staff Commission, while others will no longer be required. Some functions from within the Department of Education (DE) will also transfer to ESA.

1.3 This paper sets out the Director level structure of ESA. It describes both the context within which the structure has been developed and the approach taken to its development.

2.0 The Context for Organisation Design

2.1 The Minister and Department of Education's vision for education is:

'Ensuring that every learner fulfils his or her potential at each stage of development'.

Improving educational and personal development outcomes for children and young people is the core aim of education reform.

A successful implementation of the RPA will be a vital component in the realisation of this vision and the achievement of the desired strategic outcomes for education. These outcomes cover many aspects of education and learning. ESA will support the development of young people to reach their full potential, through the provision of a wide variety of suitable and flexible learning opportunities, appropriately resourced, efficiently and effectively organised and delivered with the support of education staff, parents and the community.

2.2 The new arrangements must also realise the desired improvements in administrative structures, processes and relationships.

2.3 The aim of the policy in establishing ESA is to improve educational outcomes by:

- improving equality of access for all children and young people to excellent educational experiences;
- enhancing the capability of schools, youth settings and other education providers to deliver high quality education and raise standards through support and challenge;

- improving social inclusion by providing high quality, consistent services to all those who need additional support;
- supporting the continued development of a highly skilled and motivated workforce that is efficiently and effectively organised and deployed to deliver high quality education services;
- establishing a clear and effective planning and accountability framework;
- creating a simpler, more efficient and effective administration system; and
- releasing resources from administrative tasks to improve the quality of services at the frontline.

2.4 From an administrative perspective, the policy will deliver benefits through:

- improving the speed, consistency and coherence of decision making and policy implementation;
- delivering services in a more efficient way;
- streamlining education administration; and
- realising economies of scale.

2.5 In addition, the creation of ESA provides a vital opportunity to review key relationships within the education sector, to clarify roles and responsibilities and organise functions in a more effective way. In particular, it provides the opportunity to put the improvement agenda at the centre of education practice and to support and develop schools and youth settings in delivering better education outcomes.

2.6 The Director structure in ESA is fully consistent with the Outline Business Case, approved by the Department of Finance and Personnel, which demonstrates savings of £20m per annum by the end of the third year of ESA for re-allocation to frontline services. This first tranche of savings arises from a reduction in posts through the re-organisation of the existing providers into a single entity. At senior levels this will lead to a reduction of over 40% in the number of posts, generating a saving in itself of almost £2m per year.

3.0 Roles and Responsibilities

3.1 The RPA has significant implications for all bodies in the education sector, including the Department of Education. Under the new arrangements, it is intended that the Department will have responsibility for:

- **Strategy and Policy Development:** The Department will set the education agenda for the longer term and determine the policies to be developed in order to deliver its strategic intent.
- **Accountability and Resources:** The Department will continue to play the lead role in accounting for the performance of the education sector and retain its responsibility for securing the resources required to improve educational outcomes.
- **Performance Management:** The Department will ensure performance primarily by setting strategic targets, tracking outcomes and applying strategic levers to ensure that ESA maintains a focus on delivering those outcomes. The Department will apply incentives and sanctions to drive performance improvements.

3.2 The Education and Training Inspectorate (ETI) will continue to report on the quality of education, youth provision and training. Its reports will continue to be based on centrally programmed inspections and surveys, follow-up inspections and visits. The work of the ETI will be a very important component of the DE Raising Standards agenda and will be a central component in setting ESA's improvement strategy and in the identification and dissemination of good practice. The ETI will also continue to advise DE on matters of educational policy.

3.3 ESA will assume the direct frontline operational activities currently carried out by the existing education support bodies and parts of DE. ESA will therefore have responsibility for:

- Educational Outcomes: While responsibility for the delivery of improved educational outcomes will remain within the school, ESA will support DE policy by monitoring school performance including taking cognisance of ETI reports and acting to raise standards and improve outcomes through providing information, advice and support; developing leadership skills across the education sector; securing training for teaching and non-teaching staff; and intervening as necessary where progress is unsatisfactory. In all of this, ESA will work closely with the ETI.
- Children and Young People's Services: ESA will implement DE policies through the provision of an integrated and comprehensive range of high quality children's services to meet the needs of children and young people. This will include services which are delivered in a school based setting and those which are delivered away from the school, including, in early years and youth work settings.
- Curriculum, Examinations and Assessment: ESA will be responsible for the development, roll out and monitoring of the school curriculum from early years to post-16; the development and roll-out of assessment tools and methodologies to support teaching and learning in the classroom including the enhanced use of ICT; and the setting, moderating and marking of public examinations and awarding of qualifications.
- Strategic Planning: ESA will be responsible for strategic planning of schools and youth provision, in line with DE's School Improvement policies, the Sustainable Schools Policy, the Bain recommendations, the Entitlement Framework and new post-primary arrangements. ESA will also develop a new education estates service to streamline and improve the efficiency and effectiveness of the procurement, delivery and maintenance of the education estate, in line with new approaches being developed by DE.
- Financial Planning, Operational Planning and Delivery of Operational Services: ESA will be responsible for the delivery of a range of operational services to schools including transport, meals, cleaning, caretaking and a range of services to support pupils/students such as awards, grants and benefits. ESA will build in arrangements to ensure continuous improvement in the delivery of these and other services for which it is responsible. In addition, ESA will be responsible for the financial planning and budgetary control of the sector.

4.0 Developing an Organisation Structure

4.1 DE has outlined a set of criteria to inform and guide the Education and Skills Authority Implementation Team (ESAIT) in its development of the organisational structure. The criteria were developed to reflect the Minister's key objective of raising standards in the education service, and are listed in Appendix 1. ESAIT has adopted a structured approach to the design of the new organisation, including:

- Considering the vision, primary goals and objectives of the new organisation. This reflects the criteria set out by the Department, including the increased focus on raising

educational standards, improving children's services and strategic and area planning, to support the Minister's emphasis on equality and inclusion.

- Developing an understanding of the business operations of the new organisation and the key activities required to deliver the organisation's operational plan, in particular what the new organisation must do to meet the needs of its key customers/stakeholders.
- Clustering service areas in light of a new approach to the design of education administration. Whilst the initial focus, as set out in this paper, has been on the development of the Director level structure, some details on structures to support schools and the youth service at a local level are also outlined to provide some context.

4.2 ESAIT has developed service delivery models to set out how services will be delivered under ESA. During May and June 2008, 20 workshops were held with some 350 service managers from each of the affected organisations as part of the change management process designed to develop thinking on how services will be delivered within ESA. The workshops provided the basis for development of future service delivery models which were discussed with some 450 staff in the current organisations and Trade Union Side (TUS) at further workshops in November and December 2008. This work is informing the design of the organisational structure for ESA, including the range of posts required at Assistant Director level and below, the locations for services, the linkages across the various services within ESA and the links with other organisations including local councils, Health and Social Care Trusts and the new NI Library Authority.

4.3 A number of design principles have been used throughout the organisational design process and in workshops to determine future service delivery models. These include:

- giving priority to the learning needs of children and young people;
- meeting the learning needs of communities;
- emphasising equality and inclusion
- delivering services in a consistent, equitable and inclusive manner which are:
 - high quality
 - responsive at a local and regional level
 - innovative
 - providing value for money
 - benchmarked against best practice and
 - releasing resources from back office functions to the frontline.

Regional Strategy/Local Delivery

4.4 One of the major weaknesses of the current system has been the variation in the interpretation and delivery of policy in different areas, with the inevitable consequence of failure to achieve DE objectives (eg different approaches to literacy and numeracy and different levels of access to special education). A major objective for the RPA in education is therefore to ensure that education policy is delivered consistently across the region to ensure equity in terms of access and quality of services. To achieve this, ESA will set out common aims, objectives and standards which will be applied consistently across the region.

4.5 A further weakness of the current system is the duplication of administration and management of services. To improve efficiency and effectiveness, a number of services will be consolidated into regional functions, (eg finance, accounting, payroll, HR, estate planning).

4.6 However, if ESA is to succeed in its aim to be responsive to the needs of pupils, parents, teachers and schools, it must be decentralised with a strong local presence and have a real focus on the local delivery of services. The local structure will be based on multi-disciplinary Local Teams working directly with clusters of schools, youth service and early years providers to provide all of the support and advice that they require on a day to day basis, within an agreed regional framework. These teams will also monitor the performance of schools and other providers across a range of quality indicators and work with leaders in schools and other settings to address any concerns about any aspects of performance (in line with 'Every School a Good School' and other DE policies). Local managers, who will be responsible for the coordination and delivery of services at a local level, will also provide a local contact for school leaders, youth service and early years providers, parents, pupils and local political representatives (councillors or MLAs) to deal with any issues or concerns quickly and effectively. Local managers will report to the Director of Education Quality and Standards on the performance of the team at a local level.

4.7 Services will be planned and managed at a regional level to ensure consistency in approach with agreed targets and performance indicators identified for each local area. Resources will be allocated to Local Teams in line with need and local managers will have flexibility to respond to local needs and circumstances. For example, the regional transport manager will be responsible for ensuring that ESA has in place an efficient, effective and safe transport system, in line with DE policy and taking account of best practice, the assessment of need and local circumstances. He/she will ensure that the transport system operates efficiently and effectively across the region, and will be the budget holder for the service, accountable to the Director of Operational Services, the Chief Executive and the ESA Board for the delivery of services within budget and to agreed performance targets. At a local level, the Local Team will respond quickly and effectively to day to day issues as they arise in different services, including transport and will identify and raise any persistent problems or systems issues with the regional transport manager to ensure these are dealt with. The local manager will also gather information to enable local and regional performance monitoring of services and respond to issues raised locally.

An outline of the range of services likely to be provided through Local Teams is provided in Appendix 2.

5.0 The Director Posts

5.1 The central objective in establishing ESA is to raise standards in the education service and improve educational outcomes for young people. Over the next 5-10 years, the education service will undergo significant and radical change to ensure that it can meet the challenges of the 21st Century. As policy will be delivered through ESA, the successful achievement of the priorities and targets set by the Minister and DE will depend on ESA having the necessary capacity at a senior level. This has been a key factor in determining how the Director team should be configured, the areas of responsibility for each post and the number of posts required.

5.2 ESA cannot simply be an amalgamation of the current organisations. It must be a new, modern, dynamic and highly effective organisation, configured and deployed to deliver a challenging education agenda. Senior management must, corporately and individually, oversee the successful transfer of staff and functions from 12 different organisations and lead a highly complex restructuring exercise, stretching over a number of years, taking on new responsibilities, developing new relationships and addressing a number of immediate challenges.

The Chief Executive and Director team will have to provide vital leadership to ESA employees during this transitional period and develop an organisation fit for the future.

5.3 In addition to assuming responsibility for functions currently carried out by the 12 legacy organisations, ESA will also be responsible for the successful implementation of new education policies and practices including completing the roll-out of the revised curriculum and assessment arrangements; the new School Improvement Policy, 'Every School a Good School'; a new literacy and numeracy strategy; new post-primary arrangements including the Entitlement Framework and new transfer arrangements; new SEN policies and practices following the SEN Review; new early years policies following the Early Years Review; a Sustainable Schools Policy; Area based planning, new Priorities for Youth; and new Framework agreements for procuring capital and minor works.

5.4 New, clearer and more direct lines of accountability are a fundamental aspect of the changes being introduced by the RPA in education. ESA will therefore have to develop new relationships with:

- DE;
- schools, Boards of Governors, pupils and parents;
- sectoral support bodies;
- the Education Advisory Forum;
- Local Government, particularly with regard to community planning and local input;
- Health and Social Care Trusts with regard to Children's Services;
- the Assembly Education Committee; and
- the staff of the new ESA and their representatives.

ESA will also face a number of immediate challenges including:

- handling the sensitivities and practicalities around ownership of current controlled schools and preparation for transfer to another body when the legislation is passed;
- developing and supporting a fuller role for Boards of Governors;
- harmonisation issues eg special educational needs provision, transport provision;
- delivering efficiencies as set out in Efficiency Delivery Plans; and
- relocation of Public Sector jobs in line with Executive policy.

5.5 Initial structures for ESA must reflect the huge change agenda across the organisation, together with the absolute priority of 'getting the basics right'. The structures must also reflect the effort which will be required to create a new organisation with a new and distinctive culture. As a result of the delay in ESA implementation, some of the existing organisations have become 'blighted' and have difficulty in retaining and recruiting staff in some key areas. Redressing this position will be a key challenge for ESA and will take time. In addition, the significant emphasis on outcomes and performance management within ESA will require a major shift in organisational culture.

5.6 ESAIT has considered a number of options for its Director structure since the first consultation in May 2007. These ranged from a larger number of Director posts based on clear functional responsibilities to a smaller number of posts responsible for a much wider range of functions. Consideration included the significant change management and cultural change issues mentioned above, and the current state of the existing organisations. In shaping the new

organisation, ESAIT has identified a reduction in senior posts of over 40%, generating annual savings of almost £2m. Taking all of these factors into account, together with the design principle of de-layering to achieve a much 'flatter' organisation structure, the final recommendation is for seven Director posts.

5.7 The purpose and responsibilities for each of these posts are outlined below. The description is indicative of the nature of the roles and details may change at different stages in the development of ESA and as a consequence of changes in policy. Each of these posts represents a very significant level of responsibility. To determine their weighting and respective salary scales, salary levels for each post will be subject to professional evaluation. Salaries will have to strike a balance between the need to secure and retain high calibre individuals for the posts, comparability with other parts of the public sector and demonstrating prudent stewardship of public monies.

5.8 The number of posts has been influenced by the additional substantial transition responsibilities for the Director team during the first 5 years at least. ESAIT therefore proposes that the senior management structure should be reviewed after 5 years.

Other Organisations

5.9 The Director structure is in line with the top management teams in new public sector organisations such as NI Water and the 5 Health and Social Care Trusts. The top management teams in these organisations comprise 9 members including a Chief Executive. The Director structure for ESA is also consistent with top management teams in Children's Services within local authorities in GB.

6 Purpose and Responsibilities of Director Posts

Corporate Responsibility of Directors

6.1 Alongside their specific lead responsibilities, each Director will also carry a very important corporate responsibility for shaping the strategic direction of ESA, contributing to the achievement of corporate goals and targets, meeting statutory responsibilities, supporting the Minister's agenda for equality and inclusion and ensuring a joined up and coordinated approach to the delivery of services. This will be managed at the top of the organisation through the collective action of the senior management team, overseen by the Chief Executive and the ESA Board, and at a local level through the integrated delivery of services through Local Area Teams.

Director of Education Quality and Standards

Context

6.2 Every year, some 12,000 young people leave school after 12 years of compulsory education, without achieving 5 good GCSEs including English and Maths, the recognised minimum standard for education success. This is unacceptable and significant change is required if this situation is to be improved quickly. The Minister has made clear that the establishment of ESA will be a key element in the drive to raise standards, as it provides the opportunity to clearly define roles and responsibilities and to ensure that raising standards is given priority at the most senior level within the new organisation.

6.3 DE is finalising a new policy 'Every School a Good School' and is currently consulting on a new Literacy and Numeracy Strategy. ESA will be responsible for implementing both policies,

working closely with school leaders and Boards of Governors to review performance across a range of indicators, identify areas for improvement and take the necessary action. This will require a new approach to working with schools, including new relationships and re-definition of roles and responsibilities.

6.4 A key focus for the Director will be the development of a regionally consistent approach to raising standards, setting performance indicators and targets at a regional and local level. Staff based in Local Teams will work directly with schools to ensure standards are raised. These teams will be established and managed by the Director of Education Quality and Standards, and are likely to be based on local government boundaries. More detail about Local Teams is provided at Appendix 2.

Research consistently demonstrates that high quality teaching and school leadership are key to achieving successful outcomes for children and young people. Whilst it is envisaged that there will be an increasing role for the initial teacher educators (ITEs), it is likely that, in line with best practice, the learning community of the school will become the major focus for the professional development of the teacher. There will, however, remain a strategic regional role for ESA in providing a framework for coordinated and coherent career development for teachers, bringing together the diverse elements of continuing professional development, curricular training, pedagogical training, ICT and other support training. This will also include leadership training and management training for Principals, VPs and senior teachers.

A particular responsibility for the Director of Education Quality and Standards is to ensure that the relatively new provision in Irish Medium and Integrated Education is fully supported.

Purpose of the Post

6.5 The Director of Education Quality and Standards will support the Minister's vision of equality and inclusion being responsible for providing strategic leadership to the education sector to ensure that standards are raised and education outcomes are improved for young people in every school, youth work and early years setting.

6.6 He/she will provide strategic advice to DE on policy issues related to education quality and standards. The Director will lead the establishment and management of Local Teams to provide direct support, advice and guidance to schools, youth work and early years settings. He/she will have responsibility for ensuring the effective monitoring of performance at regional, local and school level, the identification and dissemination of best practice and the establishment of effective arrangements for identifying and addressing areas for improvement in schools and other settings.

6.7 The Director will provide strategic leadership in the development and implementation of a regional framework for the professional development of teachers and school leaders, taking account of new policies, procedures and best practice.

6.8 The Director will also lead the development and implementation of a regional approach to the recruitment and training of Boards of Governors, to ensure that every school has in place a Board of Governors with the appropriate skills, knowledge and training required to perform their duties effectively. The Director will be sensitive to the needs of small or newly formed schools, particularly in emerging sectors.

6.7 The Director will have a particular responsibility for ensuring that practice in schools and in professional development reflect international best practice. The Director will develop a network of relationships nationally and internationally to support the pursuit of best practice.

6.9 The Director will work closely with the Director of Children and Young People's Services and the Director of Curriculum, Assessment and Examinations to ensure a coordinated, integrated and effective approach to ensuring every child reaches their full potential.

Director of Children and Young People's Services

Context

6.10 The responsibilities of the Children and Young People's Services Directorate range from early years and pre-school provision through to post-primary and youth services, and include Special Educational Needs, Educational Psychology, Behaviour Support Teams, Education Welfare Service, Alternative Education Provision and related areas. The establishment of ESA provides the opportunity to develop an integrated and comprehensive approach to Children and Young People's Services which will be critical to improving outcomes for all children and young people.

6.11 Responsibility for a range of pre-school and early years services previously administered through DHSSPS was transferred to DE in 2007 in order to provide a more coherent approach to child development. The Department is developing an Early Years Strategy designed to ensure that every child gets a good start in their development through the provision of Sure Start and pre-school places, parental support services and strengthening the link through to primary school.

6.12 DE is currently conducting a Review of Special Education Needs and Inclusion. This envisages very significant changes to the way services are assessed, managed and delivered and ESA will be responsible for implementing the changes emerging from the review.

6.13 The establishment of ESA will also bring together all of the different strands of statutory and voluntary youth service provision and policy advice and guidance, and provide a more coherent approach to the implementation of DE's new Priorities for Youth Policy.

Purpose of the Post

6.14 The Director of Children and Young People's Services will support the Minister's vision for equality and inclusion by providing provide strategic leadership to the sector to ensure that high quality, accessible services are provided in an integrated manner to children and young people, targeted particularly on those in need and those with barriers to learning, in order to enhance their development and enable them to reach their full potential.

6.15 He/she will provide strategic advice to DE on policy issues related to children and young people's services. The Director will lead the strategic development of high quality, modern, regional services encompassing early years, special education needs, behaviour support, education welfare, alternative education provision, youth services and child protection. He/she will also lead the development and implementation of effective programmes to enhance social inclusion and support diversity.

6.16 The Director will play a lead role in developing community planning and linkages with local government and will develop strong and effective relationships at a strategic and operational level with colleagues in Health and Social Care Trusts and other relevant statutory and voluntary agencies to ensure a child-centred and integrated approach to service delivery.

6.17 The Director will work closely with the Director of Education Quality and Standards and the Director of Curriculum, Assessment and Examinations to ensure a coordinated, integrated and effective approach to ensuring every child reaches their full potential.

Director of Curriculum, Assessment and Examinations

Context

6.18 The curriculum is the cornerstone of our education system. What children are taught and how they are taught is a major factor in determining whether they reach their full potential and are able to contribute positively to their community, society and the economy. The revised curriculum has been developed to respond to the changing nature of the world of work and society in general and is being rolled out across all schools. The successful implementation of the revised curriculum will depend on the development and dissemination of high quality training and support materials, including ICT curriculum support, for teachers.

6.19 The curriculum is complemented by arrangements for assessment. Accurate, relevant and reliable assessment tools are also being developed and made available to schools to complement the revised curriculum and support teaching and learning in the classroom. The curriculum is therefore an essential element of ESA's work to raise standards and improve education outcomes for children and young people.

6.20 ESA will also be responsible for the preparation, setting and marking of examinations, and awarding qualifications. The highest possible standards must be maintained to protect and enhance the reputation of the exams body. This is underpinned by the current arrangements whereby public examinations are subject to regulation and are provided under a Code of Practice agreed by the administrations in London, Cardiff and Belfast. It is important, for reasons of objectivity and transparency, that this area of work is kept separate and distinct from ESA's role in performance monitoring and raising standards in schools.

6.21 This is a high risk service delivery area which demands a significant degree of strategic and operational management to ensure the curriculum is developed to meet the needs of our society, that economy, examinations and assessments are developed and conducted to the highest possible standards. This Directorate will encompass functions currently carried out by CCEA, the curriculum support elements of C2k and elements of the ELBs including ICT learning platforms for schools.

6.22 DE has indicated that it will devolve much of its regulatory responsibilities in respect of examinations and qualifications to ESA. To reduce the potential for conflict of interest, this regulatory function will report directly to the Chief Executive of ESA.

Purpose of the Post

6.23 The Director of Curriculum, Assessment and Examinations will be responsible for delivering a curriculum and assessment system that will ensure pupils are equipped with the knowledge, understanding, skills and qualifications that will enable them to make a positive contribution to the economy and society.

6.24 The Director will advise DE on the development and review of the revised curriculum and support DE and DEL in the development of 14-19 policy. He/she will provide strategic leadership in developing and implementing an integrated approach to the provision of the revised curriculum and curriculum support to schools and teachers.

6.25 The Director will have responsibility for the effective conduct of examinations and assessments and for the development of new qualifications and assessment tools and materials, making best use of modern technology.

6.26 The Director will work closely with the Director of Education Quality and Standards and the Director of Children and Young Peoples' Services to ensure a coordinated, integrated and effective approach to ensuring every child reaches their full potential.

Director of Human Resources and Workforce Development

Context

6.27 The successful development and implementation of a Human Resources strategy for ESA will be a critical factor in the successful establishment of a fit for purpose organisation capable of delivering high quality services for children and young people.

6.28 ESA, when established, will have over 50,000 employees, working in multiple locations, in a wide variety of service areas. This includes approximately 20,000 teaching staff across 1,250 schools, other school based staff, staff in front line operational services, early years and youth services staff, administrators and management. Staff will be drawn from 12 different organisations, each with their own culture, work practices, terms and conditions and HR policies and procedures. This is a large and diverse workforce which must be brought together into a single organisation, harmonised and streamlined to ensure ESA has sufficient, appropriately skilled staff to meet future demand and changing needs. The Director will lead the process of populating new organisational structures through recruitment, internal competitions or assignment of staff to posts and management of a voluntary severance and redeployment strategy.

6.29 The PAC report on Job Evaluation in the Education and Library Boards recommended that ESA's top management team should include a top class HR professional with a proven track record in building a harmonious industrial relations culture and a highly motivated workforce in a large organisation. This recommendation was accepted by DE.

Purpose of the Post

6.30 The overall purpose of the post of Director of Human Resources and Workforce Development will be to establish and maintain a highly skilled and motivated workforce with a harmonious industrial relations culture to enable the organisation to meet its objectives and support the Minister's vision of equality and inclusion.

6.31 The Director will ensure the successful transfer of staff from legacy organisations into ESA and provide strategic leadership in the development and implementation of workforce strategies including recruitment, re-deployment and voluntary severance arrangements, to align the current staffing complement with future service delivery models and new organisational structures.

6.32 He/she will lead the strategic and operational development of high quality HR services and put in place a HR Management Information System that meets business needs.

6.33 The Director will establish first class employment practices, including a training and development strategy and a performance management scheme, that will attract and retain a high quality workforce that has the skills and capabilities to meet current and future demands.

6.34 The Director will develop and establish new, modern, employee relations and negotiating machinery for ESA and put in place arrangements for the effective operation of ESA's Employing Authority role for all teachers and other school based staff.

Director of Finance and ICT

Context

6.35 ESA will be responsible for the financial management of a budget in the region of £1.9 billion. A key objective for the establishment of ESA is to release resources from within the education budget for re-direction to the classroom and other front line support services, in order to improve the educational experiences and outcomes for children and young people. The Executive has agreed Efficiency Delivery Plans (EDPs) for all government departments and the Finance Director will work closely with colleagues in DE to ensure the EDP for education is delivered. This will require effective strategic partnership working across the Directorates within ESA to identify and secure efficiencies, whilst maintaining and enhancing the quality of services.

6.36 In line with the agreed recommendations of the PAC report on 'Job Evaluations within the Education and Library Boards', ESA will have robust processes for financial approvals and subsequent monitoring of expenditure to secure effective financial management, within a rigorous financial framework.

6.37 New budgetary, financial monitoring and reporting systems will be required to facilitate and support prudent financial and performance management and to develop strong budgetary controls across the organisation. In addition, budget holders must have the skills and knowledge necessary to manage their budgets in an efficient and effective way to realise benefits, achieve positive outcomes, and remain within budget. A significant proportion of the ESA budget will be allocated to schools through the Common Funding Formula. Schools will also require a significant degree of support to ensure they manage their finances appropriately, stay within budget and achieve value for money.

6.38 There are currently 27 payrolls across the affected organisations, paying approximately 50,000 staff transferring into ESA. These will have to be streamlined to reduce the administrative burden, whilst ensuring that all staff continue to be paid, on time and accurately.

Purpose of the Post

6.39 The Director of Finance and ICT will ensure the sound financial management of the ESA Budget, securing the expected efficiencies within the agreed timeframe, and implementing robust and effective financial planning, monitoring and reporting systems.

6.40 The Director will provide strategic leadership for financial planning and management of the ESA Budget and the development and implementation of sound financial and management accounting systems and processes, providing the necessary assurances to the Chief Executive, the Board and DE. This will include ensuring effective alignment of resources to priorities and achievement of Value For Money in the delivery of ESA services.

6.41 The Director will oversee the strategic management of the ESA payrolls to ensure all staff are paid accurately and on time. He/she will also have responsibility for the timely and accurate allocation of resources to schools and monitoring and advising schools on financial planning to ensure that they use resources effectively and remain within budget.

6.42 He/she will establish and maintain appropriate mechanisms for the procurement of Goods and Services and ensure that ESA is established as a Centre of Procurement Expertise (COPE).

6.43 The Director will have lead strategic responsibility for the planning and provision of high quality, effective, and robust ICT infrastructure and support for schools and ESA.

Director of Strategic Planning

Context

6.44 Whilst it has many strengths, the education sector faces major issues of poor quality infrastructure, over-provision in many areas, and some significant areas of underperformance. It now requires very high quality strategic planning to re-shape provision with a primary objective of improving outcomes.

6.45 The Investment Strategy for Northern Ireland identifies around £3 billion in capital expenditure for the development of the education estate over the next 10 years. There have also been significant changes in education over the last few years which will have major implications for the education estate. The roll-out of the revised curriculum and the Entitlement Framework, greater collaboration among schools, and the move to new post-primary arrangements will impact on the design, location, size and number of schools required for the future. The schools' estate will be shaped by these changes through implementation of a new sustainable schools policy, Area Based Planning and Strategic Investment Plans which will impact directly on the way in which we plan and build new schools.

6.46 ESA will also operate within new arrangements for the procurement of services for capital works, minor works, maintenance and professional services. These changes will represent a new and radical approach to education estates planning and management and will require strong leadership from the outset to secure the involvement of all the different stakeholders in the process and to deliver successful outcomes.

6.47 There are currently over 1,250 schools, with a pupil population of approximately 330,000 pupils. In 2006, the Bain Review of the education estate identified approximately 53,000 surplus places (15%) across the school estate and estimated that, on current demographic trends, this could rise to 80,000 within the next 10 years (around 23%). The report recommended a target of 10% for spare capacity within the estate, which points to the need for a radical rationalisation programme if a fit for purpose education estate is to be provided.

Purpose of the Post

6.48 The Director will provide strategic leadership in the development, review and update of Area Based Plans to meet the educational needs of each area, in conjunction with relevant stakeholders, within guidelines set by DE and for approval by DE.

6.49 The Director of Strategic Planning will ensure the planning and provision of a fit for purpose education estate that meets the educational needs of pupils, taking account of existing and new education policies and developments in collaborative working among schools.

6.50 He/she will work with other Directors and Local Team Leaders in the development of Education Plans for each Local Area, setting out the arrangements for the delivery of education services and the supporting education infrastructure to ensure the effective delivery of the Department's policies and the improvement of education outcomes. This will form the basis for the development of Strategic Investment Plans that will identify and prioritise development

proposals emanating from area based plans and establish and maintain new procurement arrangements for capital works, minor works, maintenance and professional services.

6.51 The Director will lead the development and implementation of systems for Asset Management, including management information systems, and ensure Health and Safety standards, energy efficiency targets etc are implemented across the education estate.

Director of Operational Services

Context

6.51 The Director of Operational Services will have responsibility for a budget in excess of £150m and management responsibility for over 12,000 staff, dispersed across multiple locations. This is a complex, multi-disciplinary environment. This post provides a huge opportunity to look at new/more effective approaches and represents a key challenge for the new organisation to improve service delivery, provide the necessary customer/user focus and drive out efficiencies for reallocation to the frontline.

6.52 Core operational services such as transport, cleaning and catering are critical to the smooth day to day running of schools and the wider education service. These are high profile, high risk areas with significant operational issues. These services also deal directly with customers/users on an individual basis i.e. pupils, parents, and school leaders and command a high public profile. The school admissions service, also located within this Directorate, can also attract a significant amount of media attention and public scrutiny.

6.53 The Director will oversee service managers working across a significant geographical area, dealing with day to day operations, delivered within a regional framework. The Director will face a significant challenge in bringing together services delivered currently by separate organisations, streamlining business processes, harmonising services and developing new and innovative approaches within a customer/user-focused environment.

Purpose of the Post

6.54 The Director of Operational Services will lead the strategic planning and operational delivery of high quality, modern, efficient and customer/user- focused services to support the smooth running of the education service.

6.55 The Director will lead the strategic and operational planning and performance management of services including transport and vehicle maintenance, cleaning and caretaking, catering and grounds maintenance in line with safety standards, statutory obligations and Value for Money considerations.

6.56 He/she will manage the effective and timely administration of school admissions and transfer processes, student finance, awards and grants, and establish and maintain a range of corporate services in support of the new organisation.

6.57 The Director will have responsibility for establishing a customer/user-facing, service delivery approach to business across the responsibilities of the Directorate, seeking and responding to customer/user feedback to ensure services are responsive to local need and modernising processes to realise efficiencies and improve the quality of service.

7.0 Conclusion

7.1 ESA, when established, will be a major organisation with a budget of almost £1.9 billion per annum, and anticipated capital spend over the next 10 years of around £3 billion.

7.2 More significantly, ESA will be responsible for delivering a wide range of new and emerging education policies that will be vital in ensuring that all our young people reach their full potential and that our economy and society develops successfully.

7.3 The Director positions in ESA will therefore be very substantial posts, carrying significant responsibility for the delivery of services across the entire region and for the successful development and implementation of a major change programme over the next 5-10 years. A strong and highly skilled top management team will be vital to the successful establishment and operation of ESA and to the achievement of the improved education outcomes for our young people to which the Minister, the Department of Education and the Executive are committed. The Director structure set out in this paper is designed to ensure that this strong and effective leadership team is in place within ESA from the outset – see Appendix 3.

Appendix 1: ESA – Organisational Structure and Operation

What Should ESA Do/Be? – Department of Education Criteria

- The champion of raising educational standards. This is multi-faceted and will involve ESA in issues ranging from the quality of initial teacher education to arrangements for supporting and, where necessary, challenging schools to raise standards.

The Department will wish to be satisfied that the ESA senior structures provide the necessary capacity to address the core education agenda, which is our top priority. This will include balancing high quality support and professional development for teachers with robust challenge for those schools performing below par. Assisting schools to implement the revised curriculum and fostering the development of local learning communities to deliver the Entitlement Framework are also key issues. You have received our policy paper on Professional Development and Support setting out our thinking on this on a more detailed level.

- Robust in financial management, maximising the amount of resources devoted to frontline services. Fulfilling all accounting and audit requirements.

The importance of meeting this criterion cannot be overstated, given the amount of public funds which will be entrusted to ESA and the need for transparency in accounting for their use. Strong financial and budgetary control will therefore be essential and it is to be expected that this will be reflected in the proposals on structures.

- The custodian of coordinated planning of the schools' estate, on an area basis, thus breaking the mould of the present arrangements which are often characterised by inter-sectoral competition. This will involve extensive consultation at local level and facilitating the expression of legitimate sectoral interests in formulating the overall plan and proposals for specific development schemes.

The 'estates' function within ESA will be perhaps the most visible, and at times controversial, area of ESA's activity and the Department expects that this will be reflected in the senior structure. ESA will take the lead on area based planning and the staff involved will need to have a full grasp of the policy parameters, principles and criteria (eg on school viability) set from time

to time by the Department. Equally, they will need to have the ability to engage authoritatively with sectoral interest groups and local communities and be in a position to contribute to local community planning. This will include engagement with local elected representatives both as individuals and in the forum of the local councils. As indicated in relation to the previous criterion, the Department will need to have clarity about how such roles would be discharged – whether, say, by individuals despatched from ESA HQ and by some of the ‘local office’ staff. If the latter, this would suggest an organisational model in which the ‘local manager’ would assume a range of responsibilities that would go significantly beyond the provision of ‘local support services’.

- The provider of high quality and well coordinated services for children and young people, melding together the services hitherto provided by DHSSPS and those from education; and extending the reach via after-school provision and the youth service.

The importance of the earliest years of a child's life is universally recognised, and effective early support and intervention pays the greatest educational dividends. The achievement of a genuinely ‘holistic’ provision for this age group has been facilitated by the recent inter-departmental transfer of certain services. In considering the ESA senior structures, the Department will wish to be assured that there is sufficient focus on creating a suite of joined-up services which embrace, inter alia, family and parenting issues; arrangements for children with special education needs and for those for whom alternative education provision may have to be made. This aspect of work should be recognised at central and local levels in the relationships formed with the various health bodies.

- The provider of efficient ancillary services to/for schools - eg meals, transport etc – with a strong customer focus.

The structures should facilitate the development of a corpus of professional expertise in the management and/or procurement of services of this kind, so that the services are of good quality whilst being delivered cost-effectively, thus avoiding drawing resources away unnecessarily from the classroom.

- The provider of advice to DE on curriculum and pupil assessment issues; and operating robust and effective systems of public examinations that reflect local needs whilst maintaining national and international currency.

Whilst policy in these areas, as in all others, will be a matter for DE, the Department will look to ESA as a source of professional advice on these issues. The Department will also wish to be assured that the management and governance arrangements in relation the examinations function remain robust so that the integrity of the systems, including in areas such as accuracy and confidentiality, is maintained.

- An internal organisational structure which balances the need for strong central coordination and control, in the interests of consistency and equity of provision across all geographical areas, with a local presence that enables responsiveness to local needs.

Achieving greater consistency of practice and provision across the region is a core objective of the RPA changes and will thus be a key success criterion for ESA. In essence there should not be a ‘postcode lottery’ in terms of the quality or accessibility of services for parents and children. It is recognised however that some of ESA's frontline support services would best be provided from a local base, by individuals who are more directly acquainted with the needs of the area. The Department will wish to examine this aspect closely, to ensure that the local bases are subject to strong central coordination, thus avoiding any inadvertent return to fragmentation or inconsistency.

It is also essential that we are clear and agreed on the nature and range of the services for which the local base will take responsibility. We can reasonably conjecture that these bases are likely to be regarded (by those within the education sector and by the general public) as ESA's 'local offices' with a consequent expectation that they would be able to deal with issues and queries on a wide range of topics. And the ESA 'local manager' may receive invitations to serve on, or interface with, other local bodies. We must be clear from the outset about whether that is seen as an appropriate role and, if so, the parameters within which such a role would be discharged. This dimension has a particular relevance also to ESA's work on the schools estate in the context of area based planning (see below).

- A 'strong' employer of the education workforce, operating modern and effective HR policies that maximise the efficient deployment of staff and their full support and development, and modernise the work practices inherited from the legacy bodies.

The need for ESA to have high calibre HR professionals at senior level has already been recognised by PAC, and the Department will wish to be assured that the senior structure provides appropriately for this.

- An organisation that maintains good working relationships with the other educational stakeholders including the Department, schools of all types, governors, teachers, sectoral bodies, trades unions, business and industry, voluntary and community bodies with an involvement in education, local councils etc.

This reflects the aspiration that ESA, in its culture and behaviour, should be outward facing, with a clear sense of its role in the wider educational, economic and social environment, and aware of the pivotal part it can play in bringing together the range of interests and communicating effectively with them.

- A well-sorted, tightly managed organisation, with strong internal performance management and corporate governance, ensuring compliance with statutory duties on equality etc; coupled with a strong focus on promoting internal efficiency across all its services and effective internal and external communication.

The size of the organisation, its geographical distribution and the wide range of services to be provided will all contribute to the challenges for the ESA board and senior management team in leading the organisation and ensuring that key operational targets are met. The structures should therefore provide for a strong coordinating function to support the board and SMT in leading and directing the organisation.

Appendix 2: Range of Services in Local Teams

Local Teams will be closely linked to local government areas to ensure co-terminosity and a seamless link with community planning and local political interfaces. They will comprise staff engaged in delivering services at a local level, including support for schools with regard to performance and management, and operational services such as transport, catering, cleaning, maintenance etc.

The Local Teams will have the following features:

- Closely linked to local government areas
- Multi-disciplinary
- Strong local knowledge

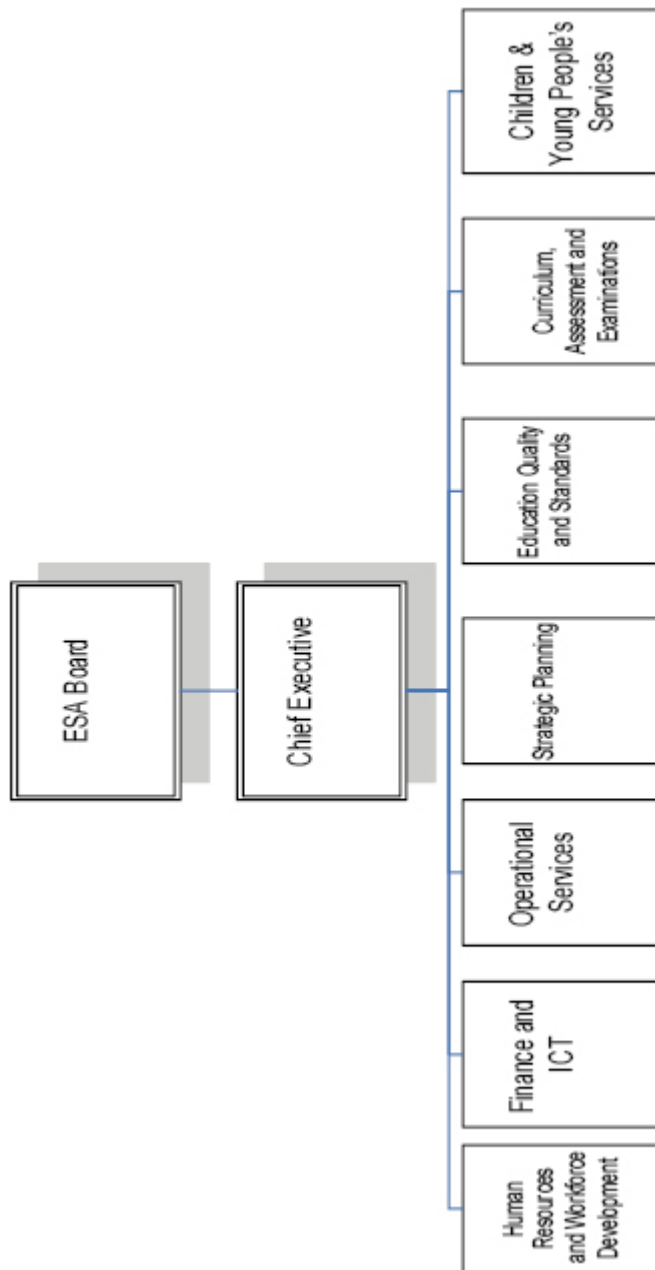
- In regular contact with schools and youth providers
- Provide a named, single point of contact for schools and youth providers
- Be a champion for the needs of the learner
- Ensure adherence to DE/ESA policies and standards
- Provide assessments of need in their areas within an agreed framework
- Provide support, advice, and facilitation for collaboration among schools and other providers
- Provide liaison with local councils on issues such as community planning.

The Local Teams are likely to include:

- A Local Manager – responsible for the educational outcomes and operational services in the area, including liaison with local councils on issues such as community planning. The Local Manager will be supported by:

School principal support officers Local HR officers	Local finance officers	To support schools to improve educational outcomes
Special education/child protection/behaviour support coordinator Educational psychologists Educational welfare officers Youth coordinator Early years coordinator		To support children and young people and improve educational outcomes
Area planning officers		To support area planning and community planning
Transport supervisor Catering supervisor Cleaning supervisor		To ensure operational services are delivered effectively in the area

Appendix 3: Education and Skills Authority Senior Management Structure



Correspondence from CnaG

Mervyn Storey MLA
Chairperson, Committee for Education
Room 241
Parliament Buildings
Stormont
Belfast
BT4 3XX

11 June 2009

Dear Chairperson Storey,

COMHAIRLE NA GAELSCOLAÍOCHTA SUBMISSION TO THE EDUCATION COMMITTEE (YOUR REF. 234/09/1/04)

Thank you for the recent opportunity afforded to Comhairle na Gaelscolaíochta to make a presentation on the Education Bill to the Committee.

Further to our presentation, I wish to invite the Committee to continue to liaise with the Department on our behalf to pursue the issues we raised in our presentation. These include the following:

1. A legislative requirement on ESA to encourage and facilitate Irish-medium education;
2. An amendment to the draft bill enabling IM trustees to be recognised as submitting authorities for the purposes of submitting employment and management schemes;
3. An amendment requiring ESA to have regard to the needs of IM pupils in giving effect to its duties in respect of the curriculum (Clause 26 (2));
4. An amendment requiring ESA to ensure that its IM governor nominees are committed to Irish-medium education.

The list above consists of points raised by Comhairle na Gaelscolaíochta to which the DE representative, Chris Stewart, responded positively. In addition, there are several points raised by Comhairle na Gaelscolaíochta which the DE representative indicated were problematic. We would like to invite the Committee to continue to pursue these with the Department on our behalf.

1. Definition of IME – Comhairle na Gaelscolaíochta is seeking an amendment to the Bill to include a definition, for the purposes of education orders, of what constitutes IM provision – of what an IM school or unit consists of. The current definition is for curricular purposes only and is not definitive. This request is in line with the legislation in place for Integrated education, which defines clearly in legislation the various types of integrated school. This amendment is important to facilitate the development of IME in collaboration with existing English-medium schools by way of units, and also to facilitate the development of IME in other sectors.

It is unclear why DE believes a proper definition of an Irish-medium school and an Irish-medium unit cannot be provided for in legislation. All other types of school are defined in Part 1, Preliminary, of Revised Version of the Education and Libraries (Northern Ireland) Order 1986. The Education and Libraries (Northern Ireland) Order 1986 has been revised by various subsequent orders in council to include relevant definitions specifically for the purposes of education orders. These definitions include definitions for controlled and grant-maintained integrated schools, secondary schools, grammar schools, nursery schools, maintained schools, and independent schools. While Chris Stewart has indicated that the definition of a Catholic Maintained school will be repealed in the second Bill, it is unclear why Irish-medium schools may not be defined, particularly given the extent to which various aspects of Integrated education are described in legislation.

The current definition of Irish-medium education defines it in terms of curriculum delivery only (The Education Reform (Northern Ireland) Order 1989 (No. 2406 (N.I. 20))). This fails to acknowledge the fact that Irish is used as the everyday language of the school or to acknowledge any other aspect of the provision. The definition is for curricular purposes only, not for the purposes of educational orders.

In addition there is no current definition, save as directed by DE policy, as to what constitutes an IM unit for the purposes of education orders, nor is there any legislative direction on how a unit should be established. Again this is in contrast to provision made in the 1989 Reform Order for Integrated Education.

2. Development Proposals – Comhairle na Gaelscolaíochta is seeking an amendment to require anyone bringing forward a development proposal for the establishment of a new IM school or unit, or a development proposing a change in existing IM provision, to be required by legislation to consult with the sectoral –support body for IME, in line with a requirement currently in place under Schedule 7, Para. 9 (6) for the Catholic Bishops. This is important to facilitate the long-term strategic development of IM provision and to avoid wasteful duplication of provision.

Currently, representatives of the IM sector do not have a right to be consulted in respect of development proposals. This is important to maintain strategic cohesion in the longer-term development of the sector. In respect of the Catholic Sector, there is provision in the draft Bill (by way of an amendment to the 1986 Order) for the Bishop of the relevant diocese to be consulted re new Catholic Maintained provision in his diocese. Comhairle na Gaelscolaíochta is seeking an amendment to the Bill conferring the right for representatives of the IM sector to be consulted in relation to development proposals for new IM provision, in the interests of contributing to a strategic and effective approach to the future development of IME, similar to that in place for Catholic Trustees due to provision in previous legislation.

Chris Stewart has made reference, in respect of the issue of consultation with the IM sectoral body, to Schedule 7 Para. 9 (4), which accords consultation rights to trustees of a school that is the subject of a development proposal or affected by it. However, the relevant sub-clause of the new Article 14, to the amendment requested by Comhairle na Gaelscolaíochta is Article 14. Sub-clause (6). Notwithstanding Chris Stewart's comments, it seems clear, under this clause that the Senior Catholic Trustee will have a consultative role in respect of the establishment of a new Catholic Maintained school. I refer to Schedule 7, Para. 9 (4), sub-clause (6) in the new Article 14.

(6) Before a proposal to establish a new Catholic maintained school is submitted to ESA under paragraph (2), the person making the proposal shall consult the Bishop of the Roman Catholic diocese in which the school is to be situated.

According to this provision, Senior Trustees will have to be consulted in relation to a development proposal to establish a new Catholic Maintained school anywhere in their Diocese. It is important that this consultative role is accorded to the IM sector to ensure the strategic welfare of the IM sector.

I wish to again, through your offices, to thank the committee for its interest in these issues and I remain available at request to provide further information on any of the issues included in this letter.

Le dea-ghuí,

Seán Ó Coinn

Príomhfheidhmeannach (CEO)

Correspondence from AQE

ASSOCIATION FOR QUALITY EDUCATION LIMITED

Chairman: Sir Kenneth Bloomfield KCB

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17th June 2009

Mr M Storey M.L.A.,
Chair of the Education Committee
Room 241
Parliament Buildings
Stormont
Belfast
BT4 3XX



Dear Mr Storey

I write first of all to thank you and the members of the Education Committee for allowing us the opportunity to make our case for changes in the Education Bill.

The second reason for writing is to address what we believe to be a very important and key point, highlighted by some members of the Committee regarding Clause 8(2). It was suggested that, because this Clause states that it is the duty of the ESA to give effect to any decision by the Boards of Governors, then schools should have no concerns about loss of authority. We continue, however, to have grave concerns about the thrust of this Bill and make the following points with particular regard to the fundamental issue raised by Clause 8(2).

John F Kennedy said at Yale on June 11th 1962: "The greatest enemy of truth is very often not the lie – deliberate, contrived and dishonest – but the myth – persistent, persuasive and unrealistic." It seems to us that this aphorism neatly encapsulates the contrast between what the ESA draft Bill actually says about the framework under which Boards of Governors would be expected to operate and the clause intended to assure Governors about their alleged autonomy.

Clause 8(2) states that "it is the duty of the ESA to give effect to any decision of the Board of Governors..." The Minister and the Department, in response to submissions by AQE and the GBA, emphasise that "the ESA may not lawfully refuse to put into effect any proper decision of a Board of Governors on employment matters."

In this regard, we think that it is pertinent to read Clauses 4-8 (Employment Schemes) of the draft Bill in conjunction with Clauses 30-38 (Schemes of Management). Boards of Governors (the submitting authority) are required to prepare such schemes **which can only come into effect when given ESA approval**. Clause 5(6) and Clause 31(6) state: "ESA may approve such a scheme either without modifications or with such modifications as it thinks fit after consulting the submitting authority of the school."

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That being the case, the assurance that the ESA may not lawfully refuse to put into effect any **proper** decision of a Board of Governors is mere political presentational spin and the alleged autonomy potentially illusory.

Why would the ESA wish to refuse to implement any decision of a Board of Governors taken in accordance with schemes which the ESA itself had approved? It is the detail of the Employment Schemes and of the Schemes at Management which is important, and the degree to which Boards of Governors are afforded reasonable flexibility or are tightly circumscribed.

It is the view of AQE that Clause 8(2) does not give authority to schools that the Minister and the Department claim and that the underlying thrust of this draft legislation is the centralisation of power within the ESA; however persistent or apparently persuasive representations to the contrary are, they remain entirely unrealistic and would, in fact, give unlimited powers to the Minister of Education and the Chief Executive.

We should, of course, be willing to develop these points further if the opportunity arose. We wish too to take this opportunity to thank you personally and your Committee for all your important work.

Yours sincerely

K. P. Bloomfield

SIR KENNETH BLOOMFIELD

Association for Quality Education Limited

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Correspondence from the Minister of Education - Scrutiny of the Education Bill

Mervyn Storey MLA
Chairperson
Committee for Education
Parliament Buildings
Stormont
BELFAST
BT4 3XX

Ref: 036/09/C/01

17 June 2009

A Charathaoirleach,

Education Bill: Committee Scrutiny

Thank you for your letter of 20 May about the Committee's consideration of Review of Public Administration (RPA) Education Bill. I appreciate the investment of time and effort by the Committee on this important legislation.

In your letter you referred to a number of matters on which the Committee has sought further information, or on which members have expressed concern. Of those, your letter and the accompanying table identified five matters in particular, for which the Committee wishes to see: changes in the Bill; more information on implementation arrangements stemming from the Bill; or a particular approach taken in the second Education Bill. To assist the Committee I shall address each of the matters in turn.

Membership of the ESA (clause 1 and schedule 1)

I understand that some members consider that the number of members proposed for the Education and Skills Authority (ESA) is too small for the effective discharge of the organisation's workload; and that some members consider that local councillors ought not to form a majority of the membership.

The Bill's provisions seek to balance a number of factors. The size of the membership and its skills base must reflect the ESA's responsibility for a key public service and a very large budget. The membership must not be so numerous as to be ineffective; and must include a strong element of local democratic accountability. The appointment arrangements must also properly reflect the merit principle, and the need to respect diversity, and promote equality of opportunity.

The Bill as drafted currently addresses all of these factors, however I wish to reflect further on the number of Board members. I would point out that the Bill includes a provision to increase the number of members by order, should the need to do so arise (paragraph 3 of Schedule 1). Members may be interested, for comparative purposes to note that the Board of the Housing Executive has 12 members; that of Invest (NI) has 10; and the Regional Health and Social Services Board has up to 12 members.

Some members also suggested a fundamentally different approach to membership, based on a requirement for the membership to be broadly representative of the community. This would be similar to the requirements on the memberships of the Equality Commission and the Human Rights Commission.

I understand the thinking behind the suggestion, but I do not consider that this is the right approach for the ESA. A representative membership is appropriate for Commissions that are operationally independent of Ministers and the Assembly. However, the ESA will not be operationally independent. Its role will be to implement the policies of the Minister of the day and legislation as passed by the Assembly with scrutiny and oversight by the Education Committee and the Assembly generally. As such, the ESA – like similar authorities for libraries, health and housing - ought to have a membership that reflects its core role of managing and delivering services.

Members also asked for reassurance that the arrangements for appointing members would ensure a balanced membership in terms of political opinion, gender, geography etc. As I have indicated, the appointment arrangements will be based on the principles in the guidance produced by the Commissioner for Public Appointments, including the merit principle. I recognise that it will be important for the ESA membership to have the trust and confidence of education interests and the broader community. With this in mind, the appointment arrangements will reflect the need to ensure balance, insofar as this is compatible with the Commissioner's Code of Practice and the merit principle. My officials will liaise closely with the Commissioner's office to ensure that best practice is followed.

Employment arrangements (clauses 3 to 12 of the Bill)

The Committee, having considered stakeholders views, has asked for the Bill to include:

- a means of giving greater clarity and certainty on the respective employment roles of the ESA and boards of governors; and
- an effective means for a board of governors to challenge an action of the ESA on an employment matter.

I recognise the concerns of stakeholders on this matter, and I have asked officials to involve stakeholders in the development of guidance and model schemes, in order to provide the necessary clarity and certainty. The committee will be aware there is already a challenge mechanism that boards of governors could avail of in article 101 of the 1986 Order.

Committees and local structure of the ESA (implementation of the first Bill)

The Committee is aware that I intend the ESA to be a single organisation, but with a strong local presence. The local structure of the ESA must be based on the decentralised provision of support services close to schools and other education providers. This will provide for decision-making that is sensitive and responsive to local needs, without the fragmentation, inconsistency and inequality that is inherent in the current arrangements.

I understand that some members wish to see the Committee and local delivery structure of the ESA specified on the face of the Bill. That would be a most unusual approach, contrasting with the arrangements for other regional organisations that provide local services, such as the Housing Executive or the Police Service. In my view, such an approach would be inflexible, and would make it unnecessarily difficult for the ESA's local structures to develop and evolve over time, and in response to local need. Therefore, I do not propose to amend the Bill in this regard, as the existing clauses make adequate provision for the Committee and local structures.

However, I appreciate that the Committee wishes to scrutinize the proposed arrangements, and I attach at Annex B a paper illustrating my Department's proposals.

Ownership of controlled schools (Second Bill)

The Committee has expressed the view that the membership of the proposed ownership body ought to be representative of the community served by the controlled sector. The Committee has also sought my views on the suggestion that this might be achieved by retaining the current Education and Library Boards in reduced form, with the sole function of owning the controlled schools estate. Before addressing possible options, there are two key points that I should like to emphasise.

Firstly, it is recognised that the majority of children and young people who attend controlled schools come from a Protestant community background. As a consequence, the ethos of many controlled schools, and of the controlled sector generally, has a strong Protestant Christian element. This is part of the identity of the sector, and is something that ought to be recognised and celebrated.

However, one of the strengths of the controlled sector is its willingness to respect diversity, and promote equality. Indeed we all expect that of all sectors. That strength must not be lost. Controlled schools are, and must remain, open and welcoming to children of any community background, and of any religious faith, or none. Therefore, the 'community served by the controlled sector' is the entire community.

Secondly, whilst much is made of the issue of ownership, I do not believe that the ethos of controlled schools (or, indeed, any school) is derived from the ownership of the buildings. I have also made it clear that ownership will not convey any advantage or disadvantage to any school or sector in terms of the planning, governance, or funding of education.

That being the case, I believe that calls for a 'representative' membership of the ownership body reflect a misunderstanding of the respective roles of the ownership and representative bodies. The ethos of the controlled sector will stem from the values and beliefs of the children, parents, staff and governors of individual schools, and from the representative body that will foster and develop an identity and ethos for the sector as a whole. Therefore, it is the representative body, rather than the ownership body, that requires a representative membership.

In relation to the options for membership of the ownership body, I understand the thinking behind the suggestion to retain Education and Library Boards, which is to allow for a role for the Transferors' Representative Committee (TRC) in ownership arrangements. I value the contribution made by the TRC in many aspects of the controlled sector, and I would welcome their continued participation in the ESA, the ownership body, or the representative body, if appointed through merit-based arrangements.

However, I cannot agree to the retention of Education and Library Boards. This would undermine RPA policy, by partially retaining arrangements that are clearly no longer fit for purpose. It would be an expensive, complex, and unwieldy approach that could not be justified.

I have carefully considered the Committee's views, and the responses to the recent public consultation on ownership and representation for controlled schools. A summary of the consultation responses, together with my Department's views and the policy implications is attached at Annex B. The paper sets out my decisions on controlled schools ownership which are:

- There should be a small, fit for purpose, statutory ownership body.
- Its functions should be limited to acquiring, holding, and disposing of property as required by the sector, and subject to the approval of my Department.

- The body should not have any other functions, such as nominating governors, encouraging boards of governors to take ownership of schools, developing ethos, area planning, or acting as the submitting authority for schemes of management or employment.
- Membership of the body should reflect its role – with 4 to 6 members appointed on the basis of merit.

This reflects the concept of the body as a small organisation with a tightly defined remit of exercising stewardship of property. However, I recognise the importance of ensuring that the body is sensitive and responsive to the views of the sector that it will serve. Therefore, I propose to include in the second Education Bill, along with the proposals to establish the body, a clause placing a statutory duty on the ownership body, in exercising any of its functions, to consult the representative body, and take account of its views.

Controlled schools representation

I appreciate that members are keen to see progress made on the establishment of a controlled sector representative body. I am fully committed to ensuring that each sector has the capacity for an effective representation and advocacy role. I share members' desire for faster progress within the controlled sector, but I trust that members will understand the challenge of developing such arrangements in a large, diverse sector, with no history of collective self-representation.

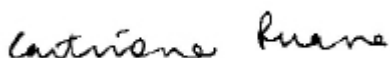
My Department is convening a broad consultative group of controlled sector educational interests, including educationalists, the TRC, and community representatives. The consultative group will meet in the coming weeks for an initial discussion. The aim will be to identify a smaller working group, which my Department will assist to develop a business case to establish the organisation.

Departmental amendments to the first Bill

I attach, at Annex C, a table setting out the other amendments to the first Bill that I intend to take forward at Committee stage. Officials will have described many of these during evidence sessions. I would welcome the Committee's views on these proposals.

In conclusion, my Department and the Committee face a shared challenge in taking forward legislation for the most fundamental and far-reaching reform of education in a generation. I, too, hope that we can reach a consensus on the first Bill, and take forward the reforms in a spirit of partnership. I look forward to the Committee's response to the proposals in this letter, and to my Department's proposals for the second Bill, which will be brought to the Committee in the coming weeks.

Is Mise



Caitríona Ruane MLA

Minister for Education

Annex A

Local Area Teams: Role; Structure; Composition & Community Input

Background

1. The principal objective in establishing the Education and Skills Authority (ESA) is to improve educational outcomes for all children and young people. The key to success will be developing strong, effective leadership within schools; and giving those schools the autonomy to run their own affairs, along with the support services that they need.
2. The main role of the ESA will be to provide front-line support services to its customers - schools and other education providers. These services will continue to be provided locally, and this will be the major factor in determining the structure of the organisation at local level.
3. By being close to the point of delivery and closer to the end user, local managers and service staff based in (what for the present we will describe as) Local Area Teams (LATs) will have the flexibility and professional skills to respond to specific local circumstances and the needs of local communities.

Interface and Accountability

4. Given the complexity and scale of the new organisation, ESA will have robust corporate governance arrangements to ensure there is sufficient accountability and oversight of functional areas and that due process is followed by each Directorate. This will be managed at the top of the organisation through the collective action of the senior management team, overseen by the Chief Executive and the ESA Board and also through a number of Committees. The role of the Committees is discussed in more detail at paragraph 18.

Local Area Teams - Purpose

5. In considering the role and nature of the local area teams, the ESA Implementation Team (ESAIT) has engaged with school principals and service practitioners to find out from the end users what they would want from local teams. Principals have indicated that they want support which is locally and easily available and which places schools at the centre of professional development. The Working Groups which were established to consider the key areas of Children and Young People's Services and Education Quality considered local teams as being critical to the successful delivery of services and requiring the following characteristics:

- staff who can provide a full range of support and advice to improve educational outcomes;
- a named, single point of contact;
- the ability to deal with day to day queries quickly and effectively;
- sufficient skills and expertise in Finance/HR/management issues;
- a coordinated/integrated response to problems;
- the authority to make decisions; and
- solutions based on local circumstances.

6. Building on this feedback, Local Teams will have the following features:

- multi-disciplinary;
- strong local knowledge;
- in regular contact with schools and youth providers;
- provide a named, single point of contact for schools and youth providers;
- closely linked to local government areas;
- be a champion for the needs of the learner;
- ensure adherence to DE/ESA policies and standards;
- provide assessments of need in their areas within an agreed framework;
- provide support, advice, and facilitation for collaboration among schools and other providers; and
- provide liaison with local councils on issues such as community planning.

Number of Local Area Teams

7. There is a need to strike a balance between having a local structure that is sensitive and coterminous with local government and having one which is cost effective. After consideration, it is felt that the six-unit model strikes the right balance between local sensitivities and keeping senior management costs sensible without over-complicating the structure of the organisation. The probable configuration will be one Local Team for the new Belfast City Council area; and 5 Local Teams, each covering 2 new local council areas.

Local Area Teams - Composition and Management

8. The head of each local team will have responsibility for the educational support services in the area, including liaison with local councils on issues such as community planning. As his/her prime focus will be on raising educational standards, the Head of each Local Team will report to the Director of Education Quality.

9. The local teams will be responsible for delivery of a range of key services including:

- i. support for schools in raising standards and delivering the curriculum;
- ii. direct educational support services for children (special needs, educational welfare, peripatetic support, educational psychology, behaviour support, child protection, etc.);
- iii. youth services/ early years provision;
- iv. school management support (human resources, finance, strategic planning - including participation in community planning); and

10. Delivery of operational services (school transport, school meals, cleaning services etc.) will be located at a local level but the main reporting line will be to the Director of Operations rather than to the Head of each Local Team. This will ensure that the focus of the Head of each Local Team can remain on educational outcomes for the area rather than on the significant volume of day to day issues that will arise from the delivery of these services.

This range of responsibilities is illustrated at Appendix A.

11. The Director of Strategic Planning will likewise need to ensure that school planning, building maintenance and related services also have a local contact point to deliver on these services.

Team members

12. The Head of each Local Team will be supported by the following staff:

Work Area	Staff
Support for schools in raising standards	<ul style="list-style-type: none">▪ School improvement professionals▪ Special education/child protection/behaviour support coordinator
Direct educational support services for children	<ul style="list-style-type: none">▪ Educational psychologists▪ Educational welfare officers
Youth services/Early Years provision	<ul style="list-style-type: none">▪ Youth coordinator▪ Early years coordinator
School Management Support	<ul style="list-style-type: none">▪ Local finance officers▪ Local HR officers▪ Area planning officers

13. The size and composition of the LATs should be needs-based i.e. based on the needs of the schools, early years and youth settings. This could mean a mixture of permanent members of the team, staff who can be drafted in at short notice to deal with specific issues and staff who are shared between a number of teams. LATs will also be able to draw on capacity from within schools, by including seconded principals or senior teachers.

14. There will need to be flexibility to enable the composition of teams to change depending on the intake of a particular year and the changing needs of children and young people over the course of their education.

Accountability/Reporting Arrangements

15. The Head of each Local Team will have overall responsibility for the day to day delivery of services in his/her local area within the work areas outlined in paragraphs 9 and 10 and illustrated at Appendix A. The Heads of these work areas will report to the Head of the Local Team and be accountable for their performance. It is important that the Head of each Local Team has sufficient oversight of the way services are being delivered to ensure that targets are being met and that delivery is consistent with the overall framework set at a regional level. However, there is a danger that the Head of the Local Team will get too involved at an operational level which will prevent him/her from having sufficient strategic oversight across the range of responsibilities and across the local area.

16. It is therefore envisaged that, for some work areas i.e. Management Support and Delivery of Operational Services, there will need to be an additional reporting line to the Director of HR/Finance/Strategic Planning and Director of Operations respectively.

Role of Committees

17. The members of the ESA Board will be responsible for the corporate governance of the organisation. It will be their responsibility to ensure that ESA delivers its budget and its agreed performance targets. It will also be their responsibility to ensure that ESA and its Directors follow proper process and maintain all the standards expected of a public sector organisation. It is likely that the Board will delegate some of its detailed oversight to a number of Supervisory Committees made up of ESA members, and these committees may operate with a degree of delegated authority from the Board. These Committees may include:

- Business Committee – Finance, HR Operations;
- Audit Committee;
- Strategic Planning Committee; and
- Education and Children’s Services Committee.

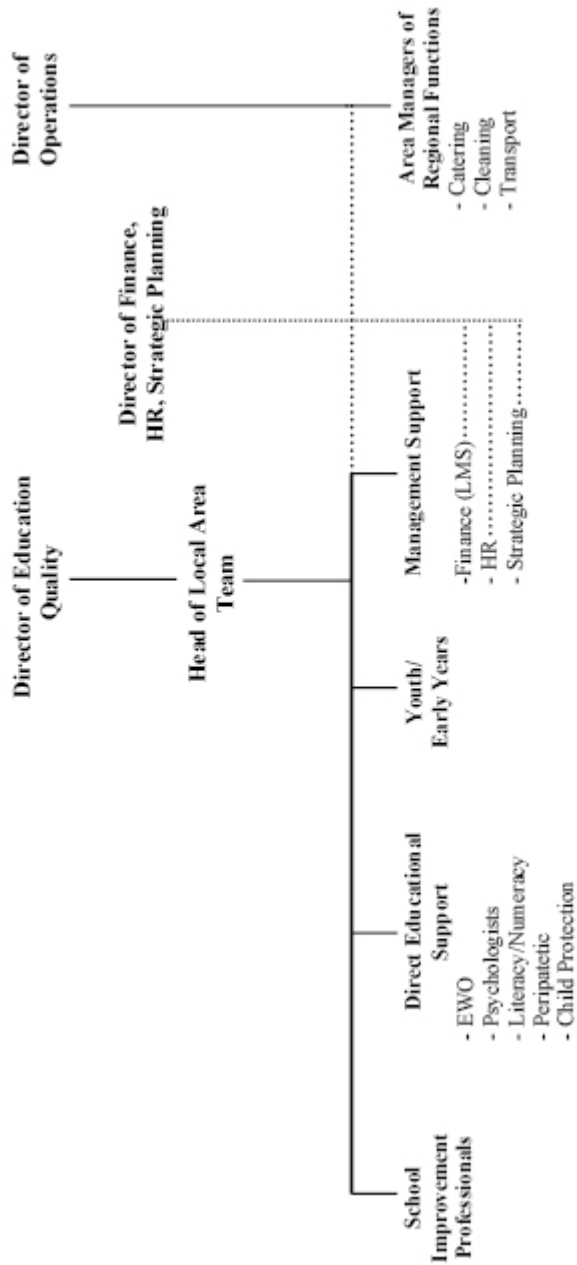
Local Committees

18. The ESA will also establish 11 Local Committees to work with the LATs, with one Committee for each local council area. These Committees will ensure that the ESA has a strong interface with local communities and that the views of local representatives are communicated to inform decision-making at Board level. They will comprise a number of elected representatives and members with local knowledge and expertise - a mixture of educationalists, business sector, community, parents and pupils - to ensure that the full range of views are taken on board. The configuration will be that each local team (other than the Belfast team) will be associated with two local committees.

19. These Committees will be formally part of ESA and will be chaired by a member of the ESA Board to ensure that views expressed can be fed through to the ESA Board. Where necessary, the Chair will be supported by the head of the Local Team.

20. The Committees will be operating both within a clear and consistent framework set by DE and regional standards set by ESA for the range of services. Provisions for the establishment of such committees have already been included in the Education Bill.

Local Area Teams Appendix A



Annex B

Review of Public Administration

RPA Policy Paper 20: Publicly Owned Schools – Ownership and Representation

Analysis Report

Summary of Responses to Stakeholder Comments from Consultation on Policy Paper 20

June 2009

Summary

Introduction

1. This report is an analysis of the 57 responses received as a result of the public consultation on the policy paper setting out the proposals for publicly owned schools – ownership and representation (Policy Paper 20), and the equality impact screening exercise carried out on those proposals.

2. The policy paper considered: where ownership of publicly owned schools might reside; what the functions of the new legal owner ought to be; and the arrangements to support the sector in establishing a sectoral representative organisation, similar to those for other sectors.

Details of the Consultation

3. The policy paper, together with an Equality Impact Assessment Screening form for the policy proposals were issued directly to 57 individuals and stakeholder organisations for their comments and wider circulation on 12 January 2009. They were also made available to read or download from the Department of Education website and the Office of the First Minister and Deputy First Minister (OFMDFM) consultation website.

4. The consultation period ended on 09 March 2009, with a total of 57 written responses received. Responses were accepted by post, fax or email.

5. Responses were received from the following sources: 40 schools, 4 trade union organisations, 10 organisations impacted by RPA in education, the Equality Commission, NI Human Rights Commission and a member of the public.

6. All responses were acknowledged in writing as they were received. We did not respond to individuals or organisations about the points made in their submissions.

7. We will publish this report on the Department Of Education website, and will let respondents know how to access the document.

8. Requests to view the content of responses can be made through the Department of Education at:

RPA Policy and Legislation Team
G3 Annex
Department of Education
Rathgael House
Balloo Road
Bangor

BT19 7PR
Or by email to rpa@deni.gov.uk

Analysis of Comments Received

9. Five questions were posed at the end of the policy paper. The responses are summarised below.

10. Q1. Assuming acceptance of the need to transfer ownership of controlled schools out of the ESA while still retaining public ownership, and balancing the need to address the legitimate concerns of stakeholders against the added costs of new ownership arrangements, and the contravention of a key RPA principle, is it appropriate to proceed with the establishment of a statutory ownership body?

Comments:

11. The majority of respondents disagreed with the establishment of a statutory ownership body, separate from the ESA, as they did not accept that the ownership of publicly owned schools by the ESA would result in any real or perceived conflict of interest.

12. A few responses from Boards of Governors stated that they have no wish to take on any legal obligations concerning the ownership of schools. Likewise, several respondents expressed concern about the long term vision for Boards of Governors of publicly owned schools to become legal owners, fearing that this would place major responsibilities on those members, and possibly create recruitment difficulties.

Outcome:

13. See paragraph 16.

14. Q2. Would the proposals in this paper address the concerns of stakeholders on this issue?

Comments:

15. The response rate was low, but a few respondents stated that they considered that this paper did not address the concerns of stakeholders on this issue.

Outcome:

16. The Minister notes that the majority of responses were not in favour of the establishment of a new organisation to own publicly owned schools. However, the Minister is also mindful of the views expressed previously by stakeholders and some members of the Education Committee, that there would be a perceived conflict of interest between the ESA's ownership of schools and its other functions. After careful consideration, the Minister has decided that a separate ownership body should be established. This will be taken forward in the second of two Bills to give effect to the Review of Public Administration in education. Careful planning and preparation will be required for the establishment of the new organisation. It is expected that it will come into operation approximately nine to twelve months after the establishment of the ESA.

17. Q3. Is there a more appropriate ownership arrangement that would address the concerns of stakeholders while keeping costs and risks to a minimum, and ensuring robust financial controls and accountability arrangements safeguarding this asset for future generations?

Comments:

18. Several respondents felt that the ESA should retain ownership of Publicly Owned schools.

19. A few respondents suggested that the ownership of schools should be vested in the school governors.

Outcome:

20. The Minister notes these comments, but has decided to proceed with the establishment of a new body, as noted above.

21. Q4. Should the legal owner hold the deeds of these schools, or have a long term transformational role?

Comments:

22. Several respondents agreed that the legal owner should hold the deeds and have a long term transformational role.

23. A few respondents considered that the legal owner should hold the deeds only.

Outcome:

24. The Minister notes that there is little support for the suggested long-term transformational role of the ownership body. The Minister remains of the view that it would be a legitimate aspiration of boards of governors of controlled schools to take ownership of the schools' property if they wish. However, the Minister has decided not to give the ownership body the function of fostering such change. The Minister has also decided that the role of the ownership body will be limited to acquiring, holding or disposing of school property according to need.

25. The rationale for establishing an ownership body is based solely on the need to address the matter of the perceived risk of conflict of interest. In the policy paper, the Department explored the possibility of giving the ownership body some other functions, such as the appointment of foundation governors for controlled schools. However, following consultation and further consideration, the intention is that the role of the ownership body will focus solely on the ownership of controlled schools' property, with no other functions.

26. There will be an initial transfer of controlled schools' property to the ownership body when it is first established. Thereafter, it is intended that the ownership body will act in response to decisions made by the ESA and boards of governors of controlled schools. For example, if the ESA decided to establish a new controlled school, it would acquire a site and build the school. Once complete, the ESA would then transfer ownership of the property to the ownership body. Similarly, if a controlled school were to close, or part of its property become surplus to requirements, then the ownership body would dispose of the surplus assets, with the proceeds handling according to the prevailing rules on public sector assets.

27. In relation to maintenance, there needs to be a statutory duty to maintain the property of controlled schools. Two options were considered. Firstly, that duty could be placed on the new ownership body. This would have the advantage of placing the ownership of controlled schools and the duty to maintain them in a single organisation. However, it would require the new ownership body to either develop its own maintenance capacity (duplicating ESA capacity) or to procure maintenance from the ESA.

28. Alternatively, the duty could be placed on the ESA. This would separate maintenance from ownership, which may appear incongruous, but which is already the position for maintained schools. It would have the advantage of centralising school maintenance responsibility within a single organisation rather than two, avoiding adversarial competition for resources. It would also contribute to ensuring that controlled schools have the same relationship with the ESA as maintained schools.

29. The Department has decided that the duty ought to be placed on the ESA, rather than on the new ownership body.

30. Q5. Do you agree that the ownership body should have a statutory obligation to take account of the views of the representative organisation?

Comment:

31. The majority of respondents agreed that the ownership body should have a statutory obligation to take account of the views of the representative organisation.

Outcome:

32. The Department notes this comment, and will include a provision to this effect in the second RPA education Bill.

Other Issues: Membership of the Ownership Body

Comment:

33. Several respondents suggested that, in recognition of the diversity of the sector, a range of interests need to have a place in any new body for publicly owned schools.

Outcome:

34. The Minister has carefully considered the responses received. The Minister has decided that the membership of the organisation ought to reflect its functions, which will be narrow, focussing on the stewardship of property. The organisation will not have any other executive functions: it will not manage schools or employ staff within them, nor will it have any role in planning schools, or in deciding whether any school ought to close, or be significantly changed. These matters will be the responsibility of the ESA, boards of governors, or the representative body. Equally, the organisation will not have a role in representing or acting as an advocate for controlled schools, or in fostering and developing the ethos of the sector. These will be functions of the representative body. In view of this, the Minister has decided that the membership of the organisation will be small – some 4 to 6 persons, with the arrangements for appointment based on the merit principle.

Advocacy Role for Publicly Owned Schools

Comments:

35. Many of the respondents indicated that the TRC is an extremely important voice within the publicly owned sector, and added that they feel it is not the only voice. The consultation responses received indicated a clear need and desire for a sectoral support body, representing all the voices within the sector to be developed as soon as possible.

Outcome:

36. The Department has begun work with the sector (including the TRC), to establish a working group which will develop proposals for the makeup and membership of a new sectoral representative body for the sector.

37. Although the Department will provide practical assistance to the working group, it is proper that the sector should decide the form its representative voice should take.

38. The proposals made by the working group will be subject to consultation, and it is the intention that sectoral support arrangements can be in place for this sector prior to the implementation of the RPA in January 2010.

39. The Department recognises that the TRC should form a major part of a sectoral support role for publicly owned schools, but also recognises that there are other voices from within the sector which it may also be appropriate to include within such a body. This would appear to be in line with popular opinion within the sector, as many responses advocated such an approach.

40. It will be for the sector itself to decide on the form its sectoral support should take, but the Department considers that the TRC should be included within the membership of a sectoral support representative body for the publicly owned sector (which includes both transferred and non-transferred publicly owned schools)

Annex C

Proposed Departmental Amendments to the Education Bill

Education Bill Reference

Proposed Departmental Amendment

Clause 2 – Functions and General Duty of ESA

An amendment is proposed to clause 2 (2) (b) on youth services, to link them more explicitly to the development of children and young people, in a similar fashion (and using similar language) to clause 2 (2) (a), which deals with early years services and schools.

Clause 3 – ESA to employ all staff of grant-aided schools

An amendment is proposed to this clause, to redefine the submitting authority in all cases as the owners or trustees of schools, with an option to delegate the functions to boards of governors. This reflects the views of a number of stakeholders, who suggested that school owners should be given the submitting authority role, so that they can ensure that the ethos of the school is reflected

**Education Bill
Reference**

Proposed Departmental Amendment

Clause 11- Salaries, etc. of staff: financial arrangements	<p>appropriately in the schemes of management and employment.</p> <p>This clause is in relation to the Common Funding Scheme, and the payment of salaries and other allowances to staff in schools. Voluntary Grammar (VG) schools and Grant Maintained Integrated (GMI) schools receive their budget shares in the form of maintenance grants. The Education Reform Order 1998 (articles 61 and 63) defines the purpose of such grants as 'expenditure incurred...in carrying on the school'. As these schools will no longer be employers in their own right, the payment of salaries etc would no longer be considered as falling within 'carrying on the school'. Counsel has provided a 'work around' in the legislation to allow the monies for salaries etc to be included in the budget shares and maintenance grants of those schools. The solution for VG and GMI schools is provided by clause 11 (5) and (6). These provisions separate the monies from salaries etc from the rest of the schools' budget shares, but also provide for the salaries monies to be included in maintenance grants. As currently drafted, the provisions would mean that salaries monies could not be included in the delegated budgets for controlled and maintained schools. An amendment is proposed, similar to the provisions in 11(5) and (6) to remedy the matter for controlled and maintained schools.</p>
Clauses 24-28 – Vocational Qualifications	<p>The Department for Employment and Learning has requested that these clauses, which cover the functions of DE and the ESA in relation to general qualifications, (for example GCSE and A levels) are amended. DEL's proposal is to extend the functions of the ESA, by widening its scope to cover a range of non-regulatory functions that relate to Vocational Qualifications (VQs), including advising that Department and supporting organisations involved in the development of VQs.</p>
Clause 27 – Functions of the Department in relation to Accreditation of certain external qualifications	<p>The Council for the Curriculum, Examinations and Assessment (CCEA) currently works jointly with the regulators in England and Wales on a number of regulatory issues. Qualifications that are submitted for accreditation are scrutinised by a Committee comprising representatives from the three regulators. The Department for Children, Schools and Families in England has informed us that it intends to include provision in the Apprenticeships, Skills Children and Learning Bill to allow Ofqual to work jointly with the qualifications regulators in Wales and here. Upon the dissolution of the CCEA, this role will be carried out by the Department, clause 27(4), as it is currently drafted, empowers the Department to "obtain advice" but solicitors advise that this is not strong enough to accommodate the joint working arrangements which are envisaged, and that now would</p>

**Education Bill
Reference**

Proposed Departmental Amendment

Clause 37 – Inspections on Behalf of the Department	<p>be an opportune time to amend clause 27 to provide for a " joint working" power.</p> <p>Clause 37 (5) places a duty on inspectors to monitor, inspect and report on the nature, scope and effect of advisory and support services provided or secured by ESA under Clause 13 of the Bill. An amendment is proposed to include references to Clauses 24 (examinations and assessments), 25 (other functions of ESA in relation to the curriculum, examinations and assessments), and Clause 13 (advisory and support services) in order to bring these functions within the inspection regime.</p>
Clause 42 – Inspections on Behalf of DEL	<p>DEL has asked for minor amendments to Clause 42, in relation to the appointment of Assessors and Lay Persons. The clause as currently drafted gives DE the sole power to appoint assessors and to assign lay persons for the purposes of inspections. DEL has requested that this is amended to require DE to consult with DEL before appointing assessors and lay persons.</p>
Clause 54 – Commencement	<p>Clause 29 of the Bill, which deals with Disciplinary Powers of the General Teaching Council, inserts an amendment to Article 36 of the 1998 Order. This clause needs to be commenced upon Royal Assent, rather than on an appointed day. This is to bring the Council here into line with England and Wales at the earliest possible date. To do so will require an amendment to Clause 54, which specifies those provisions that will commence upon Royal Assent.</p>
Schedule 3, paragraph 5 - (ESA) Accounts and reports: transitional arrangements	<p>The ESA will be established on 1 January 2010 and it will be required to produce merged accounts for the full 2009-10 year which will be audited by the Comptroller and Auditor General and laid before the Assembly. The merged ESA accounts will include the results of each of the legacy organisations for the nine month period from 1 April to 31 December. Department of Finance and Personnel advice is that the requirement in the legislation, as currently drafted, that each of the legacy organisations prepare and have audited by the C&AG and have laid before the Assembly, accounts for the period up to the end of December 2009 is not required. An amendment is proposed to remove this requirement.</p>
Catholic Maintained Schools Definition in Education Legislation	<p>The definition of Catholic maintained school has been carried forward in the current Education Bill, as currently drafted. A Catholic maintained school is defined as a maintained school listed in a scheme of Catholic maintained schools. The main purpose of the definition was the delineation of the group of schools for which the Council for Catholic Maintained Schools (CCMS) was responsible. With the demise of CCMS, the provision will no longer be required for that purpose, and there is no other policy reason for retaining the separation between these schools and other voluntary schools. Therefore, it is</p>

**Education Bill
Reference**

Proposed Departmental Amendment

	<p>proposed that the definition of Catholic maintained school is removed, and the amendment or repeal of the various references to the definition in the Education Orders.</p>
Exceptional Circumstances Body	<p>An amendment is proposed to Article 29(6) of the 2006 Education Order. This amendment will enable the Department to put in place the appropriate arrangements to facilitate a new exceptional circumstances procedure in relation to post-primary school admissions.</p>
Clause 26 – Discharge by ESA of its functions under sections 24 and 25	<p>The Department is currently considering making an amendment to this clause to ensure that curriculum support and similar services are sensitive to the needs of Irish-medium education.</p>
Clause 2 – Functions and General Duty of ESA	<p>The Department is considering an amendment to this clause to include a duty on the ESA to encourage and facilitate the development of Irish-medium education</p>

Correspondence from NICCE

NORTHERN IRELAND

Commission for Catholic Education

Mr Mervyn Storey MLA
Chairperson
Education Committee of the Northern Ireland Assembly
Room 242
Parliament Buildings
Stormont
Belfast BT4 3XX

23 June 2009

Dear Mr Storey,

Re: Education Bill

The Northern Ireland Commission for Catholic Education (the 'Commission') gave evidence to the Education Committee of the Northern Ireland Assembly on 18th March 2009.

The Department of Education responded in writing to the points raised by the Commission and the Council for Catholic Maintained Schools (CCMS). That response was prepared in advance of the 18th March 2009 hearing and was based on the Commission's earlier written submission to the Committee. It was clear from the Department's response that the Commission's position on a number of key aspects of the Bill was not accepted by the Department. It was also apparent that the level of Trustee concern about a number of clauses contained within the Bill had not been fully appreciated.

The Commission now encloses its response to the aforementioned paper distributed by the Department of Education on 18th March 2009. A range of associated materials are also enclosed which highlight the consistency with which the Trustees have expressed concern about certain aspects of the RPA process. Many of these concerns continue to exist in the draft Education Bill.

As the Commission understands it the purpose of the Education Bill is to implement the recommendations of the Review of Public Administration (RPA) not to radically alter the structures and rights of the Trustees of Catholic Schools. The Trustees, represented by the Commission, remain firmly of the view that certain of the Bill's provisions will, if enacted, fundamentally undermine the rights of parents to have their children educated in schools, and not just Catholic schools, with a particular ethos or defining character.

In particular, the proposal that the new Education and Skills Authority ("ESA") would have responsibility for the employment of all staff in every school in Northern Ireland removes from all Catholic schools a right which has been exercised effectively from the commencement of formalised Catholic education in this jurisdiction. It undermines the Trust under which each school operates.

Northern Ireland Commission for Catholic Education

Lisbreen, 73 Somerton Road, Belfast BT15 4DE

Telephone: 028 90776185 Fax: 028 9077 9377 Email: nicce@downandconnor.org

24 JUN 2009
24/09/09

The Trustees of each Catholic school are the legal owners of the school. They act as Charitable Trustees and are under a moral and legal obligation to ensure that each school is maintained as a Catholic school with its own distinctive ethos and character. The Education Bill seeks to alter that right and obligation and has not produced any coherent rationale as to why such a fundamental step needs to be taken.

The Trustees have consistently supported the principle of reform of public administration and can appreciate some of the potential benefits of the ESA. However, for any revised system of educational governance to function the trust and confidence of Catholic schools and their Trustees is important. That confidence will not be achieved by depriving Catholic and other schools with a specific ethos and defining character of their fundamental rights and statutory safeguards.

The Commission also defends and supports the rights of others within the education sector to retain responsibility for employment as it considers this duty central to each school preserving its own ethos and character.

The Commission earnestly seeks the support of all those charged with the responsibility of considering educational reform to have regard to those aspects of the Education Bill which purport to introduce a degree of centralisation, which, in the opinion of the Commission, is unnecessary and extremely damaging to the rights of parents who wish to send their children to Catholic schools, or to other schools with a particular ethos or defining character.

The Commission, on behalf of the Trustees, is anxious and remains open to discussing how our continuing concerns in this regard might be adequately and appropriately addressed within the context of the ESA and the need to ensure effectiveness and efficiency in the use of public resources.

To that end, I would be obliged if in your capacity as Chairperson, you could convey to members of the Education Committee the willingness of the Commission to meet with them to discuss the ongoing concerns of the Trustees. I would also be most grateful if you could arrange for all members of the Education Committee to receive a copy of the documents enclosed.

With every good wish.

Yours sincerely,

.....
Most Rev. Donal McKeown
Chairperson.

Enc.

Mr Chris Stewart
RPA Division
Department of Education
Rathgael House
43 Balloo Road
BANGOR
County Down
BT19 7PR

June 2009

Dear Mr Stewart,

Re: Education Bill

The Northern Ireland Commission for Catholic Education (the 'Commission') gave evidence to the Education Committee of the Northern Ireland Assembly on 18th March 2009.

The Department of Education responded in writing to the points raised by the Commission and the Council for Catholic Maintained Schools (CCMS). That response was prepared in advance of the 18th March 2009 hearing and was based on the Commission's written submission to the Committee. It was clear from the Department's response that the Commission's position on a number of key aspects of the Bill was not accepted by the Department. It was also apparent that the level of Trustee concern about a number of clauses contained within the Bill had not been fully appreciated.

The Commission now encloses its response to the paper distributed by the Department of Education on the occasion of the presentation of evidence by NICCE to the N.I. Assembly Education Committee. A range of associated materials are also enclosed which highlight the consistency with which the Trustees have expressed concern about certain aspects of the RPA process. Many of these concerns continue to exist in the draft Education Bill.

As the Commission understands it the purpose of the Education Bill is to implement the recommendations of the Review of Public Administration (RPA) not to radically alter the structures and rights of the Trustees of Catholic Schools. The Trustees, represented by the Commission, remain firmly of the view that certain of the Bill's provisions will, if enacted, fundamentally undermine the rights of parents to have their children educated in schools, and not just Catholic schools, with a particular ethos or defining character.

In particular, the proposal that the new Education and Skills Authority ("ESA") would have responsibility for the employment of all staff in every school in Northern Ireland removes from all Catholic maintained schools as well as Catholic voluntary grammar schools, a right which has been exercised effectively from the commencement of formalised Catholic education in this jurisdiction. It undermines the Trust under which each school operates. The Trustees of each Catholic school are the legal owners of the school. They act as Charitable Trustees and are under a moral and legal obligation to ensure that each school is maintained as a Catholic school with its own distinctive ethos and character. The Education Bill seeks to alter that right and obligation and has not produced any coherent rationale as to why such a fundamental step needs to be taken.

**A REPLY TO THE DEPARTMENT OF EDUCATION'S RESPONSE
TO THE SUBMISSIONS OF THE COMMISSION FOR CATHOLIC EDUCATION
AND THE COUNCIL FOR CATHOLIC MAINTAINED SCHOOLS
TO THE EDUCATION COMMITTEE OF THE ASSEMBLY**

INTRODUCTION:

- (1) This paper is a reply to the Department of Education's paper of March 2009, which of itself was a response to the submission of the Commission for Catholic Education ("the Trustees") and the Council for Catholic Maintained Schools to the Committee for Education of the Northern Ireland Assembly on 18th March 2009.

POWERS OF THE TRUSTEES/BOARDS OF GOVERNORS IN RELATION TO EMPLOYMENT SCHEMES:

- (2) The Trustees note that, in seeking to develop the underlying policy of the Education Bill, the Department argue that they have included a number of measures to ensure that the role of the Trustees in fostering and developing the ethos of Catholic education is recognised and supported. In particular, the Department points to *inter alia* the following:-

- (i) The Trustees, as the submitting authority, will control the schemes of management and employment for Catholic schools;
- (ii) Boards of governors of Catholic schools will make the key employment decisions under the direction of the Trustees;
- (iii) The ESA will be bound by the schemes of employment and will be under a legal duty to put into effect the lawful decisions of boards of governors.

- (3) The Department failed to point out in their response that the ability of the Trustees to control schemes of management and employment is subject to the approval of the Education & Skills Authority ("the ESA"). This is a new development in relation to employment arrangements and one which potentially has far-reaching consequences. To allege that the new arrangements do not involve any real or practical loss of autonomy, as boards of governors will remain responsible for the exercise of employment functions, we are advised, is legally incorrect and misleading. The powers of boards of governors are circumscribed in the following respects:-

- (i) Schemes of employment must be approved by the ESA and cannot come into force until they have been approved by the ESA ;
- (ii) In preparing an employment scheme, the submitting authority must take into account any guidance issued by the ESA ;
- (iii) The ESA has an absolute discretion as to what provisions it includes in such guidance ;
- (iv) The ESA further has the power to make its own employment scheme for a school which has not submitted a scheme that accords with the guidance issued by the ESA ;
- (v) Where the ESA is of the opinion that a decision of the board of governors which fails to be taken within an employment scheme was taken otherwise than in accordance with that scheme, the ESA may require the board of governors to reconsider the matter *ad infinitum* .

- (4) It is not disputed that boards of governors remain involved in the exercise of employment functions. Under the provisions of the Education Bill, however, ultimate responsibility rests with the ESA, who are the legal employer and any legal duty to implement a decision of a board of governors is subject to all of the matters referred to at paragraph (3) above.

- (10) The perceived reticence of the Minister to formally legislate for sectoral support is all the more surprising when one considers that the Catholic Trustees have responsibility for the largest sector of the schools estate in Northern Ireland and in light of the fact that there are already in existence specific statutory safeguards for both integrated and Irish medium sectors which cater for less than 5% of all school children in Northern Ireland.

APPOINTMENT OF COMMUNITY GOVERNORS:

- (11) The Trustees note that pursuant to Section 52 of the Education Bill, the Bill shall be construed as one with the 1986 Order. Paragraph 29 of the response of the Department states that the ESA will be under a duty to consult the Trustees of Catholic schools before appointing community governors. This duty is not contained in the Education Bill but appears to remain in Schedule 5(2) of the Education and Libraries (Northern Ireland) Order 1986 ("the 1986 Order"). The Trustees have requested that consultation should be specifically included in the Education Bill and that the wording should be changed from a duty to consult the Trustees to a new wording which requires the Department to make an appointment "in consultation with the Trustees". The Trustees remain of the view that the wording should be more appropriate and precise than the existing wording.

- (12) The de facto arrangements that have worked well to date as between the Trustees and the Department/ELB's already involve a degree of consultation which allows for effective approval by the trustees of nominees to Catholic schools. This has helped instil confidence that the Department fully understands the importance of preserving the ethos and character of Catholic schools. Further clarification to underline the crucial importance of consultation would further increase confidence in the relationship as between ESA and the Trustees.

THE RIGHTS OF PARENTS AND TRUSTEES:

- (13) The Trustees note the Minister's acknowledgement that the rights of parents and Trustees need to continue to be reflected in legislation and again note the provisions of Section 52 of the Education Bill. Given, however, the concerns expressed by the Trustees, and their acknowledged role, and that of parents, in educating their children in a manner consistent with their religious convictions, it seems entirely apposite that the Education Bill should make specific reference to the rights of trustees and the rights of parents to avoid any possible confusion.

CONCLUSION:

- (14) The Trustees are adamant that each school should be the legal employer of all staff within the school. This would be in accord with the granting to each school of maximised autonomy, with which the Trustees are in full agreement.
- (15) It is also recognised that smaller schools will require support in exercising their responsibilities as employers. This support would be provided by the Sectoral Support Body which the Trustees consider ought to be enshrined in legislation.
- (16) The Trust Deed which is the foundation document of Catholic schools in Northern Ireland implicitly and explicitly reposes in the Trustees a moral and legal duty to safeguard the ethos and character of their schools in accordance with Canon Law and the teachings of the Catholic Church. Section 3 of the Education Bill erodes that fundamental duty and calls into question the ability of the Trustees to fulfil their responsibilities to parents who choose a Catholic education.

Committee Correspondence to the Secretary of State



Secretary of State
Northern Ireland Office
Castle Buildings
Stormont

Our Ref: 042/09/C/04

29 June 2009

Dear Secretary of State

Education Bill

Appointments to the Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission

In the course of the Committee for Education's scrutiny of the Education Bill the composition and role of the Education and Skills Authority ('ESA') has been the subject of much discussion. At present the Bill proposes in Schedule 1, Paragraph 2(1) to (3), that ESA membership appointments will be on the basis of merit and that a majority of the ESA members (7-11 plus a Chair) will be local government councillors. Some Committee members are concerned that the result of the appointments process may not produce an ESA membership which is representative of the community in Northern Ireland.

You will of course recall that that the vast majority of schools in Northern Ireland serve either the Roman Catholic or Protestant communities. Previously, administrative responsibility for these schools was separate but the Bill will bring it together under one administrative body, the ESA, for all grant-aided schools.

Against this background an ESA whose membership does not properly reflect the communities served by the schools for which ESA is responsible may well not secure the confidence of the two main communities in Northern Ireland and the Committee for Education is considering whether the Bill should or could include a requirement on the Department of Education similar to that imposed on the Secretary of State by Sections 68(3) and 73(4) of the Northern Ireland Act 1998 for appointments to the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland, namely:

"In making appointments under this section, the Secretary of State shall so far as practicable secure that the Commissioners, as a group, are representative of the community in Northern Ireland."

I should be grateful if you could provide the Committee for Education with details of the arrangements by which the Secretary of State secures, 'so far as practicable', that such appointments produce a group of appointees which 'are representative of the community in Northern Ireland'.

Yours Sincerely



Mervyn Storey
Chairperson, Committee For Education

Committee Correspondence to the Minister of Education - Scrutiny of the Education Bill



Ms Catriona Ruane
Minister of Education
Department for Education
Rathgael House
Balloo Road
BANGOR
BT19 7PR

Ref: 036/09/C/03

29 June 2009

Dear Minister

Education Bill : Committee for Education Scrutiny

Thank you for your letter of 17 June regarding information the Committee sought from the Department and areas where Members have expressed concern.

The Committee continued its scrutiny of the Education Bill on Friday last (26 June) and I write to inform you that the Committee agreed in principle that Regulations would bring 'clarity, certainty and confidence' on a range of issues in the Bill where this is currently lacking. The Committee went on to identify two areas to make Regulations to cover the following:

- Model Employment Schemes and Guidance on Employment Schemes; and
- ESA Local Committees.

This would entail amendments to the Bill to include enabling provisions under which the Department would be required to make Regulations on these two important areas.

I must emphasise that this letter is not a response to your 17 June reply to the Committee. The Committee continues its scrutiny of the individual clauses of the Bill and its response to proposals in the letter will and are being addressed in this context. Your officials are of course present during these sessions and can inform you on the Committee's thinking.

The Committee's desired approach continues to be to work with the Department and you as the Minister for Education, to agree amendments to the clauses and the schedules of this Bill as appropriate. However, time is short and an urgency and priority needs to be given to the

Departments responses to the Committee. Hence, this letter highlighting the Committees agreement on Friday to the principle of Regulations in these two important areas. Finally the Committee noted that you continue 'to reflect further on the number of (ESA) Board numbers' and again requested your proposals on this as a matter of urgency.

As the Committee pointed out in its letter of 20 May, if its desired approach to agree amendments on this Bill (as appropriate) with the Department and you as Minister is not forthcoming, the Committee will have to consider putting down its own amendments to this Bill.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M Storey', written in a cursive style.

Mr Mervyn Storey MLA
Chairperson, Committee for Education

**Correspondence from
Minister of State for NI**



**Northern
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Office**

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Minister of State

Mervyn Storey
Chairperson
Committee for Education
Room 241 Parliament Buildings
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BT4 3XX



APPOINTMENTS TO THE EQUALITY COMMISSION FOR NORTHERN IRELAND AND THE NORTHERN IRELAND HUMAN RIGHTS COMMISSION

Thank you for your letter of 29 June, addressed to the Secretary of State, concerning the statutory obligations placed on the Secretary of State in making appointments to the Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission.

As you note in your letter, sections 68(3) and 73(4) of the Northern Ireland Act 1998 impose on the Secretary of State a requirement, when making appointments to these two Commissioners, to:

“as far as practicable secure that the Commissioners, as a group, are representative of the community in Northern Ireland.”

As you may be aware, appointments to both Commissions are regulated by the Office for the Commissioner for Public Appointments (OCPA), so vacancies on the Commission are filled through full and open competition and more generally appointments must be made in accordance with OCPA’s code.

In practice, the Secretary of State fulfils the obligation on him in two ways. The first is done at the stage of advertising the posts. He takes steps to ensure that it is drawn to the attention of as wide as possible a pool of potential applicants. This might include practical steps such as advertising in a range of Northern Ireland newspapers to ensure that details of the posts are seen by people across the



Northern
Ireland
Office

community in Northern Ireland, and writing to the leaders of the main political parties to inform them of the competition.

The competition itself takes place entirely on merit. The applications are assessed by a selection panel (usually composed senior civil servants and an independent OCPA assessor), which considers the evidence given in the application forms against the requirements of the job and selects a shortlist of candidates to interview. In this first stage of the process applications are anonymous: the panel only learns the identity of the candidates at the interview stage. As with other competitions, monitoring information is sought from all candidates on their community background, but this is held confidentially and not disclosed to the panel. Once the candidates on the shortlist have been interviewed, the panel draws up a list of "appointable candidates" who, in the opinion of the panel, meet the requirements for the post.

The second way in which the Secretary of State is able take steps to meet the statutory requirement is at the final selection stage. The list of "appointable candidates" is provided to him and he selects which candidates to appoint. In doing so, he can have regard to the community background of the candidates and other relevant information – including, for example the particular expertise they could bring to the Commission – and he can make selections which help to ensure that the Commissioners, as a group, are representative of the community in Northern Ireland.

It should be noted that the obligation on the Secretary of State is to ensure representativeness "as far as practicable". Appointments to the Commissions tend to be staggered, to ensure continuity, so the Secretary of State is generally only appointing a few Commissioners at any one time. Depending on the number of vacancies and the pool of appointable candidates, it may not always be possible to secure a Commission that is exactly representative of the community. This may particularly be the case for bodies with a small number of Commissioners.



Northern
Ireland
Office

Finally, it is important to emphasise that these appointments are carried out in accordance with the DCPA code. That code provides detailed guidance about the selection process, including in relation to diversity and equality of opportunity.

I hope this information is helpful to the Committee.

Yours
Paul

RT HON PAUL GOGGINS MP
MINISTER OF STATE FOR NORTHERN IRELAND

**Correspondence from Department
of Education - Outstanding Responses**



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31st July 2009

Dear John

**EDUCATION BILL: OUTSTANDING RESPONSES TO
CORRESPONDENCE FROM THE COMMITTEE FOR EDUCATION**

This letter is a holding reply to update you on where things stand with six outstanding responses to correspondence from the Education Committee.

Letter dated 29 June 2009 – Ref: 043/09/C/01

The Committee raised a number of issues in this letter and we are working to provide a full response in the next few weeks.

Letter dated 29 June 2009 – Ref: 247/09/I/06

The Committee had asked for a response to issues raised by the Commission for Catholic Education. Discussions with the Commission are ongoing and, when these are finalised, the Department will be able to respond to the Committee.

Letter dated 29 June 2009 – Ref: 234/09/I/06

The Committee had asked for a response to issues raised by Comhairle na Gaelscolaíochta. The Minister is currently considering the issues raised by Comhairle na Gaelscolaíochta and DE will respond to the Committee in due course.

Letter dated 9 July 2009 – Ref: 044/09/C/01

The Committee raised a number of issues in this letter and we are working to provide a full response in the next few weeks.



DEPARTMENT OF EDUCATION

Letter dated 15 July 2009 – Ref: 150/09/I/04

The Committee had asked for the Department's comments on an amendment to Clause 47 which has been proposed by the NSPOC. The Minister's views on the proposed amendment are being sought and a reply will issue in due course.

Letter dated 29 July 2009 – Ref: 046/09/C/01

This letter covered an earlier letter from the Committee (dated 12 May) which had not been sent at the time. A reply will issue in due course.

Yours sincerely



John Leonard
Departmental Assembly Liaison Officer



**Correspondence from the Minister of Education -
Model Schemes, Local Committees and ESA
Members**

FROM THE MINISTER ÓN AIRE



COR T97/2009

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Chairperson
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5 August 2009

A Mervyn a chára

Thank you for your letter of 29 June about the Committee's continuing consideration of the Education Bill.

In your letter you referred to two areas where the Committee has agreed in principle a need for regulations. I have noted the Committee's suggestion in principle that the Bill should be amended to include enabling provisions under which the Department of Education (DE) would be required to make regulations on both issues. To provide a duty to make regulations would be a most unusual approach as, normally, regulations are made under enabling powers. Your letter does not make clear why the Committee is seeking such a prescriptive approach or is this a unanimous view of the Committee. The Committee will be aware that the RPA related legislation tabled before the Assembly by Executive colleagues has not been subject to such restrictions.

I will deal with each of the two areas in turn.

Model Schemes of Employment and Guidance on Employment Schemes

You will now be aware that I have agreed that the Bill should include an enabling power (not a duty) for regulations to be made on model schemes of employment and guidance on employment schemes. As requested at the Committee's meeting on 1 July 2009, a paper on the employment scheme regulations will be prepared for the Committee.



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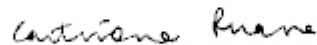
ESA Local Committees

In my letter of 17 June, I spelt out the rationale for my decision not to specify the local delivery structure of the ESA on the face of the Bill. The same rationale would apply to the introduction of regulations in this area. The ESA's local structures will develop and evolve over time, and in response to need, and it would be difficult to accommodate this if the detailed structures were specified in legislation. My letter of 17 June included a paper illustrating DE's proposals for local area teams and for local committees.

Number of Members on the ESA

You also mentioned the issue of the number of members on the ESA. I am still reflecting on this matter including the financial implications of extending the number of Board members as I am sure the Committee would agree that finance should be directed to frontline services rather than bureaucracy. I will, however, continue to examine the issue of greater representation on the Board measured against factors such as finance and efficient delivery of services and will advise the Committee of my views as soon as possible.

I have noted that the Committee is continuing its consideration of the Education Bill and welcome its desire to work with me and the Department to agree amendments to the Bill. I appreciate that work which the Committee has undertaken so far and recognise the difficulties of the task ahead following the summer recess. However, I hope that we can continue to work together to ensure that all children here will benefit from the reforms being introduced through the Education Bill and its companion No 2 Bill.



CAITRÍONA RUANE MLA

Correspondence from the Department of Education - Departmental Amendments

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Clerk to the Committee for Education
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4 September 2009

Dear John

The Education Bill - Amendments

The purpose of this letter is to provide the Committee with details of the amendments to the Bill to which the Minister has agreed to bring forward.

The Minister is still considering amendments from NSPCC, Sir Reg Empey and the Committee, and we will advise you of her views on these as soon as possible. However the attached provides details of the amendments that Committee members wished to review more urgently.

I appreciate we are still to provide you with some of the information requested in your letters dated 19th and 29th June and 9th July 2009. We would hope to have all outstanding material with you within the week.

Yours sincerely

John Leonard

Consolidated Department of Education Amendments
28 August 09
EDUCATION BILL

AMENDMENTS TO BE MOVED AT CONSIDERATION STAGE

By the Minister of Education

Clause 2, page 1, line 15, at end insert 'that contribute towards the spiritual, moral, cultural, social, intellectual and physical development of those for whom those services are provided;'

Clause 2, page 2, line 6, at end insert—

'(4A) ESA shall ensure that its functions relating to grant-aided schools are (so far as capable of being so exercised) exercised with a view to encouraging and facilitating the development of education provided in an Irish speaking school (within the meaning of Article 3(2) of the Education (Northern Ireland) Order 2006).'

Clause 3, page 2, line 27, leave out sub-paragraphs (i) and (ii) and insert—

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

Clause 4, page 3, line 19, at end insert—

'(4) The Department may by regulations make provision as to the form and content of employment schemes.'

Clause 6, page 4, line 11, leave out from 'subsection' to 'cannot' in line 13 and insert 'section 5(1)(b) does not comply with regulations under section 4(4) or does not accord with any guidance issued by ESA under section 5(3) and cannot (in either case)'

Clause 11, page 6, line 23, leave out subsection (5) and (6) and insert—

'(5) Notwithstanding any of the previous provisions of this Act, the budget share of a grant-aided school shall include an amount in respect of—

- (a) the salaries and allowances of the staff of the school; and
- (b) the relevant contributions in respect of such staff.

(6) But—

- (a) in the case of a voluntary grammar school, ESA may set-off against the maintenance grant payable under Article 61(2)(a) of the 1998 Order any payments made by ESA itself in respect of the matters mentioned in paragraphs (a) and (b) of subsection (1);
- (b) in the case of a grant-maintained integrated school, ESA may set-off against the maintenance grant payable under Article 63(2)(a) of the 1998 Order any payments made by ESA itself in respect of the matters mentioned in paragraphs (a) and (b) of subsection (2).'

Clause 11, page 6, line 43, at end insert—

'(c) "the appointed day" means the day appointed under section 54 for the coming into operation of section 3.'

After Clause 16 insert—

ESA to contract for certain capital works [j2597]

*—(1) ESA may enter into contracts for, or in connection with, the provision or alteration of the premises of a grant-aided school.

(2) Those contracts may include contracts with the trustees or Board of Governors of a voluntary or grant-maintained integrated school requiring specified payments to be made to ESA by the trustees or Board of Governors at specified times.

(3) ESA may under the powers conferred by subsection (1) enter into a contract ("an approved contract") with another person ("the contractor")—

(a) under which the contractor undertakes at his own cost—

(i) to provide or alter any premises of a grant-aided school; and

(ii) to maintain, or provide other services in relation to, those premises over the term of the contract,

in consideration for the payment by ESA of sums of money in instalments over the term of the contract; and

(b) which has been approved by the Department for the purposes of this subsection.

(4) The inclusion in a contract of matters other than those mentioned in paragraph (a) of subsection (3) does not prevent the contract falling within that paragraph.

(5) In Article 2 of the 1986 Order for paragraphs (2G) and (2H) substitute—

"(2D) In the Education Orders references to—

(a) an approved contract,

(b) the contractor, in relation to an approved contract,

shall be construed in accordance with section {j2597}(3) of the Education Act (Northern Ireland) 2009.

(2E) References in the Education Orders to the staff of or at a school or to persons employed at, in or about a school do not include references to persons employed by the contractor for the purposes of an approved contract."

Clause 17, page 9, line 16 after 'Department)' insert 'for paragraph (1)'

Clause 26, page 14, line 12, at end insert—

'(iii) the requirements of those attending Irish speaking schools (within the meaning of Article 3(2) of the Education (Northern Ireland) Order 2006) who are taught in Irish; and'

Clause 26, page 14, line 19, leave out from 'and' to end of line 21

Clause 27, page 14, line 42, at end insert—

'(5A) The Department may—

(a) co-operate or work jointly with another body exercising functions in relation to the accreditation of qualifications (whether in the United Kingdom or elsewhere);

(b) provide information relating to the accreditation of qualifications to such a body.

(5B) Nothing in subsection (5A)—

- (a) affects any power that exists apart from that subsection; or
- (b) authorises the disclosure of information in contravention of any provision made by or under any statutory provision which prevents disclosure of the information.'

Clause 31, page 17, line 32, leave out paragraphs (a) and (b) and insert—

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

Clause 37, page 20, line 29, at end add 'and on the discharge by ESA of its functions under sections 24 and 25 (except section 25(1)(b)).'.

Clause 42, page 24, line 4, at end insert—

'(6A) Before —

- (a) appointing an assessor under subsection (1) for the purposes of the inspection of an establishment under section 41; or
- (b) assigning a member of the panel under subsection (5) to be a lay person for the purposes of such an inspection,

the Department shall consult DEL.

(6B) Before —

- (a) appointing an assessor under subsection (1) for the purposes of the inspection of an establishment by virtue of paragraph 14 of Schedule 1 to the Libraries Act (Northern Ireland) 2008; or
- (b) assigning a member of the panel under subsection (5) to be a lay person for the purposes of such an inspection,

the Department shall consult the Department of Culture, Arts and Leisure.'

Clause 49

The Minister of Education gives notice of her intention to oppose the question that clause 49 stand part of the Bill

Clause 54, page 30, line 24, at end insert—

'(cc) section 29 and Schedule 6.'

Schedule 3, page 38, line 20, leave out head (b)

Schedule 3, page 40, line 8, leave out paragraph 5 and insert—

'5.—(1) ESA shall make arrangements for a statement of accounts to be prepared in relation to each dissolved body for the relevant period.

(2) Each statement of accounts shall—

- (a) be in such form, and

(b) contain such information,
as the Department may direct.

(3) ESA shall, within such time after the end of the relevant period as the Department may direct send a copy of each statement of accounts to the Department.

(4) In this paragraph "the relevant period" means the period—

- (a) beginning on such day as the Department may direct; and
- (b) ending immediately before the appointed day.'

Schedule 4, page 41, line 16, leave out head (b) and insert—

'(b) the Roman Catholic Archbishop of Armagh and the Roman Catholic Bishops of Clogher, Derry, Down and Connor, Dromore and Kilmore; and'

Schedule 7, page 48, line 25, leave out from 'for' to end of line 27 and insert 'for the words from "has the meaning" to the end substitute "means a maintained school whose trustees are appointed by, or on behalf of, the Roman Catholic Church;"'

Schedule 7, page 50, line 5, leave out paragraph (6)

Schedule 7, page 51, line 16, leave out paragraph (15)

Schedule 7, page 55, line 31, leave out from 'and' to end of line 33 and insert—

'(aa) in paragraph 1(2) for sub-paragraphs (a) and (b) substitute "the trustees and Board of Governors of the school;"'

Schedule 7, page 61, line 5, leave out paragraph 18 and insert—

"18—(1) In Article 10(3)(aa) and (4)(aa) for "the body constituted by" substitute "a tribunal constituted in accordance with".

(2) In Article 16(2) for sub-paragraphs (a) and (b) substitute "the Board of Governors of a grant-aided school shall consider any representations made to it by ESA".

(3) In Article 16A(1) for the words from the beginning to "direction" substitute "ESA shall make arrangements for enabling the parent of a child of compulsory school age to apply to a tribunal constituted in accordance with regulations under paragraph (6) for a direction".

(4) In Article 16A(2)(a) and (b) for "body" wherever occurring", substitute "tribunal".

(5) In Article 16A(5)(a) for "pupil" substitute "child".

(6) In Article 16A(6)—

(a) for "a body" substitute "tribunals";

(b) in sub-paragraphs (a), (b) and (c) for "the body" substitute "a tribunal";

(c) after sub-paragraph (c) insert—

"(cc) may provide for two or more tribunals to sit at the same time;"

(d) in sub-paragraph (d) for "the Department" substitute "ESA".

(7) In Article 16A after paragraph (6) substitute—

"(6A) A tribunal is not to be regarded as a committee of ESA."

(8) In Article 16A for paragraph (7) insert—

"(7) ESA may make payments to members of a tribunal—

(a) for or in relation to their service members; and

(b) by way of travelling and subsistence allowance."

(9) In Article 16B(1)(d), for "the body established" substitute "a tribunal constituted".'

Schedule 7, page 62, line 13, leave out sub-paragraph (7) and insert—

‘(7) In Article 32(2) for sub-paragraphs (a) and (b) substitute “the Board of Governors of a controlled or maintained school shall consider any representations made to it by ESA.”’

Schedule 7, page 62, line 21, leave out sub-paragraphs (13) to (17) and insert—

‘(13) In Article 55(3) and (6) for sub-paragraph (c) substitute—

“(c) where the school is a maintained school, the trustees of the school.”’

(14) In Article 56(1)—

(a) for “the board concerned” substitute “ESA”;

(b) for sub-paragraph (b)(iii) substitute—

“(iii) where the school is a maintained school, the trustees of the school,”

(c) in sub-paragraph (b) for “that Council” substitute “those trustees”.

(15) In Article 56(2) for sub-paragraph (d) substitute—

“(d) where the school is a maintained school, the trustees of the school.”

(16) In Article 60(5) for “all the boards, the Council for Catholic Maintained Schools” substitute “ESA”.

(17) In Article 60(8) and (11) for sub-paragraph (c) substitute—

“(c) where the school is a maintained school, the trustees of the school.”’

Schedule 8, page 72, leave out lines 13 and 14

Schedule 8, page 72, leave out lines 20 to 24 and insert—

‘Article 25’

Schedule 8, page 73, leave out lines 12 and 13

Schedule 8, page 73, leave out lines 35 and 36 and insert—

‘In Article 61(1) the words “situated in its area”.

Article 61(3).’

Schedule 8, page 73, leave out lines 39 and 40 and insert—

‘In Article 63(1) the words “situated in its area”.

Article 63(3).’

Schedule 8, page 73, line 47, leave out from beginning to end of line 3 on page 74 and insert

‘Article 70(3) to (7), (9) and (10).’

Schedule 8, page 74, line 41, at end insert—

‘Article 28.’

Bill Reference	Text of Amendment	Explanation
2 (2) (b)	at end insert 'that contribute towards the spiritual, moral, cultural, social, intellectual and physical development of those for whom those services are provided;'	Clarifies that the duty on ESA in relation to Youth Services is similar to the duty in relation to schools and educational services
2 (4)	at end insert— '(4A) ESA shall ensure that its functions relating to grant-aided schools are (so far as capable of being so exercised) exercised with a view to encouraging and facilitating the development of education provided in an Irish speaking school (within the meaning of Article 3(2) of the Education (Northern Ireland) Order 2006).'	Places a duty on ESA to encourage and facilitate Irish Medium Education
3 (2) (a)	leave out sub-paragraphs (i) and (ii) and insert— '(i) in the case of a controlled school, the Board of Governors of the school; (ii) in the case of a voluntary or grant-maintained integrated school, the trustees of the school or (if the trustees so determine) the Board of Governors of the school; and'	Changes the submitting authority in relation to employment schemes to trustees of a school where a school has trustees
4	at end insert— '(4) The Department may by regulations make provision as to the form and content of employment schemes.'	Inserts an enabling provision to allow the Department to regulate on the content of employment schemes

6 (1) (c)	<p>leave out from 'subsection' to 'cannot' in line 13 and insert 'section 5(1)(b) does not comply with regulations under section 4(4) or does not accord with any guidance issued by ESA under section 5(3) and cannot (in either case)'</p>	<p>Amendment to ensure that submitting authorities should comply with these regulations on employment schemes</p>
11	<p>leave out subsection (5) and (6) and insert—</p> <p>'(5) Notwithstanding any of the previous provisions of this Act, the budget share of a grant-aided school shall include an amount in respect of—</p> <p>(a) the salaries and allowances of the staff of the school; and</p> <p>(b) the relevant contributions in respect of such staff.</p> <p>(6) But—</p> <p>(a) in the case of a voluntary grammar school, ESA may set-off against the maintenance grant payable under Article 61(2)(a) of the 1998 Order any payments made by ESA itself in respect of the matters mentioned in paragraphs (a) and (b) of subsection (1);</p> <p>(b) in the case of a grant-maintained integrated school, ESA may set-off against the maintenance grant payable under Article 63(2)(a) of the 1998 Order any payments made by ESA itself in respect of the matters mentioned in paragraphs (a) and (b) of subsection (2).'</p> <p>Clause 11, page 6, line 43, at end insert—</p> <p>'(c) "the appointed day" means the day appointed under section 54 for the coming into operation of section 3.'</p>	<p>Enables Staff salaries to be included in the budget share of all grant aided schools</p>

16	<p>After Clause 16 insert—</p> <p>ESA to contract for certain capital works [j2597]</p> <p>*.—(1) ESA may enter into contracts for, or in connection with, the provision or alteration of the premises of a grant-aided school.</p> <p>(2) Those contracts may include contracts with the trustees or Board of Governors of a voluntary or grant-maintained integrated school requiring specified payments to be made to ESA by the trustees or Board of Governors at specified times.</p> <p>(3) ESA may under the powers conferred by subsection (1) enter into a contract (“an approved contract”) with another person (“the contractor”)—</p> <p>(a) under which the contractor undertakes at his own cost—</p> <p>(i) to provide or alter any premises of a grant-aided school; and</p> <p>(ii) to maintain, or provide other services in relation to, those premises over the term of the contract, in consideration for the payment by ESA of sums of money in instalments over the term of the contract; and</p> <p>(b) which has been approved by the Department for the purposes of this subsection.</p> <p>(4) The inclusion in a contract of matters other than those mentioned in paragraph (a) of subsection (3) does not prevent the contract falling within that paragraph.</p> <p>(5) In Article 2 of the 1986 Order for paragraphs (2G) and (2H) substitute—</p>	<p>The ESA will be the contracting authority for major capital works in grant aided schools</p>
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	<p>“(2D) In the Education Orders references to—</p> <p>(a) an approved contract,</p> <p>(b) the contractor, in relation to an approved contract,</p> <p>shall be construed in accordance with section (j2597)(3) of the Education Act (Northern Ireland) 2009.</p> <p>(2E) References in the Education Orders to the staff of or at a school or to persons employed at, in or about a school do not include references to persons employed by the contractor for the purposes of an approved contract.”¹</p>	
17	after ‘Department’) insert ‘for paragraph (1)’	Clarifies the reference of the Article in the Superannuation Order 1972 which is amended by clause 17 of the Bill
26	at end insert— ‘(iii) the requirements of those attending Irish speaking schools (within the meaning of Article 3(2) of the Education (Northern Ireland) Order 2006) who are taught in Irish; and’	Ensures that the ESA, in relation to curriculum and examinations, considers the requirements of those attending Irish speaking schools
26	line 19, leave out from ‘and’ to end of line 21	DEL amendment, this line is no longer required
27 (5)	at end insert— ‘(5A) The Department may— (a) co-operate or work jointly with another body exercising functions in relation to the accreditation of qualifications (whether in the United Kingdom or elsewhere); (b) provide information relating to the accreditation of qualifications to such a body. (5B) Nothing in subsection (5A)—	This allows the Department to work jointly with other jurisdictions in relation to the accreditation of qualifications.

	<p>(a) affects any power that exists apart from that subsection; or</p> <p>(b) authorises the disclosure of information in contravention of any provision made by or under any statutory provision which prevents disclosure of the information.’</p>	
31	<p>leave out paragraphs (a) and (b) and insert—</p> <p>‘(a) in the case of a controlled school, the Board of Governors of the school;</p> <p>(b) in the case of a voluntary or grant-maintained integrated school, the trustees of the school or (if the trustees so determine) the Board of Governors of the school.’</p>	As with employment schemes changes the submitting authority in relation to schemes of management to trustees of a school where a school has trustees
37 (5)	at end add ‘and on the discharge by ESA of its functions under sections 24 and 25 (except section 25(1)(b)).’	Extends the remit of the Education and Training Inspectorate to allow inspection of curriculum and qualifications
42 (6)	<p>at end insert—</p> <p>‘(6A) Before —</p> <p>(a) appointing an assessor under subsection (1) for the purposes of the inspection of an establishment under section 41; or</p> <p>(b) assigning a member of the panel under subsection (5) to be a lay person for the purposes of such an inspection,</p> <p>the Department shall consult DEL.</p> <p>(6B) Before —</p> <p>(a) appointing an assessor under subsection (1) for the purposes of the inspection of an establishment by virtue of paragraph 14 of Schedule 1 to the Libraries Act (Northern Ireland)</p>	Ensures that the Department when appointing Assessors and lay persons to assist in inspections on DEL and DCAL premises consult the appropriate Department

	<p>2008; or</p> <p>(b) assigning a member of the panel under subsection (5) to be a lay person for the purposes of such an inspection,</p> <p>the Department shall consult the Department of Culture, Arts and Leisure.’</p>	
49	<i>The Minister of Education gives notice of her intention to oppose the question that clause 49 stand part of the Bill</i>	This removes Clause 49 as this separate approach to Catholic Maintained Schools is no longer required
54	<p>at end insert—</p> <p>‘(cc) section 29 and Schedule 6;’</p>	Allows the commencement of the clause on Disciplinary Powers of the General Teaching Council to be commenced upon Royal Assent as these clauses are urgently required in order to comply with other jurisdictions
Schedule 3 (2) (3)	leave out head (b)	DCAL amendment this is no longer required as these assets and/or liabilities have already transferred to the new Libraries Authority
Schedule 3 (5)	<p>5.—(1) ESA shall make arrangements for a statement of accounts to be prepared in relation to each dissolved body for the relevant period.</p> <p>(2) Each statement of accounts shall—</p> <p>(a) be in such form, and</p> <p>(b) contain such information, as the Department may direct.</p> <p>(3) ESA shall, within such time after the end of the relevant period as the Department may direct send a copy of each statement of accounts to the Department.</p> <p>(4) In this paragraph “the relevant period” means the period—</p> <p>(a) beginning on such day as the Department may direct; and</p> <p>(b) ending immediately before the appointed day.’</p>	Makes an amendment to the arrangements for the ESAs procedure with regard to reporting on their first set of accounts following advice from DFP
Schedule 4 (2) (3) (b)	<p>leave out head (b) and insert—</p> <p>‘(b) the Roman Catholic Archbishop</p>	Amended as Clause 49 of the Bill (definition of Catholic Maintained

	of Armagh and the Roman Catholic Bishops of Clogher, Derry, Down and Connor, Dromore and Kilmore; and	Schools) is no longer required so a definition of relevant church authorities is included
Schedule 7	Minor and Consequential Amendments	The most significant amendments relate to an amendment to the Education Order 1997 to place a duty on the ESA to appoint Exceptional Circumstances Tribunals to consider appeals from parents regarding admission to secondary school for their children

Correspondence from the Department of Education - ESA Members



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Your Ref: 454/09/C/01

4 September 2009

Dear John

EDUCATION BILL – APPOINTMENT OF NON- COUNCILLOR ESA MEMBERS

Thank you for your letter of 18 August in which you request an explanation of the legal framework and authority, express or implied, which enables the Department to proceed with the recruitment exercise for non-Councillor ESA members, advertised recently in the press.

The process for the appointment competition is governed by the Code of Practice for public appointments issued by the Office for the Commissioner for Public Appointments (OCPA), which is the regulatory framework which Departments have to follow.

As you may know, the formal public appointments process involves a significant lead-in time and we are planning for ESA to come into operation on 1 January 2010. There is no legal impediment to the Department taking steps to appoint shadow members of ESA in advance of the enactment of the Education Bill and for the purpose of facilitating the implementation of the RPA reform in education. This can be done by administrative action. However, until the Bill is enacted, the Authority will have no separate legal status and will exist within DE. The shadow members will have no power to make decisions in their own right but may, in anticipation of their future role, contribute to DE decisions which would bear on the body, when established.

I hope this clarifies the position for you.

Yours sincerely

JOHN LEONARD
Departmental Assembly Liaison Officer



Committee Correspondence to the Minister of Education - Memberships, Local Committees & Schemes of Employment



**Northern Ireland
Assembly**

Mr Mervyn Storey
Chairperson, Committee for Education

Ms Caitriona Ruane
Minister of Education
Department of Education
Rathgael House
Balloo Road
Bangor
BT19

Our Ref: 036/9/C/05

9 September 2009

Dear Minister

Education Bill: Committee for Education Scrutiny

Thank you for your letter of 5 August 2009 responding to three specific areas of concern raised by the Committee for Education on this Bill.

The Committee at today's meeting took stock of the position on a number of key areas and agreed that I write to you as a matter of urgency to clarify and establish your views on certain issues. You will be aware that the Committee needs to finalise its recommendations on this Bill to the Assembly over the next two weeks. The Committee welcomed the fact that you hope we can work together to agree amendments to this Bill – even at this late stage. Consequently I would appreciate your response to this letter in time for Committee consideration at its meeting of 16 September.

Membership of the ESA

The Committee noted that you continue to examine the issue of a greater number of Members on the ESA Board.

The Committee also noted your comments in the 17 June 2009 letter on the issue of the ESA being 'representative'. On this point the Committee received advice on how a 'representative' requirement could be interpreted in the context of the education system in Northern Ireland and the role of the ESA and considered the terms of a possible amendment to Schedule 1, 2 (2) by adding:

'(c) that the Members, as a group, are representative of the community in Northern Ireland'.

The Committee could also propose an amendment to the Bill to spell out which features of the community of Northern Ireland that it would wish the ESA membership as a whole to be representative of, having regard to ESA's role. However, the Committee again would wish to agree this amendment with you and an increase in the number of ESA members. On the latter, the Committee could suggest Schedule 1, paragraph 2(1)(b) should be amended to increase the number of members:

'2. — (1) ESA shall consist of —

(a) a Chair, and

(b) not fewer than [7] or more than [11] other members,

appointed by the Department.'

Your officials were apprised of some of the detail of the Committee's consideration on this at today's meeting – this could involve a further amendment to Schedule 1 within paragraph 22 to define 'representative of the community in Northern Ireland' Again, we would ask you to reconsider these proposals urgently and let me know your views as soon as possible.

ESA Local Committees

The Committee noted your rationale for not specifying the local delivery structure of the ESA on the face of the Bill or in regulations and is grateful for the paper attached to your letter of 17 June 2009 illustrating your proposals in this area. However, the Committee agreed at today's meeting that I write to you to ask you to re-consider your position regarding the scope for a limited regulation to provide some clarity and certainty in the specific area of ESA Committees, particularly on ESA Local Committees.

The Committee noted your words to the Assembly on 25 November and particularly on 8 December 2008 –

- "the ESA will be founded on democratic accountability";
- "The ESA must be a regional organisation, but with a strong local presence and a real focus on local delivery";
- Local Managers "will be sensitive to and receive input from local Committees comprising, amongst others a number of elected representatives".

Key stakeholders including CCMS, E&LBs and NICCE in their oral and written evidence to the Committee emphasised a need for clarity in the role of ESA Committees, particularly Local Committees.

The Committee at today's meeting considered a draft enabling provision to paragraph 8 of Schedule 1 to provide for regulations on the structure of Local Committees of the ESA. Paragraph (4) would read with the amendment underlined:

8. — (1)

(4) The Department may by regulations —

(a) require prescribed functions of ESA to be exercised on its behalf by a prescribed committee or employee of ESA; and

(b) regulate the appointment by ESA of an employee for the purposes of exercising such functions.

Implicit in such a provision for a Department to make regulations is the power to vary or revoke arrangements by further regulations. However, I would emphasise that the Committee's preferred route is to agree such a provision with you.

As indicated, the regulations might specify the membership numbers, structure, appointment process and role in broad terms, and the enabling provision would simply reflect this. The terms of the enabling provision, the timescale of the draft regulations coming before Committee and being laid in the Assembly are the key areas of focus here for the Committee at this stage. I

must emphasise that this is important to the Committee, but again the Committee does not wish to adopt a prescriptive approach.

Schemes of Employment

The Committee welcomes your agreement that the Bill will include an enabling power for regulations on the above, and considered at today's meeting your Department's paper of 4 September 2009, which included the specific terms of the amendment which you have agreed to bring forward to regulate on the content of employment schemes. The Committee looks forward to scrutinising the detailed paper on these Regulations with your officials in due course.

However, the Committee's main focus at this point is the precise terms of your proposed enabling provision in the Bill and the timescale on when the draft Regulations will be formally brought before the Committee, including planned date to lay the Regulations before the Assembly. Could you please as a matter of urgency signal your intention on the timescale of the Regulations? To clarify the Committee's position, it does not wish to adopt a prescriptive approach in relation to recommending 'a duty to make regulations'.

On the precise wording of the enabling provision, the Committee will come back to you as soon as it has considered your Department's detailed paper on these Regulations.

As Chairperson of the Committee, I can make myself available at short notice to discuss any of the above items with you and/or your senior officials. This reflects the urgency of these matters, which the Committee would genuinely wish to agree with you, ideally over the next week or so

Yours sincerely

Mervyn Storey MLA
Chairperson
Committee for Education

Briefing Paper from Department of Education - Employment Arrangements 10 September

Review of Public Administration (RPA): Employment Arrangements In The First Education Bill

1. This paper responds to concerns raised by stakeholders and Committee members on the RPA employment arrangements. The Committee asked for:

- greater clarity and certainty on the respective roles of the Education and Skills Authority (ESA) and boards of governors, with the apportionment of roles underpinned by legislation rather than merely by guidance;
- assurance that there would be an effective, accessible mechanism for boards of governors to challenge an action (or failure to act) of the ESA; and
- further consideration of the concerns raised about dismissals of staff, and on whether a decision of a board of governors to dismiss a member of staff could be made binding on the ESA.

Respective roles of the ESA and boards of governors

2. The Minister has agreed to bring forward an amendment to give the Department the power to make regulations on the form and content of employment schemes. The wording of the proposed amendment is:

Clause 4, page 3, line 19, at end insert—

‘(4) The Department may by regulations make provision as to the form and content of employment schemes.’

3. A working draft of regulations that will govern the scope and content of employment schemes is attached at Annex A. The regulations place particular emphasis on the respective roles of the ESA and boards of governors.

4. The regulations are based very closely on Schedule 2 to the Education (NI) Order 1998, which sets out the respective roles of the current employing authorities (the Council for Catholic Maintained Schools (CCMS) and Education and Library Boards) and the boards of governors of Controlled and Catholic maintained schools. The intention of the regulations is to ensure that the apportionment of employment functions between the ESA and boards of governors will be the same as that between CCMS and Catholic maintained schools at present.

Challenge mechanism

5. In relation to challenge by boards of governors, it was recognised that such a mechanism already exists, in the form of article 101 of the Education and Libraries (NI) Order 1986, which would allow the Department to issue directions to remedy complaints or challenges made by boards of governors. The intention was to include a clause in the first Bill providing a ‘cross reference’ to article 101. That is to say, the amendment would not make a substantive change to the law, but would reassure the Committee and stakeholders by providing a ‘pointer’ to the challenge mechanism that they seek, alongside the employment provisions in the Bill.

6. However, Legislative Counsel has advised very strongly that such a provision would be inappropriate, precisely because it would merely restate the existing law. Counsel also advised that, by singling out a particular use of article 101, there would be a serious risk of confusion about its application to all other ESA functions.

7. The Minister is minded to accept Counsel’s advice, and does not intend to bring forward an amendment on this matter. However, the Minister wishes to reassure the Committee that the substantive policy commitment will still be met – there will be an effective, easily accessible challenge mechanism available to boards of governors in the form of article 101. Whilst it would not be flagged up in the Education Bill as had been intended, a similar effect will be achieved by including a reference to the existence of the challenge mechanism in the guidance on employment schemes and in model schemes themselves.

Dismissals

8. In view of the concerns expressed by the Committee and stakeholders, the issue of dismissals has been reconsidered, with the benefit of additional legal advice. As a result, we are now able to offer further reassurance on the autonomy of boards of governors to make key employment decisions.

9. To date, the Department's position has been that, whilst the Education Bill will give boards of governors the power to decide that a member of staff should be dismissed, the requirements of employment law meant that such a decision could not be automatically binding on the ESA, and must be subject to ratification.

10. However, following further legal advice, we are satisfied that this is not the case. The Education Bill and employment scheme regulations will ensure that schemes give boards of governors the power to make decisions on dismissals. The effect of clause 8 (2) of the Bill will be that such decisions will be binding on the ESA, which will be under a legal duty to put them into effect.

11. The ESA (like CCMS) will have a right to attend any meeting of a board of governors where a potential dismissal is to be considered, and the board must consider the ESA's advice (but is not obliged to accept it). The only circumstances in which the ESA may decline to give effect to such a decision are if the decision has not been taken in accordance with the school's scheme of employment. Even then, the ESA's powers will be limited to requiring the board of governors to deal with the matter again, in accordance with the scheme.

Modification of employment law

12. The employment provisions in the Education Bill would result in a disparity between education law and employment law. This disparity would not affect the decision-making role of boards of governors. However, it could give rise to difficulties for the ESA in any legal proceedings on employment matters. The Department will address this by means of an Order to modify employment law as it applies to employment in grant-aided schools. Powers to make such an Order have been included in clause 12 of the Bill.

13. The scope of the modifying Order will be similar to that of the Education (Modification of Statutory Provisions Relating to Employment) Order (NI) 1991, and will include provisions to the effect that:

- references in employment law to 'employer' or 'principal' will include references to boards of governors acting in the exercise of their employment powers;
- references to 'employment' will have effect as if they were references to employment by a board of governors;
- references to 'employees' will have effect as if they were references to employees at the school in question;
- references to dismissal by an employer will include references to dismissal by the ESA following a decision of a board of governors;
- in any application to an Industrial Tribunal or Fair employment Tribunal, the proceedings would be taken against the board of governors of the school;
- the ESA would have the right to be made a party to the proceedings, and to take part in them; and
- any decision, declaration, order, recommendation or award made in the course of the proceedings would have effect as if made against the ESA.

14. The net effect of the employment provisions will be that boards of governors will have considerable autonomy on employment matters. However, it must be emphasised that all boards of governors must act lawfully, and the Department would use its power of direction to prevent any board of governors from taking an unlawful decision.

15. It is recognised that it will be important for boards of governors to have access to legal advice. The Department has already indicated in correspondence to stakeholders that it sees a need for boards of governors to have access to legal advice that they commission, either from the ESA or from another source.

16. It is recognised that there may be occasions when a board of governors and the ESA disagree as to the lawfulness of a proposed course of action, based on the legal advice that each receives. It is proposed that this is addressed by including in model schemes of employment, a stipulation that, where such a disagreement arises, the ESA will obtain further legal advice from senior counsel, and the board of governors will consider that advice before making its decision.

17. There may be occasions when the law is unclear, and where it is in the interests of all parties to clarify matters through legal proceedings. Where this is the case, the Department would expect the ESA to support the actions of a board of governors in seeking to clarify the legal position.

Conclusion

18. The Education Bill will give full effect to the RPA policy intentions in relation to employment in grant-aided schools. The employment arrangements will:

- deliver the benefits of a single employer;
- protect the ethos of schools by giving schools the responsibility for drawing up employment schemes; and
- give boards of governors the autonomy to make key employment decisions from 'hiring to firing'.

Department of Education
September 2009

ANNEX A

*Regulations laid before the Assembly under ***, and subject to ***** resolution procedure of the Assembly*

DRAFT STATUTORY RULES OF NORTHERN
IRELAND

2010 No.

EDUCATION

The Education (Employment Schemes) Regulations

(Northern Ireland) 2010

Laid before the Assembly in draft

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into operation</i>	-	***

The Department of Education, in exercise of the powers conferred by sections *** of the Education Act ***, makes the following Regulations:

PART 1

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Education (Employment Schemes) Regulations (Northern Ireland) 2010 and shall come into operation on ***

(2) In these Regulations—

“the 2010 Act” means the Education (Northern Ireland) Act 2010

“ESA” means the Education and Skills Authority

PART 2

Education Employment Schemes

Determination of Staff Complement

2. Every scheme of employment shall include a provision making it the responsibility of the Board of Governors of a school to determine the complement of teaching and non-teaching posts of the school.

Appointment etc.

3. Every scheme of employment shall set out the procedures to be followed by the Board of Governors of the school in appointing persons to be employed to work at the school.

4. A scheme of employment may permit a Board of Governors of a school to request the ESA to carry out any part of the appointment procedures that would otherwise be carried out by the Board of Governors of that school. Such a request may be in relation to a particular post, or all posts of a particular description.

5. A scheme of employment may permit a Board of Governors to request that an officer of the ESA attend as an observer or take part in appointment procedures, and the scheme of employment may make it the duty of the ESA to comply with any such request.

6. Every scheme of employment shall include a provision to the effect that the ESA may not employ any person to work at a particular school unless:

- (a) The Board of Governors of the school, having carried out the appointment procedures contained within the scheme of employment, determines that the person should be employed there; or
- (b) The person is employed as a peripatetic teacher under the terms of section 10 of the 2010 Act.

7. The requirement under paragraph 6.(a) shall apply to secondment, temporary transfer or redeployment from another school.

Discipline

8. Every scheme of employment shall stipulate that the regulation of conduct and discipline in relation to the staff of the school shall be under the [control] of the school.

9. Every scheme of employment shall require the Board of Governors of a school, following consultation with the ESA, to establish;

- (a) Disciplinary rules and procedures; and
- (b) Procedures for affording to members of staff of the school opportunities to seek redress to any grievances relating to their employment with the school.

10. Every scheme of employment shall require the Board of Governors of the school to take such steps as appear to it to be appropriate for making the rules and procedures known to staff at the school.

11. Every scheme of employment shall include a requirement that, where the implementation of any determination made by the Board of Governors in the exercise of its [control] and discipline of the staff of any such school requires action which:

- (a) Is not within the functions exercisable by the Board of Governors by virtue of the Education Orders; and
- (b) Is within the power of ESA,

It shall be the duty of ESA to take that action at the request of the Board of Governors.

Suspension

12. Every scheme of employment shall include a provision to the effect that the Board of Governors and the Principal of a school shall both have the power to suspend any person employed to work at that school where, in the opinion of the Board of Governors or (as the case may be) of the Principal, that the person's exclusion is required.

13. Every scheme of employment shall also provide that:

- (a) The Board of Governors or Principal of a school, when exercising the power to suspend shall at the first opportunity inform the ESA and the Principal or the Board of Governors (as the case may be).
- (b) Any suspension may only be ended by the Board of Governors; and the Board of Governors shall inform the ESA and the Principal at the first opportunity.

14. No scheme of employment may include a provision giving the ESA the power to suspend a person employed to work at a school, unless that person is employed as a peripatetic teacher under a scheme of employment drawn up under section 10 of the 2010 Act.

Dismissal, etc.

15. Every scheme of employment shall include provisions to the following effect:

- (a) Where the Board of Governors of the school determines that any person employed to work at the school under a particular contract of employment should cease to work there under that contract, it shall notify the ESA in writing of its determination and the reasons for that determination.
- (b) If the person concerned is employed under the terms of contract of employment in question to work solely at the school, and the person does not resign, the ESA shall, before the end of the period of one month beginning on the date on which the notification from the Board of Governors under 15.(a) is received in relation to that person, either give the person such notice terminating that contract with the ESA as is required in that contract, or terminate that contract without notice if the circumstances are such that it is entitled to do so by reason of the persons conduct.
- (c) If in a case within 15.(a) the person concerned is not employed to work under the terms of their contract to work solely in that school, the ESA shall require the person to cease to work at that school.
- (d) The Board of Governors of a school shall make arrangements for affording to any person in respect of whom it proposes to make a determination under 15.(a) an opportunity of making representations with respect to the action it proposes to take, including (if the person so wishes) oral representations to such persons as the Board of Governors may appoint for the purpose, and shall have regard to any representations made by the person.
- (e) An officer of the ESA shall be entitled to attend, for the purposes of giving advice, all proceedings of the Board of Governors relating to any determination under 15.(a) and the Board of Governors shall consider any advice given by the officer of the ESA before making any determination.
- (f) Subject to 15.(g), the ESA shall not dismiss a person employed by it to work solely at a school except as provided at 15.(a) to 15.(e).

- (g) Paragraph (f) shall not apply in any case where the dismissal of the person in question is required to comply with:
- (i) Article 35(3) of the Education (NI) Order 1998; or
 - (ii) Regulations made under Article 83A of the Education and Libraries (NI) Order 1986.

Payments in respect of dismissals, resignations, etc.

16. Every scheme of employment shall include provisions to the following effect:

- (a) Subject to sub-paragraph 16.(b), it shall be for the Board of Governors of any school to determine:
 - (i) Whether any payment should be made by the ESA in respect of the dismissal, or for the purposes of securing the resignation, of any member of staff of the school; and
 - (ii) The amount of such payment.
- (b) Sub-paragraph 16.(a) does not apply in relation to any payment which is required or authorised to be made:
 - (i) By virtue of any contract other than the one made in contemplation of the impending dismissal or resignation of the member of staff concerned; or
 - (ii) Under any statutory provision.
- (c) The ESA:
 - (i) Shall take such steps as may be required for giving effect to any determination of the Board of Governors of any such school under sub-paragraph 16.(a); and
 - (ii) Shall not make, or agree to make, any payment to which that sub-paragraph applies in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of any such school otherwise than in accordance with any such determination.
- (d) Costs incurred by ESA in giving effect to any determination under paragraph 16.(a) in respect of any member of staff of any such school shall not be met from the schools budget share for any financial year except in so far as the ESA has good reason for deducting such costs, or any part of those costs, from that share.
- (e) The fact that the ESA has a policy precluding dismissal of its employees by reasons of redundancy is not to be regarded as a good reason for the purposes of sub-paragraph 16.(d).

Sealed with the Official Seal of the Department of Education on ***

Address
Date

Name
A senior officer of the
Department

Correspondence from Department of Education - Outstanding Correspondence

John Simmons
Clerk to the Committee for Education
Parliament Buildings
Stormont
Belfast
Bt4 3xx

15 September 2009

Dear John

EDUCATION BILL: OUTSTANDING RESPONSES TO CORREPPONDENCE FROM THE COMMITTEE FOR EDUCATION

I am writing to provide the Committee with an update on the issues raised in your letters dated 19th and 29th June, 9th July, and the 9th and 10th September 2009. For ease of reference, I shall deal with each of the letters in chronological order.

Letter dated 19 June 2009 – Ref: 042/09/C/01

Schedule 1, Paragraph 2(1)(b)

You asked for the outcome of the Minister's reflection on the number of ESA members.

I understand Mervyn Storey wrote to the Minister on 9th September to ask her to reconsider the Committee's proposals urgently. The Minister's reply addresses the issue.

Schedule 1, Paragraph 2(2)(b)

You had asked for a paper on how the Equality Commission and Human Rights Commission achieve representative membership boards. I understand that the Committee subsequently obtained information for the NIO.

Schedule 1, Paragraph 2(3)

You asked us to ascertain whether similar clauses regarding membership are contained within other RPA legislation such as Health legislation. I can confirm this is the case, and that these provisions are subject to negative resolution.

Schedule 1, Paragraph 4

With regard to levels of remuneration for ESA members, I can confirm that the rates approved by DFP are; ESA Chair £33,000 per annum; and ESA Member £8,800 per annum.

Schedule 1, Paragraph 7(1)

The Chairperson has raised the issue of ESA Local Committees with the Minister in his letter of 9th September and the Minister has responded.

Letter dated 29 June 2009 – Ref: 043/09/C/01

Controlled Schools Ownership Body

You had asked for sight of these provisions. The relevant clauses are contained within Bill 2. It is hoped that Committee members will have sight of the draft Bill in its entirety in the very near future.

Attendees at Controlled Sector Group Meetings

Please see response to this issue raised in your 9th July letter below.

In your paragraph 2 you asked for details of amendments to clauses 2 and 11. These are included in the paper on amendments that was forwarded to you on 4th September.

In this paragraph you also asked about the Committee's proposal to remove "(so far as they are capable of being exercised)" from clause 2(4).

We consulted Legislative Council who confirmed our advice to the Committee, and advised that the provision should remain. The effect of removing these words would be to place a duty on the ESA that it could not comply with.

I note your comments in paragraph 4 regarding the Committee's view that the provisions in Schedule 1 paragraph 2(3) be the subject of affirmative resolution.

A paper on employment issues and draft employment regulations requested in your paragraph 4 has been sent under separate cover.

Letter dated 9 July 2009 – Ref: 044/09/C/01

Schedule 1, Paragraph 2

Please refer to responses to your 29th June letter covering ESA membership and remuneration.

Clauses 4 and 5

As stated above, a paper covering employment matters and draft regulations has been sent. The Minister remains of the view that the regulations should be subject to the normal negative resolution control mechanism.

Controlled Sector Advocacy Body

A list of those who attended meetings on 30th June and 18th August to consider the potential for a sectoral support body for schools currently in the controlled sector is attached.

Clause 13

You asked for a written explanation of the intention of this clause.

Under the terms of this clause the ESA will be required to provide, or to secure the provision of, a training and support service for the Boards of Governors and all staff of grant-aided schools. The intention is that a school either individually or in concert with other schools may request training and support services provided by the ESA or secured by the ESA on its/their behalf.

The clause provides for the move away from the fixed provision currently determined by the Education and Library Boards. It also means that services will be commissioned from schools, so that they are responsive to need. Therefore there will be a mixed market of provision involving the ESA, other providers, and the schools themselves.

Clause 19

You asked whether an appropriation in aid provision is necessary, similar to that contained in the Libraries Act. It is not the Departments intention to include a similar provision in the Education Bill. All such issues will be dealt with by way of Financial Memorandum.

Clause 23

Some members had suggested including a general duty to promote the 'mental well-being' of children and young persons within the provisions of clause 23.

The Minister recognises that ESA clearly has an important role to play in the holistic development of children. However, the Minister is also of the view that the statutory duty for mental health must rest with DHSSPS which has responsibility for all health issues. It would not be appropriate to place overlapping duties on two Departments and the Minister does not intend to move the suggested amendment.

Letter dated 9th September ref 458/09/C/01

Schedule 1, Paragraph 2 – Membership of the ESA

The Department carried out research in respect of the amount paid to members of a number of comparable bodies. The proposal to pay £8,800 per annum, took account of the size of the new organisation, the budget that the board will be required to manage, and the time commitment required. We believe that this is proportionate to the responsibilities and commitment required and is on par with that currently paid to members of other public bodies.

Clause 12(1) – Modification of employment law

The rationale for the different levels of Assembly control is that clause 50 can be used to amend the Act itself, whereas clause 12 is a power to modify employment law to reflect the provisions of the Act. Therefore the Minister does not intend to move such an amendment.

50(1) – Supplementary, incidental, consequential, transitional provision etc

The Minister does not believe there is a need to insert a consultation requirement in clause 50. Clause 51(3) requires a draft of the Order under clause 50(1) to be laid and approved by resolution of the Assembly. This is in our opinion a higher standard to meet than a consultation requirement. It is also worth noting that the provisions are well precedented, unobjectionable and useful in practice.

Byelaws under clause 15(5)

As it stands, clause 15 would not authorise the creation of offences and the imposition of fines. Given the nature of the purposes for which bye-laws may be made, we have concluded that there is no need for such a provision in clause 15.

Letter dated 10th September ref 051/109/C/01

Clause 27

The objective of the amendment is to allow the Department (as the regulator for general qualifications here post-RPA) to:

- i. work jointly with other Qualifications' Regulators to fulfill its duties and functions in relation to accrediting certain external qualifications; and
- ii. share information with other Qualifications' Regulators to allow them to fulfill their duties.

Currently, the Council for the Curriculum, Examinations and Assessment (CCEA) is responsible for the accreditation of all qualifications in Northern Ireland, with the exception of National Vocational Qualifications (NVQs) which are regulated by the Qualifications and Curriculum Authority (QCA). CCEA works closely with the qualifications regulators in England and Wales in performing its regulatory function as the three countries share a common qualifications system and qualifications framework known as the National Qualifications Framework (NQF).

Clause 27 of The Education Bill covers the regulatory arrangements that will apply here post-RPA in relation to qualifications designated by the Department (namely GCSEs, GCE A levels and Essential Skills).

The Department for Children Schools and Families in England is in the process of legislating to establish a new qualifications regulator – The Office of Qualifications and Examinations Regulation (Ofqual). Their lawyers have raised concerns that the joint working arrangements currently undertaken by the Qualifications' Regulators in England, Wales and Northern Ireland are not covered in legislation. They have indicated that their new legislation will contain adequate powers to enable Ofqual to work jointly with the Qualifications' Regulators in Wales and Northern Ireland and other bodies and to share information associated with the regulatory function.

Departmental Solicitor's Office has advised that DE needs to take similar powers to enable it to work jointly with other Qualifications' Regulators and to share relevant information with them.

Scotland and the south of Ireland operate different public examinations systems and, while there is co-operation and sharing of best practice with these regions, there is not the direct comparability that exists within the three-country framework. The Qualifications Regulators from the five countries meet on annual basis to consider issues around the currency and portability of qualifications across and beyond these islands. In addition, CCEA has been involved in a small pilot exercise in the south which was set up to establish a system that will mean that any NQF qualifications offered there are properly quality assured.

Remaining Amendments

We will inform the Committee of the outcome of the Minister's consideration of the remaining amendments as soon as we receive it.

Schemes of Management

The Committee had asked to see examples of current schemes. Copies are attached to the covering e-mail.

Yours sincerely

Eve Stewart

pp John Leonard

Annex A

Controlled Schools Sectoral Support Meeting Tuesday 30th June 2009, Island Civic Centre, Lisburn

Attended

Name	Organisation
Dr Peter Cunningham	CEARA Special School
Mrs Florence Mairs	Straid Primary school
Mr Sam Kirk	Straid Congregation Church
Mr Alfie Snoddy	Straid Congregation Church
Reverend Ian Ellis	Transferors Representative Council
Mr John Platt	Millburn Primary School
Mr Tom Walsh	SEELB
Mr Nicky McBride	SEELB
Ms Sybil Skelton	SEELB
Ms Alice Lennon	SEELB
Mr Neil Craig	SEELB
Mr Andy McMorran	Ashfield Boys High School
Reverend Robert Herron	Transferors Representative Council
Dr Peter Shirlow	Queens University
Mr Paul Logan	Down High School
Mr Eddie McClinchey	Fleming Fulton School
Mr Hugh McCarthy	Killicomaine Junior High School
Mr Chris Stewart	Department of Education
Mr Joe Reynolds	Department of Education
Ms Geraldine Quinn	Department of Education
Miss Patricia Wyers	Department of Education

Controlled Schools Sectoral Support Meeting Tuesday 18 August 2009, Island Civic Centre, Lisburn

Attended

Name	Organisation
Florence Mairs	Straid Primary school
Ian Ellis	Transferors Representative Council
John Platt	Millburn Primary School
Tom Walsh	SEELB
Paul Logan	Down High School
Hugh McCarthy	Killicomaine Junior High School
Robin McLoughlin	Grosvenor Grammar

Name	Organisation
Heather Reid	Wellington College
Ian Drysdale	Wellington College
Jackie Redpath	Greater Shankill Partnership Board
Tom Scott	Greater Shankill Partnership Board
Catherine Cooke	Foyle Women's Information Network
Michael Wardlow	NICIE
Diane Hawthorne	Glynn Primary School
Tony Carlin	INTO
Trevor Gribben	Transferors Representative Council
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***SCHEME OF MANAGEMENT
FOR CATHOLIC MAINTAINED SCHOOLS***

COUNCIL FOR CATHOLIC MAINTAINED SCHOOLS

SCHEME OF MANAGEMENT 2002

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PART I

CITATION

1. The Council for Catholic Maintained Schools in pursuance of Article 9B of the Education and Libraries (Northern Ireland) Order 1986 and after the consultation required by Article 9B (3) of that Order has prepared the following scheme providing for:
 - (a) the membership and procedure of the Board of Governors of each Catholic maintained school;
 - (b) the management of each such school;
 - (c) the functions to be exercised in relation to each such school by the Board of Governors, committees of the Board of Governors and the principal; and
 - (d) such other matters as are required or authorised by the Education Orders to be included in or regulated by the scheme.
2. Each school shall be conducted in accordance with -
 - (a) the provisions of the Education Orders;
 - (b) the terms of this scheme;
 - (c) any regulations or orders made by the Department;
 - (d) any direction or guidance of the Department
 - (e) any rules or guidance of the Board.

PART II

INTERPRETATION

3. (1) In this scheme, unless the context otherwise requires -
 - "board" means the Education and Executive Library Board which is the funding authority for the schools;
 - "Chief Executive" means the Chief Executive of the board or the Council; this will be indicated as appropriate;
 - "Committee" means a committee established under **Article 26** of this scheme;
 - "co-opted member" means a member who has been co-opted under Article 122 or 139 of the 1989 Order;

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"Council" means the Council for Catholic Maintained Schools;

"Department" means the Department of Education;

Senior Management Officer for the Diocese means the officer responsible for the management of the diocesan education office for the [Archdiocese] [Diocese] in which the school is situated;

"in committee" proceedings means that part of a meeting which is to be kept in confidence;

"meeting" means a meeting of the Board of Governors or as the case may be a committee established under **Article 26** of this scheme;

"member" means a member of the Board of Governors or as the case may be a committee established under **Article 26** of this scheme;

"nominating trustees" has the meaning assigned to it by paragraph 2 (3) of Schedule 5 to the 1986 Order;

"non-school activities"* means activities, other than school activities, carried on wholly or mainly under the management or control of the Board of Governors;

"parent", in relation to a child or young person, includes not only a guardian and every person who has actual custody of the child or young person but also individuals who by virtue of the Children (NI) Order 1995 Articles (5) and (6) are deemed to have parental responsibility.

"principal" means the principal of the school;

"school" means [any school to which this scheme applies];

"secretary" means the secretary to the Board of Governors or to a committee of the Board of Governors, who is appointed under **Article 49** of this scheme;

"the Education Orders" means the 1986, 1989, 1993, 1996, 1997, 1998, 2003 and 2005 Orders;

"the 1986 Order" means the Education and Libraries (NI) Order 1986;

"the 1989 Order" means Education Reform (Northern Ireland) Order 1989;

*This refers to community activities carried on in the school.

"the 1997 Order" means The Education (NI) Order 1997

"the 1993 Order" means The Education and Libraries (N.I.) Order 1993

"the 1996 Order" means The Education (NI) Order 1996

"the Children Order" means The Children (NI) Order 1995

"the 1998 Order" means the Education (Northern Ireland) Order 1998

"the 2003 Order" means The Education and Libraries (N.I.) Order 2003

"the 2005 Order" means the Special Educational Needs and Disability (NI) Order 2005;

throughout this scheme of the "Board of Governors" means a member other than the principal of a co-opted member;

"voting member of the Board of Governors" means a member other than the principal or a co-opted member;

"voting member of a committee" means a member entitled to vote at a committee meeting under Article 60 (1) of this scheme.

- (2) The Interpretation Act (NI) 1954 shall apply for the interpretation of this scheme.

PART III

MEMBERSHIP OF THE BOARD OF GOVERNORS

Membership

4. (1) (a) 85% Capital Grant (i.e. those who have not entered into a Schedule 5 agreement). Subject to Article 13 of the 1986 Order and Articles 122 and 139 of the 1989 Order and Article 14 of the 1998 Order and Article 23 of the 2003 Order each Board of Governors shall be constituted in accordance with paragraph 3 of part I of Schedule 5 to the 1986 Order.
- (b) 100% Capital Grant (i.e. those who have entered into a Schedule 5 agreement). Subject to Article 13 of the 1986 Order and Articles 122 and 139 of the 1989 Order each Board of Governors shall be constituted in accordance with paragraph 2 of Part I of Schedule 5 to the 1986 Order.

- (2) The nominating trustees under this scheme shall be those named in the deed of trust for the school(s).
- (3) Unless the Department approves otherwise individuals will be limited to membership of no more than 3 Boards of Governors in keeping with Article (37) of the 1993 Order.

Acceptance of Membership

5. Every member shall, at or before or within one month after the first meeting of which he is notified, sign a declaration of his acceptance of membership and until he has signed such a declaration he shall not be entitled to act as a member.

Disqualification from Membership

6. (1) A person, other than the principal or a teacher elected in accordance with the relevant provisions of Schedule 5 to the 1986 Order, who -
 - (a) is employed in the school for the purposes of the school or for the purposes of non-school activities; or
 - (b) has within the five years before the first day that his membership could have taken effect or at any time thereafter been convicted by a court in Northern Ireland or elsewhere in the British Islands* of any offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine; or
 - (c) is adjudged bankrupt or who has made a composition** or arrangement with his creditors;shall not be a member of the Board of Governors of the school.
- (2) (a) Where a person is disqualified from membership by reason of his having been adjudged bankrupt, that disqualification shall cease -
 - (i) on his discharge from bankruptcy unless the bankruptcy order made against that person is previously annulled; and
 - (ii) if the bankruptcy is so annulled, on the date of the annulment.
- (b) Where a person is disqualified by reason of his having made a composition or arrangement with his creditors and he pays his debts in full, the disqualification shall cease on the date on which the payment is completed and in any other case it shall cease on the expiration of five years from the date on which the terms of the deed of composition or arrangement are fulfilled.

* The Interpretation Act (NI) 1954 defines the British Islands as the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland.

- ** This is where an agreement has been made for the payment of a sum in lieu of a larger sum or other obligation.

Term of Office

7. Subject to **Article 8 (2)-(4)** of this scheme and to **Article 13(4)** of the **1986 Order** and **Article 23 of the 2003 Order** the term of office of voting and co-opted members shall coincide with that of members of the board, with the exception as outlined below, provided that voting members shall remain in office until their successors are appointed. The term of office for Parent representatives on the Board of Nursery schools will hold office for a period of two years to reflect the changing nature of Nursery school enrolments. The first term will coincide with the beginning of the term of office of the Board and the second will begin at the end of the second year of the Board's term of office. Any voting or co-opted member going out of office may be re-appointed unless he is disqualified or otherwise ineligible.

Termination of membership

8. (1) A voting or co-opted member may resign by giving written notice to the secretary.
- (2) A member nominated by the board who is a member of the board shall, unless the board otherwise determines, cease to be a member if he ceases to be a member of the board.
- (3) Where a voting or co-opted member is absent from three consecutive meetings of the Board of Governors, or for six months consecutively, whichever is the greater period, the secretary shall report the matter at the next meeting, and unless the Board of Governors is satisfied that his failure to attend was occasioned by illness or other unavoidable cause, the member shall be deemed to have resigned his membership and shall cease to be a member.
- (4) A member other than the principal or teacher elected in accordance with the relevant provisions of Schedule 5 to the 1986 Order who -
- (a) subsequently becomes an employee of a school for which the Board of Governors is appointed, in accordance with the terms of **Article 6(1)(a)** of this scheme; or
 - (b) is subsequently convicted of an offence and sentenced by a court, in accordance with the terms of **Article 6 (1) (b)** of this scheme; or
 - (c) subsequently becomes bankrupt, in accordance with the terms of **Article 6 (1) (c)** of this scheme;

shall thereupon cease to be a member of the Board of Governors.

Vacancies

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9. A vacancy occurring among the voting members or members co-opted under Article 139 of the 1989 Order shall be filled as soon as practicable by a person nominated, elected, chosen or co-opted by the persons or body entitled to nominate, elect, choose or co-opt him and that person shall hold office on the same terms as these members. Where a person co-opted under Article 122 of the 1989 Order ceases to be a member the Board of Governors may co-opt another person in his place and that person shall hold office on the same terms as the person so replaced.

PART IV

FUNCTIONS OF THE BOARD OF GOVERNORS

General

10. In addition to its statutory functions, and subject to the provisions of the Education Orders and regulations, orders and directions made thereunder and to the provisions of schemes under the Education Orders, the Board of Governors shall manage and control the school(s) for which it is appointed in accordance with this scheme.

Appointment and Promotion of Teachers and the Appointment of Other Staff

11. (1) The functions of the Board of Governors in relation to the appointment and promotion of teachers shall be carried out on behalf of, and in the name of, the Council, in accordance with the Council's Appointments Scheme and the Scheme for the Allocation of Management Allowances.
- (2) The functions of the Board of Governors in relation to the appointment of non-teaching staff under Article 88 of the 1986 Order shall be carried out on behalf of, and in the name of, the board.

School Development Plans

12. (1) Subject to regulations made under Article 13(3) of the 1998 Order, the Board of Governors shall prepare, and from time to time revise, a school development plan.
- (2) In preparing or revising a school development plan, the Board of Governors shall –
- (a) consult the principal of the school;
 - (b) consider –
 - (i) any guidance given by the Department, the board for the area in which the school is situated and (in the case of a Catholic maintained school) the Council for Catholic Maintained Schools; and
 - (ii) the findings of any inspection of the school under Article 102 of the 1986 Order.

Admission of Pupils to School

13. The Board of Governors shall (for each school under its management and control) exercise its functions in relation to making arrangements for the admission of pupils, drawing up criteria to be applied in the selection of pupils and the

application of admissions and enrolment numbers as required by PART III of the 1997 Order.

Determination of Curriculum Policy and of the Curriculum

14. (1) The Board of Governors shall (for each school under its management and control) -
 - (a) determine, and keep under review, its policy in relation to the curriculum for the school [including education for children with special educational needs] and;
 - (b) make, and keep up to date, a written statement of that policy.
- (2) When determining or reviewing its policy in relation to the curriculum for the school the Board of Governors shall -
 - (a) take account of the findings of any inspection of the school under Article 102 of the 1986 Order as substituted by Article 33 of the 1996 Order; and
 - (b) consider any representations made to it regarding the curriculum by the board, the Council and any other body or person connected with the community served by the school.
- (3) The Board of Governors shall -
 - (a) ensure that the religious education provided in the school shall be in accordance with diocesan policy on religious education; and
 - (b) ensure the provision of assembly for collective worship.
- (4) The Board of Governors shall consult the principal of the school before making or varying any statement under **paragraph (1) (b)** of this Article.
- (5) The Board of Governors shall allocate to the principal such functions as will, subject to the resources available, enable him to determine and organise the curriculum in accordance with the curriculum policy for the school determined under **paragraph (1)** of this Article and ensure that it is followed within the school.
- (6) The Board of Governors shall furnish the relevant board and the Council with a copy of every statement made by it under **paragraph (1) (b)** of this Article.

Pupil Discipline

- 15 The Board of Governors shall ensure that policies designed to promote good behaviour and discipline on the part of its pupils are pursued at the school. In particular it shall:

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- (a) make, and from time to time review, a written statement of general principles to which the principal is to have regard in determining any measures under Article 35 (1) (a) of this scheme.
- (b) before making or revising that statement-
 - (i) consult (in such manner as appears to it to be appropriate) the principal and the parents of registered pupils at the school; and
 - (ii) consider any guidance given by the Department, the Council and, where appropriate, the board for the area in which the school is situated.
- (c) where it considers it desirable that any particular measures should be determined by the principal (under Article 35 (1)(a) of this scheme) or that he should have regard to any particular matters -
 - (i) notify him of those measures or matters; and
 - (ii) give him such guidance as it considers appropriate.

Pupil Suspension and Expulsion

- 16 The Board of Governors shall ensure that the scheme, prepared by CCMS, specifying the procedure to be followed in relation to the suspension or expulsion of pupils from school in accordance with Article 49 of the 1986 Order as amended by Article 39 of the 1993 Order is implemented when necessary.

The Principal

17. (1) The Board Of Governors shall (for each school under its management and control) -
 - (a) assist the principal in such a manner as is reasonably necessary to enable him to control the internal organisation, management and discipline of the school subject to such directions as may from time to time be given by the Board; and
 - (b) provide the principal with such opportunity as may be necessary to enable him to express his opinions and to make his recommendations to the Board of Governors (in writing if so required) on all matters connected with the school.
- (2) Unless the board otherwise approves, nothing in paragraph (1) shall apply to non-teaching staff employed in the school(s) where the Board of Governors has no delegated responsibility for those staff under Article 58 of the 1989 Order.

Communication

18. The Board of Governors shall (for each school under its management and control) encourage -

- (a) the principal to promote regular communication between assistant teachers and parents of pupils; and
- (b) the principal to maintain regular communication and consultation with his assistant teachers on the management of the school, curricular matters and on matters relating to the education, health and welfare and discipline of the pupils;

and shall from time to time request a report from the principal on these matters.

Annual Report of the Board of Governors

- 19. (1) The Board of Governors shall in the autumn term of every school year prepare (for each school under its management and control) a report in respect of the previous school year containing a summary of the steps taken by the Board of Governors in the discharge of its functions during the period covered by the report.
- (2) The report shall -
 - (a) be as brief as is reasonably consistent with the requirements as to its contents;
 - (b) give details of the date, time and place for the next annual parents' meeting and its agenda and indicate that the purpose of that meeting will be to provide an opportunity for discussion of the report and of the discharge by the Board of Governors, the principal, the board, the Council, and the Department of their functions in relation to the school;
 - (c) report on the consideration given and any action taken in relation to any resolutions passed at the previous annual parents' meeting;
 - (d) give the name of each member of the Board of Governors and indicate into which of the following categories he falls, namely -
 - (i) members nominated by trustees or nominating trustees of the school or schools;
 - (ii) members elected by parents;
 - (iii) members elected by assistant teachers;
 - (iv) members nominated by the board;
 - (v) members nominated by the Head of Department
 - (vi) members co-opted under Article 122 of the 1989 Order;

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- (vii) members co-opted under Article 139 of the 1989 Order;
- (viii) the principal;
- (e) give, in relation to each member (other than the principal) the date on which his term of office comes to an end;
- (f) name the chairperson of the Board of Governors and its secretary;
- (g) give such information as is available to the Board of Governors about arrangements for the next election of parents to the Board of Governors;
- (h) contain a financial statement -
 - (i) reproducing or summarising any financial statement of which a copy has been furnished to the Board of Governors by the board under the Education Orders since the last report was prepared;
 - (ii) indicating, in general terms, how any grants made to the Board of Governors under the Education Orders in the period covered by the report were used and how any sum made available to the Board of Governors by the board in respect of the school's budget share (within the meaning of the Education Orders) or in accordance with Article 51 of that Order in the period covered by the report was used;
 - (iii) giving details of the application of any gifts or bequests made to the school in that period;
- (i) describe what steps have been taken by the Board of Governors to develop or strengthen the school's links with the community and, in particular, to promote the attainment of the objectives of the educational theme called Education for Mutual Understanding;
- (j) give such information as is required to be made available in accordance with regulations under Article 31 (2) (a) of the 1989 Order.
- (k) (3) describe the arrangements made and facilities provided for special educational needs (SEN) and disabled pupils including any special admission arrangements which the governors have made and the steps taken to ensure that pupils with special educational needs or disabilities are treated no less favourably than other pupils under Article 8 of the 1996 Order.

- (ii) describe the steps taken to secure the implementation of their special educational needs (SEN) policies in accordance with Article 9 of the 1996 Order and Article 18 of the SENO 2005 Order
- (l) describe in general terms -
 - (i) the arrangements made for the security of the pupils and staff of the school and the school premises; and
 - (ii) any changes to those arrangements since the last report was prepared.
 - (iii) with effect from the (2005/06) school year, include information as to the facilities provided to assist access to the school by disabled pupils, and the accessibility plan for the school
- (3) The Board of Governors may produce its report(s) in such language or languages (in addition to English) as it considers appropriate.
- (4) The Board of Governors shall take such steps as are reasonably practicable to secure that (for each school under its management and control) -
 - (a) the parents of all registered pupils at the school, all persons employed at the school, the Chief Executive of the board and the Chief Executive of the Council are given (free of charge) a copy of its report in respect of that school;
 - (b) copies of that report are available for inspection (at all reasonable times and free of charge) at the school; and
 - (c) copies of any such report to be considered at an annual parents' meeting are given to parents not less than two weeks before that meeting.

Annual Parents' Meeting

- 20. (1) The Board of Governors shall (in respect of each school under its management and control) hold a meeting once in every school year ("the annual parents' meeting") which is open to -
 - (a) all parents of registered pupils at the school; and
 - (b) such other persons (including assistant teachers at the school, representatives of the board and the Council) as the Board of Governors may invite.
- (2) The purpose of the meeting shall be to provide an opportunity for discussion of -

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- (a) the report of the Board of Governors under Article 19 of this scheme;
 - (b) the discharge by the Board of Governors, the principal, the board, the Council and the Department of their functions in relation to the school;
 - (c) where relevant, discuss any Inspection Report and the Board of Governors' response to that report [cf 21 (3) (b)].
- (3) Unless prevented from doing so by illness or other unavoidable cause each member of the Board of Governors shall be expected to attend the annual parents' meeting. When a member is unable to attend the annual parents' meeting he shall advise the secretary of the Board of Governors of his inability to attend.
- (4) The procedure to be followed at the annual parents meeting shall be regulated in accordance with Schedule 1 of this scheme.
- (5) The Board of Governors shall -
- (a) consider, or where appropriate refer for consideration to the next meeting of the Board of Governors, any resolution which is duly passed at an annual parents' meeting and which it considers is a matter for it;
 - (b) request the principal to comment orally, or subsequently in writing to the Board of Governors on any such resolution which it considers is a matter for him; and
 - (c) send to the board or the Council or the Department a copy of any such resolution which it considers is a matter for the board or the Council or the Department as the case may be.

School Inspections

- 21.
- (1) The Board of Governors shall convene a meeting with the Reporting Inspector, and, if relevant, any other member of the Inspection Team, before each general or focused inspection of the school takes place for the purpose of making the Board of Governors' views about the school known to the Inspection Team.
 - (2) The procedure for a meeting convened under paragraph (1) of this Article shall be as set out in Schedule 2 to this scheme.
 - (3) After each general or focused inspection of the school, the Board of Governors shall -

- (a) provide the parents of all registered pupils at the school with a summary of the general inspection report or the full report of the focused inspection which will be prepared by the Department;
 - (b) within three months of receiving the Inspection Report prepare its response to the report which shall set out the action which the Board of Governors intends to take;
 - (c) discuss the general or focused Inspection Report and the Board of Governors' response to that report with parents at the annual parents' meeting convened under **Article 19** of this scheme.
- (4) After any other inspection the Board of Governors shall provide, on request, a copy of the Inspectorate's findings to the parents of all registered pupils at the school.

Other Reports and Returns

22. The Board of Governors shall provide for the board any information, reports and returns as may reasonably be required for the exercise of the board's functions in relation to the school, and shall at all times assist the board in the exercise of such functions.
23. The Board of Governors shall provide for the Council any information, reports and returns as the Council may reasonably require for the exercise of its functions in relation to the school, being reports or returns which cannot (for whatever reason) be obtained by the Council from the Department or the board.

School Premises

24. (1) The Board of Governors shall be responsible for the safeguarding of all equipment provided for the purposes of any school under its management and control, and shall from time to time and not less than once in each school year inspect the premises and equipment of the school. The Board of Governors shall submit a report to the Chief Executive of the board about any matter arising from such an inspection which falls within the responsibility of the board.
- (2) The Board of Governors shall draw to the attention of the trustees any need which, in its judgement, exists for alterations or extensions to the premises of the school.
- (3) The Board of Governors may at any time submit proposals to the board relating to any repair, maintenance or equipment considered necessary for the school for which the Board of Governors has no delegated responsibility under a scheme approved under the Education Orders, and may authorise the principal to submit urgent proposals directly to the board.
- (4) The Board of Governors may, if authorised by the board, incur reasonable expenditure on emergency works of repair and maintenance to the school

premises for which the Board of Governors has no delegated responsibility under a scheme approved under the Education Orders but shall not otherwise have any power to carry out such works.

- (5) The Board of Governors shall notify the board in writing of any use made of the school premises for other than school purposes or in the case of a community school non-school activities and shall obtain from the user body written indemnity against -
- (a) any damage caused to the school property and premises;
 - (b) any personal injury caused on the school premises or the school property, and
 - (c) any other public loss;

for the period during which the school is in use for non-school activities.

- (6) The Board of Governors shall afford to authorised officers of the board necessary access to the premises of the school for the proper discharge of the duties of the board in relation to the school except where such access is at the discretion of the Board of Governors under Article 29 (2) (f) of the 1989 Order.
- (7) The functions of the Board of Governors shall not extend to any accommodation or equipment provided by the board solely for school meals purposes, where the school does not have a delegated budget or where it does have a delegated budget but no allowance is made for expenditure on or in connection with such a service in determining the school's budget share (within the meaning of Part V of the 1989 Order).

Power of Chairperson or Vice-Chairperson of the Board of Governors to act in Cases of Urgency.

25. (1) The chairperson or, if he cannot be contacted, the vice-chairperson of the Board of Governors of a school shall, in the circumstances mentioned in **paragraph (2)** below have the power to discharge any function of the Board of Governors, and shall report such action to the next meeting of the Board of Governors which shall be convened at the earliest possible opportunity thereafter.
- (2) The circumstances are that the deferment of the function to the earliest date when it would be practicable to convene a Board of Governors meeting would be likely to be seriously detrimental to the interests of the school, or to the interests of any registered pupil at the school, his parent, or a person employed at the school.

PART V

COMMITTEES OF THE BOARD OF GOVERNORS

Functions of a committee

26. (1) The Board of Governors may establish such committees, including a Finance Committee, as it considers necessary and may -
- (a) subject to paragraphs (2) and (3) delegate to such a committee such of its functions as it considers desirable except functions relating to powers conferred or duties imposed by or under the following provisions -
- (i) Articles 4, 10 and 11 of the 1989 Order which relate to duties with respect to the curriculum.
 - (ii) Article 13(3A) and 3(B) of the 1986 Order - appointment of parent governors - and Articles 122 and 139 (5) of the 1989 Order - co-option of members to the Board of Governors.
 - (iii) Articles 31 and 42 (3) of the 1989 Order and Article 17 of the 1997 Order
 - (iv) Article 16 of the 1997 Order which relates to the criteria for selecting pupils for admission to the school(s).
 - (v) Article 69 of the 1989 Order as amended by Article 36 of the 1996 Order which relates to the initiation of procedures for the acquisition of grant-maintained integrated status.
 - (vi) Article 69 of the 1989 Order as applied by Article 91 of that Order as amended by Article 36 of the 1996 Order - which relates to the initiation of the procedures for the acquisition of controlled integrated status.
 - (vii) Article 3(2)(a) and (b) of the 1998 Order as amended by the 2003 Order which relates to the provision of a statement of general principles concerning pupil discipline.
 - (viii) Article 125 of the 1989 Order in so far as approval of the annual report of the Board of Governors is concerned.

- (ix) Article 131 of the 1989 Order which relates to charges and remissions policies.
 - (x) A scheme approved by the Department under Article 143 of the 1989 Order which relates to the appointment of teachers.
 - (xi) Article 47 of this scheme which relates to the election of chairperson and vice-chairperson of the Board of Governors.
 - (xii) Article 39 of this scheme in so far as it relates to the convening of meetings of the Board of Governors.
 - (xiii) This Article of this scheme which relates to the delegation of functions to a committee.
- (b) refer any matters within its purview to such a committee for consideration and report.
- (2) Subject to the Education Orders the financial functions of the Board of Governors under the Education Orders may not be delegated to a committee other than the Finance Committee of the Board of Governors.
 - (3) The functions to be delegated to a committee under this Article shall not, unless the Board of Governors otherwise determines, include the power to take decisions on behalf of or in the name of the Board of Governors without the approval of the Board of Governors.

Membership of a Committee

- 27. (1) Subject to the following provisions of this Article the membership of a committee established under Article 25 of this scheme shall be determined by the Board of Governors and may include persons who are not members of the Board of Governors.
- (2) Apart from the committee established to consider appeals against staff dismissal, a committee established under Article 25 of this scheme must always provide for voting members of the Board of Governors to be in the majority and the absolute minimum of voting Governors permitted within that constraint is three.
- (3) The members of the Finance Committee of the Board of Governors shall consist entirely of members of the Board of Governors the majority of whom shall be voting members of the Board of Governors. This does not affect the right, under Article 40 (1) and (5) of this scheme, of persons other than members to attend such meetings.

- (4) The majority of the members of a committee to which functions of the Board of Governors under paragraph 5 of Schedule 4 to the 1989 Order are delegated shall be voting members of the Board of Governors.
- (5) The majority of the members of a committee to which functions of the Board of Governors under paragraph 5 of Schedule 4 to the 1989 Order are delegated shall be voting members of the Board of Governors.
- (6) Where a committee to which functions of the Board of Governors under paragraph 5 of Schedule 4 to the 1989 Order are delegated, takes any decision as to the dismissal of a member of staff (referred to in this Article as a "first committee"), no member of that committee shall take part in the proceedings of any committee established to consider any appeal against that decision (referred to in this Article as an "appeal committee").
- (7) The membership of an appeal committee shall include no fewer voting members of the Board of Governors than that of the first committee the decision of which is subject to appeal.

Disqualification and Termination of Membership

28. (1) Articles 6 (1) (b) and (c) and (2) and 8 (4) (b) and (c) of this scheme shall apply to the membership of a committee in the same manner as it applies to the membership of the Board of Governors.
- (2) A member of a committee other than the principal may resign by giving notice to the Board of Governors and shall do so if he is disqualified from membership under paragraph (1).
- (3) Where a member of a committee other than the principal is absent from three consecutive meetings the secretary of the committee shall report the matter to the Board of Governors and unless the Board of Governors is satisfied that his failure to attend was occasioned by illness or other unavoidable cause, the member shall be deemed to have resigned his membership and shall cease to be a member of the committee.

PART VI

FUNCTIONS OF THE PRINCIPAL

General

29. (1) In addition to his statutory functions and subject to the provisions of the Education Orders and regulations, orders and directions made thereunder and to the provisions of this scheme and a scheme under the Education Orders and such directions as may, from time to time, be given to him by the Board of Governors, the principal shall control the internal organisation, management and discipline of the school.

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- (2) Unless the board otherwise approves nothing in paragraph (1) shall apply to -
- (a) the school meals service or staff employed at the school solely for the purposes of the school meals service; or
 - (b) non-teaching staff, other than school meals staff, employed by the board on a contract;

Where the school has no delegated budget or where it does have a delegated budget but no allowance is made for expenditure on or in connection with the items of expenditure referred to in paragraph 2(a) or (b) as appropriate in determining the school's budget share (within the meaning of the Education Orders)."

Delegated Functions

30. (1) Subject to a financial scheme under the Education Orders the Board of Governors may delegate to the principal such of its functions in respect of the school for which the principal is appointed, as it considers desirable except functions relating to powers conferred or duties imposed by or under the following provisions -
- (a) Articles 4, 10 and 11 of the 1989 Order which relate to duties with respect to the curriculum.
 - (b) Article 13 (3A) and (3B) of the 1986 Order - appointment of parent governors - and Articles 122 or 139 (5) of the 1989 Order - co-option of members to the Board of Governors.
 - (c) Articles 31 of the 1989 Order and Article 17 (3) of the 1997 Order which relate to the provision and publication of information.
 - (d) Article 16 of the 1997 Order which relates to the criteria for selecting pupils for admission to the school(s).
 - (e) Article 69 of the 1989 Order, as amended by Article 36 of the 1996 Order - which relates to the initiation of procedures for the acquisition of grant-maintained integrated status.
 - (f) Article 69 of the 1989 Order as applied by Article 91 of that Order, as amended by Article 36 of the 1996 Order which relates to the initiation of procedures for the acquisition of controlled integrated status.
 - (g) Article 88 of the 1986 Order which relates to the appointment of non-teaching staff.
 - (h) Article 3(2)(a) and (b) of the 1998 Order and Article 15 2(a) and (b) of this scheme which relates to the provision of a statement of general principles concerning pupil discipline.
 - (i) Article 125 of the 1989 Order in so far as approval of the annual report of the Board of Governors is concerned.
 - (j) Article 131 of the 1989 Order which relates to charges and remissions policies.
 - (k) A scheme approved by the Department under Article 143 of the 1989 Order which relates to the appointment of teachers, other than the functions relating to the recruitment of teachers to posts of less than six months' duration and any function of the Board of Governors under the Council's scheme for the promotion of teachers.

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- (l) Paragraph 5 of Schedule 4 to the 1989 Order which relates to the dismissal of staff.
 - (m) **Article 39 (3)** of this scheme which relates to the convening of meetings.
 - (n) **Article 47** of this scheme which relates to the election of chairperson and vice-chairperson of the Board of Governors.
 - (o) This **Article** of this scheme which relates to the delegation of functions to the principal.
- (2) The functions to be delegated to a principal under this **Article** shall not unless the Board of Governors otherwise determines, include the power to take decisions on behalf of or in the name of the Board of Governors without the approval of the Board of Governors.
- (3) The principal shall carry out any functions delegated to him by the Board of Governors under this **Article** of this scheme and shall report any action or decision taken by him in relation to those functions to the next meeting of the Board of Governors or as soon as practicable thereafter.

Curriculum

31. In relation to the curriculum the principal shall carry out the functions allocated to him under **paragraph (5) of Article 14** of this scheme.

Child Protection

32. The school's Record of Child Abuse Complaints should be made available to the Board of Governors at least annually. The Education and Training Inspectorate will ask to see the Record during inspections.

Communication

33. The principal shall -
- (a) promote regular communication between assistant teachers and parents of pupils; and
 - (b) maintain regular communication and consultation between himself and assistant teachers on the management of the school, curricular matters and on matters relating to the education, health and welfare and discipline of the pupils;

and shall report to the Board of Governors on these matters as necessary or when so requested by the Board of Governors.

Pupil Discipline

34. (1) It will be the duty of the principal -
- (a) to determine measures (which may include the making of rules and provision for enforcing them) to be taken with a view to -
 - (i) promoting, among pupils, self-discipline and proper regard for authority;
 - (ii) encouraging good behaviour and respect for others on the part of pupils and in particular preventing all forms of bullying among pupils;
 - (iii) ensuring that the standard of behaviour of pupils is acceptable; and
 - (iv) otherwise regulating the conduct of pupils.
 - (aa) before determining such measures, to consult the registered pupils at the school and the parents of those pupils
 - (b) in determining such measures -
 - (i) to act in accordance with the current statement made by the Board of Governors under Article (15)(a) of this scheme; and
 - (ii) to have regard to any notification or guidance given to him under Article (15)(c) of this scheme;
 - (c) to prepare a written statement of such measures and secure that -
 - (i) a copy of that statement is given (free of charge) to the parents of all registered pupils at the school; and
 - (ii) copies of that statement are available for inspection (at all reasonable times and free of charge) at the school.
- (2) The standard of behaviour which is to be regarded as acceptable at the school shall be determined by the principal insofar as it is not determined by the Board of Governors.

Pupil Suspension and Expulsion

35. In determining the measures in relation to the suspension or expulsion of any pupil the principal shall -
- (i) act in accordance with the scheme prepared by CCMS under Article 49 of the 1986 Order as amended by Article 39 of the 1993 Order and any written statement of general principles provided for him by the Board of Governors.

- (ii) have regard to any guidance that the Board of Governors may offer in relation to particular matters.

Meetings of the Board of Governors and Committees Thereof

36. Unless prevented from doing so by illness or other unavoidable cause and subject to paragraph 2 (5) of Schedule 5 to the 1986 Order and to **Articles 40 (3), 50, 51, 53 and 54** of this scheme, the principal shall attend every meeting of the Board of Governors and of any committees established under **Article 26** of this scheme of which he is a member. If the principal is unable to attend a meeting of the Board of Governors or a committee of which he is a member he shall inform that Board of Governors of the reason for his inability to attend. In these circumstances the Board of Governors may require the assistance of a vice-principal.

Resolutions of Annual Parents' Meetings

37. When so requested by the Board Of Governors the principal shall comment in writing on any resolution which is duly passed by an annual parents meeting and which the Board of Governors consider is a matter for him and report on any action he has taken thereon.

PART VII

PROCEEDINGS OF THE BOARD OF GOVERNORS AND COMMITTEES THEREOF OTHER THAN PROCEEDINGS REQUIRED UNDER ARTICLES 19 AND 20 OF THIS SCHEME

Frequency of Meetings

38. (1) The Board of Governors shall meet as often as the conduct of business may require, being not less than once in each school term.
- (2) A Committee established by the Board of Governors under **Article 26** of this scheme shall meet as often as the conduct of its business may require.
- (3) The chairperson of the Board of Governors or of a committee, as the case may be, may call a meeting of its members at any time and shall do so within 21 days following receipt of a written request made by not less than one third of the members.

Convening of Meetings

39. (1) Five clear days at least before a meeting of the Board of Governors or a committee thereof, notice of the time and place of the meeting, together with the agenda for the meeting, shall be sent -

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- (a) as appropriate to each member of the Board of Governors or committee thereof, and to the Chief Executive of the board and the Senior Management Officer of the diocese; and
 - (b) in the case of a meeting of a committee, to the secretary of the Board of Governors.
- (2) Subject to **paragraph 3** and **Article 66(1)** and (3) of this scheme a copy of each written report or paper to be considered by members at the meeting shall be sent to each of those members five full days at least before the meeting and on request to the Chief Executive of the board and the Senior Management Officer of the diocese.
- (3) The chairperson may withhold any report or paper relating to a matter specified on the agenda from a member who would be required under this scheme to withdraw from the meeting during discussion and consideration of the subject matter of the report or paper in question.

Right to Attend Meetings

40. (1) (a) The Chief Executive of the Council or other officer of the Council as the Chief Executive may nominate and the Senior Management Officer of the diocese; and
- (b) the Chief Executive of the board or other officer of the board as the Chief Executive may nominate,
- may upon giving notice to the secretary, attend any meeting of the Board of Governors or a committee thereof in an advisory capacity, but shall not vote on any question.
- (2) Subject to **paragraph (3)** and **Article 54 (1)** of this scheme the principal shall be entitled to attend any meeting of a committee of the Board of Governors of which he is not a member.
- (3) Where a Board of Governors is responsible for two or more schools the principal of any one of those schools shall not be entitled to attend or take part in a meeting of a committee of the Board of Governors whenever a matter relating exclusively to one or more of the other schools is being discussed.
- (4) A principal, who is acting as secretary to the Board of Governors or a committee thereof, may, with the agreement of the members, admit a person to any Board of Governors or committee meeting for the purpose of providing secretarial assistance.
- (5) A member of staff in the school with responsibility for any aspect of school finance may, upon the invitation of the Finance Committee, attend a meeting of that committee when matters other than staffing matters are

being discussed provided that he has no personal or pecuniary interest in the matters under discussion.

- (6) Members of the Education and Training Inspectorate of the Department of Education, may, upon the invitation of the Board of Governors, attend a meeting of the Board of Governors or a committee thereof, for the purpose of discussing matters relevant to any inspection of the school undertaken by the Education and Training Inspectorate.

Stated Items on the Agenda

41. (1) The agenda for every meeting of the Board of Governors shall include -
- (a) when appropriate, the election of a chairperson;
 - (b) when appropriate, the election of a vice-chairperson and/or the appointment of a secretary;
 - (c) the minutes of the previous meeting and matters arising from those minutes;
 - (d) business to be raised by members, notice of which has been submitted in accordance with Article 56 of this scheme;
 - (e) any business which must be settled in the interests of the efficient management of the school [or schools];
 - (f) a written report or where time has not allowed for the production of a written report, an oral report by the principal which shall include such matters as may previously have been requested by members;
 - (g) (i) matters arising from the minutes or other written report of a committee of the Board of Governors where such a committee has sat since the last meeting of the Board of Governors; or
(ii) an oral report by the chairperson or voting member of a committee of the Board of Governors where the committee has sat since the last meeting of the Board of Governors but time has not allowed for the preparation of minutes or a written report;
 - (h) where appropriate, a report on the previous annual parents' meeting, and any resolutions arising therefrom which were referred for further consideration.
- (2) Every item stated on the agenda for a meeting of the Board of Governors shall be directly relevant to the functions of, or to some matter which affects the functions of, the Board of Governors or a committee thereof.

42. (1) **Article 41(1)(a) to (f) and (h)** of this scheme shall apply to the agenda for every meeting of a committee as it applies to the agenda for every meeting of the Board of Governors.
- (2) Every item stated on the agenda for a committee meeting shall be directly relevant to the functions of, or to some matter which affects the functions of, the committee.
43. (1) The minutes of the previous meeting shall, unless the members decide otherwise, be the first item on the agenda. The other stated items on the agenda shall be listed in order of priority according to the importance and/or urgency of the subject matter.
- (2) The chairperson of the meeting may amend the order or priority determined under **paragraph (1)** above if he considers it convenient and conducive to the efficient dispatch of business.

Commencement of Business

44. The business of any meeting shall proceed immediately upon a quorum being formed and the chair being taken once the appointed time for the meeting has been reached or passed.

Quorum

45. (1) The quorum for a meeting of the Board of Governors shall be one half (rounded up to a whole number) of the total number of voting members entitled to be present.
- (2) The quorum for a meeting of a committee of the Board of Governors shall be one third (rounded up to a whole number) and not less than three of the total number of voting members entitled to be present.
- (3) If during any meeting of the Board of Governors or a committee thereof the number of members assembled ceases to constitute a quorum the meeting shall be adjourned.
- (4) When a voting member is required under the provisions of this scheme to withdraw from a meeting, he shall not be counted for the purposes of **paragraphs (1) and (2)** of this Article as a voting member entitled to be present.

Order of Business

46. The business of the meeting shall follow the order specified in the agenda, or as amended by the chairperson.

Election of Chairperson

47. (1) At the first meeting of each newly-constituted Board of Governors, the voting members shall elect a chairperson and a vice-chairperson from among those of their number who are not members of staff and the persons so elected shall hold office until the election of their successors.
- (2) Should a vacancy occur in the office of chairperson or vice-chairperson of the Board of Governors the voting members shall at the next meeting of the Board of Governors elect one of their number who is not a member of staff to fill that vacancy.
- (3) Should the chairperson and vice-chairperson of the Board of Governors be absent from a meeting, the voting members present shall elect one of their number who is not a member of staff to be chairperson of that meeting.
48. **Article 47** of this scheme shall apply to the election of a chairperson of a committee as it applies to the election of a chairperson of the Board of Governors.

Appointment of Secretary

49. (1) Subject to paragraphs (2) and (3) -
- (a) the Board of Governors shall appoint a person to act as its secretary; and
- (b) a committee of the Board of Governors shall appoint a person to act as its secretary.
- (2) Neither the principal of nor other teacher in the school shall act as secretary at any meeting of the Board of Governors or of a committee thereof at which any matter relating to the appointment, remuneration, tenure or conditions of service, status, conduct, discipline, suspension, dismissal, resignation, retirement or superannuation of the principal is to be considered.
- (3) Where a Board of Governors is responsible for two or more schools, the principal of any one of those schools shall not act as secretary at any meeting of the Board of Governors or a committee thereof whenever a matter relating conclusively to one or more of the other schools is to be considered.

Declaration of Family Relationships of Members

50. (1) Every member of the Board of Governors or a committee thereof shall disclose in writing to the secretary any family or other relevant relationship known to him to exist between himself and any person who is employed, or is a candidate for employment in any school for which the Board of Governors is appointed; and all such disclosures shall as soon as practicable

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be brought to the notice of the Board of Governors and any committee of which he is a member.

- (2) For the purposes of this Article, a family relationship shall be deemed to exist between a member and a person who is employed or who is a candidate for employment in the school if they are husband and wife or living together as husband and wife, or if the person who is employed or is a candidate for employment, or the husband or wife or co-habitee of that person, is the -

- (a) parent;
- (b) grandparent;
- (c) grandson or granddaughter;
- (d) son or daughter;
- (e) brother or sister;
- (f) first cousin;
- (g) uncle or aunt;
- (h) all equivalent step-relationships; or
- (i) nephew or niece;

of the member, or of the husband or wife or co-habitee of the member.

- (3) Where a member who is required to make such disclosure is present at a meeting of the Board of Governors or a committee thereof at which any matter is being considered relating to or affecting the appointment, remuneration, tenure or conditions of service, promotion, status, conduct, suspension, dismissal, retirement or superannuation of a person to whom he stands in a family or other relevant relationship, he shall withdraw from the meeting during consideration and discussion of that matter, and any vote relating thereto.

51. (1) Where a member of the Board of Governors or a committee thereof who has a family or other relevant relationship with a pupil, is present at a meeting which includes discussion of -

- (a) the admission of, or disciplinary action against, that pupil; or
- (b) disciplinary action against another pupil arising out of an alleged incident involving the pupil first mentioned in this paragraph;

he shall declare his relationship at the meeting as soon as practicable after its commencement and shall withdraw from the meeting during consideration and discussion of the matter in question and any vote relating thereto.

- (2) For the purposes of this Article a family relationship shall be deemed to exist if the member is the parent, grandparent, brother or sister, uncle or aunt, or equivalent step-relationship, of the pupil.

- (3) A member who is required to make a declaration under paragraph (1) shall withdraw from the meeting during consideration and discussion of the matter in question, and any vote relating thereto.

Declaration of Knowledge of Canvassing

52. Where a member of the Board of Governors or a committee thereof has knowledge of any instance of canvassing for an appointment, contract or order with which the Board of Governors or a committee is concerned, he shall declare this knowledge before the issue is discussed. The Board of Governors shall consider any action which might be necessary arising from such a declaration.

Declaration of Pecuniary Interest

53. Where a member of the Board of Governors or a committee thereof has any pecuniary interest, whether direct or indirect, in the supply of goods or services to any school for which the Board of Governors is appointed, or in any other matter under consideration by the Board of Governors or a committee, he shall, if present at a meeting at which any such matter is to be considered, disclose openly the nature of his interest as soon as practicable after the commencement of the meeting. He shall withdraw from the meeting during consideration or discussion of that matter and any vote on any question related to that matter.

Withdrawal of Principal or Teacher Member

54. (1) If the principal is present at a meeting of the Board of Governors or a committee thereof at which -
- (a) his remuneration, tenure or conditions of service; or
 - (b) his conduct, discipline, suspension, dismissal, transfer, resignation or retirement; or
 - (c) his continued employment at the school;
 - (d) his transfer from one post to another or his promotion;
 - (e) the appointment of a successor to him;
- is the subject of consideration or discussion he shall withdraw from the meeting during consideration and discussion of, and voting on, that matter and his withdrawal shall be recorded in the minutes.
- (2) If a teacher member is present at a meeting of the Board of Governors or a committee thereof at which -
- (a) his remuneration, tenure, or conditions of service; or
 - (b) his promotion or transfer; or

- (c) his conduct, discipline, suspension, dismissal, resignation or retirement; or
- (d) the appointment of his successor; or
- (e) the appointment, the transfer, or the promotion of, any teacher, to a post senior to his own; or
- (f) the conduct, discipline, suspension, dismissal, resignation or retirement of any member of staff holding a post senior to his own;

is the subject of consideration, discussion or voting, he shall withdraw from the meeting during such consideration, discussion or voting on that matter and his withdrawal shall be recorded in the minutes.

"In Committee" Proceedings

55. (1) Subject to paragraph (2) the Board of Governors or a committee thereof may at any time during a meeting of its members resolve itself into committee for the purpose of transacting any business on the agenda for that meeting.
- (2) A resolution under paragraph (1) may only be made in respect of business which, because of its nature and subject to any guidance from the Department, members consider should be dealt with in a confidential manner.
- (3) The business referred to in the resolution shall be the only matter considered "in committee". Once the business has been considered the meeting shall be resumed and the recommendation(s) made "in committee" shall be proposed for adoption.
- (4) "In committee" proceedings may not be adjourned but if the business is for any reason unfinished the meeting shall be resumed and the chairperson of that meeting may propose that the business be again considered "in committee" on another day.

Notice of Business to be raised by Members

56. (1) Subject to Article 57 of this scheme notice of any business to be raised by a member or members at a meeting of the Board of Governors or a committee thereof shall be given in writing, signed by the member or members giving the notice and delivered at least ten full days before the next meeting to the secretary of that meeting.
- (2) If that business is not raised at the meeting either by a member who gave notice thereof or by some other member on his behalf it shall be treated as withdrawn.

- (3) If the subject matter of any business raised at a Board of Governors meeting of which notice has been given under paragraph (1) comes within the remit of any committee or committees of the Board of Governors, it shall, upon being proposed and seconded stand referred without discussion to such committee or committees, for consideration and report, provided that the chairperson of the Board of Governors may, with the consent of the majority of members present, and if it is convenient and conducive to the dispatch of business to do so, allow the business to be dealt with at the meeting of the Board of Governors at which it is raised.

Business Not Requiring Notice

57. (1) The chairperson of the Board of Governors may permit the following business to be raised at a meeting of the Board of Governors without notice
- (a) amendments to the minutes;
 - (b) amendments to the order of business;
 - (c) proposals arising out of agenda items, to be put before members for decision;
 - (d) amendments to proposals at (c);
 - (e) a request for a recorded vote on any issue put to members for decision;
 - (f) a proposal to adjourn discussion on a particular item of business or a matter related to that item;
 - (g) a proposal to adjourn the meeting;
 - (h) a proposal for a member to withdraw;
 - (i) a proposal to initiate "in committee" proceedings under **Article 55** of this scheme;
 - (j) adoption of reports and recommendations of the principal;
 - (k) adoption of reports and recommendations of committees;
 - (l) appointment of a committee under **Article 26** of this scheme occasioned by an agenda item;
 - (m) remission of an agenda item to a committee already established under **Article 25** of this scheme.

(2) This Article does not apply to a proposal to rescind or vary a resolution carried at a previous meeting.

58. **Article 57 (1) (a) to (j) and (2)** of this scheme shall apply to the meetings of a committee as it applies to the meetings of the Board of Governors.

Rules of Debate

59. (1) No discussion of business shall take place at a meeting of the Board of Governors or a committee thereof at any time when the chair is vacant.
- (2) A member shall address the chair when speaking and shall direct his speech to the business of the meeting, to a proposal or an amendment to a proposal related to that business, or to a point of order.
- (3) If notice of any business raised by a member at the meeting has not been given in accordance with **Article 56** of this scheme, it shall, if required by the chairperson, be put into writing and handed to the chairperson before it is further discussed or put to the meeting.
- (4) A proposal relating to the business of the meeting or an amendment to such a proposal shall not be discussed unless it has been formally proposed by a member at the meeting and seconded.
- (5) Subject to **paragraph (6)** the chairperson may recommend and, with the agreement of members, shall set limits on the frequency and duration of individual debates as appear to be necessary for the efficient discharge of the business of meetings.
- (6) A member who makes a proposal relating to the business of the meeting has the right to reply at the close of the debate on the proposal and on an amendment to the proposal immediately before it is put to the vote.
- (7) A member who is speaking shall not be interrupted by another member unless on a point of order.
- (8) A member who is called to order shall cease to speak until the point of order is disposed of.
- (9) A point of order shall relate only to an alleged breach of the scheme of management or to another statutory provision. When a member raises a point of order he must specify the provision in question and state the way in which he considers it to have been broken.
- (10) A point of order must be dealt with before business is resumed.
- (11) The ruling of the chairperson on a point of order shall not be open to discussion.

Voting

60. (1) A member who is not a voting member of the Board of Governors shall not be entitled to vote on any question at any meeting of the Board of Governors or a committee thereof other than at a meeting of a committee established to consider appeals against staff dismissal.
- (2) Every question before a meeting of the Board of Governors or a committee thereof shall, subject to **Articles 46, 56 (3) and 62(1)** of this scheme, be determined by a majority of the votes of the voting members present and voting thereon. Where there is an equal division of votes, the chairperson of the meeting shall have a second or casting vote.
- (3) Any member shall have the right to propose that the votes cast by members on any item of business be recorded. Where a member makes such a proposal but it is not carried, the member shall retain the right to have his own vote recorded.

Disorderly Conduct

61. If at a meeting of the Board of Governors or a committee thereof any member persistently disregards the procedures for the conduct of business contained in this scheme including the ruling of the chair, and wilfully and persistently obstructs the business of the meeting, a proposal for the member to withdraw from the meeting may be made and the proposal if seconded shall be put to the voting members of the meeting and determined without discussion.

Adjournment of Meetings

62. (1) A meeting of the Board of Governors or a committee thereof may be adjourned by the chairperson of the meeting. When a meeting is adjourned to a later time on the same day or to another date the adjourned meeting shall be treated as a continuation of the original meeting. When a meeting is adjourned indefinitely any unfinished business shall be dealt with at the next ordinary meeting.
- (2) Where the date fixed for an adjourned meeting so permits, notice of the adjourned meeting shall be sent to -
- (a) each member, the Chief Executive of the board and the Senior Management Officer of the diocese; and
- (b) where the meeting is a meeting of a committee, the secretary of the Board of Governors;
- on the first working day after the adjournment.

- (3) No business shall be conducted at the reconvened meeting which was not on the agenda for the original meeting unless notice thereof is sent to -
- (a) each member, the Chief Executive of the board and the Senior Management Officer of the diocese, and
 - (b) where the meeting is a meeting of a committee, the secretary of the Board of Governors;
- five full days before such a meeting.

Minutes

63. (1) A separate record shall be taken of -
- (a) the proceedings of each meeting of the Board of Governors;
 - (b) the proceedings of each meeting of a committee of the Board of Governors; and
 - (c) "in committee" proceedings at each such meeting;
- by the secretary to those proceedings.
- (2) Subject to **Article 64** of this scheme the minutes of the proceedings listed at **paragraph (1)** shall be recorded in a form acceptable to the Board of Governors.

Content of Minutes

64. (1) the minutes required under **Article 63 (1) (a) and (b)** of this scheme shall record -
- (a) the names of those present at the meeting and any apologies received from absent members;
 - (b) when appropriate, changes in the membership;
 - (c) any amendments agreed at that meeting to the minutes of the previous meeting and matters arising from those minutes;
 - (d) any declarations required under **Articles 50 to 53** of this scheme;
 - (e) all withdrawals required under **Articles 50,51,53,54 and 61** of this scheme and any subsequent re-entries;
 - (f) those items of business which are taken under "in committee" proceedings in accordance with **Article 55** of this scheme;

- (g) the results of any votes taken by members at that meeting and, upon the request of a member, the members' vote in relation to any issue put before the meeting;
- (h) where it is agreed that all the votes cast on any item of business are to be recorded, those voting for, those voting against and those abstaining;

and shall be signed by the appropriate chairperson as an accurate record of proceedings.

- (2) The content of the minutes required under **Article 63 (1) (c)** of this scheme shall be agreed by the members during those proceedings and signed by the chairperson as an accurate record of those proceedings.

Discussion of Minutes

- 65. Discussion of the minutes required under **Article 63** of this scheme shall be restricted to the question of accuracy. Any question as to the accuracy of the minutes shall be raised and settled before any matters arising from the minutes are discussed.

Distribution of Minutes

- 66. (1) A copy of the minutes required under **Article 63 (1) (a)** and **(b)** of this scheme shall be sent to the Chief Executive of the board and the Senior Management Officer of the diocese within one month after that meeting and to each member at least five full days before the next meeting.
- (2) The Board of Governors shall make a copy of the signed minutes of any of its meetings, and a copy of any written report or paper considered at its meetings, available upon request to a member of staff or a parent of a pupil at any school for which the Board of Governors is appointed and may exclude from those copies any material relating to -
 - (a) a named teacher or other person employed at or proposed to be employed at the school;
 - (b) a named pupil at, or applying for admission to, the school;
 - (c) any matter which, by reason of its nature, the Board of Governors is satisfied should be dealt with on a confidential basis.
- (3) Subject to **paragraph (5)** the minutes of any "in committee" proceedings required under **Article 63 (1) (c)** of this scheme shall not be circulated or accessible without the permission of the Board of Governors to any person including a member who is required to withdraw from those proceedings under **Articles 50, 51, 53 and 54** of this scheme. The chairperson of the Board of Governors shall make arrangements for the minutes of all such "in committee" proceedings to be kept in a secure place.

SCHEME OF MANAGEMENT 2002

- (4) No records of any proceedings of a meeting of the Board of Governors or a committee thereof other than those required under **Article 63** of this scheme shall be circulated to any person.
- (5) Any minute purporting to be signed as mentioned in **Article 64 (1) and (2)** of this scheme shall be received in evidence without further proof.

PART VIII

COPIES OF THE SCHEME

67. A copy of this scheme shall be available to each member of the Board of Governors and each member of a committee of the Board of Governors who is not a member of the Board of Governors and upon request to any member of the staff of the school.

PART IX

MAKING AND APPROVAL OF THE SCHEME


68. This scheme was prepared by the Council for Catholic Maintained Schools.
Sealed with the Common Seal of the Council for Catholic Maintained Schools this


Member of Council


Member of Council

The Department of Education hereby approves this scheme and hereby specifies
that it shall come into operation on

SEALED with the Official Seal :
of the Department of Education :
on 9 September 2018:


Senior Officer of the Department of Education

SCHEDULE 1

ANNUAL PARENTS' MEETING

Articles 18 and 19 of this Scheme of Management contain the requirements of Articles 125 and 126 of the Education Reform (NI) Order 1989 relating to the duty of each Board of Governors to produce annually a report in respect of the exercise of its functions for the previous school year and to hold an annual meeting of parents at which the report of governors and other related matters may be discussed.

The annual report being sent to parents should include information as to the day, date, time and place of the annual parents' meeting.

Convening of Meeting

1. The annual parents' meeting shall be convened by the principal of the school after consultation with the Board of Governors.

The notification to parents shall indicate the day, date, time and place of the meeting which should be held at a time (preferably evening) and in a place most convenient for the majority of parents. The notice shall be accompanied by a copy of the annual report of the Board of Governors.

Parents should be notified in writing not less than two weeks before the meeting.

Agenda for Annual Parents Meeting

2. The annual report shall contain an agenda for the parents meeting. The items on the agenda will vary from school to school, but each agenda should contain the following items:

- (i) Apologies
- (ii) Minutes of the Last Parents' Meeting
- (iii) Matters Arising from the Minutes
- (iv) Any resolution duly passed at a previous annual meeting
- (v) The Annual Report of the Board of Governors (only the more important items should be listed)
- (vi) The Discharge of their Functions in Relation to the School by
 - the Board of Governors;
 - the Education and Library Board;

- the Council for Catholic Maintained Schools;
- the Department of Education;
- (vii) Financial Statement (PTA finances to be included)
- (viii) Election of Parent Governor (if appropriate)

Attendance

3. The meeting shall be open to all parents of registered pupils at the school and such other persons as the Board of Governors may invite which will include all members of the Board of Governors and all staff of the school, both teaching and non-teaching.

Quorum

4. No quorum has been specified for the annual parents' meeting. However, where the meeting is used as the occasion for the election of a parent governor, then for that item on the agenda there will require to be present either 50 or 10% of parents entitled to vote, whichever is the lesser.

Chairperson

5. The chairperson of the Board of Governors or, in his absence, the vice-chairperson, shall act as chairperson of the meeting. Should neither the chairperson nor vice-chairperson be present, the remaining voting governors shall elect one of their number to be chairperson of that meeting.

Secretary

6. The Board of Governors shall appoint a person to act as secretary.

Conduct of Meeting

7. The chairperson shall be in control of the meeting and the business of the meeting shall be conducted in accordance with the "Rules of Debate" as detailed in Article 59 of this Scheme of Management

Voting

8. Voting shall normally be by show of hands. Only parents of registered pupils will be entitled to vote.

Minutes

9. Copies of the minutes of the meeting and any resolutions passed at the meeting shall be forwarded to the Diocesan Education Office as soon as is practicable after the meeting.

SCHEDULE 2

PROCEDURE FOR MEETINGS ABOUT SCHOOL INSPECTIONS

1. When a general inspection of the school is due to take place, the Board of Governors shall make arrangements to meet the Reporting Inspector.
2. The meeting shall be held at such time and place as is convenient for the Reporting Inspector and the Board of Governors.
3. The meeting shall be under the control of the Board of Governors.
4. The secretary to the Board of Governors shall prepare an agenda for the meeting, after consultation with the Reporting Inspector.
5. The Board of Governors shall choose one of its voting members to be chairperson of the meeting and another person to be secretary to the meeting.
6. At the commencement of the meeting the chairperson shall explain the purpose of the meeting and invite the Reporting Inspector to make an introductory statement. The Chairperson shall then allow the Board of Governors to comment on any matter properly relevant to the business of the meeting.
7. The secretary shall prepare a written report of the proceedings of the meeting and submit it to the next meeting of the Board of Governors and to the Reporting Inspector before the general or focused inspection takes place.
8. Any question arising at the meeting about whether a matter may be properly be discussed at the meeting shall be determined by the chairperson on the advice of the Reporting Inspector.

SCHEDULE 3

LEGISLATION IN THE EMPLOYMENT FIELD

SCHEDULE 3

Fair Employment and Treatment (NI) Order 1998 No 3162 (NI 21)
Sex Discrimination (NI) Order 1976 No 1042 (NI 15)
Sex Discrimination (NI) Order 1988 No 1303 (NI 13)
Equal Pay Act (NI) 1970 (Chapter 32)
Disability Discrimination Act (NI) 1995 (Chapter 50)
Race Relations (NI) Order 1997 No 869 (NI 6)
Commissioner for Complaints (NI) Order 1996 No 1297 (NI 7)
EC Equal Treatment Directive 1976 No 297
The Freedom of Information Act 2000

NOTE:

*Some of the provisions in the extant primary legislation listed above have been amended since enactment.**

The Education and Library Board Scheme for the Management of Controlled Schools Arrangement of Scheme

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Part I - Citation

1. The Education and Library Board in pursuance of Article 9B of the Education and Libraries (Northern Ireland) Order 1986 and after the consultation required by Article 9B(1) of that Order, has prepared the following scheme providing for -

- (a) the membership and procedure of the Board of Governors of each school under its management other than a controlled integrated school;
- (b) the management of each such school;
- (c) the functions to be exercised in relation to each such school by the Board of Governors, committees of the Board of Governors and the principal;
- (d) such other matters as are required or authorised by the Education Orders to be included in or regulated by the scheme.

2. The school shall be conducted in accordance with -

- (a) the provisions of the Education Orders;
- (b) the terms of this scheme;
- (c) any regulations or orders made by the Department;
- (d) any direction or guidance of the Department;
- (e) any rules or directions of the Board.

Part II - Interpretation

3. (1) In this scheme, unless the context otherwise requires -

"board" means the Education and Library Board;

"Chief Executive" means the Chief Executive of the board;

"committee" means a committee established under Article 23 of this scheme;

"co-opted member" means a member who has been co-opted under Article 122 or 139 of the 1989 Order;

"Department" means the Department of Education;

"in committee proceedings" means that part of a meeting which is to be kept private;

"meeting" means a meeting of the Board of Governors or as the case may be a committee established under Article 22 of this scheme;

"member" means a member of the Board of Governors or as the case may be a member of a committee established under Article 22 of this scheme;

"non-school activities" means activities, other than school activities, carried on wholly or mainly under the management or control of the Board of Governors;

"principal" means the principal of the school;

"school" means [any school to which this scheme applies]; [the school referred to in Article 1(a) of the Scheme];

"secretary" means the secretary to the Board of Governors or to a committee of the Board of Governors, who is appointed under Article 43 of this scheme;

"the Education Orders" means the 1986, 1989, 1993, 1996, 1997, 1998 and 2003 Orders;

"the 1986 Order" means the Education and Libraries (NI) Order 1986;

"the 1989 Order" means the Education Reform (NI) Order 1989;

"the 1993 Order" means the Education and Libraries (NI) Order 1993;

"the 1996 Order" means the Education (NI) Order 1996;

"the 1997 Order" means the Education (NI) Order 1997;

"the 1998 Order" means the Education (NI) Order 1998;

"the 2003 Order" means the Education and Libraries (NI) Order 2003;

"voting member of the Board of Governors" means a member other than the principal or a co-opted member;

"voting member of a committee" means a member entitled to vote at a committee meeting under Article 54 of this scheme.

(2) The Interpretation Act (NI) 1954 shall apply for the interpretation of this scheme.

Part III - Membership of the Board of Governors

Membership

4. Subject to Article 13 of the 1986 Order, Articles 122 and 139 of the 1989 Order, Article 14 of the 1998 Order and Article 23 of the 2003 Order, each Board of Governors shall be appointed by the board in accordance with the provisions of Article 10 of and Schedule 4 to the 1986 Order.

Acceptance of Membership

5. Every member shall, at or before the first meeting of which he is notified, sign a declaration of his acceptance of membership and of this scheme of management and submit it to the secretary to the Board of Governors otherwise his membership shall be void.

Disqualification from Membership

6. (1) A person, other than the principal or a teacher elected in accordance with the relevant provisions of Schedule 4 to the 1986 Order, who -

(a) is employed for gain solely in [the] [a] school or in the case of a community school for the purposes solely of non-school activities; or

(b) has within the five years before the first day that his membership could have taken effect or at any time thereafter been convicted by a court in Northern Ireland or elsewhere in the *British Islands of any offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine;

(c) is adjudged bankrupt or who has made a ** composition or arrangement with his creditors; or

(d) on the making of a Bankruptcy Restrictions Order (BRO);

shall not be a member of the Board of Governors of the school.

(2) (a) Where a person is disqualified from membership by reason of his having been adjudged bankrupt, that disqualification shall cease -

(i) on his discharge from bankruptcy, unless the bankruptcy order made against that person is previously annulled; and

(ii) if the bankruptcy is so annulled, on the date of the annulment.

(b) Where a person is disqualified by reason of his/her having made a composition or arrangement with his/her creditors and he/she pays his/her debts in full, the disqualification shall cease on the date on which the payment is completed and in any other case it shall cease on the expiration of five years from the date on which the terms of the deed of composition or arrangement are fulfilled.

Footnotes:

*The Interpretation Act (NI) 1954 defines the British Islands as the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland.

**This is where an agreement has been made for the payment of a sum in lieu of a larger sum or other obligation.

Term of Office

7. (1) Subject to Article 8 of this scheme, Article 13(4) of the 1986 Order and Article 23 of the 2003 Order, the term of office of voting and co-opted members shall coincide with that of members of the board, provided that members shall remain in office until their successors are appointed.

(2) Any voting or co-opted member going out of office may be re-appointed unless he is disqualified or otherwise ineligible.

Termination of Membership

8. (1) A voting or co-opted member may resign by giving written notice to the Chief Executive.

(2) A member nominated by the board who is also a member of the board shall, unless the board otherwise determines, cease to be a member if he ceases to be a member of the board.

(3) Where a voting or co-opted member is absent from three consecutive meetings of the Board of Governors, or for six months consecutively, whichever is the greater period, the secretary shall report the matter at the next meeting and, unless the Board of Governors is satisfied that his failure to attend was occasioned by illness or other unavoidable cause, the member shall be deemed to have resigned his membership and shall cease to be a member.

(4) A member other than the principal or teacher elected in accordance with the relevant provisions of Schedule 4 to the 1986 Order who -

(a) subsequently becomes an employee of any school for which the Board of Governors is appointed, in accordance with the terms of Article 6(1)(a) of this scheme; or

(b) is subsequently convicted of an offence and sentenced by a court, in accordance with the terms of Article 6(1)(b) of this scheme; or

(c) subsequently becomes bankrupt, in accordance with the terms of Article 6(1)(c) of this scheme;

shall thereupon cease to be a member of the Board of Governors.

Vacancies

9. A vacancy occurring among the voting members or members co-opted under Article 139 of the 1989 Order shall be filled as soon as practicable by a person nominated, elected, chosen or co-opted by the persons or body entitled to nominate, elect, choose or co-opt him/her and that person shall hold office on the same terms as those members. Where a person co-opted under Article 122 of the 1989 Order ceases to be a member, the Board of Governors may co-opt another person in his place and that person shall hold office on the same terms as the person so replaced.

Part IV - Functions of the Board of Governors

General

10. In addition to its statutory functions, and subject to the provisions of the Education Orders and regulations, orders and directions made thereunder and to the provisions of schemes under the Education Orders, the Board of Governors shall manage and control the school for which it is appointed in accordance with this scheme.

Appointment of Teachers and Other Staff

11. The functions of the Board of Governors in relation to the appointment of teachers under a scheme under Article 153 of the 1989 Order and the appointment of non-teaching staff under Article 88 of the 1986 Order shall be carried out on behalf of, and in the name of, the board.

School Development Plans

12. (1) Subject to regulations made under Article 13(3) of the 1998 Order, the Board of Governors shall prepare, and from time to time revise, a school development plan.

(2) In preparing or revising a school development plan, the Board of Governors shall –

(a) consult the principal of the school;

(b) consider –

(i) any guidance given by the Department, the board for the area in which the school is situated and (in the case of a Catholic maintained school) the Council for Catholic Maintained Schools; and

(ii) the findings of any inspection of the school under Article 102 of the 1986 Order.

Determination of Curriculum Policy and of the Curriculum

13. (1) The Board of Governors shall:

(a) determine, and keep under review, its policy in relation to the curriculum for the school; and

(b) make, and keep up to date, a written statement of that policy.

(2) The policy determined by a Board of Governors under paragraph (1)(a) in relation to the curriculum for a school shall be compatible with -

(a) any programme of study specified under Article 7(1)(a) of the 1989 Order which forms part of that curriculum;

(b) any syllabus for a course which forms part of that curriculum and leads to an examination for a qualification approved under Article 9(1) of the 1989 Order; and

(c) the statutory provisions relating to education (including, in particular, those relating to children with special educational needs).

(3) In discharging its duty under paragraph (1), a Board of Governors shall consider, in particular -

(a) the range of the curriculum; and

(b) the balance between, and coherence of, its different components.

(4) The Board of Governors shall -

(a) when determining or reviewing its policy in relation to the curriculum for the school -

(i) take account of the findings of any inspection of the school under Article 102 of the 1986 Order;

(ii) consider any representations made to it regarding the curriculum by the board and any other person or body connected with the community served by the school.

(b) consult the principal of the school before making or varying any statement under paragraph (1)(b).

(5) The Board of Governors shall allocate to the principal such functions as will, subject to the resources available, enable him to determine and organise the curriculum in accordance with the curriculum policy for the school determined under paragraph 1 of this Article and secure that it is followed within the school.

(6) The Board of Governors shall furnish the board with a copy of every statement made by it under paragraph (1)(b).

The Principal

14. (1) The Board of Governors shall -

(a) assist the principal in such manner as is reasonably necessary to enable him to control the internal organisation, management and discipline of the school, subject to such directions as may from time to time be given by the Board; and

(b) provide the principal with such opportunity as may be necessary to enable him to express his opinions and to make his recommendations to the Board of Governors (in writing if so required) on all matters connected with the school, including the appointment and removal of non-teaching staff.

15. The Board of Governors shall encourage -

(a) the principal to promote regular communication between assistant teachers and parents of pupils;

(b) the principal to maintain regular communication and consultation with his assistant teachers on the management of the school, curricular matters and on matters relating to the education, health and welfare, and discipline of the pupils;

and shall from time to time request a report from the principal on these matters.

Pupil Discipline

16. (1) The Board of Governors shall ensure that policies designed to promote good behaviour and discipline on the part of its pupils are pursued at the school.

(2) In particular it shall:

(a) make, and from time to time review, a written statement of general principles to which the principal is to have regard in determining any measures under Article 30(1)(a) of this scheme;

(b) before making or revising that statement –

(i) consult (in such manner as appears to it to be appropriate) the principal and the registered pupils at the school and the parents of those pupils; and

(ii) consider any guidance given by the Department and the board for the area in which the school is situated.

(c) where it considers it desirable that any particular measures should be determined by the principal under Article 30(1)(a) of this scheme or that he should have regard to any particular matters –

(i) notify him of those measures or matters; and

(ii) give him such guidance as it considers appropriate.

Annual Report of the Board of Governors

17. (1) The Board of Governors shall once in every school year prepare a report in respect of the previous school year containing a summary of the steps taken by the Board of Governors in the discharge of its functions during the period covered by the report.

(2) The report shall -

(a) be as brief as is reasonably consistent with the requirements as to its contents;

(b) give details of the date, time and place for the next annual parents' meeting and its agenda and indicate that the purpose of that meeting will be to provide an opportunity for discussion of the report and of the discharge by the Board of Governors, the principal, the board and the Department of their functions in relation to the school;

(c) report on the consideration given and any action taken in relation to any resolutions passed at the previous annual parents' meeting;

(d) give the name of each member of the Board of Governors and indicate into which of the following categories he falls, namely:-

(i) members nominated by the transferors and superseded managers of the contributory schools;

(ii) members elected by parents;

(iii) members elected by assistant teachers;

(iv) members chosen by the board;

(v) members nominated by the Head of the Department;

(vi) members co-opted under Article 122 of the 1989 Order;

(vii) members co-opted under Article 139 of the 1989 Order;

(viii) the principal;

(e) give, in relation to each member (other than the principal) the date on which his term of office comes to an end;

(f) name the Chair of the Board of Governors and its secretary;

(g) give such information as is available to the Board of Governors about arrangements for the next election of parents to the Board of Governors;

(h) contain a financial statement -

(i) reproducing or summarising any financial statement of which a copy has been furnished to the Board of Governors by the board under the Education Orders since the last report was prepared;

(ii) indicating, in general terms, how any sum made available to the Board of Governors by the board in respect of the school's budget share (within the meaning of the Education Orders) in the period covered by the report was used;

(iii) giving details of the application of any gifts or bequests made to the school in that period.

(i) describe what steps have been taken by the Board of Governors to develop or strengthen the school's links with the community and, in particular, to promote the attainment of the objectives of the educational theme called Education for Mutual Understanding;

(j) give such information as is required to be made available in accordance with regulations under Article 31(2)(a) of the 1989 Order;

(k) (i) describe the arrangements made and facilities provided for special educational needs (SEN) and disabled pupils including any special admission arrangements which the governors have made and the steps taken to ensure that pupils with special educational needs or disabilities are treated no less favourably than other pupils under Article 8 of the 1996 Order;

(ii) describe the steps taken to secure the implementation of their special educational needs (SEN) policies in accordance with Article 9 of the 1996 Order;

[(iii) with effect from the [2005/06] school year, include information as to the facilities provided to assist access to the school by disabled pupils and the accessibility plan for the school;]

(l) describe in general terms –

(i) the arrangements made for the security of the pupils and staff of the school and the school premises; and

(ii) any changes to those arrangements since the last report was prepared.

(3) The Board of Governors may produce its report in such language or languages (in addition to English) as it considers appropriate.

Footnote: [] is subject to an Appointed Day provision

(4) The Board of Governors shall take such steps as are reasonably practicable to secure that -

(a) the parents of all registered pupils at the school, all persons employed at the school, and the Chief Executive of the board are given (free of charge) a copy of its report in respect of that school;

(b) copies of that report are available for inspection (at all reasonable times and free of charge) at the school; and

(c) copies of any such report to be considered at an annual parents' meeting are given to parents not less than two weeks and not more than four weeks before that meeting.

Annual Parents' Meeting

18. (1) The Board of Governors shall hold a meeting once in every school year and in the first term of every school year thereafter ("the annual parents' meeting") which is open to -

(a) all parents of registered pupils at the school; and

(b) such other persons (including assistant teachers at the school and representatives of the board) as the Board of Governors may invite.

(2) The purpose of the meeting shall be to provide an opportunity for discussion of -

(a) the report of the Board of Governors under Article 17 of this scheme;

(b) the discharge by the Board of Governors, the principal, the board and the Department of their functions in relation to the school.

(3) Unless prevented from doing so by illness or other unavoidable cause each member of the Board of Governors shall be required to attend the annual parents' meeting. When a member is unable to attend the annual parents' meeting he shall advise the secretary of the Board of Governors of the reason for his inability to attend. The secretary shall report the absence to the next meeting of the Board of Governors.

(4) The procedure to be followed at the annual parents' meeting shall be regulated in accordance with Schedule 1 to this scheme.

(5) The Board of Governors shall -

(a) consider any resolution which is duly passed at an annual parents' meeting and which it considers is a matter for it;

(b) request the principal to comment in writing on any such resolution which it considers is a matter for him; and

(c) send to the board or the Department a copy of any such resolution which it considers is a matter for the board or the Department as the case may be.

School Inspections

19. (1) The Board of Governors shall convene a meeting with the Reporting Inspector, and, if relevant, any other member of the Inspection Team, before each general or focused inspection of the school takes place for the purpose of making the Board of Governors' views about the school known to the Inspection Team.

(2) The procedure for a meeting convened under paragraph (1) of this Article shall be as set out in Schedule 2 to this scheme.

(3) After each general or focused inspection of the school, the Board of Governors shall -

(a) provide the parents of all registered pupils at the school with a summary of the general inspection report or the full report of the focused inspection which shall be prepared by the Department;

(b) within 3 months of receiving the Inspection Report prepare its response to the Report which shall set out the action which the Board of Governors intends to take;

(c) discuss the general or focused inspection report and the Board of Governors' response to that report with parents at the annual parents' meeting convened under Article 18 of this scheme.

(4) After any other inspection the Board of Governors shall provide, on request, a copy of the Inspectorate's findings to the parents of all registered pupils at the school.

School Premises

20. (1) Subject to any direction given to it by the board, the use of the school premises shall be under the control of the Board of Governors at all times except to the extent necessary for the exercise by the board of its powers under Article 62(2) of the 1989 Order.

(2) The Board of Governors shall from time to time and not less than once in each school year inspect the premises and equipment of any school under its management and control and shall submit an annual report to the Chief Executive about the condition and state of repair thereof.

(3) The Board of Governors shall draw to the attention of the board any need which, in its judgement, exists for alterations or extensions to the premises of the school.

(4) The Board of Governors may at any time submit proposals to the board relating to any repairs, maintenance or equipment considered necessary for the school for which the Board of Governors has no delegated responsibility under a scheme approved under the 1989, 1998 and 2003 Orders and may authorise the principal to submit urgent proposals directly to the board.

(5) The Board of Governors may, if authorised by the board, incur reasonable expenditure on emergency works of repair and maintenance to the school premises for which the Board of Governors has no delegated responsibility under a scheme approved under the 1989, 1998 and 2003 Orders but shall not otherwise have any power to carry out such works.

(6) The Board of Governors shall afford to authorised officers of the board necessary access to the premises of the school for the proper discharge of the duties of the board in relation to the school except where such access is at the discretion of the Board of Governors under Article 29(2)(f) of the 1989 Order.

Power of the Chair or Vice-Chair of the Board of Governors to act in cases of urgency

21. (1) The Chair of, if he cannot be contacted, the Vice-Chair of the Board of Governors of a school shall, in the circumstances mentioned in paragraph (2) below, have the power to discharge, any function of the Board of Governors, and shall report such action to the next meeting of the Board of Governors.

(2) The circumstances are that the deferment of the function to the earliest date when it would be practicable to convene a Board of Governors' meeting would be likely to be seriously detrimental to the interests of the school or the interests or any registered pupil at the school, his parent, or a person employed at the school.

Part V - Committees of the Board of Governors

Functions of a Committee

22. (1) The Board of Governors may establish such committees, including a Finance Committee, as it considers necessary and may -

(a) subject to paragraphs (2) and (3), delegate to such a committee such of its functions as it considers desirable except functions relating to powers conferred or duties imposed by or under the following provisions -

(i) Articles 4, 10 and 11 of the 1989 Order which relate to duties with respect to the curriculum;

(ii) Article 13(3A) and (3B) of the 1986 Order - appointment of parent governors - and Articles 122 and 139(5) of the 1989 Order - co-option of members to the Board of Governors;

(iii) Articles 31 of the 1989 Order and Article 17(3) of the 1997 Order which relate to the provision and publication of information;

(iv) Article 16 of the 1997 Order which relates to the criteria for selecting pupils for admission to the school;

(v) Article 69 of the 1989 Order which relates to the initiation of procedures for the acquisition of grant-maintained integrated status;

(vi) Article 69 of the 1989 Order as applied by Article 91 of that Order which relates to the initiation of procedures for the acquisition of controlled integrated status;

(vii) Article 3(2)(a) and (b) of the 1998 Order as amended by the 2003 Order which relates to the provision of a statement of general principles concerning pupil discipline;

(viii) Article 125 of the 1989 Order in so far as approval of the annual report of the Board of Governors is concerned;

(ix) Article 131 of the 1989 Order which relates to charges and remissions policies;

(x) Article 41 of this scheme which relates to the election of Chair and Vice-Chair of the Board of Governors;

(xi) Article 33(3) of this scheme in so far as it relates to the convening of meetings of a Board of Governors;

(xii) this Article of this scheme which relates to the delegation of functions to a committee;

(b) refer any matters within its purview to such a committee for consideration and report.

(2) Subject to the 1989, 1998 and 2003 Orders, the financial functions of the Board of Governors may not be delegated to a committee, other than the Finance Committee of the Board of Governors.

(3) The functions to be delegated to a committee under this Article shall not, unless the Board of Governors otherwise determines, include the power to take decisions on behalf of or in the name of the Board of Governors without the approval of the Board of Governors.

Membership of a Committee

23. (1) Subject to the following provisions of this Article the membership of a committee established under Article 22 of this scheme shall be determined by the Board of Governors and may include persons who are not members of the Board of Governors.

(2) A committee established under Article 22 of this scheme apart from the committee established to consider appeals against staff dismissal shall include not less than three voting members of the Board of Governors.

(3) The members of the Finance Committee of the Board of Governors shall consist entirely of members of the Board of Governors, the majority of whom shall be voting members of the Board of Governors.

(4) A committee established to undertake functions of the Board of Governors relating to the appointment of teachers or the promotion of teachers under a scheme of the board shall consist of five voting members of the Board of Governors and, where appropriate, the principal of the school.

(5) The majority of the members of a committee to which functions of the Board of Governors under paragraph 5 of Schedule 4 to the 1989 Order are delegated shall be voting members of the Board of Governors.

(6) Where a committee to which functions of the Board of Governors under paragraph 5 of Schedule 4 to the 1989 Order are delegated, takes any decision as to the dismissal of a member of staff (referred to in this Article as a "first committee"), no member of that committee shall take part in the proceedings of any committee established to consider any appeal against that decision (referred to in this Article as an "appeal committee").

(7) The membership of an appeal committee shall include no fewer voting members of the Board of Governors than that of the first committee the decision of which is subject to appeal.

Disqualification and Termination of Membership

24. (1) Articles 6(1)(b) and (c) and (2) and 8(4)(b) and (c) of this scheme shall apply to the membership of a committee in the same manner as it applies to the membership of the Board of Governors.

(2) A member of a committee other than the principal may resign by giving notice to the Board of Governors and shall do so if he is disqualified from membership under paragraph (1).

(3) Where a member of a committee other than the principal is absent from 3 consecutive meetings of the committee during a period in which three meetings are held, or during a period of six months, whichever is the greater, the secretary of the committee shall report the matter to the Board of Governors and unless the Board of Governors is satisfied that his failure to attend was occasioned by illness or other unavoidable cause, the member shall be deemed to have resigned his membership and shall cease to be a member of the committee.

Part VI - Functions of the Principal

General

25. (1) In addition to his statutory functions and subject to the provisions of the Education Orders and regulations, orders and directions made thereunder and to the provisions of this scheme and a financial scheme under the Education Orders and such directions as may, from time to time, be given to him by the Board of Governors, the principal shall control the internal organisation, management and discipline of the school.

(2) Unless the board otherwise approves nothing in paragraph (1) shall apply to -

(a) the school meals service or staff employed at the school solely for the purposes of the school meals service; or

(b) non-teaching staff, other than school meals staff, employed by the board on a contract;

where the school has no delegated budget or where it does have a delegated budget but no allowance is made for expenditure on or in connection with the items of expenditure referred to in paragraph 2(a) or (b) as appropriate in determining the school's budget share (within the meaning of the Education Orders).

Delegated Functions

26. (1) Subject to a financial scheme under the Education Orders, the Board of Governors may delegate to the principal such of its functions in respect of the school for which the principal is appointed, as it considers desirable except functions relating to powers conferred or duties imposed by or under the following provisions -

(a) Articles 4, 10 and 11 of the 1989 Order which relate to duties with respect to the curriculum;

(b) Article 13(3A) and (3B) of the 1986 Order - appointment of parent governors - and Articles 122 and 139(5) of the 1989 Order - co-option of members to the Board of Governors;

(c) Articles 31 of the 1989 Order and Article 17(3) of the 1997 Order

which relate to the provision and publication of information;

(d) Article 16 of the 1997 Order which relates to the criteria for selecting pupils for admission to the school;

(e) Article 69 of the 1989 Order which relates to the initiation of procedures for the acquisition of grant-maintained integrated status;

(f) Article 69 of the 1989 Order as applied by Article 91 of that Order which relates to the initiation of procedures for the acquisition of controlled integrated status;

(g) Article 88 of the 1986 Order which relates to the appointment of non-teaching staff;

(h) Article 3(2)(a) and (b) of the 1998 Order and Article 16 2(a) and (b) of this scheme which relates to the provision of a statement of general principles concerning pupil discipline;

(i) Article 125 of the 1989 Order in so far as approval of the annual report of the Board of Governors is concerned;

(j) Article 131 of the 1989 Order which relates to charges and remissions policies;

- (k) Paragraph 5 of Schedule 4 to the 1989 Order which relates to the dismissal of staff;
 - (l) Article 33(3) of this scheme which relates to the convening of meetings;
 - (m) Article 41 of this scheme which relates to the election of Chair and Vice-Chair of the Board of Governors;
 - (n) This Article of this scheme which relates to the delegation of functions to the principal;
 - (o) Any functions of the Board of Governors under the board's scheme for teaching appointments under Article 153 of the 1989 Order or under the board's scheme for the promotion of teachers other than functions relating to the recruitment of temporary teachers to posts for periods of less than one year's duration.
- (2) The functions to be delegated to a principal under this Article shall not, unless the Board of Governors otherwise determines, include the power to take decisions on behalf of or in the name of the Board of Governors without the approval of the Board of Governors.
- (3) The principal shall carry out any functions delegated to him by the Board of Governors under this Article of this scheme and shall report any action or decision taken by him in relation to those functions to the next meeting of the Board of Governors or as soon as practicable thereafter.

Curriculum

27. In relation to the curriculum the principal shall carry out the functions allocated to him under paragraph (5) of Article 13 of this scheme.

Communication

28. The principal shall -

- (a) promote regular communication between assistant teachers and parents of pupils; and
- (b) maintain regular communication and consultation with his assistant teachers about the management of the school, curricular matters and on matters relating to the education, health and welfare, and discipline of the pupils;

and shall report to the Board of Governors on these matters as necessary or when so requested by the Board of Governors.

Meetings of the Board of Governors and Committees Thereof

29. (1) Unless prevented from doing so by illness or other unavoidable cause and subject to Article 44 to 48 of this scheme, the principal shall attend every meeting of the Board of Governors and of any committees established under Article 22 of this scheme of which he is a member.

(2) If the principal is unable to attend a meeting of the Board of Governors or a committee of which he is a member he shall inform the Board of Governors of the reason for his inability to attend. In these circumstances, the Board of Governors may require the attendance of a vice-principal.

Pupil Discipline

30. (1) It will be the duty of the principal -

(a) to determine measures (which may include the making of rules and provision for enforcing them) to be taken with a view to –

(i) promoting, among pupils, self-discipline and proper regard for authority;

(ii) encouraging good behaviour and respect for others on the part of pupils and, in particular, preventing all forms of bullying among pupils;

(iii) securing that the standard of behaviour of pupils is acceptable; and

(iv) otherwise regulating the conduct of pupils;

(aa) before determining such measures, to consult the registered pupils at the school and the parents of those pupils;

(b) in determining such measures -

(i) to act in accordance with the current statement made by the Board of Governors under Article 16(2)(a) of this scheme; and

(ii) to have regard to any notification or guidance given to him under Article 16(2)(c) of this scheme;

(c) To prepare a written statement of such measures and secure that -

(i) a copy of that statement is given (free of charge) to the parents of all registered pupils at the school; and

(ii) copies of the statement are available for inspection (at all reasonable times and free of charge) at the school.

(2) The standard of behaviour which is to be regarded as acceptable at the school shall be determined by the principal so far as it is not determined by the Board of Governors.

Resolutions of Annual Parents' Meetings

31. When so requested by the Board of Governors the principal shall comment in writing on any resolution which is duly passed by an annual parents' meeting and which the Board of Governors consider is a matter for him and report on any action he has taken thereon.

Part VII: Proceedings of the Board of Governors and Committees Thereof, other than Proceedings Required Under Articles 18 and 19 of this Scheme

Frequency of Meetings

32. (1) The Board of Governors shall meet as often as the conduct of business may require, being not less than once in each school term.

(2) A committee established by the Board of Governors under Article 22 of this scheme shall meet as often as the conduct of its business may require.

(3) The Chair of the Board of Governors or of a committee, as the case may be, may call a meeting of its members at any time and shall do so within 21 days following receipt of a written request made by not less than one-third of the members.

Convening of Meetings

33. (1) Five full days at least before a meeting of the Board of Governors or of a committee thereof, notice of the time and place of the meeting, together with the agenda for the meeting, shall be sent -

(a) as appropriate, to each member of the Board of Governors or committee thereof, and to the Chief Executive; and

(b) in the case of a meeting of a committee, to the secretary of the Board of Governors.

(2) Subject to paragraph (3), and Article 60(2) and (3) of this scheme a copy of each written report or paper to be considered by members at the meeting shall be sent to each of those members five full days at least before the meeting and, on request, to the Chief Executive.

(3) The Chair may withhold any report or paper relating to a matter specified on the agenda from a member who would be required under this scheme to withdraw from the meeting during discussion and consideration of the subject matter of the report or paper in question.

Right to Attend Meetings

34. (1) The Chair of the board and the Chief Executive, or other officer(s) of the board as the Chief Executive may nominate, may, upon giving notice to the secretary, attend any meeting of the Board of Governors or a committee thereof in an advisory capacity, but shall not vote on any question.

(2) Members of the Education and Training Inspectorate of the Department of Education, may, upon the invitation of the Board of Governors, attend a meeting of the Board of Governors or a committee thereof, for the purpose of discussing matters relevant to the general inspection of the school.

(3) Subject to Articles 42, 44-48 of this Scheme, the principal shall be entitled to attend any meeting of a committee of the Board of Governors of which he is not a member.

(4) A principal, who is acting as secretary to the Board of Governors or committee thereof, may with the agreement of the members, admit a person to any Board of Governors or committee meeting for the purpose of providing secretarial assistance.

(5) A member of staff of the school with responsibility for any aspect of school finance may, upon the invitation of the Finance Committee, attend a meeting of that committee when matters other than staffing matters are being discussed provided that he has no personal or pecuniary interest in the matters under discussion.

(6) Subject to paragraph (5), a member of staff of the school with expertise or knowledge relevant to an item on the agenda of a meeting of the Board of Governors or a committee thereof, may, upon the invitation of the Board of Governors or the committee, attend that meeting for the purpose of providing advice in relation to that item, provided that he has no personal or pecuniary interest in the matter under consideration. A member of staff of the school attending a meeting in this capacity shall withdraw from the meeting on the cessation of discussion of the agenda item, and before any vote is taken on that item.

Stated Items on the Agenda

35. (1) The agenda for every meeting of the Board of Governors shall include -

(a) when appropriate, the election of a Chair;

(b) when appropriate, the election of a Vice-Chair and/or the appointment of a secretary;

(c) the minutes of the previous meeting and matters arising from those minutes;

(d) business to be raised by members, notice of which has been submitted in accordance with Article 50 of this scheme;

(e) any business which must be settled in the interests of the efficient management of the school;

(f) a written report or, where time has not allowed for the production of a written report, an oral report by the principal which shall include such matters as may previously have been required by members;

(g) (i) matters arising from the minutes or other written report of a committee of the Board of Governors where such a committee has sat since the last meeting of the Board of Governors; or

(ii) a verbal report by the Chair or voting member of a committee of the Board of Governors where the committee has sat since the last meeting of the Board of Governors but time has not allowed for the preparation of minutes or a written report;

(h) where appropriate, a report on the previous Annual Parents' Meeting and any resolutions arising therefore.

(2) Every item stated on the agenda for a meeting of the Board of Governors shall be directly relevant to the functions of, or to some matter which affects the functions of, the Board of Governors or a committee thereof.

36. (1) Article 35(1)(a) to (g) of this scheme shall apply to the agenda for every meeting of a committee as it applies to the agenda for every meeting of the Board of Governors.

(2) Every item stated on the agenda for a committee meeting shall be directly relevant to the functions of, or to some matter which affect the functions of, the committee.

37. (1) The minutes of the previous meeting shall, unless the members decide otherwise, be the first item on the agenda. The other stated items on the agenda shall be listed in order of priority according to the importance and/or urgency of the subject matter.

(2) The Chair of the meeting may amend the order or priority determined under paragraph (1) above if he considers it convenient and conducive to the efficient dispatch of business.

Commencement of Business

38. The business of any meeting shall proceed immediately upon a quorum being formed and the Chair being taken once the appointed starting time for the meeting has been reached or passed.

Quorum

39. (1) The quorum for a meeting of the Board of Governors shall be one-half (rounded up to a whole number) of the total number of voting members entitled to be present.

(2) The quorum for a meeting of a committee of the Board of Governors shall be one-half (rounded up to a whole number) and not less than three of the total number of voting members entitled to be present.

(3) If during any meeting of the Board of Governors or a committee thereof the number of members assembled ceases to constitute a quorum the meeting shall be adjourned.

(4) When a voting member is required under the provisions of this scheme to withdraw from a meeting, he shall not be counted for the purposes of paragraphs (1) and (2) of this Article as a voting member entitled to be present.

Order of Business

40. (1) The business of the meeting shall follow the order specified in the agenda, or as amended by the Chair.

(2) The order of any business which arises during the meeting, and which is not specified in the agenda shall be decided by the Chair.

Election of Chairman

41. (1) At the first meeting of each newly-constituted Board of Governors, the voting members shall elect a Chair and a Vice-Chair from among those of their number who are not members of staff and the persons so elected shall hold office until the election of their successors.

(2) Should a vacancy occur in the office of Chair or Vice-Chair of the Board of Governors the voting members shall at the next meeting of the Board of Governors elect one of their number who is not a member of staff to fill that vacancy.

(3) Should the Chair and Vice-Chair of the Board of Governors be absent from a meeting, the voting members present shall elect one of their number who is not a member of staff to be Chair of that meeting.

42. Article 41 of this scheme shall apply to the election of a Chair of a committee as it applies to the election of a Chair of a Board of Governors.

Appointment of Secretary

43. (1) Subject to paragraph (2) -(3)

(a) the Board of Governors shall appoint a person to act as its secretary; and

(b) a committee of the Board of Governors shall appoint a person to act as its secretary.

(2) Neither the Principal of, nor other teacher, in the school shall act as secretary at any meeting of the Board of Governors or of a committee thereof at which any matter relating to the appointment, remuneration, tenure or conditions of service, status, conduct, discipline, suspension, dismissal, resignation, retirement or superannuation of the principal is to be considered.

Declaration of Family Relationships of Member

44. (1) Every member of the Board of Governors or a committee thereof shall disclose in writing to the secretary any family or other relevant relationship known to him to exist between himself and any person who is employed, or is a candidate for employment, in any school for which the Board of Governors is appointed; and all such disclosures shall as soon as practicable be brought to the notice of the Board of Governors and any committee of which he is a member.

(2) For the purposes of this Article, a family or other relevant relationship shall be deemed to exist between a member and a person who is employed or who is a candidate for employment in the school if they are husband and wife or living together as husband and wife, or if the

person who is employed or is a candidate for employment, or the husband or wife or co-habitee of that person, is the -

(a) parent;

(b) grandparent;

(c) grandson or granddaughter;

(d) son or daughter;

(e) brother or sister;

(f) first cousin;

(g) uncle or aunt;

(h) all equivalent step-relationships; or

(i) nephew or niece;

of the member, or of the husband or wife or co-habitee of the member.

(3) Where a member who is required to make such disclosure is present at a meeting of the Board of Governors or a committee thereof at which any matter is being considered relating to or affecting the appointment, remuneration, tenure or conditions of service, promotion, status, conduct, discipline, suspension, dismissal, retirement or superannuation of a person to whom he

stands in a family or other relevant relationship, he shall withdrawn from the meeting during consideration and discussion of that matters, and any vote relating thereto.

45. (1) Where a member of the Board of Governors or a committee thereof who has a family or other relevant relationship with a pupil, is present at a meeting which includes discussion of -

(a) the admission of, or disciplinary action against, that pupil; or

(b) disciplinary action against another pupil arising out of an alleged incident involving the pupil first mentioned in this paragraph;

he shall declare his relationship at the meeting as soon as practicable after its commencement, and shall withdraw from the meeting during consideration and discussion of the matter in question and any vote relating thereto.

(2) For the purposes of this Article, a family relationship shall be deemed to exist if the member is the parent, grandparent, brother or sister, uncle or aunt, first cousin, nephew or niece or equivalent step-relationship, of the pupil.

Declaration of Knowledge of Canvassing

46. Where a member of the Board of Governors or a committee thereof has knowledge of any instance of canvassing for an appointment, contract or order with which the Board of Governors or a committee is concerned, he shall declare this knowledge before the issue is discussed. The Board of Governors shall determine any action to be taken arising from such a declaration.

Declaration of Pecuniary Interest

47. Where a member of the Board of Governors or a committee thereof has any pecuniary interest, whether direct or indirect, in the supply of goods or services to any school for which the Board of Governors is appointed, or in any other matter under consideration by the Board of Governors or a committee, he shall, if present at a meeting at which any such matter is to be considered, disclose openly the nature of his interest as soon as practicable after the commencement of the meeting. He shall withdraw from the meeting during consideration or discussion of that matter and any vote on any question related to that matter.

Withdrawal of Principal or Teacher Member

48. (1) If the principal or teacher member is present at a meeting of the Board of Governors or a committee thereof at which -

(a) his remuneration, tenure or conditions of service; or

(b) his conduct, discipline, suspension, dismissal, resignation or retirement;

(c) his continued employment at the school;

(d) the appointment of a successor to him;

(e) his transfer from one post to another;

is the subject of consideration or discussion he shall withdraw from the meeting during consideration and discussion of, and voting on, that matter.

(2) If a teacher member is present at a meeting of the Board of Governors or a committee thereof at which -

(a) his remuneration, tenure, or conditions of service; or

(b) his promotion or transfer; or

(c) his conduct, discipline, suspension, dismissal, resignation or retirement; or

(d) the appointment of his successor; or

(e) the appointment, transfer or the promotion of any teacher to a post senior to his own; or

(f) the conduct, discipline, suspension, dismissal, resignation or retirement of any member of staff holding a post senior to his own;

is the subject of consideration or discussion he shall withdraw from the meeting during consideration and discussion of, and voting on, that matter.

"In Committee" Proceedings

49. (1) Subject to paragraph (2) the Board of Governors or a committee thereof may at any time during a meeting of its members resolve itself into committee for the purpose of transacting any business on the agenda for that meeting.

(2) A resolution under paragraph (1) may only be made in respect of business which, because of its nature, and subject to any guidance from the Department, members consider should be dealt with in a confidential manner.

(3) The business referred to in the resolution shall be the only matter considered in committee. Once the business has been considered the meeting shall be resumed and the recommendation(s) made in committee shall be proposed for adoption.

(4) In committee proceedings may not be adjourned but if the business is for any reason unfinished the meeting shall be resumed and the Chair of that meeting may propose that the business be again considered in committee on another day.

Notice of Business to be raised by Members

50. (1) Subject to Article 51 of this scheme notice of any business to be raised by a member or members at a meeting of the Board of Governors or a committee thereof shall be given in writing, signed by the member or members giving the notice and delivered at least ten full days before the next meeting to the secretary of that meeting.

(2) If that business is not raised at the meeting either by a member who gave notice thereof or by some other member on his behalf it shall be treated as withdrawn.

(3) If the subject matter of any business raised at a Board of Governors meeting of which notice has been given under paragraph (1) comes within the remit of any committee or committees of

the Board of Governors, it shall, upon being proposed and seconded, stand referred without discussion to such committee or committees, for consideration and report; provided that the Chair of the Board of Governors may, with the consent of the majority of members present and if it is convenient and conducive to the dispatch of business to do so, allow the business to be dealt with at the meeting of the Board of Governors at which it is raised.

Business Not Requiring Notice

51. (1) The Chair of the Board of Governors may permit the following business to be raised at a meeting of the Board of Governors without notice -

- (a) amendments to the minutes;
- (b) amendments to the order of business;
- (c) proposals arising out of agenda items, to be put before members for decision;
- (d) amendments to proposals at (c);
- (e) a request for a recorded vote on any issue put to members for decision;
- (f) a proposal to adjourn discussion on a particular item of business or a matter related to that item;
- (g) a proposal to adjourn the meeting;
- (h) a proposal for a member to withdraw;
- (i) a proposal to initiate in committee proceedings under Article 49 of this scheme;
- (j) adoption of reports and recommendations of the principal;
- (k) adoption of reports and recommendations of committees;
- (l) appointments of a committee under Article 22 of this scheme occasioned by an agenda item;
- (m) remission of an agenda item to a committee already established under Article 22 of this scheme.

(2) This Article does not apply to a proposal to rescind or vary a resolution carried at a previous meeting.

52. Article 51(1)(a) to (j) and (2) of this scheme shall apply to the meetings of a committee as it applies to the meetings of the Board of Governors.

Rules of Debate

53. (1) No discussion of business shall take place at a meeting of the Board of Governors or a committee thereof at any time when the Chair is vacant.

(2) A member shall address the Chair when speaking and shall direct his speech to the business of the meeting, to a proposal or an amendment to a proposal related to that business, or to a point of order.

(3) If notice of any business raised by a member at the meeting has not been given in accordance with Article 50 of this scheme, it shall, if required by the Chair, be put into writing and handed to the Chair before it is further discussed or put to the meeting.

(4) A proposal relating to the business of a meeting or an amendment to such a proposal shall not be discussed unless it has been formally proposed by a member at the meeting and seconded.

(5) Subject to paragraph (6) the Chair may recommend and, with the agreement of the majority of members, shall set limits on the frequency and duration of individual debates as appear to be necessary for the efficient discharge of the business of meetings.

(6) A member who makes a proposal relating to the business of the meeting has the right to reply at the close of the debate on the proposal and on an amendment to the proposal immediately before it is put to the vote.

(7) A member who is speaking shall not be interrupted by another member unless on a point of order.

(8) A member who is called to order shall cease to speak until the point of order is disposed of.

(9) A point of order shall relate only to an alleged breach of the scheme of management or to another statutory provision. When a member raises a point of order he must specify the provision in question and state the way in which he considers it to have been broken.

(10) A point of order must be dealt with before business is resumed.

(11) The ruling of the Chair on a point of order shall not be open to discussion.

Voting

54. (1) A member who is not a voting member of the Board of Governors shall not be entitled to vote on any question at any meeting of the Board of Governors or a committee thereof other than at a meeting of a committee established to consider appeals against staff dismissal.

(2) Every question before a meeting of the Board of Governors or a committee thereof shall, subject to Articles 40, 50(3) and 56(1) of this scheme, be determined by a majority of the votes of the voting members present and voting thereon. Where there is an equal division of votes, the Chair of the meeting shall have a second or casting vote.

(3) Any member shall have the right to propose that the votes cast by members on any item of business be recorded. Where a member makes such a proposal but it is not carried, the member shall retain the right to have his own vote recorded.

Disorderly Conduct

55. If at a meeting of the Board of Governors or a committee thereof any member persistently disregards the procedures for the conduct of business contained in this scheme including the

ruling of the Chair, and wilfully and persistently obstructs the business of the meeting, a proposal for the member to withdraw from the meeting may be made and the proposal if seconded shall be put to the voting members of the meeting and determined without discussion.

Adjournment of Meetings

56. (1) A meeting of the Board of Governors or a committee thereof may be adjourned by the Chair of the meeting. When a meeting is adjourned to a later time on the same day or to another date the adjourned meeting shall be treated as a continuation of the original meeting. When a meeting is adjourned indefinitely any unfinished business shall be dealt with at the next ordinary meeting.

(2) Where the date fixed for an adjourned meeting so permits, notice of the adjourned meeting shall be sent to -

(a) each member and the Chief Executive; and

(b) where the meeting is a meeting of a committee, the secretary of the Board of Governors;

on the first working day after the adjournment.

(3) No business shall be conducted at the reconvened meeting which was not on the agenda for the original meeting unless notice thereof is sent to -

(a) each member and the Chief Executive; and

(b) where the meeting is a meeting of a committee, the secretary of the Board of Governors;

seven full days before such a meeting.

Minutes

57. (1) A separate record shall be taken of -

(a) the proceedings of each meeting of the Board of Governors;

(b) the proceedings of each meeting of a committee of the Board of Governors; and

(c) in committee proceedings at each such meeting;

by the secretary to those proceedings.

(2) Subject to Article 58 of this scheme the minutes of the proceedings listed at paragraph (1) shall be recorded in a form acceptable to the board.

Content of Minutes

58. (1) The minutes required under Article 57(1)(a) and (b) of this scheme shall record -

(a) the names of those present at the meeting and any apologies received from absent members;

- (b) when appropriate, changes in the membership;
- (c) any amendments agreed at that meeting to the minutes of the previous meeting and matters arising from those minutes;
- (d) any declaration(s) required under Articles 44, 45, 46 and 47 of this scheme;
- (e) all withdrawals required under Articles 34(5), (6) and (7), 44, 47, 48 and 55 of this scheme and any subsequent re-entries;
- (f) those items of business which are taken under in committee proceedings in accordance with Article 49 of this scheme;
- (g) the results of any votes taken by members at that meeting and, upon the request of a member, the members' vote in relation to any issue put before the meeting;
- (h) where it is agreed that all the votes cast on any item of business are to be recorded, those voting for, those voting against and those abstaining;

and shall be signed by the appropriate Chair as an accurate record of proceedings.

(2) The content of the minutes required under Article 57(1)(c) of this scheme shall be agreed by the members present during those proceedings and signed by the Chair as an accurate record of those proceedings.

Discussion of Minutes

59. Discussion of the minutes required under Article 57 of this scheme shall be restricted to the question of accuracy. Any question as to the accuracy of the minutes shall be raised and settled before any matters arising from the minutes are discussed.

Distribution of Minutes

60. (1) A copy of the minutes required under Article 57(1)(a) and (b) of this scheme, shall be sent to the Chief Executive within 14 days after that meeting and to each member at least five full days before the next meeting.

(2) The Board of Governors shall make a copy of the signed minutes of any of its meetings and a copy of any written report or paper considered at its meetings, available upon request to a

member of staff or a parent of a pupil at any school for which the Board of Governors is appointed and may exclude from those copies any material relating to -

- (a) a named teacher or other person employed at or proposed to be employed at the school;
- (b) a named pupil at, or applying for admission to, the school;
- (c) any matter which, by reason of its nature, the Board of Governors is satisfied should be dealt with on a confidential basis.

(3) Subject to paragraph (5) the minutes of any in committee proceedings required under Article 57(1)(c) of this scheme shall not be circulated or accessible without the permission of the

Board of Governors to any person including a member who is required to withdraw from those proceedings under Article 44, 45, 47 or 48 of this scheme. The Chair of the Board of Governors shall make arrangements for the minutes of all such in committee proceedings to be kept in a secure place.

(4) No records of any proceedings of a meeting of the Board of Governors or a committee thereof other than those required under Article 57 of this scheme shall be circulated to any person.

(5) Any minute purporting to be signed as mentioned in Article 58(1) and (2) of this scheme shall be received in evidence without further proof.

Part VIII: Copies of the Scheme

61. A copy of this scheme shall be available to each member of the Board of Governors and each member of a committee of the Board of Governors who is not a member of the Board of Governors and, upon request, to any member of the staff of the school.

Part IX: Making and Approval of the Scheme

62. This scheme was prepared by The Education and Library Board.

Dated this day of .

Chairman

Chief Executive

The Department of Education hereby approves this scheme and hereby specifies that it shall come into operation on .

SEALED with the Official Seal of the Department of Education on .

Senior Officer of the Department of Education

Schedule 1

Annual Parents' Meeting - Procedure

1. The annual parents' meeting (the meeting) shall be under the control of the Board of Governors and shall be held at such time and place as the Board of Governors considers convenient to the parents of registered pupils at the school.

2. The Board of Governors shall choose one of its voting members to be Chair of the meeting and another person to be secretary to the meeting. The secretary shall prepare a written report of the proceedings of the meeting and submit it to the next meeting of the Board of Governors.

3. A copy of the report of the previous meeting shall be given to each person present at the meeting.

4. At the commencement of the meeting the Chair shall explain the purpose of the meeting, report on the outcome, if any, of any resolutions duly passed at the previous meeting and invite the parents present to comment on any matter which may properly be discussed at the meeting.
5. No person who is not the parent of a registered pupil at the school may vote on any question put to the meeting.
6. Voting shall be by show of hands unless the Chair or at least one-third of the parents present call for a secret ballot.
7. Where at least one-tenth of the parents entitled to attend or 50 of such parents, whichever is the less, are present at the meeting the meeting may pass (by a simple majority) resolutions on any matters which may properly be discussed at the meeting.
8. Any question arising at the meeting as to whether a person is a parent of a registered pupil at the school within the definition of this scheme or as to whether a matter may properly be discussed at the meeting shall be determined by the Chair.

Schedule 2

Procedure for Meetings About School Inspections

1. When a general or focused inspection of the school is due to take place, the Board of Governors shall make arrangements to meet the Reporting Inspector.
2. The meeting shall be held at such time and place as is convenient for the Reporting Inspector and the Board of Governors.
3. The meeting shall be under the control of the Board of Governors.
4. The secretary to the Board of Governors shall prepare an agenda for the meeting, after consultation with the Reporting Inspector.
5. The Board of Governors shall choose one of its voting members to be Chair of the meeting and another person to be secretary to the meeting.
6. At the commencement of the meeting, the Chair shall explain the purpose of the meeting and invite the Reporting Inspector to make an introductory statement. The Chair shall then allow the Board of Governors to comment on any matter properly relevant to the business of the meeting.
7. The secretary shall prepare a written report of the proceedings of the meeting and submit it to the next meeting of the Board of Governors and to the Reporting Inspector before the general or focused inspection takes place.
8. Any question arising at the meeting about whether a matter may properly be discussed at the meeting shall be determined by the Chair on the advice of the Reporting Inspector.

Legislation in the Employment Field Schedule 3

Fair Employment and Treatment (NI) Order 1998 No 3162 (NI 21)

Sex Discrimination (NI) Order 1976 No 1042 (NI 15)

Sex Discrimination (NI) Order 1988 No 1303 (NI 13)

Equal Pay Act (NI) 1970 (Chapter 32)

Disability Discrimination Act (NI) 1995 (Chapter 50)

Race Relations (NI) Order 1997 No 869 (NI 6)

Commissioner for Complaints (NI) Order 1996 No 1297 (NI 7)

EC Equal Treatment Directive 1976 No 207

The Freedom of Information Act 2000

Note:

Some of the provisions in the extant primary legislation listed above have been amended since enactment.

Scheme for the Management of Voluntary Grammar School Arrangement of Scheme

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Part I: Citation

1. The Board of Governors of [] Grammar School (hereinafter called the school) in pursuance of the provisions of Article 9B(4)(b) of the Education and Libraries (Northern Ireland) Order 1986 (hereinafter called the 1986 Order), as inserted by Article 123 of the Education Reform (Northern Ireland) Order 1989 (hereinafter called the 1989 Order) has prepared the following scheme providing for -

- (a) the membership and procedure of the Board of Governors of the school;
- (b) the management of the school;

(c) the functions to be exercised by the Board of Governors, committees of the Board of Governors and the Principal; and

(d) such other matters as are required or authorised by the Education Orders to be included in or regulated by the scheme.

2. The school shall be conducted in accordance with -

(a) the provisions of the Education Orders;

(b) the terms of this Scheme;

(c) any regulations or orders made by the Department; and

(d) any direction or guidance of the Department.

Part II: Interpretation

3. (1) In this scheme, unless the context otherwise requires

"board" means the education and library board for the area in which the school is situated;

"Chair" means the Chair of the Board of Governors or a committee thereof;

"Committee" means a committee established under Article 24 of this scheme;

"co-opted member" means a member who has been co-opted under Article 122 or 139 of the 1989 Order;

"Department" means the Department of Education for Northern Ireland;

"in committee" proceedings" means that part of a meeting which is to be kept in private;

"meeting" means a meeting of the Board of Governors or as the case may be a committee established under Article 24 of this scheme;

"member" means a member of the Board of Governors or as the case may be a committee established under Article 24 of this scheme;

"non-school activities" means activities, other than school activities, carried on wholly or mainly under the management or control of the Board of Governors;

"Principal" means the principal of the school;

"school" means [] Grammar School;

"secretary" means the secretary to the Board of Governors or to a committee of the Board of Governors, who is appointed under Article 46 of this scheme;

"the Education Orders" means the 1986, 1989, 1993, 1996, 1997, 1998, 2003, 2005 and 2006 Orders;

"the 1986 Order" means the Education and Libraries (Northern Ireland) Order 1986;

"the 1989 Order" means the Education Reform (Northern Ireland) Order 1989;

"the 1993 Order" means the Education and Libraries (Northern Ireland) Order 1993;

"the 1996 Order" means the Education (Northern Ireland) Order 1996;

"the 1997 Order" means the Education (Northern Ireland) Order 1997;

"the 1998 Order" means the Education (Northern Ireland) Order 1998;

"the 2003 Order" means the Education and Libraries (Northern Ireland) Order 2003;

"the 2005 Order" means the Special Educational Needs and Disability (Northern Ireland) Order 2005;

"the 2006 Order" means the Education (Northern Ireland) Order 2006;

"voting member of the Board of Governors" means a member other than the principal or a co-opted member; and

"voting member of a committee" means a member entitled to vote at a committee established under Article 24 of this scheme.

(2) The Interpretation Act (NI) 1954 shall apply for the interpretation of this Scheme.

Part III: Membership of the Board of Governors

Membership

[100% Capital Grant]

4. (1) Subject to Articles 11, 13 and 116 of the 1986 Order, Article 14 of the 1998 Order and Article 23 of the 2003 Order, the Board of Governors shall consist of [9][18][27][36] voting members, the Principal of the school and any members who may be co-opted under Article 122 of the 1989 Order and where appropriate members required to be co-opted under Article 139 of that Order.

(2) Of the voting members of the Board of Governors –

(a) four-ninths shall be appointed [as provided by the scheme of management] and at least one of the persons so appointed shall, at the time of his appointment, be a parent of a pupil attending the school;

(b) one-third shall be appointed-

(ii) where an agreement under paragraph 2 of Schedule 6 to the 1986 Order is in force in relation to the school, by the Head of the Department and the board or boards concerned in accordance with an agreement made between the Head of the Department and the board or boards concerned;

(iii) in any other case, by the Head of the Department

(c) subject to Article 13(3A) of the 1986 Order, one-ninth shall be elected by parents of pupils attending the school from amongst parents of such pupils;

(d) subject to Article 13(4) of the 1986 Order, one-ninth shall be elected by assistant teachers at the school from amongst such assistant teachers.

(3) The trustee(s) of the school are [].

[85% Capital Grant]

4. (1) Subject to Articles 11, 13 and 116 of the 1986 Order, Article 14 of the 1998 Order and Article 23 of the 2003 Order, the Board of Governors shall consist of [10][18][27][36] voting members, the Principal of the school and any members who may be co-opted under Article 122 of the 1989 Order and where appropriate members required to be co-opted under Article 139 of that Order.

(2) Where there are [10]* [18] [27] [36] voting members of the Board of Governors of the school, then of those members –

(a) [six]* [five-ninths] shall be appointed [as provided by the scheme of management] and at least one of the persons so appointed shall, at the time of his appointment, be a parent of a pupil attending the school;

(b) [two]* [two-ninths] shall be appointed-

(i) where an agreement under paragraph 2 of Schedule 6 to the 1986 Order is in force in relation to the school, by the Head of the Department and the board or boards concerned in accordance with an agreement made between the Head of the Department and the board or boards concerned;

(iii) in any other case, by the Head of the Department

(c) subject to Article 13(3A) of the 1986 Order, [one]* [one-ninth] shall be elected by parents of pupils attending the school from amongst parents of such pupils;

(d) subject to Article 13(4) of the 1986 Order, [one]* [one-ninth] shall be elected by assistant teachers at the school from amongst such assistant teachers.

(3) The trustee(s) of the school are [].

[65% and no Capital Grant]

4. (1) Subject to Articles 11, 13 and 116 of the 1986 order, Article 14 of the 1998 order and Article 23 of the 2003 order, the Board of Governors shall consist of

(d) the persons appointed [as provided by the scheme of management], at least one of whom shall, at the time of his appointment, be a parent of a pupil attending the school. Where the number of these persons is 13 or less, one person shall be elected under (b) and (c) of this Article. Where the number of such persons is 14 or more, two persons shall be elected under (b) and (c).

(e) [one or two] person(s) elected in accordance with paragraph 2(2) and 2(5) of Schedule 7 to the 1986 Order by parents of pupils attending the school from amongst the parents of such pupils;

(f) [one or two] person(s) elected in accordance with paragraph 2(2) and 2(5) of Schedule 7 to the 1986 Order by assistant teachers at the school from amongst such assistant teachers.

Acceptance of Membership

5. Every member shall, at or before or within one month after the first meeting of which he is notified, sign a declaration of his acceptance of membership and of this Scheme of Management and submit it to the Secretary to the Board of Governors otherwise he shall not be entitled to act as a member.

Disqualification from Membership

6. (1) A person, other than the Principal or a teacher elected in accordance with paragraph 3(2)(d) of Schedule 6 to the 1986 Order, as amended by paragraph 4(2)(d) or 5(2)(d), who -

(a) is employed for the purposes of the school or for the purposes of non-school activities; or

(b) has within the five years before the first day that his membership could have taken effect or at any time thereafter been convicted by a court in Northern Ireland or elsewhere in the *British Islands of any offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine;

(c) is adjudged bankrupt or who has made **a composition or arrangement with his creditors; or

(d) on the making of a Bankruptcy Restrictions Order (BRO);

shall not be a member of the Board of Governors of the school.

(2) (a) Where a person is disqualified from membership by reason of his having been adjudged bankrupt, that disqualification shall cease -

(i) on his discharge from bankruptcy unless the bankruptcy order made against that person is previously annulled; and

(ii) if the bankruptcy is so annulled, on the date of the annulment.

(b) Where a person is disqualified by reason of his having made a composition or arrangement with his creditors and he pays his debts in full, the disqualification shall cease on the date on which the payment is completed and in any other case it shall cease on the expiration of five years from the date on which the terms of the deed of composition or arrangement are fulfilled.

Term of Office

7. (1) Subject to Article 23 of the 2003 Order, Schedule 6 and 7 to the 1986 Order, as amended by the 1993 Order, and Article 8(2)-(4) of this scheme, voting members shall hold office for

four years from the date on which they take up office and shall remain in office until their successors are appointed.

(2) Where an elected parent or teacher governor ceases to hold office before the end of his four years terms of office, any person elected to replace him shall hold office only for the remainder of that period.

(3) Any voting or co-opted member going out of office may be reappointed unless he is disqualified or otherwise ineligible.

Footnotes:

*The Interpretation Act (NI) 1954 defines the British Islands as the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland.

**This is where an agreement has been made for the payment of a sum in lieu of a larger sum or other obligation.

(4) A member co-opted under Articles 122 and 139 of the 1989 Order shall hold office for such period not exceeding four years as the Board of Governors may determine. Any voting or co-opted member going out of office may be re-appointed unless he is disqualified or otherwise ineligible.

Termination of Membership

8. (1) A voting or co-opted member may resign by giving written notice to the secretary.

(2) Where a voting or co-opted member is absent from three consecutive meetings of the Board of Governors, or for six months consecutively, whichever is the greater period, the secretary shall report the matter at the next meeting, and unless the Board of Governors is satisfied that his failure to attend was occasioned by illness or other unavoidable cause, the member shall be deemed to have resigned his membership and shall cease to be a member.

(3) A member, other than the Principal or teacher elected in accordance with the relevant provisions of Schedule 6 and 7 to the 1986 Order, who -

(a) subsequently becomes an employee of the school, in accordance with the terms of Article 6(1)(a) of this scheme;

(b) is subsequently convicted of an offence and sentenced by a court, in accordance with the terms of Article 6(1)(b) of this scheme; or

(c) subsequently becomes bankrupt, in accordance with the terms of Article 6(1)(c) of this scheme;

shall thereupon cease to be a member of the Board of Governors.

(4) An assistant teacher elected as a member of the Board of Governors shall, on ceasing to be an assistant teacher at the school, cease to be a member of the Board of Governors in accordance with the relevant provisions of Schedule 6 to the 1986 Order.

Vacancies

9. (1) A vacancy occurring among the voting members or members co-opted under Article 139 of the 1989 Order shall be filled as soon as practicable by a person nominated, elected, chosen or co-opted by the persons or body entitled to nominate, elect, choose or co-opt him and that person shall hold office on the same terms as those members. Where a person co-opted under Article 122 of the 1989 Order ceases to be a member, the Board of Governors may co-opt another person in his place and that person shall hold office on the same terms as the person so replaced.

(2) The secretary to the Board of Governors shall notify the Department of any change in the membership of the Board of Governors.

Part IV: Functions of the Board of Governors

General

10. In addition to its statutory functions, and subject to the provisions of the Education Orders and regulations, orders and directions made thereunder, the Board of Governors shall manage and control the school in accordance with this scheme.

Financial Management

11. The Board of Governors shall ensure that the grants available to the school under the Education Orders are managed in accordance with any conditions determined by the Department and any guidance issued by the Department.

Teachers and Other Staff

12. (1) Subject to Articles 69 and 70 of the 1986 Order, to Article 32 of this scheme and paragraph (7) of this Article, the Board of Governors shall be responsible for the determination of the school's staffing complement and for the selection, appointment, promotion, remuneration, discipline, suspension and dismissal of all staff employed by the Board of Governors for the purposes of the school. Subject to paragraph 2 of this Article, the Board of Governors, in consultation with the Principal, shall determine the procedures to be used for the recruitment and promotion of staff. In carrying out these responsibilities the Board of Governors shall have regard to the relevant statutory instruments relating to employment, including the requirements in relation to monitoring and reporting. See Schedule 3.

(2) The functions of the Board of Governors in relation to the recruitment of teachers to posts of one year's duration or more, the recruitment of other staff to substantive posts in the school and the promotion of all staff shall be carried out at properly convened meetings of the Board of Governors or committees thereof and shall include provision for appeals.

(3) The regulation of staff conduct and discipline, and any procedures for affording to members of staff opportunities for seeking redress or any grievances relating to their employment, shall be under the control of the Board of Governors. The Board of Governors shall establish -

(a) disciplinary rules and procedures; and

(b) staff grievance procedures,

and shall take such steps as appear to be appropriate for making these known to the staff of the school.

(4) The Board of Governors may -

(a) suspend any person employed by it to work at the school where, in the opinion of the Board of Governors, his suspension from school is required; and

(b) end any suspension implemented under sub-paragraph (a) of this paragraph or paragraph (3) of Article 32 of this scheme.

(5) When the Board of Governors determines that a person, who is employed by it to work at the school under a particular contract of employment, should cease to work at the school under that contract, the Board of Governors shall -

(a) give that person such notice as is required under the contract to terminate his employment; or

(b) terminate the contract without notice if the circumstances are such that it is entitled to do so by reason of the person's conduct.

(6) The Board of Governors shall -

(a) make arrangements for affording to any person, whose contract of employment is about to be terminated under paragraph (5) of this Article, the opportunity to make representations with respect to the proposed termination, including oral representations to such person or persons as the Board of Governors may appoint for the purpose, and shall have regard to those representations; and

(b) make arrangements for affording to any person, whose contract of employment has been terminated under paragraph (5) of this Article, the opportunity of appeal.

(7) Nothing in this Article shall prevent the Board of Governors from making arrangements with any other body or person which may provide for employees of that other body or person to work in the school.

School Development Plans

13. (1) Subject to regulations made under Article 13(3) of the 1998 Order, the Board of Governors shall prepare, and from time to time revise, a school development plan.

(2) In preparing or revising a school development plan, the Board of Governors shall –

(a) consult the principal of the school;

(b) consider –

(i) any guidance given by the Department, the board for the area in which the school is situated and (in the case of a Catholic maintained school) the Council for Catholic Maintained Schools; and

(ii) the findings of any inspection of the school under Article 102 of the 1986 Order.

Determination of Curriculum Policy and of the Curriculum

14. (1) The Board of Governors shall:

(a) determine, and keep under review, its policy in relation to the curriculum for the school; and

(b) make, and keep up to date, a written statement of that policy.

(2) When determining or reviewing its policy in relation to the curriculum for the school the Board of Governors shall -

(a) take account of the findings of any inspection of the school under Article 102 of the 1986 Order; and

(b) consider any representations made to it regarding the curriculum by the relevant board, and any other body or persons connected with the community served by the school.

(3) The Board of Governors shall consult the Principal of the school before making or varying any statement under paragraph (1)(b) of this Article.

(4) The Board of Governors shall allocate to the Principal such functions as will, subject to the resources available, enable him to determine and organise the curriculum in accordance with the curriculum policy for the school determined under paragraph (1) of this Article and secure that it is followed within the school.

The Principal

15. (1) The Board of Governors shall –

(a) assist the Principal in such manner as is reasonably necessary to enable him to control the internal organisation, management and discipline of the school;

(b) provide the Principal with such opportunity as may be necessary to enable him to express his opinions and to make his recommendations to the Board of Governors (in writing if so required) on all matters connected with the school.

16. The Board of Governors shall encourage –

(a) the Principal to promote regular communication between assistant teachers and parents of pupils;

(b) the Principal to maintain regular communication and consultation with his assistant teachers on the management of the school, curricular matters and on matters relating to the education, health and welfare, and discipline of the pupils;

and shall from time to time request a report from the Principal on these matters.

Pupil Discipline

17. (1) The Board of Governors shall ensure that policies designed to promote good behaviour and discipline on the part of its pupils are pursued at the school.

(2) In particular it shall:

(a) make, and from time to time review, a written statement of general principles to which the principal is to have regard in determining any measures under Article 31(1)(a) of this Scheme.

(b) before making or revising that statement –

(i) consult (in such manner as appears to it to be appropriate) the Principal and the registered pupils at the school and the parents of those pupils; and

(ii) consider any guidance given by the Department and the board for the area in which the school is situated.

(c) where it considers it desirable that any particular measures should be determined by the principal (under 31(1) (a)) of the Scheme or that he should have regard to any particular matters –

(i) notify him of those measures or matters; and

(ii) give him such guidance as it considers appropriate.

Suspension and Expulsion

18. The Board of Governors shall prepare a scheme specifying the procedure to be followed in relation to the suspension or expulsion of pupils from school in accordance with Article 49 of the 1986 Order as amended by Article 39 of the 1993 Order.

Annual Report of the Board of Governors

19. (1) The Board of Governors shall once in every school year prepare a report in respect of the previous school year containing a summary of the steps taken by the Board of Governors in the discharge of its functions during the period covered by the report.

(2) The report shall -

(a) be as brief as is reasonably consistent with the requirements as to its contents;

(b) give details of the date, time and place for the next annual parents' meeting and its agenda and indicate that the purpose of that meeting will be to provide an opportunity for discussion of the report and of the discharge by the Board of Governors, the Principal, the education and library board and the Department of their functions in relation to the school;

(c) report on the consideration given and any action taken in relation to any resolutions passed at the previous annual parents' meeting;

(d) give the name of each member of the Board of Governors and indicate into which of the following categories he falls, namely -

(i) members as provided by Article 4 of this scheme;

(ii) members elected by parents;

(iii) members elected by assistant teachers;

- (iv) members nominated by the [Department] [the board] [the Department and the board];
 - (v) members co-opted under Articles 122 or 139 of the 1989 Order;
 - (vi) the Principal;
- (e) give, in relation to each member (other than the Principal) the date on which his term of office comes to an end;
- (f) name the Chair of the Board of Governors and its secretary;
- (g) give such information as is available to the Board of Governors about arrangements for the next election of parents to the Board of Governors;
- (h) contain a financial statement -
- (i) reproducing or summarising any financial statement of which a copy has been furnished to the Board of Governors by the Department under Article 61(3)(b) of the 1989 Order since the last report was prepared;
 - (ii) indicating, in general terms, how any grants made to the Board of Governors under the Education Orders in the period covered by the report were used;
 - (iii) giving details of the application of any gifts or bequests made to the school in that period;
- (i) describe what steps have been taken by the Board of Governors to develop or strengthen the school's links with the community and, in particular, to promote the attainment of the objectives of the educational theme called Education for Mutual Understanding;
- (j) give such information as is required to be made available in accordance with regulations under Article 31(2)(a) of the 1989 Order;
- (k) (i) describe the arrangements made and facilities provided for special educational needs (SEN) and disabled pupils including any special admission arrangements which the governors have made and the steps taken to ensure that pupils with special educational needs or disabilities are treated no less favourably than other pupils under Article 8 of the 1996 Order and Article 18 of the SEND Order 2005;
- (ii) describe the steps taken to secure the implementation of their special educational needs (SEN) policies in accordance with Article 9 of the 1996 Order;
 - (iii) with effect from the 2005/06 school year, include information about the facilities provided to assist access to the school by disabled pupils and the accessibility plan for the school;
- (l) describe in general terms –
- (i) the arrangements made for the security of the pupils and staff of the school and the school premises; and
 - (ii) any changes to those arrangements since the last report was prepared.
- (3) The Board of Governors may produce its report in such language or languages (in addition to English) as it considers appropriate.

(4) The Board of Governors shall take such steps as are reasonably practicable to secure that -

(a) the parents of all registered pupils at the school, all persons employed at the school, are given (free of charge) a copy of its report in respect of the school;

(b) copies of that report are available for inspection (at all reasonable times and free of charge) at the school; and

(c) copies of any such report to be considered at an annual parents' meeting are given to parents not less than two weeks before that meeting.

Annual Parents' Meeting

20. (1) The Board of Governors shall hold a meeting once in every school year and in every school year thereafter ("the annual parents' meeting") which is open to -

(a) all parents of registered pupils at the school; and

(b) such other persons (including assistant teachers at the school) as the Board of Governors may invite.

(2) The purpose of the meeting shall be to provide an opportunity for discussion of -

(a) the report of the Board of Governors under Article 19 of this scheme;

(b) the discharge by the Board of Governors, the Principal, the education and library board and the Department of their functions in relation to the school; and

(c) where relevant, discuss the General Inspection Report and the Board of Governors' response to that report.

(3) Unless prevented from doing so by illness or other unavoidable cause each member of the Board of Governors shall be expected to attend the annual parents' meeting. When a member is unable to attend the annual parents' meeting he shall advise the secretary of the Board of Governors of his inability to attend.

(4) The procedure to be followed at the annual parents' meeting shall be regulated in accordance with Schedule 1 of this scheme of management.

(5) The Board of Governors shall -

(a) consider, any resolution which is duly passed, at an annual parents' meeting and which it considers is a matter for it;

(b) request the Principal to comment in writing on any such resolution which it considers is a matter for him; and

(c) send to the education and library board or the Department a copy of any such resolution which it considers is a matter for the Board or the Department as the case may be.

School Inspections

21. (1) The Board of Governors shall convene a meeting with the Reporting Inspector, and, if relevant, any other member of the Inspection Team, before each general or focused inspection of the school takes place for the purpose of making the Board of Governors' views about the school known to the Inspection Team.

(2) The procedure for a meeting convened under paragraph (1) of this Article shall be as set out in Schedule 2 to this scheme.

(3) After each general or focused inspection of the school, the Board of Governors shall -

(a) provide the parents of all registered pupils at the school with a summary of the general inspection report or the full report of the focused inspection which shall be prepared by the Department;

(b) within 3 months of receiving the Inspection Report prepare its response to the Report which shall set out the action which the Board of Governors intends to take;

(c) discuss the general or focused inspection report and the Board of Governors' response to that report with parents at the annual parents' meeting convened under Article 20 of this scheme.

(4) After any other inspection the Board of Governors shall provide, on request, a copy of the Inspectorate's findings to the parents of all registered pupils at the school.

School Premises

22. (1) The Board of Governors shall be responsible for the maintenance of the school premises and the contents thereof [and shall keep the trustees informed of the condition of the school premises and its contents].

(2) Before undertaking any capital works to the school, the Board of Governors shall obtain the approval of [the trustees and] the Department to those works.

(3) If any use is made of the school premises other than for school purposes the Board of Governors shall obtain from the user body for the period during which the school is in use for non-school activities written indemnity against -

(a) any damage caused to the school property and premises;

(b) any personal injury caused on the school premises or the school property; and

(c) any other public loss.

(4) The functions of the Board of Governors under this Article shall not extend to any accommodation or equipment provided by the education and library board solely for school meals purposes.

Power of Chair or Vice-Chair of the Board of Governors to act in Cases of Urgency

23. (1) Subject to paragraph (3) of this Article, the Chair or, if he cannot be contacted, the vice-chair of the Board of Governors of the school shall, in the circumstances mentioned in paragraph (2) below, have the power to discharge any function of the Board of Governors, and

shall report such action to the next meeting of the Board of Governors which shall be convened at the earliest possible opportunity thereafter.

(2) The circumstances are that the deferment of the function to the earliest date when it would be practicable to convene a Board of Governors' meeting would be likely to be seriously detrimental to the interests of the school, or to the interests of any registered pupil at the school, his parent, or a person employed at the school.

(3) The functions to be exercised by the chair or vice-chair under paragraph (1) of this Article shall not include the power to appoint or dismiss a member of staff.

Part V: Committees of the Board of Governors

Functions of a Committee

24. (1) The Board of Governors may establish such committees, including a Finance Committee, as it considered necessary and may -

(a) subject to paragraphs (2) and (3) of this Article delegate to such a committee such of its functions as it considers desirable except functions relating to powers conferred or duties imposed by or under the following provisions -

(i) Articles 4, 10 and 11 of the 1989 Order which relate to duties with respect to the curriculum.

(ii) Article 13 of the 1986 Order - appointment of parent governors - and Articles 122 and 139(5) of the 1989 Order - co-option of members to the Board of Governors.

(iii) Article 31 of the 1989 Order and Article 17 of the 1997 Order which relate to the provision and publication of information.

(iv) Article 16 of the 1997 Order which relates to the criteria for selecting pupils for admission to the school.

(v) Article 69 of the 1989 Order which relates to the initiation of procedures for the acquisition of grant-maintained integrated status.

(vi) Article 3(2)(a)(b) of the 1998 Order which relates to the provision of a statement of general principles concerning pupil discipline.

(vii) Article 125 of the 1989 Order in so far as approval of the annual report of the Board of Governors is concerned.

(viii) Article 131 of the 1989 Order which relates to charges and remissions policies.

(ix) Article 45 of this scheme which relates to the election of the Chair and Vice-Chair of the Board of Governors.

(x) Article 36 of this scheme in so far as it relates to the convening of meetings of the Board of Governors.

(xi) This Article of this scheme which relates to the delegation of functions to a committee.

(b) refer any matters within its purview to such a committee for consideration and report.

(2) Subject to the 1989, 1998 and 2003 Orders, the financial functions of the Board of Governors may not be delegated to a committee, other than the Finance Committee of the Board of Governors.

(3) The functions to be delegated to a committee under this Article shall not, unless the Board of Governors otherwise determines, include the power to take decisions on behalf of or in the name of the Board of Governors without the approval of the Board of Governors.

Membership of a Committee

25. (1) Subject to the following provisions of this Article, the membership of a committee established under Article 24 of this scheme shall be determined by the Board of Governors and may include persons who are not members of the Board of Governors.

(2) A committee established under Article 24 of this scheme, apart from the committee established to consider appeals against staff dismissal, shall include not less than three members of the Board of Governors, at least two of whom should be voting members.

(3) The Finance Committee of the Board of Governors shall consist entirely of members of the Board of Governors, the majority of whom shall be voting members of the Board of Governors. The Bursar may be invited to be a non-voting member of the Finance Committee.

(4) Subject to paragraph (6) of this Article, the majority of the members of a committee to which functions of the Board of Governors under Article 24 of this scheme are delegated shall be voting members of the Board of Governors.

(5) A committee, which is established to undertake functions of the Board of Governors in relation to the appointment of staff, shall -

(a) in the case of teaching appointments, consist of not less than three voting members of the Board of Governors and, subject to Article 51(1) of this scheme, the Principal of the school; and

(b) in the case of other appointments, consist of three members of the Board of Governors, two of whom shall be voting members and the other the Principal.

Where practicable, the membership of the committee shall reflect the interests and gender balance represented on the Board of Governors.

(6) Where a committee, to which functions are delegated under Article 12 of this scheme, takes any decision as to the dismissal of a member of staff, no member of that committee shall take part in the proceedings of any committee established to consider any appeal against that decision.

(7) The membership of an Appeal Committee shall include no fewer voting members of the Board of Governors than that of the first committee the decision of which is subject to appeal.

Disqualification and Termination of Membership

26. (1) Articles 6(1)(b) and (c) and (2) and 8(3)(b) and (c) of this scheme shall apply to the membership of a committee in the same manner as it applies to the membership of the Board of Governors.

(2) A member of a committee other than the Principal may resign by giving notice to the Board of Governors and shall do so if he is disqualified from membership under paragraph (1) of this Article.

(3) Where a member of a committee other than the Principal is absent from three consecutive meetings the secretary of the committee shall report the matter to the Board of Governors and unless the Board of Governors is satisfied that his failure to attend was occasioned by illness or other unavoidable cause, the member shall be deemed to have resigned his membership and shall cease to be a member of the committee.

Part VI: Functions of the Principal

General

27. In addition to his statutory functions and subject to the provisions of the Education Orders and regulations and orders and directions made thereunder and to the provisions of this scheme and such directions as may, from time to time, be given to him by the Board of Governors, the Principal shall control the internal organisation, management and discipline of the school.

Delegated Functions

28. (1) The Board of Governors may delegate to the Principal such of its functions in respect of the school as it considers desirable except functions relating to powers conferred or duties imposed by or under the following provisions -

(a) Articles 4, 10 and 11 of the 1989 Order which relate to duties with respect to the curriculum.

(b) Article 13 of the 1986 Order - appointment of parent governors - and Articles 122 or 139(5) of the 1989 Order - co-option of members to the Board of Governors.

(c) Articles 31 and 42(3) of the 1989 Order and Article 17 of the 1997 Order which relate to the provision and publication of information.

(d) Article 16 of the 1997 Order which relates to the criteria for selecting pupils for admission to the school.

(e) Article 69 of the 1989 Order which relates to the initiation of procedures for the acquisition of grant-maintained integrated status.

(f) Article 3(2)(a) and (b) of the 1998 Order and Article 17 2(a) and (b) of this scheme which relates to the provision of a statement of general principles concerning pupil discipline.

(g) Article 125 of the 1989 Order in so far as approval of the annual report of the Board of Governors is concerned.

(h) Article 131 of the 1989 Order which relates to charges and remissions policies.

(i) Article 36 of this scheme which relates to the convening of meetings.

(j) Articles 44 and 45 of this scheme which relates to the election of a Chair and Vice-Chairman of the Board of Governors and committees thereof.

(k) This Article of this scheme which relates to the delegation of functions to the Principal.

(l) Article 12 of this scheme, except in relation to the recruitment of teachers to posts of less than one year's duration.

(2) The functions to be delegated to the Principal under this Article shall not, unless the Board of Governors otherwise determines, include the power to take decisions on behalf of or in the name of the Board of Governors without the approval of the Board of Governors.

(3) The Principal shall carry out any functions delegated to him by the Board of Governors under this Article and shall report any action or decision taken by him in relation to those functions to the next meeting of the Board of Governors or as soon as practicable thereafter.

Curriculum

29. In relation to the curriculum the Principal shall carry out the functions allocated to him under paragraph 4) of Article 14 of this scheme.

Communication

30. The Principal shall -

(a) promote regular communication between assistant teachers and parents of pupils; and

(b) maintain regular communication and consultation with his assistant teachers about the management of the school, curricular matters and on matters relating to the education, health and welfare and discipline of the pupils.

and shall report to the Board of Governors on these matters as necessary or when so requested by the Board of Governors.

Pupil Discipline

31. (1) It will be the duty of the principal –

(a) to determine measures (which may include the making of rules and provision for enforcing them) to be taken with a view to –

(i) promoting, among pupils, self-discipline and proper regard for authority;

(ii) encouraging good behaviour and respect for others on the part of pupils and in particular preventing all forms of bullying among pupils;

(iii) securing that the standard of behaviour of pupils is acceptable; and

(iv) otherwise regulating the conduct of pupils;

(aa) before determining such measures, to consult the registered pupils at the school and the parents of those pupils;

(b) in determining such measures –

(i) to act in accordance with the current statement made by the Board of Governors under Article 17(2)(a) of this scheme;

(ii) to have regard to any notification or guidance given to him under Article 17(2) of this scheme;

(c) to prepare a written statement of such measures and to secure that –

(i) a copy of that statement is given (free of charge) to the parents of all registered pupils at the school; and

(ii) copies of the statement are available for inspection (at all reasonable times and free of charge) at the school.

(2) The standard of behaviour which is to be regarded as acceptable at the school will be determined by the Principal so far as it is not determined by the Board of Governors.

Staff Discipline

32. (1) The Principal shall be responsible to the Board of Governors for the discipline of all staff employed by the Board of Governors at the school.

(2) In carrying out his duties under paragraph (1) of this Article, the Principal shall act in accordance with -

(a) any disciplinary rules and procedures; and

(b) any staff grievance procedures,

drawn up by the Board of Governors under Article 12(3) of this scheme.

(3) The Principal may suspend any person employed by the Board of Governors to work at the school where, in the opinion of the Principal, his suspension from school, is required.

(4) The Principal, when exercising a power of suspension under paragraph (3) of this Article, shall immediately inform the Board of Governors.

(5) Any suspension under paragraph (3) of this Article may only be ended by the Board of Governors.

Meetings of the Board of Governors and Committees Thereof

33. Unless prevented from doing so by illness or other unavoidable cause and subject to Articles 25(6), 47, 48, 50 and 51 of this scheme, the Principal shall attend every meeting of the Board of Governors and of any committees established under Article 24 of this scheme of which he is a member. If the Principal is unable to attend a meeting of the Board of Governors or a committee of which he is a member he shall inform the Board of Governors of the reason for his

inability to attend. In these circumstances the Board of Governors may require the attendance of the Vice-Principal.

Resolutions of Annual Parents' Meetings

34. When so requested by the Board of Governors the Principal shall comment in writing on any resolution which is duly passed by an annual parents' meeting, and which the Board of Governors consider is a matter for him, and report on any action he has taken thereon.

Part VII: Proceedings of the Board of Governors and Committees Thereof Other than Proceedings Required Under Articles 20 and 21 of this Scheme

Frequency of Meetings

35. (1) The Board of Governors shall meet as often as the conduct of business may require, being not less than once in each school term.

(2) A committee established by the Board of Governors under Article 24 of this scheme shall meet as often as the conduct of its business may require.

(3) The chairman of the Board of Governors or of a committee, as the case may be, may call a meeting of its members at any time and shall do so within 21 days following receipt of a written request made by not less than one-third of the members.

Convening of Meetings

36. (1) Subject to paragraph (3) of this Article, [five/seven] clear days at least before a meeting of the Board of Governors or a committee thereof, notice of the time and place of the meeting, together with the agenda for the meeting, shall be sent -

(a) as appropriate to each member of the Board of Governors or committee thereof, and

(b) in the case of a meeting of a committee, to the secretary of the Board of Governors.

(2) Subject to paragraphs (3) and (4) of this Article and Article 63(1) and (3) of this scheme a copy of each written report or paper to be considered by members at the meeting shall be sent to each of those members five full days at least before the meeting.

(3) The [5/7] days' notice referred to in paragraphs (1) and (2) of this Article may be limited to three days in cases of exceptional emergency.

(4) The Chair may withhold any report or paper relating to a matter specified on the agenda from a member who would be required under this scheme to withdraw from the meeting during discussion and consideration of the subject matter of the report or paper in question.

Right to Attend Meetings

37. (1) Any of the school trustees may, upon giving notice to the secretary, attend any meeting of the Board of Governors or a committee thereof in an advisory capacity, but shall not vote on any question.

[100% & 85% Capital Grant]

(2) Where under any instrument of government of a school assets of a capital nature held for the purposes of or in connection with the school are vested in the Board of Governors of the school, the persons elected to the Board of Governors of the school under Article 4(2) (c) and (d) of this scheme shall, unless the other members of the Board of Governors otherwise determine, not be entitled to attend or take part in any meeting of the Board of Governors whenever a matter relating to the acquisition, disposal or management of such assets is being discussed or to vote on any question relating to such a matter.

[65% and no Capital Grant]

(2) Where under any instrument of government of a school assets of a capital nature held for the purposes of or in connection with the school are vested in the Board of Governors of the school, the persons elected to the Board of Governors of the school under article 4(2) (b) and (c) of this scheme shall, unless the other members of the Board of Governors otherwise determine, not be entitled to attend or take part in any meeting of the Board of Governors whenever a matter relating to the acquisition, disposal or management of such assets is being discussed or to vote on any question relating to such a matter.

(3) Subject to Articles 46 and 47-51 of this scheme, the Principal shall be entitled to attend any meeting of a committee of the Board of Governors of which he is not a member.

(4) A Principal, who is acting as secretary to the Board of Governors or a committee thereof, may, with the agreement of the members, admit a person to any Board of Governors of committee meeting for the purpose of providing secretarial assistance.

(5) A member of staff of the school with responsibility for any aspect of school finance may, upon the invitation of the Finance Committee, attend a meeting of that committee when matters other than staffing matters are being discussed provided that he has no personal or pecuniary interest in the matters under discussion.

(6) Members of the Education and Training Inspectorate of the Department of Education, may, upon the invitation of the Board of Governors, attend a meeting of the Board of Governors or a committee thereof, for the purpose of discussing matters relevant to a general inspection of the school.

(7) Subject to paragraph (5) of this Article, a person with expertise or knowledge relevant to an item on the agenda of the meeting of a Board of Governors or a committee thereof, may, upon the invitation of the Board of Governors or the committee, attend that meeting for the purpose of providing advice in relation to that item, provided that he has no personal or pecuniary interest in the matter under consideration. A person attending a meeting in this capacity shall withdraw from the meeting on the cessation of discussion of the agenda item, and before any vote is taken on that item.

Stated Items on the Agenda

38. (1) The agenda for every meeting of the Board of Governors shall include -

- (a) where appropriate, the appointment of a Chair;
- (b) when appropriate, the appointment of a Vice-Chair and the appointment of a secretary;
- (c) the minutes of the previous meeting and matters arising from those minutes;
- (d) business to be raised by members, notice of which has been submitted in accordance with Article 53 of this scheme;
- (e) any business which must be settled in the interests of the efficient management of the school;
- (f) a written report or where time has not allowed for the production of a written report, an oral report by the Principal which shall include such matters as may previously have been required by members;
- (g) (i) matters arising from the minutes or other written report of a committee of the Board of Governors where such a committee has sat since the last meeting of the Board of Governors; or
(ii) an oral report by the Chair or voting member of a committee of the Board of Governors where the committee has sat since the last meeting of the Board of Governors but time has not allowed for the preparation of minutes or a written report.
- (h) where appropriate, a report on the previous Annual Parents' Meeting, and any resolutions arising therefrom which were referred for further consideration.

(2) Every item stated on the agenda for a meeting of the Board of Governors shall be directly relevant to the functions of, or to some matter which affects the functions of, the Board of Governors or a committee thereof.

39. (1) Article 38(1)(a) to (f) and (h) of this scheme shall apply to the agenda for every meeting of a committee as it applies to the agenda for every meeting of the Board of Governors.

(2) Every item stated on the agenda for a committee meeting shall be directly relevant to the functions of, or to some matter which affect the functions of, the committee.

40. (1) The minutes of the previous meeting shall, unless the members decide otherwise, be the first item on the agenda. The other stated items on the agenda shall be listed in order of priority according to the importance and/or urgency of the subject matter.

(2) The Chair of the meeting may amend the order or priority determined under paragraph (1) above if he considers it convenient and conducive to the efficient dispatch of business.

Commencement of Business

41. The business of any meeting shall proceed immediately upon a quorum being formed and the chair being taken once the appointed time for the meeting has been reached or passed.

Quorum

42. (1) The quorum for a meeting of the Board of Governors shall be one-half (round up to a whole number) of the total number of voting members entitled to be present.

(2) The quorum for a meeting of a committee of the Board of Governors shall be one-third (rounded up to a whole number) and, in the case of the Teaching Appointments Committee, not less than three, and in the case of other committees, not less than two, of the total number of voting members entitled to be present.

(3) If during any meeting of the Board of Governors or a committee thereof the number of members assembled ceases to constitute a quorum the meeting shall be adjourned.

(4) When a voting member is required under the provision of this scheme to withdraw from a meeting, he shall not be counted for the purposes of paragraphs (1), (2) and (3) of this Article as a voting member entitled to be present.

Order of Business

43. (1) The business of the meeting shall follow the order specified in the agenda, or as amended by the Chair.

(2) The Order of any business which arises during the meeting and which is not specified in the agenda shall be decided by the Chair.

Election of Chair

44. (1) The voting members of the Board of Governors shall elect a Chair and a Vice-Chair from among those of their own number who are not members of staff. The persons so elected shall hold office until the election of their successors.

(2) Elections under paragraph (1) of this Article shall take place at the first meeting of each constituted or reconstituted Board of Governors and may take place annually thereafter.

(3) Should a vacancy occur in the office of Chair or Vice-Chair of the Board of Governors the voting members shall elect one of their number, who is not a member of staff, at the next meeting of the Board of Governors to fill the vacancy. A Chair or Vice-Chair elected under this paragraph shall hold office only until the expiration of the period for which his predecessor was last elected but shall be eligible for re-election.

(4) Should the Chair and Vice-Chair of the Board of Governors both be absent from a meeting, the voting members present shall elect one of their number, who is not a member of staff, to be Chair of that meeting.

45. (1) The Chair of a committee shall be elected by the voting members of that committee at the first meeting of the committee.

(2) Should a vacancy occur in the office of Chair or a committee or if the Chair should be absent from a meeting, the voting members at the meeting shall elect one of their number to fill the vacancy or absence.

Appointment of Secretary

46. (1) Subject to paragraphs (2) and (3) of this Article -

(a) the Board of Governors shall at their first meeting appoint a person to act as secretary and correspondent between the Board and the Department; and

(b) a committee of the Board of Governors shall appoint a person to act as its secretary.

(2) Neither the Principal of, nor other teacher, in the school shall act as secretary at any meeting of the Board of Governors or of a committee thereof at which any matter relating to the appointment, remuneration, tenure or conditions of service, status, conduct, discipline, suspension, dismissal, resignation, retirement or superannuation of the Principal is to be considered.

(3) The Board of Governors or a committee thereof may at any time terminate the appointment of any person as secretary and appoint another person or persons in his place.

Declaration of Family Relationship of Member

47. (1) Every member of the Board of Governors or a committee thereof shall disclose in writing to the secretary any family or other relevant relationships known to him to exist between himself and any person who is employed, or is a candidate for employment in the school for which the Board of Governors is appointed; and all such disclosures shall as soon as practicable be brought to the notice of the Board of Governors and any committee of which he is a member.

(2) For the purposes of this Article, a family or other relevant relationship shall be deemed to exist between a member and a person who is employed or who is a candidate for employment in the school if they are husband and wife or living together as husband and wife, or if the person who is employed or is a candidate for employment, or the husband or wife or co-habitee of that person, is the -

(a) parent or grandparent;

(b) brother or sister;

(c) grandson or granddaughter;

(d) son or daughter;

(e) first cousin;

(f) uncle or aunt;

(g) all equivalent step-relationships; or

(h) nephew or niece;

of the member, or of the husband or wife or co-habitee of the member.

(3) Where a member who is required to make such disclosure is present at a meeting of the Board of Governors or a committee thereof at which any matter is being considered relating to or affecting the appointment, remuneration, tenure or conditions of service, promotion, status, conduct, suspension, dismissal, retirement or superannuation of a person to whom he stands in a family or other relevant relationship, he shall withdraw from the meeting during consideration and discussion of that matter, and any vote relating thereto.

48. (1) Where a member of the Board of Governors or a committee thereof who has a family or other relevant relationship with a pupil, is present at a meeting which includes discussion of -

- (a) the admission of, or disciplinary action against, that pupil; or
- (b) disciplinary action against another pupil arising out of an alleged incident involving the pupil first mentioned in this paragraph;

he shall declare his relationship at the meeting as soon as practicable after its commencement.

(2) For the purposes of this Article a family relationship shall be deemed to exist if the member is the parent, grandparent, brother or sister, uncle or aunt, first cousin, or equivalent step-relationship, of the pupil.

(3) A member who is required to make a declaration under paragraph (1) of this Article shall withdraw from the meeting during consideration and discussion of the matter in question, and any vote relating thereto.

Declaration of Knowledge of Canvassing

49. (1) Where a member of the Board of Governors or a committee thereof has knowledge of any instance of canvassing for an appointment, contract or order with which the Board of Governors or a committee is concerned, he shall declare this knowledge before the issue is discussed. Subject to paragraph (2) of this Article, the Board of Governors shall consider any action which might be necessary arising from such a declaration.

(2) Where the Board of Governors is aware of canvassing by or on behalf of an applicant for a teaching post within the school and is also aware that the canvassing was carried on with the knowledge of the applicant, the applicant shall be disqualified from consideration for the appointment.

Declaration of Pecuniary Interest

50. Where a member of the Board of Governors or a committee thereof has any pecuniary interest, whether direct or indirect, in the supply of goods or services to any school for which the Board of Governors is appointed, or in any other matter under consideration by the Board of Governors or a committee, he shall, if present at a meeting at which any such matter is to be considered, disclose openly the nature of his interest as soon as practicable after the commencement of the meeting. He shall withdraw from the meeting during consideration or discussion of that matter and any vote on any question related to that matter.

Withdrawal of Principal or Teacher Member

51. (1) If the Principal is present at a meeting of the Board of Governors or a committee thereof at which -

- (a) his remuneration, tenure or conditions of service; or
- (b) his conduct, discipline, suspension, dismissal, resignation or retirement; or
- (c) the appointment of a successor to him,

is the subject of consideration or discussion he shall withdraw from the meeting during consideration and discussion of, and voting on, that matter and his withdrawal shall be recorded in the minutes.

(2) If a teacher member is present at a meeting of the Board of Governors or a committee thereof at which -

(a) his remuneration, tenure, or conditions of service; or

(b) his promotion or transfer; or

(c) his conduct, discipline, suspension, dismissal, resignation or retirement; or

(d) the appointment of his successor; or

(e) the appointment, the transfer, or the promotion of, any teacher, to a post senior to his own; or

(f) the conduct, discipline, suspension, dismissal, resignation or retirement of any member of staff holding a post senior to his own;

is the subject of consideration, discussion or voting, he shall withdraw from the meeting during such consideration, discussion or voting on that matter and his withdrawal shall be recorded in the minutes.

"In Committee" Proceedings

52. (1) Subject to paragraph (2) of this Article, the Board of Governors or a committee thereof may at any time during a meeting of its members resolve itself into committee for the purpose of transacting any business on the agenda for that meeting.

(2) A resolution under paragraph (1) of this Article may only be made in respect of business which, because of its nature, and subject to any guidance from the Department, members consider should be dealt with in a confidential manner.

(3) The business referred to in the resolution shall be the only matter considered "in committee". Once the business has been considered the meeting shall be resumed and the recommendation(s) made "in committee" shall be proposed for adoption.

(4) "In committee" proceedings may not be adjourned but if the business is for any reason unfinished the meeting shall be resumed and the chair of that meeting may propose that the business be again considered "in committee" on another day.

Notice of Business to be raised by Members

53. (1) Subject to Article 54 of this scheme, notice of any business to be raised by a member or members at a meeting of the Board of Governors or a committee thereof shall be given in writing, signed by the member or members giving the notice and delivered at least ten full days before the next meeting to the secretary of that meeting.

(2) If that business is not raised at the meeting either by a member who gave notice thereof or by some other member on his behalf it shall be treated as withdrawn.

(3) If the subject matter of any business raised at a Board of Governors meeting of which notice has been given under paragraph (1) of this Article comes within the remit of any committee or committees of the Board of Governors, it shall, upon being proposed and seconded, stand

referred without discussion to such committee or committees, for consideration and report; provided that the Chair of the Board of Governors may, with the consent of the majority of members present, and if it is convenient and conducive to the dispatch of business to do so, allow the business to be dealt with at the meeting of the Board of Governors at which it is raised.

Business Not Requiring Notice

54. (1) The Chair of the Board of Governors may permit the following business to be raised at a meeting of the Board of Governors without notice -

- (a) amendments to the minutes;
- (b) amendments to the order of business;
- (c) proposals arising out of agenda items, to be put before members for decision;
- (d) amendments to proposals at (c) above;
- (e) a request for a recorded vote on any issue put to members for decision;
- (f) a proposal to adjourn discussion on a particular item of business or a matter related to that item;
- (g) a proposal to adjourn the meeting;
- (h) a proposal for a member to withdraw;
- (i) a proposal to initiate "in committee" proceedings under Article 52 of this scheme;
- (j) adoption of reports and recommendations of the principal;
- (k) adoption of reports and recommendations of committees;
- (l) appointments of a committee under Article 25 of this scheme occasioned by an agenda item; and
- (m) remission of an agenda item to a committee already established under Article 24 of this scheme.

(2) This Article does not apply to a proposal to rescind or vary a resolution carried at a previous meeting.

55. Article 54(1)(a) to (m) and (2) of this scheme shall apply to the meetings of a committee as it applies to the meetings of the Board of Governors.

Rules of Debate

56. (1) No discussion of business shall take place at a meeting of the Board of Governors or a committee thereof at any time when the chair is vacant.

(2) A member shall address the chair when speaking and shall direct his speech to the business of the meeting, to a proposal or an amendment to a proposal related to that business, or to a point of order.

(3) If notice of any business raised by a member at the meeting has not been given in accordance with Article 53 of this scheme, it shall, if required by the Chair, be put into writing and handed to the Chair before it is further discussed or put to the meeting.

(4) A proposal relating to the business of the meeting or an amendment to such a proposal shall not be discussed unless it has been formally proposed by a member at the meeting and seconded.

(5) Subject to paragraph (6) of this Article, the Chair may recommend and, with the agreement of the majority members, shall set limits on the frequency and duration of individual debates as appear to be necessary for the efficient discharge of the business of meetings.

(6) A member who makes a proposal relating to the business of the meeting has the right to reply at the close of the debate on the proposal and on an amendment to the proposal immediately before it is put to the vote.

(7) A member who is speaking shall not be interrupted by another member unless on a point of order.

(8) A member who is called to order shall cease to speak until the point of order is disposed of.

(9) A point of order shall relate only to an alleged breach of the scheme of management or to another statutory provision. When a member raises a point of order he must specify the provision in question and state the way in which he considers it to have been broken.

(10) A point of order must be dealt with before business is resumed.

(11) The ruling of the Chair on a point of order shall not be open to discussion.

Voting

57. (1) A member who is not a voting member of the Board of Governors shall not be entitled to vote on any question at any meeting of the Board of Governors or a committee thereof other than at a meeting of a committee established to consider appeals against staff dismissal.

(2) Every question before a meeting of the Board of Governors or a committee thereof shall, subject to Articles 43, 52(3) and 59(1), be determined by a majority of the votes of the voting members present and voting thereon. Where there is an equal division of votes, the Chair of the meeting shall have a second or casting vote.

(3) Any member shall have the right to propose that the votes cast by members on any item of business be recorded. Where a member makes such a proposal but it is not carried, the member shall retain the right to have his own vote recorded.

Disorderly Conduct

58. If at a meeting of the Board of Governors or a committee thereof any member persistently disregards the procedures for the conduct of business contained in this scheme including the

ruling of the chair, and wilfully and persistently obstructs the business of the meeting, a proposal for the member to withdraw from the meeting may be made and the proposal if seconded shall be put to the voting members of the meeting and determined without discussion.

Adjournment of Meetings

59. (1) A meeting of the Board of Governors or a committee thereof may be adjourned by the Chair of the meeting. When a meeting is adjourned to a later time on the same day or to another date the adjourned meeting shall be treated as a continuation of the original meeting. When a meeting is adjourned indefinitely any unfinished business shall be dealt with at the next ordinary meeting.

(2) Where the date fixed for an adjourned meeting so permits, notice of the adjourned meeting shall be sent to -

(a) each member; and

(b) where the meeting is a meeting of a committee, the secretary of the Board of Governors;

on the first working day after the adjournment.

(3) No business shall be conducted at the reconvened meeting which was not on the agenda for the original meeting unless notice thereof is sent to -

(a) each member; and

(b) where the meeting is a meeting of a committee, the secretary of the Board of Governors;

seven full days before such a meeting.

Minutes

60. (1) A separate record shall be taken of -

(a) the proceedings of each meeting of the Board of Governors;

(b) the proceedings of each meeting of a committee of the Board of Governors; and

(c) "in committee" proceedings at each such meeting;

by the secretary to those proceedings.

(2) "In committee" proceedings, under paragraph (1) of this Article, shall include the proceedings of any interviews of staff.

(3) Subject to Article 61 of this scheme, the minutes of the proceedings listed at paragraph (1) of this Article shall be recorded in a form acceptable to the Board of Governors.

Content of Minutes

61. (1) The minutes required under Article 60(1)(a) and (b) of this scheme shall record -

- (a) the names of those present at the meeting and any apologies received from absent members;
- (b) when appropriate, changes in the membership;
- (c) any amendments agreed at that meeting to the minutes of the previous meeting and matters arising from those minutes;
- (d) any declaration(s) required under Articles 47 to 50 of this scheme;
- (e) all withdrawals required under Articles 47, 50 and 51 of this scheme and any subsequent re-entries;
- (f) those items of business which are taken under "in committee" proceedings in accordance with Article 52 of this scheme;
- (g) the results of any votes taken by members at that meeting and, upon the request of a member, the member's vote in relation to any issue put before the meeting; and
- (h) where it is agreed that all the votes cast on any item of business are to be recorded, those voting for, those voting against and those abstaining;

and shall be signed by the appropriate chairman as an accurate record of proceedings.

(2) The content of the minutes required under Article 60(1)(c) of this scheme shall be agreed by the members during those proceedings and signed by the chairman as an accurate record of those proceedings.

Discussion of Minutes

62. Discussion of the minutes required under Article 60 of this scheme shall be restricted to the question of accuracy. Any question as to the accuracy of the minutes shall be raised and settled before any matters arising from the minutes are discussed.

Distribution of Minutes

63. (1) A copy of the minutes required under Article 60(1)(a) and (b) of this scheme, shall be sent to each member of the Board at least five full days before the next meeting.

(2) The Board of Governors shall make a copy of the signed minutes of any of its meetings, and a copy of any written report or paper considered at its meetings, available upon request to a member of staff or a parent of a pupil at any school for which the Board of Governors is appointed and may exclude from those copies any material relating to -

- (a) a named teacher or other person employed at or proposed to be employed at the school;
- (b) a named pupil at, or applying for admission to, the school; and
- (c) any matter which, by reason of its nature, the Board of Governors is satisfied should be dealt with on a confidential basis.

(3) Subject to paragraph (5) of this Article, the minutes of any "in committee" proceedings required under Article 60(1)(c) of this scheme shall not be circulated or accessible without the permission of the Board of Governors to any person including a member who is required to withdraw from those proceedings under Articles 47, 48, 50 and 51 of this scheme. The Chair of the Board of Governors shall make arrangements for the minutes of all such "in committee" proceedings to be kept in a secure place.

(4) No records of any proceedings of a meeting of the Board of Governors or a committee thereof other than those required under Article 60 of this scheme shall be circulated to any person.

(5) Any minute purporting to be signed as mentioned in Article 61(1) and (2) of this scheme shall be received in evidence without further proof.

Part VIII: Copies of the Scheme

64. A copy of this scheme shall be available to each member of the Board of Governors and each member of a committee of the Board of Governors who is not a member of the Board of Governors and upon request to any member of the staff of the school.

Part IX: Making and Approval of the Scheme

65. The Board of Governors may at any time revise, alter or amend this scheme but every such amendment shall be subject to the approval of the Department.

66. This scheme, which was prepared by the Board of Governors of [] Grammar School, revokes, on the date of its coming into operation, the existing scheme made on the Day of the month of in the year

Sealed with the Seal of the School on: _____

Signed on behalf of the Board of Governors of: _____

The Department of Education hereby approves this scheme and hereby specifies that it shall come into operation on: _____.

SEALED with the Official Seal of the Department of Education on: _____

Signed: _____ Senior Officer of the Department of Education

Schedule 1

Procedure for Annual Parents' Meeting

1. The annual parents' meeting (The Meeting) shall be under the control of the Board of Governors and shall be held at such time and place as the Board of Governors consider convenient to the parents of registered pupils at the school.

2. The Board of Governors shall choose one of its voting members to be chair of the meeting and another person to be secretary to the meeting. The secretary shall prepare a written report of the proceedings of the meeting and submit it to the next meeting of the Board of Governors.

3. A copy of the report of the previous meeting shall be given to each person present at the meeting.
4. At the commencement of the meeting the Chair shall explain the purpose of the meeting, as set out in Article 20(2) of the scheme of management, report on the outcome, if any, of any resolutions duly passed at the previous meeting and invite parents present to comment on any matter which may properly be discussed at the meeting.
5. No person who is not a parent of a registered pupil at the school may vote on any question put to the meeting.
6. Voting shall be by show of hands unless the chairman or at least one-third of the parents present call for a secret ballot.
7. Where at least one-tenth of the parents entitled to attend or 50 of such parents, whichever is the lesser, are present at the meeting, the meeting may pass (by a simple majority) resolutions on any matters which may be properly discussed at the meeting.
8. Any question arising at the meeting as to whether a person is a parent of a registered pupil at the school or as to whether a matter may properly be discussed at the meeting shall be determined by the Chair in accordance with the provisions of the scheme of management.

Schedule 2

Procedure for Meetings About School Inspections

1. When a general or focused inspection of the school is due to take place, the Board of Governors shall make arrangements to meet the Reporting Inspector.
2. The meeting shall be held at such time and place as is convenient for the Reporting Inspector and the Board of Governors.
3. The meeting shall be under the control of the Board of Governors.
4. The secretary to the Board of Governors shall prepare an agenda for the meeting, after consultation with the Reporting Inspector.
5. The Board of Governors shall choose one of its voting members to be Chair of the meeting and another person to be secretary to the meeting.
6. At the commencement of the meeting, the Chair shall explain the purpose of the meeting and invite the Reporting Inspector to make an introductory statement. The Chair shall then allow the Board of Governors to comment on any matter properly relevant to the business of the meeting.
7. The secretary shall prepare a written report of the proceedings of the meeting and submit it to the next meeting of the Board of Governors and to the Reporting Inspector before the general or focused inspection takes place.
8. Any question arising at the meeting about whether a matter may properly be discussed at the meeting shall be determined by the Chair on the advice of the Reporting Inspector.

Schedule 3

Legislation in the Employment Field

Fair Employment and Treatment (NI) Order 1998 No 3162 (NI 21)

Sex Discrimination (NI) Order 1976 No 1042 (NI 15)

Sex Discrimination (NI) Order 1988 No 1303 (NI 13)

Equal Pay Act (NI) 1970 (Chapter 32)

Disability Discrimination Act (NI) 1995 (Chapter 50)

Race Relations (NI) Order 1997 No 869 (NI 6)

Commissioner for Complaints (NI) Order 1996 No 1297 (NI 7)

EC Equal Treatment Directive 1976 No 207

The Freedom of Information Act 2000

Note:

Some of the provisions in the extant primary legislation listed above have been amended since enactment.

Gmi

Scheme of Management

Arrangement of Scheme

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Part I: Citation

1. The Board of Governors of the grant-maintained integrated school known as in pursuance of Article 9B(5) of the Education and Libraries Order 1986 (as inserted by Article 123 of the Education Reform (Northern Ireland) Order 1989) has prepared the following scheme providing for –

a. the membership and procedure of the Board of Governors of the school;

- b. the management of the school;
 - c. the functions to be exercised in relation to the school by the Board of Governors, committees of the Board of Governors and the principal; and
 - d. such other matters as are required or authorised by the Education Orders to be included in or regulated by the scheme.
2. The school shall be conducted in accordance with –
- a. the provisions of the Education Orders;
 - b. the terms of this scheme;
 - c. any regulations or orders made by the Department;
 - d. any direction of the Department:
- and, insofar as they are not inconsistent with 2.a. and 2.c. above;
- e. the Memorandum and Articles of Association;
 - f. any bye-laws or standing orders of the company.
3. In discharging its responsibilities under the terms of this scheme and any statutory provisions, the Board of Governors shall consider any advice or guidance provided by the Northern Ireland Council for Integrated Education.

Part II: Interpretation

4. (1) In this scheme unless the context otherwise requires –
- "Articles of Association" means the Articles of Association of
- for the time being in force;
- "board" means the Education and Library Board;
- "Chief Executive" means the Chief Executive of the Board;
- "Committee" means a committee established under Article 27 of this scheme;
- "the company" means
- "co-opted member" means a member who has been co-opted under Article 122 or 139 of the 1989 Order;
- "Department" means the Department of Education for Northern Ireland;
- "Head of Department" means the Head of the Department of Education for Northern Ireland;
- " "in committee" proceedings" means that part of a meeting which is to be kept in confidence;

"meeting" means a member of the Board of Governors or as the case may be a committee established under Article 27 of this scheme;

"Memorandum of Association" means the Memorandum of Association of for the time being in force;

"NICIE" means the Northern Ireland Council for Integrated Education;

"non-school activities" means activities, other than school activities, carried on wholly or mainly under the management or control of the Board of Governors;

"parent", in relation to a child or young person, includes a guardian and every person who has actual custody of the child or young person;

"principal" means the principal of the school;

"school" means the school referred to in Article 1 of this scheme;

"secretary" means the secretary to the Board of Governors or to a committee of the Board of Governors, who is appointed under Article 47 of this scheme;

"the Education Orders" means the 1986, 1987, 1989, 1993, 1996, 1997, 1998 and 2003 Orders;

"the 1986 Order" means the Education and Libraries (Northern Ireland) Order 1986;

"the 1989 Order" means the Education Reform (Northern Ireland) Order 1989;

"the 1996 Order" means the Education (Northern Ireland) Order 1996;

"the 1997 Order" means the Education (Northern Ireland) Order 1997;

"the 1998 Order" means the Education (Northern Ireland) Order 1998;

"the 2003 Order" means the Education and Libraries (Northern Ireland) Order 2003;

"voting member of the Board of Governors" means a member other than the principal or a co-opted member;

"voting member of a committee" means a member entitled to vote at a committee meeting under Article 58 of this scheme.

4. (2) Words importing the masculine gender only shall include the feminine gender.

The Interpretation Act (Northern Ireland) 1954 shall apply for the interpretation of this scheme.

Part III: Membership of the Board of Governors

Membership

5. (1) Subject to Article 13 of the 1986 Order, Article 14 of the 1998 Order and Article 23 of the 2003 Order, the Board of Governors shall consist of [16][24] voting members, the principal of

the school and no more than 3 persons who may be co-opted under Article 122 of the 1989 Order and where appropriate members required to be co-opted under Article 139 of that Order.

(2) Of the voting members:

6[9] shall be foundation governors, at least one-third of whom shall, at the time of their appointment, be parents of pupils attending the school;

4[6] shall be appointed by the Head of the Department;

4[6] shall be elected by parents of pupils attending the school from amongst the parents of such pupils;

2[3] shall be elected by assistant teachers at the school from amongst such assistant teachers.

Acceptance of Membership

6. Every member shall, at or before the first meeting which he attends or within one month after the first meeting of which he is notified, sign a declaration of his acceptance of membership and until he has signed such a declaration he shall not be entitled to act as a member.

Term of Office

7. Subject to Article 9(2)-(4) of this scheme and to Article 13(4) of the 1986 Order, the term of office of voting and co-opted members shall be as set out in Articles 12 and 13 of the Articles of Association, provided that members shall remain in office until their successors are appointed.

Disqualification of Membership

8. (1) A person, other than the principal or a teacher elected in accordance with paragraph 2(1)(d) of Schedule 5 to the 1989 Order, who –

a. is employed in the school for the purposes of the school or for the purposes of non-school activities; or

b. has within the 5 years before the first day that his membership could have taken effect or at any time thereafter been convicted by a court in Northern Ireland or elsewhere in the British Islands of any offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than 3 months without the option of a fine;

c. is adjudged bankrupt or who has made a composition or arrangement with his creditors; or

d. on the making of a Bankruptcy Restrictions Order (BRO);

shall not be a member of the Board of Governors of school.

(2) a. Where a person is disqualified from membership by reason of his having been adjudged bankrupt, that disqualification shall cease –

(i) on his discharge from bankruptcy unless the bankruptcy order made against that person is previously annulled; and

(ii) if the bankruptcy is so annulled, on the date of the annulment.

b. Where a person is disqualified by reason of his having made a composition or arrangement with his creditors and he pays his debts in full, the disqualification shall cease on the date on which the payment is completed and in any other case it shall cease on the expiration of 5 years from the date on which the terms of the deed of composition or arrangement are fulfilled.

Termination of Membership

9. (1) A voting or co-opted member may resign by giving written notice to the secretary.

(2) A member nominated by the Head of the Department may resign by giving notice to the Head of the Department.

(3) Where a voting or co-opted member is absent from 3 consecutive meetings of the Board of Governors, or for 6 months consecutively, whichever is the greater period, the secretary shall report the matter at the next meeting and unless the Board of Governors is satisfied that his failure to attend was occasioned by illness or other unavoidable cause, the member shall be deemed to have resigned his membership and shall cease to be a member.

(4) A member, other than the principal or teacher elected in accordance with the relevant provisions of Schedule 5 to the 1989 Order, who –

a. subsequently becomes an employee of a school for which the Board of Governors is appointed, in accordance with the terms of Article 8(1) of this scheme; or

b. is subsequently convicted of an offence and sentenced by a court, in accordance with the terms of Article 8(1)(b) of this scheme; or

c. subsequently becomes bankrupt, in accordance with the terms of Article 8(1)(c) of this scheme;

shall thereupon cease to be a member of the Board of Governors.

(5) An assistant teacher elected as a member of the Board of Governors shall, on ceasing to be an assistant teacher at the school, cease to be a member of the Board of Governors.

Vacancies

10. (1) Subject to Articles 12 and 13 of the Articles of Association a vacancy occurring among the voting members shall be filled as soon as practicable by a person nominated, elected or chosen by the persons or body entitled to nominate, elect or choose him and that person shall hold office on the same terms as those members. Where a person co-opted under Article 122 of the 1989 Order ceases to be a member, the Board of Governors may co-opt another person in his place and that person shall hold office on the same terms as the person so replaced.

(2) The Secretary to the Board of Governors shall notify the Department of any change in the membership of the Board of Governors.

Part IV: Functions of the Board of Governors

General

11. (1) In addition to its statutory functions, and subject to the provisions of the Education Orders and regulations, orders and directions made thereunder, the Board of Governors shall manage and control the school for which it is appointed in accordance with this scheme and paragraph 3 of the Memorandum of Association.

(2) In exercising its functions under Article 11(1) of this scheme, the Board of Governors shall use its best endeavours to ensure that the management, control and ethos are such as are likely to attract to the school reasonable numbers of both Protestant and Roman Catholic pupils.

12. The Board of Governors shall –

a. reasonably support the principal in such manner as is reasonably necessary to enable him to control the internal organisation, management and discipline of the school and to do so in accordance with the requirements of paragraph 3 of the Memorandum of Association;

b. provide the principal with such opportunity as may be necessary to enable him to express his opinions and to make his recommendations to the Board of Governors (in writing if so required) on all matters connected with the school including the appointment and removal of non-teaching staff.

Financial Management

13. The Board of Governors shall ensure that the grants available to the school under Article 77 of the 1989 Order are managed in accordance with the Financial Memorandum and any other conditions determined by the Department and any guidance issued by the Department and NICIE.

Staff Management

14. (1) Subject to Articles 69 and 70 of the 1986 Order and to paragraph 7 of this Article the Board of Governors shall be responsible for the determination of the school's staffing complement and for the selection, appointment, promotion, remuneration, discipline, suspension and dismissal of all staff employed by the Board of Governors for the purposes of the school. Subject to paragraph (2) of this Article, the Board of Governors, in consultation with the principal, shall determine the procedures to be used for the recruitment and promotion of staff. In carrying out these responsibilities the Board of Governors shall have regard to the relevant statutory instruments relating to employment, including the requirement in relation to monitoring and reporting. (See Appendix A).

(2) The functions of the Board of Governors in relation to the recruitment of teachers to posts of one year's duration or more, the recruitment of other staff to substantive posts in the school and the promotion of all staff shall be carried out at properly convened meetings of the Board of Governors or committees thereof and shall include provisions for appeals.

(3) The regulation of staff conduct and discipline, and any procedures for affording to members of staff opportunities for seeking redress of any grievances relating to their employment, shall be under the control of the Board of Governors. The Board of Governors shall establish -

a. disciplinary rules and procedures; and

b. staff grievance procedures

and shall make these known to the staff of the school.

(4) The Board of Governors may –

a. suspend any person employed by it to work at the school where, in the opinion of the Board of Governors, his suspension from school is required;

b. end any suspension implemented under sub-paragraph (a) of this paragraph.

(5) When the Board of Governors determines that a person, who is employed by it to work at the school under a particular contract of employment, should cease to work at the school under that contract, the Board of Governors shall –

a. give that person such notice as is required under the contract to terminate his employment; or

b. terminate the contract without notice if the circumstances are such that it is entitled to do so by reason of the person's conduct.

(6) The Board of Governors shall –

a. make arrangements for affording to any person, whose contract of employment is about to be terminated under paragraph (5)a of this Article, the opportunity to make representations with respect of the proposed termination, including oral and written representations to such person or persons as the Board of Governors may appoint for the purpose and shall have regard to those representations;

b. make arrangements for affording to any person, whose contract of employment has been terminated under paragraph (5)b of this Article, the opportunity to appeal.

(7) The Board of Governors shall make arrangements with the employers of persons employed in the school for their conduct while on the school premises.

School Development Plans

15. (1) Subject to regulations made under Article 13(3) of the 1998 Order, the Board of Governors shall prepare, and from time to time revise, a school development plan.

(2) In preparing or revising a school development plan, the Board of Governors shall –

a. consult the principal of the school;

b. consider –

(i) any guidance given by the Department and the board for the area in which the school is situated; and

(ii) the findings of any inspection of the school under Article 102 of the 1986 Order.

Determination of Curriculum Policy and of the Curriculum

16. (1) The Board of Governors shall –

- a. determine and keep under review, its policy in relation to the curriculum for the school;
- b. make, and keep up to date, a written statement of that policy.

(2) When determining or reviewing its policy in relation to the curriculum for the school the Board of Governors shall –

a. take account of the findings of any inspection of the school under Article 102 of the 1986 Order; and

b. consider any representations made to it regarding the curriculum by the board and any other body connected with the school.

(3) The Board of Governors shall consult the principal of the school before making or varying any statement under paragraph (1)b.

(4) The Board of Governors shall allocate to the principal such functions as will, subject to the resources available, enable him to determine and organise the curriculum in accordance with the curriculum policy for the school determined under paragraph (1) of this Article and secure that it is followed within the school.

Pupil Discipline

17. The Board of Governors shall ensure that policies designed to promote good behaviour and discipline on the part of its pupils are pursued at the school. In particular it shall -

a. make, and from time to time review, a written statement of general principles to which the principal is to have regard to determining any measures under Article 34(1)a of this scheme.

b. before making or revising that statement –

(i) consult (in such manner as appears to it to be appropriate) the principal and the parents of registered pupils at the school; and

(ii) consider any guidance given by the Department and the board for the area in which the school is situated.

c. where it considers it desirable that any particular measures should be determined by the principal under Article 34(1)a or that he should have regard to any particular matters –

(i) notify him of those measures or matters; and

(ii) give him such guidance as it considers appropriate.

The Principal

18. The Board of Governors shall -

a. assist the principal in such manner as is reasonably necessary to enable him to control the internal organisation, management and discipline of the school; and

b. provide the principal with such opportunity as may be necessary to enable him to express his opinion and to make his recommendations to the Board of Governors (in writing if so required) on all matters connected with the school.

19. The Board of Governors shall encourage –

a. the principal to promote regular communication between assistant teachers and parents of pupils; and

b. the principal to maintain regular communication and consultation with his assistant teachers on the management of the school, curricular matters and on matters relating to the education, health and welfare and discipline of the pupils;

and shall from time to time request a report from the principal on these matters.

Annual Report of the Board of Governors

20. (1) The Board of Governors shall once in every school year prepare a report in respect of the previous school year containing a summary of the steps taken by the Board of Governors in the discharge of its functions during the period covered by the report.

(2) The report shall –

a. be as brief as is reasonably consistent with the requirements as to its contents;

b. give details of the date, time and place for the next annual parents' meeting and its agenda and indicate that the purpose of that meeting will be to provide an opportunity for discussion of the report and of the discharge by the Board of Governors, the principal, the board and the Department of their functions in relation to the school;

c. report on the consideration given and any action taken in relation to any resolutions passed at the previous annual parents' meeting;

d. give the name of each member of the Board of Governors and indicate into which of the following categories he falls, namely -

(i) foundation members;

(ii) members elected by parents;

(iii) members elected by assistant teachers;

(iv) members appointed by the Head of Department;

(v) members co-opted under Article 122 of the 1989 Order;

(vi) the principal.

e. give, in relation to each member (other than the principal) the date on which his term of office comes to an end;

f. name the Chair and Vice-Chair of the Board of Governors and its secretary and the treasurer of the school;

g. give such information as is available to the Board of Governors about arrangements for the next election of parents to the Board of Governors;

h. contain a financial statement –

(i) reproducing or summarising any financial statement of which a copy has been furnished to the Board of Governors by the Department under Article 78 of the 1989 Order since the last report was prepared;

(ii) indicating, in general terms, how any grants made to the Board of Governors by the Department under the Education Orders in the period covered by the report were used;

(iii) giving details of the application of any gifts or bequests made to the school in that period;

i. describe what steps have been taken by the Board of Governors to develop or strengthen the school's links with the community and, in particular, to promote the attainment of the objectives of the educational theme called Education for Mutual Understanding;

j. give such information as is required to be made available in accordance with regulations under Article 31(2)(a) of the 1989 Order;

k. (i) describe the arrangements made and facilities provided for special educational needs (SEN) and disabled pupils including any special admission arrangements which the governors have made and the steps taken to ensure that pupils with special educational needs or disabilities are treated no less favourably than other pupils under Article 8 of the 1996 Order.

(ii) describe the steps taken to secure the implementation of their special educational needs (SEN) policies in accordance with Article 9 of the 1996 Order.

[(iii) with effect from the [2005/06] school year, include information as to the facilities provided to assist access to the school by disabled pupils, and the accessibility plan for the school;]

l. describe in general terms –

(i) the arrangements made for the security of the pupils and staff of the school and the school premises; and

(ii) any changes to those arrangements since the last report was prepared.

(3) The Board of Governors may produce its report(s) in such language or languages (in addition to English) as it considers appropriate.

(4) The Board of Governors shall take such steps as are reasonably practicable to secure that -

a. the parents of all registered pupils at the school, all persons employed at the school, are given (free of charge) a copy of its report in respect of that school;

b. copies of that report are available to all persons for inspection (at all reasonable times and free of charge) at the school; and

c. copies of any such report to be considered at an annual parents' meeting are given to parents not less than two weeks before that meeting.

Footnote: [] is subject to an Appointed Day provision

Annual Parents' Meeting

21. (1) The Board of Governors shall hold a meeting once in every school year ("the annual parents' meeting") which is open to –

- a. all parents of registered pupils at the school; and
- b. such other persons (including assistant teachers and other employees at the school) as the Board of Governors may invite.

(2) The purpose of the meeting shall be to provide an opportunity for discussion of –

- a. the report of the Board of Governors under Article 20 of this scheme;
- b. the discharge by the Board of Governors, the principal, the board and the Department of their functions in relation to the school; and
- c. where relevant, discuss the General Inspection Report and the Board of Governors' response to that report (Article 22(3)b of this scheme).

(3) Unless prevented from doing so by illness or other unavoidable cause each member of the Board of Governors shall be expected to attend the annual parents' meeting. When a member is unable to attend the annual parents' meeting he shall advise the secretary of the Board of Governors of his inability to attend.

(4) The procedure to be followed at the annual parents' meeting shall be regulated in accordance with Schedule 1.

(5) The Board of Governors shall –

- a. consider and comment orally, or where appropriate refer for consideration to the next meeting of the Board of Governors, any resolution which is duly passed at an annual parent's meeting and which it considers is a matter for it;
- b. request the principal to comment orally, or subsequently in writing to the Board of Governors on any such resolution which it considers is a matter for him; and
- c. send to the board or the Department or NICIE a copy of any such resolution which it considers is a matter for the board or the Department or NICIE as the case may be.

School Inspections

22. (1) The Board of Governors shall convene a meeting with the Reporting Inspector, and, if relevant, any other member of the Inspection Team, before each general or focused inspection of the school takes place for the purpose of making the Board of Governors' views about the school known to the Inspection Team.

(2) The procedure for a meeting convened under paragraph (1) of this Article shall be as set out in Schedule 2 to this scheme.

(3) After each general or focused inspection of the school, the Board of Governors shall -

a. provide the parents of all registered pupils at the school with a summary of the general inspection report or the full report of the focused inspection which shall be prepared by the Department;

b. within 3 months of receiving the Inspection Report prepare its response to the Report which shall set out the action which the Board of Governors intends to take;

c. discuss the general or focused inspection report and the Board of Governors' response to that report with parents at the annual parents' meeting convened under Article 21 of this scheme.

(4) After any other inspection the Board of Governors shall provide, on request, a copy of the Inspectorate's findings to the parents of all registered pupils at the school.

Other Reports and Returns

23. The Board of Governors shall provide for the board any information, reports and returns as may reasonably be required for the exercise of the board's functions in relation to the school, and shall at all times assist the board in the exercise of such functions.

24. The Board of Governors shall provide for the Department or NICIE any information, reports and returns as the Department or NICIE may reasonably require for the exercise of its functions in relation to the school, being reports or returns which cannot (for whatever reason) be obtained by the Department or NICIE from the board.

School Premises

25. (1) The school premises shall be under the control of the Board of Governors at all times.

(2) The Board of Governors shall from time to time and not less than once in each school year inspect the premises and equipment of the school and shall instruct the secretary to record its findings.

(3) Before undertaking any capital works at the school the Board of Governors shall obtain the approval of the Department and NICIE to carry out those works.

(4) If use is made of the school premises other than for school purposes the Board of Governors shall obtain from the user body for the period during which the school is in use for non-school activities written indemnity against -

a. any damage caused to school property and premises;

b. any personal injury caused on the school premises or the school property; and

c. any other public loss.

(5) The Board of Governors shall ensure that all insurances are effected and maintained as are necessary to safeguard the school and Governors against all public liability and against the

consequences of negligence on the part of any person employed by the Board of Governors or any defect in the buildings, premises, furnishings or equipment of the school whereby death, injury, loss or damage might result to any person in or upon the school premises.

(6) The function of the Board of Governors under this Article shall not extend to any equipment provided by the board solely for school meals purposes.

Power of Chair or Vice-Chair of the Board of Governors Actions in Cases of Urgency

26. (1) The Chair or, if he cannot be contacted, the Vice-Chair of the Board of Governors of a school shall, in the circumstances mentioned in paragraph (2) below, have the power to discharge any function of the Board of Governors except that relating to the appointment of permanent teaching staff and the dismissal of teaching and non-teaching staff, and shall report such action to the next meeting of the Board of Governors which shall be convened at the earliest possible opportunity thereafter.

(2) The circumstances are that the deferment of the function to the earliest date when it would be practicable to convene a Board of Governors meeting would be likely to be seriously detrimental to the interests of the school, or to the interests of any registered pupil at the school, his parent, or a person employed at the school.

Part V: Committees of the Board of Governors

Functions of a Committee

27. (1) In addition to the Parents' Council and Staff Council as provided for in Articles 38, 39, 40, 41 and 42 of the Articles of Association, the Board of Governors may establish such committees, including a Finance Committee and a Teaching Appointments Committee, as it considers necessary and may –

a. subject to paragraphs (2) and (3) delegate to such a committee such of its functions as it considers desirable except functions relating to powers conferred or duties imposed by or under the following provisions –

(i) Articles 4, 10 and 11 of the 1989 Order which relate to duties with respect to the curriculum.

(ii) Article 13(3A) and 3(B) of the 1986 Order as inserted by Article 121 of the 1989 Order – appointment of parent governors and Articles 122 and 139(5) of the 1989 Order co-option of members to the Board of Governors.

(iii) Articles 31 of the 1989 Order and Article 17(3) of the 1997 Order which relate to the provision and publication of information.

(iv) Article 16 of the 1997 Order which relates to the criteria for selecting pupils for admission to the school.

(v) Article 49 of the 1986 Order, as inserted by Article 39 of the 1993 Order, which relates to the preparation of a scheme specifying procedures in relation to the suspension or expulsion of pupils.

(vi) Article 66(2) of the 1989 Order which requires the Board of Governors to use its best endeavours to ensure that the management, control and ethos of the school are such as are likely to attract reasonable numbers of both Protestant and Roman Catholic pupils.

(vii) Article 79 of the 1989 Order which relates to proposals for significant change to a grant-maintained integrated school.

(viii) Article 80 of the 1989 Order relating to the discontinuance of a grant-maintained integrated school by the Board of Governors.

(ix) Article 124(1)(b) of the 1989 Order which relates to the provision of a statement of general principles concerning pupil discipline.

(x) Article 125 of the 1989 Order in so far as approval of the annual report of the Board of Governors is concerned.

(xi) Article 131 of the 1989 Order which relates to charges and remissions policies.

(xii) Article 38(3) of this scheme in so far as it relates to the convening of meetings of the Board of Governors.

(xiii) Article 45 of this scheme which relates to the election of Chair and Vice-Chair of the Board of Governors.

(xiv) This Article of this scheme which relates to the delegation of functions to a committee.

b. refer any matters within its purview to such a committee for consideration and report.

(2) The functions to be delegated to a committee under this Article shall not, unless the Board of Governors otherwise determines, include the power to take decisions on behalf of or in the name of the Board of Governors without the approval of the Board of Governors.

(3) "Subject to the Education Orders, the financial functions of the Board of Governors may not be delegated to a committee, other than the Finance Committee of the Board of Governors."

Membership of a Committee

28. (1) Subject to the following provisions of this Article the membership of a committee established under Article 27 of this scheme shall be determined by the Board of Governors and may include persons who are not members of the Board of Governors.

(2) A committee established under Article 27 of this scheme apart from the committee established to consider appeals against staff dismissal shall include not less than three voting members of the Board of Governors, and not less than four members.

(3) The members of the Finance Committee of the Board of Governors shall consist entirely of members of the Board of Governors, the majority of whom shall be voting members of the Board of Governors. This does not affect the right, under Article 40(1) this scheme, of persons other than members to attend such meetings.

(4) A committee established under Article 27 of this scheme, apart from the committee established to consider appeals against staff dismissal, shall include not less than three members of the Board of Governors, at least two of whom should be voting members.

(5) Subject to paragraph (6) of this Article, the majority of the members of a committee, to which functions of the Board of Governors under Article 27 of this scheme are delegated, shall be voting members of the Board of Governors.

(6) A committee, which is established to undertake functions of the Board of Governors in relation to the appointment of staff, shall –

a. in the case of teaching appointments, consist of not less than three voting members of the Board of Governors; and

b. in the case of other appointments, consist of three members of the Board of Governors, two of whom shall be voting members.

(7) Where practicable, the membership of the committee shall reflect the interests and gender balance represented on the Board of Governors.

Disqualification and Termination of Membership

29. (1) Articles 8(1)b and c and (2) and 9(4)b and c of this scheme shall apply to the membership of a committee in the same manner as it applies to the membership of the Board of Governors.

(2) A member of a committee other than the principal may resign by giving notice to the Board of Governors and shall do so if he is disqualified from membership under paragraph (1).

(3) Where a member of a committee other than the principal is absent from three consecutive meetings the secretary of the committee shall report the matter to the Board of Governors and unless the Board of Governors is satisfied that his failure to attend was occasioned by illness or other unavoidable cause, the member shall be deemed to have resigned his membership and shall cease to be a member of the committee

Part VI: Functions of the Principal

General

30. In addition to his statutory functions and subject to the provisions of the Education Orders and regulations, orders and directions made thereunder and to the provisions of this scheme and such directions as may, from time to time, be given to him by the Board of Governors, the principal shall control the internal organisation, management and discipline of the school.

Delegated Functions

31. (1) The Board of Governors may delegate to the principal such of its functions in respect of the school for which the principal is appointed, as it considers reasonable and desirable except functions relating to powers conferred or duties imposed by or under the following provisions –

a. Articles 4, 10 and 11 of the 1989 Order which relate to duties with respect to the curriculum.

b. Article 13(3A) and (3B) of the 1986 Order – appointment of parent governors – and Articles 122 or 139(5) of the 1989 Order – co-option of members to the Board of Governors.

c. Articles 31 of the 1989 Order and Article 17(3) of the 1997 Order which relate to the provision and publication of information.

d. Article 16 of the 1997 Order which relates to the criteria for selecting pupils for admission to the school.

e. Article 49 of the 1989 Order as inserted by Article 39 of the 1993 Order which relates to the preparation of a scheme specifying procedures in relation to the suspension or expulsion of pupils.

f. Article 66(2) of the 1989 Order which requires the Board of Governors to use its best endeavours to ensure that the management, control and ethos of the school are such as are likely to attract reasonable numbers of both Protestant and Roman Catholic pupils.

g. Article 79 of the 1989 Order which relates to proposals for significant changes to grant-maintained integrated schools.

h. Article 80 of the 1989 Order relating to the discontinuance of a grant-maintained integrated school by the Board of Governors.

i. Article 124(1)(b) of the 1989 Order which relates to the provision of a statement of general principles concerning pupil discipline.

j. Article 125 of the 1989 Order in so far as approval of the annual report of the Board of Governors is concerned.

k. Article 131 of the 1989 Order which relates to charges and remissions policies.

l. Article 3(2)(a) and (b) of the 1998 Order and Article 17 (a) and (b) of this scheme which related to the provision of a statement of general principles concerning pupil discipline.

m. Article 14 of this scheme, except in relation to the selection and appointment of teachers to posts of less than one year's duration.

n. Article 39(3) of this scheme which relates to the convening of meetings.

o. Article 45-46 of this scheme which relates to the election of Chair and Vice-Chair of the Board of Governors.

p. This Article of this scheme which relates to the delegation of functions to the principal.

(2) The functions to be delegated to a principal under this Article shall not, unless the Board of Governors, otherwise determines, include the power to take decisions on behalf of or in the name of the Board of Governors without the approval of the Board of Governors.

(3) The principal shall carry out any functions delegated to him by the Board of Governors under Article 31 of this scheme and shall report any action or decision taken by him in relation to those functions to the next meeting of the Board of Governors or as soon as practicable thereafter.

Curriculum

32. In relation to the curriculum the principal shall carry out the functions allocated to him under paragraph (4) of Article 16 of this scheme.

Communication

33. The Principal shall –

- a. promote regular communication between assistant teachers and parents of pupils; and
- b. maintain regular communication and consultation between himself and assistant teachers on the management of the school, curricular matters and on matters relating to the education, health and welfare and discipline of the pupils;

and shall report to the Board of Governors on these matters as necessary or when so requested by the Board of Governors.

Pupil Discipline

34. (1) It will be the duty of the principal –

- a. to determine measures (which may include the making of rules and provision for enforcing them) to be taken with a view to –
 - i. promoting, among pupils, self-discipline and proper regard for authority;
 - ii. encouraging good behaviour and respect for others on the part of pupils;
 - iii. securing that the standard of behaviour of pupils is acceptable; and
 - iv. otherwise regulating the conduct of pupils;
 - aa. before determining such measures, to consult the registered pupils at the school and the parents of those pupils;
 - b. in determining such measures –
 - i. to act in accordance with the current statement made by the Board of Governors under paragraph (17)a; and
 - ii. to have regard to any notification or guidance given to him under paragraph (17)c;
 - c. to prepare a written statement of such measures and to secure that –
 - i. a copy of that statement is given (free of charge) to the parents of all registered pupils at the school; and
 - ii. copies of the statement are available for inspection (at all reasonable times and free of charge) at the school.
- (2) The standard of behaviour which is to be regarded as acceptable at the school will be determined by the principal so far as it is not determined by the Board of Governors.

Meetings of the Board of Governors and Committees Thereof

35. Unless prevented from doing so by illness or other unavoidable cause and subject to Articles 48, 49, 51 and 52 of this scheme, the principal shall attend every meeting of the Board of Governors and of any committees established under Article 27 of this scheme of which he is a member. If the principal is unable to attend a meeting of the Board of Governors or a committee of which he is a member he shall inform the Board of Governors of the reason for his inability to attend. In these circumstances the Board of Governors may require the assistance of a vice-principal.

Resolutions of Annual Parents' Meetings

36. When so requested by the Board of Governors the principal shall comment in writing on any resolution which is duly passed by an annual parents' meeting and which the Board of Governors consider is a matter for him and report on any action he has taken thereon.

Staff Discipline

37. (1) The Principal shall be responsible to the Board of Governors for the discipline of all staff employed by the Board of Governors at the school.

(2) In carrying out his duties under paragraph (1) of this Article, the Principal shall act in accordance with –

(a) any disciplinary rules and procedures; and

(b) any staff grievance procedures,

drawn up by the Board of Governors under Article [] of this scheme.

(3) The Principal may suspend any person employed by the Board of Governors to work at the school where, in the opinion of the Principal, his suspension from school, is required.

(4) The Principal, when exercising a power of suspension under paragraph (3) of this Article, shall immediately inform the Board of Governors.

(5) Any suspension under paragraph (3) of this Article may only be ended by the Board of Governors.

Part VII: Proceedings of the Board of Governors and Committees Thereof other than Proceedings Required Under Articles 21 and 22 of this Scheme

Frequency of Meetings

38. (1) The Board of Governors shall meet as often as the conduct of business may require, being not less than twice in each school term.

(2) A committee established by the Board of Governors under Article 27 of this scheme shall meet as often as the conduct of its business or the Board of Governors may require.

(3) The Chair of the Board of Governors or of a committee, as the case may be, may hold a meeting of its members at any time and shall do so within 10 working days following receipt of a written request made by not less than one third of the members.

Convening of Meetings

39. (1) Five working days at least before a meeting of the Board of Governors or a committee thereof, notice of the time and place of the meeting, together with the agenda for the meeting, shall be sent –

- a. as appropriate to each member of the Board of Governors or committee thereof; and
- b. in the case of a meeting of a committee, to the secretary of the Board of Governors.

(2) Subject to paragraph 3 and Article 64(1) and (3) of this scheme a copy of each written report or paper to be considered by members at the meeting shall be sent to each of those members five working days at least before the meeting.

(3) The Chair may withhold any report or paper relating to a matter specified on the agenda from a member who would be required under this scheme to withdraw from the meeting during discussion and consideration of the subject matter of the report or paper in question.

Right to Attend Meetings

40. (1) Subject to Article 52(1) of this scheme the principal shall be entitled to attend any meeting of a committee of the Board of Governors of which he is not a member.

(2) A principal, who is acting as secretary to the Board of Governors or a committee thereof, may, with the agreement of the members, admit a person to any Board of Governors or committee meeting for the purpose of providing secretarial assistance.

(3) A member of staff in the school with responsibility for any aspect of school finance may, upon the invitation of the Finance Committee, attend a meeting of that committee when matters other than staffing matters are being discussed provided that he has no personal or pecuniary interest in the matters under discussion.

(4) Members of the Education and Training Inspectorate of the Department of Education, may, upon the invitation of the Board of Governors, attend a meeting of the Board of Governors or a committee thereof, for the purpose of discussing matters relevant to a general inspection of the school.

Stated Items of the Agenda

41. (1) The agenda for every meeting of the Board of Governors shall include

- a. where appropriate, the election of a Chair;
- b. when appropriate, the election of a Vice-Chair and/or the appointment of a secretary;
- c. the minutes of the previous meeting and matters arising from those minutes;

d. business to be raised by members, notice of which has been submitted in accordance with Article 54 of this scheme;

e. any business which must be settled in the interests of the efficient management of the school;

f. a written report by the principal which shall include such matters as may previously have been requested by members;

g. i. matters arising from the minutes or other written report of a committee of the Board of Governors where such a committee has sat since the last meeting of the Board of Governors; or

ii. a written report by the Chair or voting member of a committee of the Board of Governors where the committee has sat since the last meeting of the Board of Governors;

h. where appropriate, a written report on the previous annual parents' meeting, and any resolutions arising therefrom which were referred for further consideration.

(2) Every item stated on the agenda for a meeting of the Board of Governors shall be directly relevant to the functions of, or to some matter which affects the functions of, the Board of Governors or a committee thereof.

(3) Article 41(1)a to f and h of this scheme shall apply to the agenda for every meeting of a committee as it applies to the agenda for every meeting of the Board of Governors.

(4) The Chair of the meeting may amend the order or priority determined under paragraph (1) above if he considers it convenient and conducive to the efficient dispatch of business.

Commencement of Business

42. The business of any meeting shall proceed immediately upon a quorum being formed and the chair being taken once the appointed time for the meeting has been reached or passed.

Quorum

43. (1) The quorum for a meeting of the Board of Governors shall be one half (round up to a whole number) of the total number of voting members entitled to be present.

(2) The quorum for a meeting of a committee of the Board of Governors shall be one third (rounded up to a whole number) and not less than three of the total number of voting members entitled to be present.

(3) If during any meeting of the Board of Governors or a committee thereof the number of members assembled ceases to constitute a quorum the meeting shall be adjourned.

(4) When a voting member is required under the provisions of this scheme to withdraw from a meeting, he shall not be counted for the purposes of paragraphs (1) and (2) of this Article as a voting member entitled to be present.

Order of Business

44. The business of the meeting shall follow the order specified in the agenda, or as amended by the Chair.

Election of Chair and Vice-Chair

45. (1) At the first meeting of each newly-constituted Board of Governors, or at the first meeting in the school year, the voting members shall elect or re-elect a Chair and a Vice-Chair from among those of their number who are not members of staff and the persons so elected shall hold office until the election of their successors.

(2) Should a vacancy occur in the office of Chair or Vice-Chair of the Board of Governors the voting members shall at the next meeting of the Board of Governors elect one of their number who is not a member of staff to fill that vacancy.

(3) Should the Chair and Vice-Chair of the Board of Governors be absent from a meeting, the voting members present shall elect one of their number who is not a member of staff to be Chair of that meeting.

46. Article 45 of this scheme shall apply to the election of a Chair and Vice-Chair of a committee as it applies to the election of a Chair of the Board of Governors.

Appointment of Secretary

47. (1) Subject to paragraph (2) –

a. the Board of Governors shall appoint a person to act as its secretary; and

b. a committee of the Board of Governors shall appoint a person to act as its secretary.

(2) Neither the principal of nor other teacher in the school shall act as secretary at any meeting of the Board of Governors or of a committee thereof at which any matter relating to the appointment, remuneration, tenure or conditions of service, status, conduct, discipline, suspension, dismissal, resignation, retirement or superannuation of the principal is to be considered.

Declaration of Family Relationships of Members

48. (1) Every member of the Board of Governors or a committee thereof shall disclose in writing to the secretary any family or other relevant relationship known to him to exist between himself and any person who is employed, or is a candidate for employment in any school for which the Board of Governors is appointed, and all such disclosures shall as soon as practicable be brought to the notice of the Board of Governors and any committee of which he is a member and recorded in the minutes.

(2) For the purposes of this Article, a family relationship shall be deemed to exist between a member and a person who is employed or who is a candidate for employment in the school if they are husband and wife or living together as husband and wife, or if the person who is employed or is a candidate for employment, or the husband or wife or co-habitee of that person, is the –

a. parent;

b. grandparent;

c. grandson or granddaughter;

- d. son or daughter;
- e. brother or sister;
- f. first cousin;
- g. uncle or aunt;
- h. all equivalent step-relationships; or
- i. nephew or niece;

of the member, or of the husband or wife or co-habitee of the member.

(3) Where a member who is required to make such disclosure is present at a meeting of the Board of Governors or a committee thereof at which any matter is being considered relating to or affecting the appointment, remuneration, tenure or conditions of service, promotion, status, conduct, suspension, dismissal, retirement or superannuation of a person to whom he stands in a relevant family relationship, he shall withdraw from the meeting during consideration and discussion of that matter, and any vote relating thereto. His withdrawal shall be recorded in the minutes.

49. (1) Where a member of the Board of Governors or a committee thereof who has a family or other relevant relationship with a pupil, is present at a meeting which includes discussion of –

- a. the admission of, or disciplinary action against, that pupil; or
- b. disciplinary action against another pupil arising out of an alleged incident involving the pupil first mentioned in this paragraph;

he shall declare his relationship at the meeting as soon as practicable after its commencement.

(2) For the purposes of this Article a family relationship shall be deemed to exist if the member is the parent, grandparent, brother or sister, uncle or aunt, or equivalent step-relationship, of the pupil.

(3) A member who is required to make a declaration under paragraph (1) shall withdraw from the meeting during consideration and discussion of the matter in question, and any vote relating thereto. His withdrawal shall be recorded in the minutes.

Declaration of Knowledge of Canvassing

50. Where a member of the Board of Governors or a committee thereof has knowledge of any instance of canvassing for an appointment, contract or order with which the Board of Governors or a committee is concerned, he shall declare this knowledge before the issue is discussed. The Board of Governors shall consider any action which might be necessary arising from such a declaration.

Declaration of Pecuniary Interest

51. Where a member of the Board of Governors or a committee thereof has any pecuniary interest, whether direct or indirect, in the supply of goods or services to the school for which the

Board of Governors is appointed, or in any other matter under consideration by the Board of Governors or a committee, he shall, if present at a meeting at which any such matter is to be considered, disclose openly the nature of his interest as soon as practicable after the commencement of the meeting. He shall withdraw from the meeting during consideration or discussion of that matter and any vote on any question related to that matter. His withdrawal shall be recorded in the minutes.

Withdrawal of Principal or Teacher Member

52. (1) If the principal is present at a meeting of the Board of Governors or a committee thereof at which –

- a. his remuneration, tenure or conditions of service; or
- b. his conduct, discipline, suspension, dismissal, resignation or retirement; or
- c. the appointment of a successor to him; is the subject of consideration or discussion he shall withdraw from the meeting during consideration and discussion of, and voting on, that matter and his withdrawal shall be recorded in the minutes. The Board of Governors may require the principal to present a written report for consideration.

(2) If a teacher member is present at a meeting of the Board of Governors or a committee thereof at which –

- a. his remuneration, tenure, or conditions of service; or
- b. his promotion or transfer; or
- c. his conduct, discipline, suspension, dismissal, resignation or retirement; or
- d. the appointment of his successor; or
- e. the appointment, the transfer, or the promotion of, any teacher, to a post senior to his own; or
- f. the conduct, discipline, suspension, dismissal, resignation or retirement of any member of staff holding a post senior to his own; is the subject of consideration, discussion or voting, he shall withdraw from the meeting during such consideration, discussion or voting on, that matter and his withdrawal shall be recorded in the minutes.

"In Committee" Proceedings

53. (1) Subject to paragraph (2) the Board of Governors or a committee thereof may resolve itself into committee for the purpose of transacting any business on the agenda for that meeting. Before the commencement of business, the Board of Governors or committee thereof may determine which items, if any, are to be considered "in committee".

(2) A resolution under paragraph (1) may only be made in respect of business which, because of its nature, members consider should be dealt with in a confidential manner.

(3) The business referred to in the resolution shall be the only matter considered "in committee". Once the business has been considered the recommendation(s) made shall be proposed for adoption.

(4) If the business is for any reason unfinished this shall be recorded in the minutes. The Chair of that meeting may propose that the business be again considered "in committee" on another day.

Notice of Business to be raised by Members

54. (1) Subject to Article 55 of this scheme, notice of any business to be raised by a member or members at a meeting of the Board of Governors or a committee thereof shall be given in writing, signed by the member or members giving the notice and delivered at least ten working days before the next meeting to the secretary of that meeting.

(2) If that business is not raised at the meeting either by a member who gave notice thereof or by some other member on his behalf it shall be treated as withdrawn.

(3) If the subject matter of any business raised at a Board of Governors meeting of which notice has been given under paragraph (1) comes within the remit of any committee or committees of the Board of Governors, it shall, upon being proposed and seconded, stand referred without discussion to such committee or committees, for consideration and report; provided that the Chair of the Board of Governors may, with the consent of the majority of members present, and if it is convenient and conducive to the dispatch of business to do so, allow the business to be dealt with at the meeting of the Board of Governors at which it is raised.

(4) It will be a matter for the Chair to determine which matters raised under Any Other Business may be considered by the meeting.

Business Not Requiring Notice

55. (1) The Chair of the Board of Governors may permit the following business to be raised at a meeting of the Board of Governors without notice –

- a. amendments to the minutes;
- b. amendments to the order of business;
- c. proposals arising out of agenda items, to be put before members for decision;
- d. amendments to proposals at (c);
- e. a request for a recorded vote on any issue put to members for decision;
- f. a proposal to adjourn discussion on a particular item of business or a matter related to that item;
- g. a proposal to adjourn the meeting;
- h. a proposal for a member to withdraw;
- i. a proposal to initiate "in committee" proceedings under Article 55 of this scheme;

- j. adoption of reports and recommendations of the principal;
- k. adoption of reports and recommendations of committees;
- l. appointment of a committee under Article 27 of this scheme occasioned by an agenda item;
and
- m. remission of an agenda item to a committee already established under Article 27 of this scheme.

(2) This Article does not apply to a proposal to rescind or vary a resolution carried at a previous meeting.

56. Article 55(1)a to j and (2) of this scheme shall apply to the meetings of a committee as it applies to the meetings of the Board of Governors.

Rules of Debate

57. (1) No discussion of business shall take place at a meeting of the Board of Governors or a committee thereof at any time when the chair is vacant.

(2) A member shall address the chair when speaking and shall direct his speech to the business of the meeting, to a proposal or an amendment to a proposal related to that business, or to a point of order.

(3) If notice of any business raised by a member at the meeting has not been given in accordance with Article 54 of this scheme, it shall, if required by the Chair, be put into writing and handed to the Chair before it is further discussed or put to the meeting.

(4) A proposal relating to the business of the meeting or an amendment to such a proposal shall not be discussed unless it has been formally proposed by a member at the meeting and seconded.

(5) Subject to paragraph (6) the Chair may recommend and, with the agreement of members, shall set limits on the frequency and duration of individual debates as appear to be necessary for the efficient discharge of the business of meetings.

(6) A member who makes a proposal relating to the business of the meeting has the right to reply at the close of the debate on the proposal and on an amendment to the proposal immediately before it is put to the vote.

(7) A member who is speaking shall not be interrupted by another member unless on a point of order.

(8) A member who is called to order shall cease to speak until the point of order is disposed of.

(9) A point of order shall relate to an alleged breach of the scheme of management or to another statutory provision. When a member raises a point of order he must specify the provision in question and state the way in which he considers it to have been broken.

(10) A point of order must be dealt with before business is resumed.

(11) The ruling of the Chair on a point of order shall not be open to discussion.

Voting

58. (1) A member who is not a voting member of the Board of Governors shall not be entitled to vote on any question at any meeting of the Board of Governors or a committee thereof other than at a meeting of a committee established to consider appeals against staff dismissal.

(2) Every question before a meeting of the Board of Governors or a committee thereof shall, subject to Articles 44, 54(3) and 60(1) of this scheme, be determined by a majority of the votes of the voting members present and voting thereon. Where there is an equal division of votes, the Chair of the meeting shall have a second or casting vote.

(3) Any member shall have the right to propose that the votes cast by members on any item of business be recorded. Where a member makes such a proposal but it is not carried, the member shall have the right to have his own vote recorded.

Disorderly Conduct

59. If a meeting of the Board of Governors or a committee thereof any member persistently disregards the procedures for the conduct of business contained in this scheme including the ruling of the chair, and wilfully and persistently obstructs the business of the meeting, a proposal for the member to withdraw from the meeting may be made and the proposal if seconded shall be put to the voting members of the meeting and determined without discussion.

Adjournment of Meetings

60. (1) A meeting of the Board of Governors or a committee thereof may be adjourned by the Chair of the meeting. When a meeting is adjourned to a later time on the same day or to another date the adjourned meeting shall be treated as a continuation of the original meeting. When a meeting is adjourned indefinitely any unfinished business shall be dealt with at the next ordinary meeting.

(2) Where the date fixed for an adjourned meeting so permits, notice of the adjourned meeting shall be sent to –

a. each member; and

b. where the meeting is a meeting of a committee, the secretary of the Board of Governors; five working days before such a meeting.

(3) No business shall be conducted at the reconvened meeting which was not on the agenda for the original meeting unless notice thereof is sent to –

a. each member; and

b. where the meeting is a meeting of a committee, the secretary of the Board of Governors; five working days before such a meeting.

Minutes

61. (1) A separate record shall be taken of –

- a. the proceedings of each meeting of the Board of Governors;
- b. the proceedings of each meeting of a committee of the Board of Governors; and
- c. "in committee" proceedings at each such meeting; by the secretary to those proceedings.

(2) Subject to Article 62 of this scheme the minutes of the proceedings listed at paragraph (1) shall be recorded in a form acceptable to the Board of Governors.

Content of Minutes

62. (1) The minutes required under Article 61(1)a and b of this scheme shall record –

- a. the names of those present at the meeting and any apologies received from absent members;
- b. when appropriate, changes in the membership;
- c. any amendments agreed at that meeting to the minutes of the previous meeting and matters arising from those minutes;
- d. any declaration(s) required under Articles 48 to 51 of this scheme;
- e. all withdrawals required under Articles 48, 49, 51, 52 and 59 of this scheme and any subsequent re-entries;
- f. those items of business which are taken under "in committee" proceedings in accordance with Article 53 of this scheme;
- g. the results of any votes taken by members at the meeting and, upon the request of a member, the member's vote in relation to any issue put before the meeting; and
- h. where it is agreed that all the votes cast on any item of business are to be recorded, those voting for, those voting against and those abstaining; and shall be signed by the appropriate chair as an accurate record of proceedings.

(2) The content of the minutes required under Article 61(1)c of this scheme shall be agreed by the members during those proceedings and signed by the Chair as an accurate record of those proceedings.

Discussion of Minutes

63. Discussion of the minutes required under Article 61 of this scheme shall be restricted to the question of accuracy. Any question as to the accuracy of the minutes shall be raised and settled before any matters arising from the minutes are discussed.

Distribution of Minutes

64. (1) A copy of the minutes required under Article 61(1)a and b of this scheme, shall be sent to each member at least 5 working days before the next meeting.

(2) The Board of Governors shall make a copy of the signed minutes of any of its meetings, and one copy of any written report or paper considered at its meetings, available for scrutiny by all members of staff or upon request to a parent of a pupil at the school for which the Board of Governors is appointed and may exclude from those copies any material relating to –

- a. a named teacher or other person employed at or proposed to be employed at the school;
- b. a named pupil at, or applying for admission to, the school; and
- c. any matter which, by reason of its nature, the Board of Governors is satisfied should be dealt with on a confidential basis.

(3) Subject to paragraph (5) the minutes of any "in committee" proceedings required under Article 61(1)(c) of this scheme shall not be circulated or accessible without the permission of the Board of Governors to any person including a member who is required to withdraw from those proceedings under Articles 48, 49, 52 and 55 of this scheme. The Chair of the Board of Governors shall make arrangements for the minutes of all such "in committee" proceedings to be kept in a secure place.

(4) No records of any proceedings of a meeting of the Board of Governors or a committee thereof other than those required under Article 61 of this scheme shall be circulated to any person.

(5) Any minute purporting to be signed as mentioned in Article 62(1) and (2) of this scheme shall be received in evidence without further proof.

Part VIII: Copies of the Scheme

65. A copy of this scheme shall be available to each member of the Board of Governors and each member of a committee of the Board of Governors who is not a member of the Board of Governors and upon request to any member of the staff of the school.

Part IX: Making and Approval of the Scheme

66. This scheme was prepared by the Board of Governors of _____

on _____

Sealed with the Official Seal

of the School on [].

Chair

The Department of Education hereby approves this scheme and hereby specifies that it shall come into operation on [].

SEALED with the Official Seal

of the Department of Education

on [].

Senior Officer of the Department of Education

Schedule 1

Annual Parents' Meeting

Articles 20 and 21 of the Scheme of Management contain the requirements of Articles 125 and 126 of the Education Reform (NI) Order 1989 relating to the duty of each Board of Governors to produce annually a report in respect of the exercise of its functions for the previous school year and to hold an annual meeting of parents at which the report of governors and other related matters may be discussed.

Convening of Meeting

1. The annual parents' meeting shall be under the control of the Board of Governors and shall be convened in the autumn term.

The notification to parents shall indicate the day, date, time and place of the meeting which should be held at a time (preferably evening) and in a place most convenient for the majority of parents. The notice shall be accompanied by a copy of the annual report of the Board of Governors.

Parents should be notified in writing not less than 21 days before the meeting in the manner prescribed in Articles 17-21 of the Articles of Association.

Agenda for Annual Parents' Meeting

2. The annual report shall contain an agenda for the parents' meeting. The agenda should contain the following items:

i. Apologies

ii. Minutes of the Last Parents' Meeting

iii. Matters Arising from the Minutes

iv. Any resolution duly passed at a previous annual meeting

v. The Annual Report of the Board of Governors (as prescribed in Article 21 of the Articles of Association)

vi. The Discharge of their Functions in Relation to the School by -

the Board of Governors;

the Education and Library Board;

the Department of Education;

the Northern Ireland Council for Integrated Education;

vii. Financial Statement (Parents' Council finances to be included);

viii. Election of Parent Governor.

Attendance

3. The meeting shall be open to all parents of registered pupils at the school and such other persons as the Board of Governors may invite.

Quorum

4. Where at least one-fifth of the parents entitled to attend or 50 of such parents, whichever is the lesser are present at the meeting, the meeting may pass (by a simple majority) resolutions on any matters which may properly be discussed at the meeting.

Chair

5. The Chair of the Board of Governors or, in his absence, the Vice-Chair, shall act as a Chair of the meeting. Should neither the Chair nor Vice-Chair be present, the remaining voting governors shall elect one of their number to be Chair of that meeting.

Secretary

6. The Secretary to the Board of Governors shall act as secretary to the meeting.

Conduct of Meeting

7. The Chair shall be in control of the meeting and the business of the meeting shall be conducted in accordance with the "Rules of Debate" as detailed in Article 57 of this Scheme of Management. Any question arising at the meeting as to whether a matter may properly be discussed at the meeting shall be determined by the Chair.

Voting

8. Voting shall normally be by show of hands unless the Chair or at least one-third of the parents present call for a secret ballot. Only parents of registered pupils will be entitled to vote. Any question arising at the meeting as to whether a person is a parent of a registered pupil at the school shall be determined by the Chair in accordance with the provision of this scheme.

Minutes

9. Copies of the minutes of the meeting and any resolutions passed at the meeting shall be made available to parents as soon as is practicable after the meeting.

Note: Items i, iii, iv and viii will not be appropriate for the first Annual Meeting

Schedule 2

Procedure for Meetings about School Inspections

1. When a general or focused inspection of the school is due to take place, the Board of Governors shall make arrangements to meet the Reporting Inspector.
2. The meeting shall be held at such time and place as is convenient for the Reporting Inspector and the Board of Governors.
3. The meeting shall be under the control of the Board of Governors.
4. The secretary to the Board of Governors shall prepare an agenda for the meeting, after consultation with the Reporting Inspector.
5. The Board of Governors shall choose one of its voting members to be Chair of the meeting and another person to be secretary to the meeting.
6. At the commencement of the meeting, the Chair shall explain the purpose of the meeting and invite the Reporting Inspector to make an introductory statement. The Chair shall then allow the Board of Governors to comment on any matter properly relevant to the business of the meeting.
7. The secretary shall prepare a written report of the proceedings of the meeting and submit it to the next meeting of the Board of Governors and to the Reporting Inspector before the general or focused inspection takes place.
8. Any question arising at the meeting about whether a matter may properly be discussed at the meeting shall be determined by the Chair on the advice of the Reporting Inspector.

Schedule 3

Legislation in the Employment Field

Fair Employment and Treatment (NI) Order 1998 No 3162 (NI 21)

Sex Discrimination (NI) Order 1976 No 1042 (NI 15)

Sex Discrimination (NI) Order 1988 No 1303 (NI 13)

Equal Pay Act (NI) 1970 (Chapter 32)

Disability Discrimination Act (NI) 1995 (Chapter 50)

Race Relations (NI) Order 1997 No 869 (NI 6)

Commissioner for Complaints (NI) Order 1996 No 1297 (NI 7)

EC Equal Treatment Directive 1976 No 207

The Freedom of Information Act 2000

Note:

Some of the provisions in the extant primary legislation listed above have been amended since enactment.

Correspondence from the Minister of Education - Membership, Local Committees & Employment Arrangements

FROM THE MINISTER/ÓN AIRE



COR 1006/2009

Tel: 9127 9618
Fax: 9127 9779
Dialing codes: 028 from North of Ireland
048 from South of Ireland

Mervyn Storey MLA
Chairperson
Committee for Education
Room 241
Parliament Buildings
Stormont
BELFAST
BT4 3XX

Your Ref: 036/9/C/05

16 September 2009

A Mervyn a chara

Thank you for your further letter of 9 September. I appreciate that the Committee is in the final phase of its scrutiny of the Bill, and I welcome the opportunity to build consensus on key matters before the Committee produces its report.

Officials have provided the Committee with details of the amendments that I have already decided to move at consideration stage, together with a draft of the proposed regulations on schemes of employment. Officials will also be providing responses to all outstanding Committee queries and information requests in the next few days. I will also respond shortly on three other suggested amendments put to me by Reg Empey (on access to data by further education colleges); the National Society for the Prevention of Cruelty to Children (on child protection); and Comhairle na Gaelscolaíochta (on duties of boards of governors of Irish-medium schools). If I conclude that these further amendments are required, I will provide the Committee with the detailed text at the earliest opportunity.

Your letter of 9 September asked me to consider three particular matters: the membership of the Education and Skills Authority (ESA); the Committee and local structure of the ESA; and schemes of employment. I will deal with each in turn.

Membership of the ESA

There are two interconnected issues to be considered: the number of members, and the composition of the membership, with particular regard to 'representativeness'.



An Roinn Oideachais, Teach Rath Giall, Bóthar Bhaile Aodha, Beannachar, Co an Dúin
Department of Education, Rathgael House, 43 Balloo Road, Bangor, Co Down
Mánnstríe o Lear, Rathgael House, 43 Balloo Road, Bang'or, Coontie Doon

As I indicated in previous correspondence, both issues turn on the purpose of the ESA membership. I remain of the view that the role of the ESA is the management and delivery of services according to the policies of the Minister of the day. This should be reflected in a relatively small, skills-based membership. However, I have also emphasised the need for the membership to be broadly based, and I recognise that this would be easier to secure with a slightly larger membership than currently proposed in the Bill. Accordingly, I propose to move a further amendment to paragraph 2 (1) of Schedule 1, changing the membership range from 7-11, to 11-14 plus the chairperson.

My intention is to use the full range, and appoint 14 members in addition to the Chair. I am mindful of the Committee's concern about the potential workload for members. I will keep that matter under review and, if necessary, I will use the power in paragraph 2 (3) of Schedule 1 to increase the membership. I will continue to engage with the committee after the establishment of ESA in regards this and other matters as ESA develops in the months and years ahead.

The Committee also suggested the possible inclusion of a duty to ensure that the membership is 'representative', to be accompanied by a definition of 'representative'. I have emphasised my commitment to a diverse membership, drawn from the broad range of people who have an interest in education and the skills and competences to play a leading role. However, I am concerned that the possible amendment discussed by the committee would shift the focus of the ESA membership onto sectoral advocacy, rather than the service delivery and support role that I envisage. Sectoral advocacy is important and will, of course, be a function of the various non-statutory representative groups.

You also provided officials with a copy of correspondence from Paul Goggins MP, setting out the approach to appointing the membership of the Equality Commission and the Human Rights Commission. I was interested to note that, notwithstanding the duties on representative membership that apply in respect of those organisations, the appointment process used is the same as that to be adopted for the ESA. Indeed, the existence of the duties does not appear to have materially affected the appointment process, which reflects the guidance of the Commissioner for Public Appointments.

In these circumstances, I am not convinced of the need for the possible amendment as discussed by the committee for a further duty, and I am not minded to support it.

Committee and local structure


The Committee has quite rightly emphasised the need for trust and confidence in the detailed arrangements for the ESA. I understand your desire for clarity and certainty on these matters, and I would like to accommodate the Committee's wish to scrutinize and contribute to the ongoing development of the ESA. However, in considering how best to achieve this, I am not convinced that the suggested regulatory approach would be effective.

An initial committee structure for the ESA will, of course, be in place from the outset. However, the development of the organisation and the transformation of the services that it provides will involve a rolling programme of change that will take place over a number of years. Regulating the local structure of the organisation in the way suggested would require us to anticipate all of the changes that will take place over the next three to five years. I do not consider that this would be either practicable or desirable. The regulations, far from providing certainty and clarity, may merely impose a solution with no guarantee that it will be fit for purpose, or that it will meet evolving local need.

I believe that a much better alternative would be for the Committee, using its powers, to scrutinize, oversee and contribute to the development of the ESA, in conjunction with the Department of Education (DE). It would be both desirable and necessary to ensure that DE and the ESA facilitate the Committee in such a role.

Employment arrangements

I welcome the Committee's support for the amended employment arrangements in the Bill, which I trust have addressed your concerns and those of stakeholders. I hope that the early sight of the draft regulations will assist the Committee in its formal scrutiny of the regulations in due course. In relation to the timescale, it is my intention that the proposed enabling power and the Regulations will be made and come into operation on 1 January 2010.



CAITRÍONA RUANE MLA

Correspondence from Committee for Employment & Learning - DEL Amendments

Committee for Employment and Learning
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To: John Simmons
Clerk to the Education Committee
From: Peter Hall
Clerk to the Employment and Learning Committee
Date: 16th September 2009
Subject: DEL amendments to the Education Bill

John,

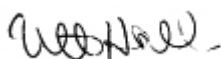
Over the last number of months the Committee for Employment and Learning has been briefed on the various amendments to the Education Bill that have been proposed by the Minister for Employment and Learning. The Committee has corresponded with the Department on a number of issues regarding these proposed amendments and Members have also communicated with the Minister of Education via the Education Committee. In doing so the Committee has made its position on these issues clear and unambiguous.

At its meeting on 16th September the Committee considered what Members understand is the last DEL amendment to the Bill and were satisfied that it should be made.

In summary, the Committee is now content that the DEL amendments to the Education Bill be made.

I hope that this is useful.

Regards



Peter Hall
Committee Clerk



Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD

Mr Peter Hall
Committee Clerk
The Committee for Employment and Learning
Northern Ireland Assembly
Parliament Buildings
Stormont
Belfast

BT4 3SW 10 September 2009

Dear Peter,

Education Bill

This letter replaces the version sent on 3 September on the same subject.

I am writing to advise the Committee that it is the Department's intention to use the NI Education Bill to seek amendments to The Education and Libraries (Northern Ireland) Order 2003. This will allow the Department to access information from the Education and Skills Authority and from Schools. I should be grateful if you would bring this to the attention of the Committee.

Background

The amendments are required to ensure that the Careers Service has access to relevant pupil data to support the provision of effective careers guidance in school and to track young people who are no longer in education, employment or training (NEET), with a view to re-engagement.

Proposed Amendments

The amendments, which are relatively minor, relate to Article 37 (8) of the "Education and Libraries (Northern Ireland) Order 2003" detailed below:

(7) A body to which this paragraph applies shall –

(g) make such reports and returns; and

(h) give such information,

to the Department for Employment and Learning as the Department may reasonably require for the purposes of the functions under any statutory provision.

(8) Paragraph (7) applies to –

(a) a board;

(b) the managers of a college of education;

(c) the governing body of a university; and

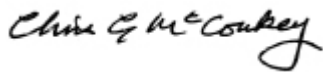
(d) the Northern Ireland Council for the Curriculum, Examinations and Assessment.

DEL requires an amendment to 8(a) to reflect the new "Education and Skills Authority". Inclusion of the following is also necessary:-

- The Board of Governors of a grant-aided school; and
- The proprietor of an independent school.

Should the Committee have any particular questions or issues with these proposals, officials are of course happy to attend a Committee meeting to discuss any of the above.

Yours sincerely



C G McConkey
Departmental Assembly Liaison Officer

Assembly Research Paper re Comparable Issues from Library, Health and Education Bills

**Briefing Paper Prepared for the Education Committee by
Jennifer Betts, Research Officer September 2009**

Summary

This briefing paper looks at issues in the Education Bill where parallels can be drawn with the Committee stages of the Libraries Bill[1] and the Health and Social Care (Reform) Bill[2]. The issues identified and illustrated in this paper are,

- Mechanisms put in place to deal with disputes between the bodies delivering the services;
- A lack of clarity that has been discussed by statutory committees scrutinising all three Bills;
- Transfer of staff;
- The representational role of service users;
- Powers of the ESA;
- The use of subordinate legislation procedures; and
- A conclusion drawing out general points in relation to the scrutiny of Bills.

Introduction

Education in Northern Ireland is unique in terms of the involvement of sectoral interests. Therefore it is not possible to make direct comparisons between the delivery of education to sectoral interest groups and the delivery of health and library services to the general population.

Therefore, this briefing paper does not attempt to make direct comparisons. Rather it examines the Committee Reports from the respective Committees' scrutiny of the Libraries Bill[3], the Health and Social Care (Reform) Bill[4] ("HSC (Reform) Bill") and highlights issues that may be of interest to the Education Committee in its scrutiny of the Education Bill[5].

The Education Bill, Libraries Bill (now Libraries Act 2008) and the Health and Social Care (Reform) Bill (now Health and Social Care (Reform) Act (Northern Ireland) 2009) are all part of the Reform of Public Administration (RPA) to rationalise and streamline public services.

Education Bill

The Education Bill is intended to provide for the establishment of the Education and Skills Authority (ESA). ESA is intended to streamline the delivery of education services.

Health and Social Care (Reform) Bill

The rationale under RPA for the HSC (Reform) Bill was to 'put in place structures which are patient-led, patient centred and responsive to the needs of patients, clients and carers as well as being more effective and efficient (releasing resources for investment in front line health and social care).'^[6]

Libraries Bill

The Libraries Bill proposed the establishment of a single Library Authority to streamline the delivery of the library service in Northern Ireland as part of RPA. The Policy context for the Library Authority is provided in 'Delivering Tomorrow's Libraries'^[7]. This policy document sets out the framework for the delivery of library services and develops standards to measure the performance of libraries in the future.

Table 1: Purpose of Education, libraries and Health Bills

Education Bill	Dissolves - Education and Library Boards CCEA Staff Commission for the ELBs Youth Council for Northern Ireland CCMS	Establishes - Education and Skills Authority (ESA)
Libraries Bill		Establishes - Library Authority
Health and Social Care (Reform) Bill	Dissolves - Health and Social Services Boards The Mental Health Commission Central Services Agency Health and Social Service Councils	Establishes the following 'health and social care bodies' – Regional health and Social Care Board Regional Agency for Public Health and Social Well-being Regional Business Services Organisation HSC trusts Special agencies Patient and Client Council RQIA

Dispute Resolution

Education

The Education Minister's letter of 17 June 2009 to the Education Committee reiterates information given by the Department of Education (DE) in evidence to the Education Committee that Article 101 of the Education and Libraries (Northern Ireland) Order 1986^[8] provides the means for dispute resolution between education bodies.

Article 101 of the 1986 Education Order was amended by Article 158 of the Education Reform (Northern Ireland) Order 1989^[9] to give wider ranging powers to the DE to intervene in disputes.

Article 158 (amending Article 101) states,

Power of Department to give Direction

158. For Article 101 of the principal Order there shall be substituted the following Article—

4. If, on a complaint made to it by any person or body, the Department is satisfied that a relevant authority has acted or is proposing to act unreasonably with respect to the exercise of any power conferred or the performance of any duty imposed by or under any provision of the Education Orders, the Department shall give such directions under paragraph (1) as to the exercise of the power or the performance of the duty as appear to the Department to be expedient to remedy that complaint.

Health

Clause 5 of the HSC (Reform) Bill 'requires the Department to prepare a framework document which sets out the main priorities, objectives, guidance and other matters for each health and social care body in connection with the carrying out of its functions. The Department must also keep the framework document under review and may, from time to time, revise it.'

In evidence to the Health Committee^[10] on 25 September 2008, a Health and Social Services Councils spokesperson expressed concerns about the separation of functions between the Regional Health and Social Care Board (RHSCB) and the Regional Agency for Public Health and Social Well-being (RAPHSW), arguing that the RAPHSW should be accountable to the Regional Board. The Health Minister addressed this concern with a 'commitment to the production of a framework document that makes abundantly clear the respective functions and interrelationship of the new health and social care organisations.'

A paper from the Department of Health, Social Services and Public Safety (DHSSPS) will 'inform the proposed Framework Document provided for in the Bill.'^[11] It outlines the working relationship between the Regional Health and Social Care Board (RHSCB) and the Regional Agency for Public Health and Social Well-being (RAPHSW).

Its publication followed a public consultation that identified concerns about perceived risks in the relationship between the two bodies. The paper sets out their roles, including their core functions and joint commissioning arrangements. These will involve funding flows between both organisations and the DHSSPS. Both organisations will be fully accountable for a joint three year rolling commissioning plan, although ultimate responsibility will rest with the RHSCB. The paper states that, 'Any failure to agree such a Plan, which cannot be resolved by the two organisations, would be referred to the Department, and ultimately the Minister.'^[12]

Clause 5 of the Bill also required the DHSSPS to consult with each body in respect of its functions and stated that it may consult with any other bodies that it considered appropriate. The DHSSPS Committee was concerned that the provision in subsection (5)(b) that the DHSSPS "may consult any other bodies or persons the Department considers appropriate" was too weak and proposed that 'may consult' should be replaced with 'will consult'. Following consideration the DHSSPS accepted the proposal and agreed to amend the clause.

Representational Role

The table below sets out the legislation relating to the appointment of members of regional boards for the delivery of the education, library and health services following the RPA.

Table 2: Representational role of bodies created in the Education, Libraries and Health Bills

	Education	Libraries Act	Health Act
Revisionary powers of Departments	<p>The Education Bill includes provision to increase the number of members of the ESA board by order.</p> <p>Schedule 1. 2.-(1) ESA shall consist of- a Chair, and not fewer than 7 or more than 11 other members, appointed by the Department.</p> <p>Schedule 2(3) The Department may by order amend sub-paragraph (1)(b) by substituting for the numbers specified there such other numbers as may be specified in the order.</p>	<p>Schedule 2.-(1) The Authority shall consist of- a Chair, and not more than 18 other members, appointed by the Department.</p> <p>Schedule 2(3) The Department may by order subject to negative resolution amend sub-paragraph (1)(b) by substituting for the number specified there such other number as may be specified in the Order. Following public consultation which ended in April 2007, there had previously been changes to the text of the Bill to increase the maximum permitted size of the Library Authority Board in response to concerns about difficulties in achieving a quorum. The Bill proposed 7 – 14 members.</p>	<p>Schedule 1. 3.-(1) The Regional Board shall consist of – a Chair appointed by the Department; a prescribed number of persons appointed by the Department; the chief officer of the Regional Board; such other officers of the Regional Board as may be prescribed; and not more than a prescribed number of other officers of the Regional Board appointed by the Chair and the members specified in heads (b) and (c).</p>
Regulations for sub-regional committees / boards.	<p>The Minister’s letter to the Committee (17 June 2009) proposes Local Area Teams with responsibility for educational support services in an area and liaise with local councils on issues including area planning. It is proposed that there will be one Local Team for Belfast City Council area and 5 Local Teams each covering 2 new local council areas. ESA will establish 11 Local Committees to work with LATS in each council area. These will comprise “a number of</p>	<p>The Libraries Act 2008 does not provide for sub-regional bodies. The matter was discussed as part of the Committee’s scrutiny of the Bill and the Department viewed it as an operational issue rather than coming within the scope of primary legislation.</p>	<p>Schedules 1-4 of the of the Health and Social Care (Reform) Act (Northern Ireland) 2009 establish respectively the, Regional Health and Social Care Board Regional Agency for Public Health and Social Well-Being Regional Business Services Organisation Patient and Client Council.</p>

Education

elected representatives and members with local knowledge and expertise".

Libraries Act

Health Act

Clarity

Clarity was lacking during the scrutiny of the Library and Health Bills regarding regional representation. Although acknowledging that the aim of the RPA was to streamline and centralise services, concern was expressed during scrutiny of both Bills about the lack of clarity surrounding local representation. This issue was addressed in part by the inclusion of elected representatives on central boards and regional committees.

The same concerns have been expressed by members of the Education Committee. It is claimed by the DE that, as yet unwritten, policy documents and a second Education Bill will provide clarity. However, the second Education Bill and policy documents are as yet unseen.

Lack of clarity was also identified in the Libraries Bill relating to sub-regional structures. Witnesses had expressed concerns about the lack of a sub-regional structure in the Bill. DCAL had stated that it saw this as an operational matter, which would therefore not be included in the legislation^[13]. The Chief Executive designate of the ESA had provided the Committee with the operational structure of the Library Authority, but the CAL Committee felt that the operational structure at sub-regional level was also important to the scrutiny stage of the Bill. The CAL Committee suggested that contact with local authorities should be written into legislation, which DCAL agreed to consider. However, it was not included in the subsequent Libraries Act.

In discussing whether measures should be in primary legislation, a policy document or regulations. In relation to the current policy framework^[14] for the Library Service a DCAL official pointed out that the CAL Minister and DCAL would be expected to bring proposals for any revised policy framework to the Committee for consideration. The Committee would also be able to call the chairperson of the proposed Library Authority to account.

The then CAL Minister urged caution when considering asking for a measure to be included in primary legislation. He argued that,

I ask the Committee to be cautious about what they are asking for, in that instance. If the Committee want to put the process into a legislative framework, it will bind the flexibility of the process. We have a system whereby, if changes were to be introduced, the natural thing — and the way in which the Assembly operates — is that those changes are reported to the relevant Committee by the relevant Minister. We engage in discussions such as those and try to reach a common sense approach, working with each other.

If the process is put into legislation, the Committee will have to bid to enter those processes. ...the Committee may want to see changes being implemented quickly. However, if the Committee has to bid to get into the legislative process for fairly minor changes, then real difficulties will be created in the flexibility of the process that we have^[15].

Health Bill

It was noted in the Health Bill Research Paper^[16] in relation to local Commissioning Groups (LCG) that,

The HSC (Reform) Bill lacks detail in relation to the composition of the membership of the LCGs^[17] including the number of representatives from the health professions or the number of publicly elected figures. Consideration may therefore be given to the inclusion of legislative provision to clearly state the number of representatives from the health professions, elected local representatives and other groups as outlined in the DHSSP's proposals.

Such legislation was not included in the subsequent HSC (Reform) Act. Section 9(6) allows for Regulations to be made for the provision of membership to LCGs and make further provision as the DHSSPS considers appropriate following consultation with the Regional Board.

Transfer of Staff

The legislation for the proposed transfer of staff is the same in all three Bills and contained in the Libraries and HSC (Reform) Acts.

During the scrutiny of the Libraries Bill the Northern Ireland Public Service Alliance (NIPSA) raised the issue of the transfer of employed staff. NIPSA reported that they had obtained legal opinion that suggested that staff transfer may be open to legal challenge if implemented as proposed in the Libraries Bill.

In giving evidence to the CAL Committee, an official from the Departmental Solicitors Office (DSO) stated,

The issues are complex, and my instructions throughout, when considering the Bill and throughout the work that I have done for other Departments on RPA, have been to ensure that the interests of staff are fully protected in line with Cabinet Office guidance and TUPE protection^[18].

The CAL Committee Report on the Libraries Bill sums up the discussions in relation to staff transfer with DCAL officials and the DSO as follows,

In relation to Schedule 2 of the Bill, NIPSA had proposed a number of amendments to the Committee in both its written and oral evidence. The Committee discussed the issues involved with a representative from the Departmental Solicitors Office at its meetings of 4 October and 6 December 2007. The Committee then wrote to the Minister seeking confirmation that he was content with the legal advice he had received regarding Schedule 2 and that the drafting of Schedule 2 reflected the advice he had received. The Minister gave that assurance in a letter dated 20 December 2007 – see Appendix 4. The Committee therefore concluded that it was content with Schedule 2 as drafted^[19].

Schedule 2 of the Libraries Act and Schedule 5 (2) of the HSC (Reform) Act apply the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) to the transfer of employed staff. The same is proposed in the Education Bill.

Representational Role of Service Users

Proposals in the HSC (Reform) Bill illustrate the representational powers that can be afforded to service users. Proposals for a Patient Client Council (PCC) to replace the Health and Social Care Councils were welcomed by the Health and Social Care Councils.

The HSC (Reform) Bill proposed to replace the Health and Social Care Councils with a new single regional body, the PCC. The following functions of the PCC in clause 17 of the Bill are;

- (a) representing the interests of the public;
- (b) promoting involvement of the public;
- (c) providing assistance (by way of representation or otherwise) to individuals making or intending to make a complaint relating to health and social care for which a body to which this section applies is responsible;
- (d) promoting the provision by bodies to which this section applies of advice and information to the public about the design, commissioning and delivery of health and social care;
- (e) such other functions as may be prescribed.

Schedule 4 of the Bill provides for the DHSSPS to appoint a Chair. Through regulations the DHSSPS may also decide on the tenure of the Chair, specify the number of other members to be appointed along with any limitations to their number and any conditions that will be applied to eligibility for membership.[\[20\]](#)

Section 18 of the Bill places a duty on health and social care bodies to co-operate with the PCC. It specifies that a body must consult with the PCC where they think appropriate with regard to the functions of the PCC; furnish it with information and 'have regard' to advice given by the PCC.

During the scrutiny of the Bill, the Health Committee expressed concern about the wording of Clause 18(6) 'a body to which this section applies shall have regard to any views expressed by the Patient and Client Council'. The Health Committee was concerned that while a body may 'have regard' to the views of the PCC, they may not necessarily act upon them. The DHSSPS agreed to amend section (6) to 'have due regard to'.

Clause 20 of the Bill required health and social care bodies to show in their consultation schemes how they would consult with the PCC and recipients of health and social care services. Again the Health Committee was concerned that 'having regard to comments' may not be strong enough and the Department agreed to amend section (6) to read 'have due regard to'.

Under the HSC (Reform) Act, social care organisations are required to produce consultation and engagement strategies for the delivery of their services. The PCC is provided with additional power as the DHSSPS will only approve these strategies following consultation with the PCC.

The PCC is now established. Its website[\[21\]](#) states that its overarching objective is to 'provide a powerful, independent voice for patients, clients, carers, and communities on health and social care issues'.

There was no reference in the HSC (Reform) Bill or subsequent Act about local offices or local councils of members. However, the PCC as established has a Chair and 16 members. It will have five regional local offices in the geographical areas covered by the five integrated Health and Social Services Trusts and Local Commissioning Groups[\[22\]](#).

Powers of the ESA

Powers are proposed in the Education Bill to allow the ESA to,

- enter into agreements;
- acquire or dispose of property;
- form bodies corporate;
- carry out or commission research; and
- co-operate with or provide advice to other statutory bodies.

The same powers are conferred on the Library Authority in the Libraries Act (Northern Ireland) 2008. Under Section 3(2) of the Act, 'Ancillary powers of Authority' in particular the Authority may-

- (a) enter into agreements;
- (b) subject to section 5, acquire or dispose of property^[23];
- (c) borrow money;
- (d) subject to the approval of the Department, form bodies corporate or acquire or dispose of interests in bodies corporate;
- (e) accept gifts;
- (f) invest money;
- (g) carry out, or commission or assist in the carrying out of, research;
- (h) co-operate with, or provide advice to, other bodies established by or under a statutory provision.

Subordinate Legislation

The four main Assembly procedures in relation to subordinate legislation are^[24];

Negative Resolution – Statutory rules made under negative resolution procedures have the effect of law as soon as the 'comes into operation' date is reached. Such statutory rules can be annulled by the Assembly within the statutory period, 30 calendar days or 10 sitting days (whichever is longer). For it to be annulled a Member of a committee must table a motion known as a prayer of annulment in the Business Office for debate in the Assembly and the Assembly must vote in favour.

Affirmative resolution – A statutory rule subject to affirmative procedure is made, printed and laid before the Assembly. It shall not come into operation unless affirmed by the Assembly. Usually the Minister responsible for the rule, although it could be any Minister, will table a motion in the Business Office proposing that the rule be affirmed by the Assembly. This is the most stringent form of Assembly control.

Confirmatory resolution – A statutory rule which is subject to confirmatory procedure is printed, made and laid before the Assembly. It ceases to have effect unless approved by a resolution (a motion) of the Assembly within a specified period provided for in the parent (primary) legislation (normally six months). The Minister will table a motion in the Business Office proposing that the rule be confirmed by the Assembly.

Draft Statutory rules – rules which are required by the primary legislation to be laid in the Assembly in draft for a specified period and once approved by the resolution of the Assembly do not require to be laid before the Assembly again.

Education Bill

In relation to the Education Bill the DE provided the Education Committee with a briefing paper outlining the range of enabling powers to make subordinate legislation. These are,

- Regulations – substantive law made by the Department to regulate or govern the exercise of functions on an ongoing basis;
- Orders – made by the Department to exercise executive power or make decisions in particular instances; and
- Bye-laws – made by the ESA to govern a range of local matters.

Clause 51 of the Bill sets out the arrangements for the Assembly to control subordinate legislation. All regulations and most orders made under the proposed Act will be subject to the negative resolution control procedure. Modifying orders would be subject to the affirmative resolution procedure because they can be used to make or modify primary legislation and should therefore be subject to the strongest means of Assembly control^[25].

Health Bill

In relation to the HSC (Reform) Bill, the Health Committee queried whether the subordinate legislation relating to the new Regional Agency and the Regional Business Support Organisation should be subject to affirmative or negative resolution.

The DHSSPS advised that,

Subsection (1) of the Clause provides that orders altering the functions of the proposed new Regional Agency (13(5)) and Regional Business Support Organisation (15(6)) and orders which include supplementary, incidental or consequential provisions to be used for expediency to give full effect to the Bill (30(1)) must use the affirmative resolution procedures. This is because it was considered that since such orders are akin to primary legislation and, therefore, more important and more likely to merit discussion they should be ^[26]formally approved by the Assembly. The regulations and other orders which may be made principally relate to the day to day organisation of the various organisations and, therefore, considered more appropriate to the negative resolution procedure.

Libraries Bill

In discussing the number of members of the Board of the Library Authority^[27] Members of the CAL Committee were concerned that, by stipulating a range with regard to board members for the Library Authority, a DCAL Minister may in future be able to vary the number of members without any need to consult the Committee.

The Principal Clerk of Bills suggested that one possible way to introduce flexibility would be to stipulate a number for board members, but provide the Minister with the power to make regulations. A statutory rule to amend the number would then have to be approved by the Assembly.

It was explained that to use an order subject to negative resolution would mean that there must be a vote in the Assembly to refuse it and that passing of an amendment would therefore remain within the power of the Assembly[28]. An amendment to the Bill was proposed by the CAL Committee and the subsequent Libraries Act (Northern Ireland) 2008 stipulates that the board of the Library Authority shall consist of a chair and not more than 18 members. The Department is able to amend the number of members by order subject to negative resolution.

Section 29 of the HSC (Reform) Act, sub-section (1) states that 'No order shall be made under section 13(5), 15(6) or 30(1) unless a draft order has been laid before, and approved by resolution of, the Assembly'. These sections refer to altering the functions of the Regional Agency, amending the support services required to be carried out by HSC bodies or making supplementary, incidental or consequential provisions to the Act.

The following regulations are subject to negative resolution in the HSC (Reform) and Libraries Acts,

- Section 29(2) of the HSC (Reform) Act states that 'Regulations under this Act and orders under section 24(4) or 26(3) are subject to negative resolution'. These refer to orders the Department may make with regard to sub-sections of the Act not applying to any specified functions.
- The Libraries Act (section 8) applies negative resolution to orders DCAL may apply making the function of making grants exercisable by the Authority rather than DCAL.

Conclusion

A common thread throughout the scrutiny of the three Bills has been the Committees' respective concerns about the lack of clarity they have been given by the Departments. Concerns relate to the details that will be included in the various policies and frameworks that will implement the legislation. The saying that 'the devil is in the detail' has been apparent in discussions with Department officials in the Committees' scrutiny of all three Bills.

Members may wish to give consideration to the significance of Statutory Rules and their importance to Committees and the Assembly in having a say over Departments' implementation of legislation.

Members may wish to consider whether they feel that the mechanisms are adequate to allow Members time to consider if the detail in the policies for new bodies reflects the wishes of the Committee.

Another issue highlighted in the HSC (Reform) Bill Research Paper[29] is pertinent. It addresses the issue of the timing between a public consultation ending and the publication of draft legislation. The research paper states,

A concern expressed by the organisation Children in Northern Ireland (CiNI) relates to how the responses received during the DHSSP's consultation process are used by them to inform the draft legislation. According to CiNI, their concerns have 'been considerably heightened by confirmation that it is not the Department's intention to consult on the draft reform legislation which will be laid before the Assembly[30]. The response raises an important issue regarding the timing of the DHSSP's consultation process and the publication of the Health and Social Care (Reform) Bill. With the consultation exercise ending in May 2008 and the bill published several weeks later in mid June 2008 it supports the concern expressed by CiNI regarding the extent to which the DHSSP took cognisance of the responses in the drafting of the HSC (Reform) Bill.

In general, Members may wish to consider whether the views expressed by interest groups and key players have been given sufficient consideration by Departments before drafting a Bill, as it is the Bill as drafted that the Committee will be asked to scrutinise.

In relation to the Education Bill, while stakeholders may have been given sufficient time for consultation, nonetheless, there were 18 policy papers in all for stakeholders to analyse, assimilate and comment on.

September 2009

[1] Libraries Bill CAL Committee Report on the Assembly website at:
http://archive.niassembly.gov.uk/legislation/primary/2007/niabill5_07.htm

[2] Health and Social Care (Reform) Bill on the Assembly website at:
http://archive.niassembly.gov.uk/legislation/primary/2007/niabill21_07.pdf

[3] Libraries Bill CAL Committee Report on the Assembly website at:
http://archive.niassembly.gov.uk/legislation/primary/2007/niabill5_07.htm

[4] Health and Social Care (Reform) Bill on the Assembly website at:
http://archive.niassembly.gov.uk/legislation/primary/2007/niabill21_07.pdf

[5] Education Bill available on the Assembly website at:
http://archive.niassembly.gov.uk/education/2007mandate/education_bill.htm

[6] Explanatory Notes at:
http://www.opsi.gov.uk/legislation/northernireland/acts/acts2009/en/niaen_20090001_en.pdf

[7] 'Delivering Tomorrow's Libraries' (2006) DCAL at:
http://www.dcalni.gov.uk/final__delivering_tomorrow_s_libraries__document_-_july_2007_-_1mb_document_for_website.pdf

[8] The Education and Libraries (Northern Ireland) Order available at: http://www.uk-legislation.hmso.gov.uk/RevisedStatutes/Acts/nisi/1986/cnisi_19860594_en_1

[9] The Education Reform (Northern Ireland) Order 1989 available at:
http://www.opsi.gov.uk/si/si1989/UKsi_19892406_en_1.htm

[10] All evidence referred to in this paper is contained in the 'Report on the Health and Social Care (Reform) Bill (NIA21/07)' available on the Assembly website at:
http://archive.niassembly.gov.uk/health/2007mandate/reports/report10_08_09r.htm

[11] 'Working relationship between the Regional Health and Social Care Board (RHSCB) and the Regional Agency for Public Health and Social Well-being' (January 2009) DHSSPS available at:
<http://www.dhsspsni.gov.uk/mipb-05-09.pdf>

[12] In the summary of 'Working relationship between the Regional Health and Social Care Board (RHSCB) and the Regional Agency for Public Health and Social Well-being' (January 2009) DHSSPS.

[13] CAL Committee Report on Libraries Bill (paragraph 1100 of evidence, 11 October 2007) available at:
http://archive.niassembly.gov.uk/culture/2007mandate/reports/report19_07_08r.htm

[14] 'Delivering Tomorrow's Libraries' (July 2007) available at;
http://www.dcalni.gov.uk/final__delivering_tomorrow_s_libraries__document_-_july_2007_-_1mb_document_for_website.pdf

[15] Paragraphs 1310 and 1311 of evidence in CAL Committee Report on the Libraries Bill

[16] NIA Research Paper 91/08, 'Health and Social Care (Reform) Bill' by Neil Foster is available on Assist at;
<http://assist.assemblyni.gov.uk/services/rsrchlib/research/reports/dept/hssps/2008/foster9108.pdf>

[17] Local Commissioning Groups.

[18] Paragraph 819 of evidence in CAL Committee Report on the Libraries Bill, 4 October 2009.

[19] CAL Committee Report on the Libraries Bill.

[20] Health and Social Care (Reform) Act (Northern Ireland) 2009; Schedule 4.

[21] The Patient Client Council website is available at:
<http://www.patientclientcouncil.hscni.net/index.html>

[22] Information from Patient Client Council website (July 2009)

[23] Section 5 referred to is 'with the approval of the Department'.

[24] From 'Guidance on Handling Subordinate Legislation (Statutory Rules) for Chairpersons and Members of Statutory Committees'.

[25] Taken from a briefing paper provided to the Education Committee by DE.

[26] From 'Clause by clause consideration of the Bill' Committee for Health, Social Services and Public Safety Report.

[27] Evidence session of the 6 December 2007 on the Libraries Bill available on Hansard.

[28] Evidence session of the 6 December 2007 on the Libraries Bill available on Hansard.

[29] NIA Research Paper 91/08, 'Health and Social Care (Reform) Bill' by Neil Foster is available on Assist at;
<http://assist.assemblyni.gov.uk/services/rsrchlib/research/reports/dept/hssps/2008/foster9108.pdf>

[30] Children in Northern Ireland (CiNI) Consultation Response.

Correspondence from Department of Education - Controlled School Sectoral Meeting 18 September 2009

Controlled Schools Sectoral Support Body

10 September 2009

List of Attendees

Name	Organisation	Email Address
Hugh McCarthy	Killicomaine JHS	Hmcarthy619@c2kni.net
Catherine Cooke	Foyle Womens Info Network	info@fwin.org.uk
Trevor Gribben	TRC & PCI	deputyclerk@presbyterianireland.org
Maggie Andrews	East Belfast Partnership	maggie@eastbelfast.com
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Robin McLoughlin	Grosvenor Grammar School	robinmcloughlin@hotmail.com
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J Redpath	Greater Shankill Partnership	jackie@greatershankillpartnership.org
Peter Shirlow	QUB	p.shirlow@qub.ac.uk
Tom Walsh	SEELB	Tom.walsh@seelb.org.uk

Name	Organisation	Email Address
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John Platt	Millburn PS	Jplatt324@c2kni.net
Gilly Irwin	NEELB	Gilly.irwin@neelb.org.uk

Name	Organisation	Email Address
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Dr Peter Cunningham	Ceara School, Lurgan (Special)	Pcunningham522@c2kni.net
Heather Reid	Recently retired Principal, Controlled School	heatheryr@googlemail.com
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Correspondence from Department of Education - Schedules 3, 4 and 7



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Your Ref: 054/09/C01

22 September 2009

Dear John

**EDUCATION BILL: COMMITTEE FOR EDUCATION MEETING ON 16
SEPTEMBER 2009**

I am writing to provide you with information on the 4 issues raised by the Committee on 16th September and highlighted in your letter dated 18th September in relation to the Education Bill.

Controlled Schools Sectoral Meeting

A list of those who attended the meeting held on 10th September was forwarded to you on 18th September under separate cover.

Schedule 3, Tax Liability

You sought written confirmation that there would be no tax liability arising from the transfer of assets under Schedule 3 to the Education Bill. More detail is set out below.

VAT

We have received advice from HMRC that the transfer of the functions performed by existing organisations into ESA should, for VAT purposes, be treated as a 'Transfer of Going Concerns' (TOGC) with the implication that VAT liabilities will not arise on the transfer of assets to ESA.

Stamp Duty Land Tax (SDLT)

Stamp Duty Land Tax is chargeable to the transferee on the transfer of interests in land. Section 66 of the Finance Act 2003 relieves from SDLT transfers made in



consequence of, or in connection with, a reorganisation effected by or under a statutory provision where both the transferor and transferee are public bodies. As ESA and all of the bodies that it will replace are public bodies established under statute then this relief will apply.

Stamp Duty

Stamp Duty is chargeable on the transfer of stock and marketable securities. It would appear unlikely that Stamp Duty will apply, however a check is being carried out to confirm that none of the existing bodies transferring into ESA hold such assets.

Corporation Tax – Transfer of Assets

Education and Library Boards and the Staff Commission are exempt from Corporation Tax and therefore no liabilities will arise on the transfer of assets to ESA.

There is a potential for tax liabilities to arise in the other three organisations - CCEA, CCMS and the Youth Council. However, given the nature of the assets held by these organisations combined with their low valuations and possible reliefs available, any potential liability appears minimal. DE is currently working with the ESA Implementation Team to clarify the position.

Schedule 4, CCMS Assets

ESAIT is currently reviewing the schedule of CCMS assets included in their Balance Sheet so as to have clarity around those which should transfer to ESA. All such assets, purchased with public funds, will transfer to ESA in accordance with that which is listed within the Asset Register.

In the main, property occupied by CCMS is owned by the Trustees and will not transfer to ESA. In the case of some CCMS properties, DE has funded some capital work and whilst this will appear on the CCMS Fixed Asset Register it is a fixture of the property and will not transfer to ESA.

Schedule 7, Exceptional Circumstances


I understand that you have been discussing this issue with officials recently and that the Committee do not need further information at this stage.

It has now been agreed officials will provide greater background information and attend the Committee to give evidence, when the Consultation period closes.

Yours sincerely



JOHN LEONARD
Departmental Assembly Liaison Officer



Correspondence from Minister of Education - Possible Further Amendments and Final Deliberations

FROM THE MINISTER/AÓN AIRE



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Chairperson
Committee for Education
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Your ref: 036/B/C/05

22 September 2009

A Mervyn a chara

EDUCATION BILL: COMMITTEE FOR EDUCATION SCRUTINY

In my letter of 16 September, I indicated that I would write to the Committee again in relation to possible further amendments to the Education Bill. I have also given further consideration to the matters discussed by the Committee in recent meetings, and wish to offer some further suggestions to assist the Committee in its final deliberations.

I have been considering three possible additional amendments. Firstly, Reg Empey sought my agreement to include within the Bill some amendments to The Education and Libraries (NI) Order 2003. The amendments will enable the Careers Service of the Department for Employment and Learning (DEL) to access relevant information on pupils, and support the provision of effective careers guidance in school. The changes will also allow DEL to identify young people who are no longer in education, employment or training with a view to re-engagement. A fuller description of the scope of the proposed amendment is attached at Annex A.

I recognise the need for this amendment and I have indicated my agreement to Reg Empey. The wording of the proposed amendment is shown at the end of Annex A.



An Roinn Oideachais, Teach Ráth Giall, Bóthar Bhaile Ancho, Beannachar, Co an Dúin
Department of Education, Rathgall House, 43 Balfour Road, Bangor, Co Down
Ministère o Leas, Rathgall House, 43 Balfour Road, Bangor, Coontie Doon

Secondly, the National Society for the Prevention of Cruelty to Children (NSPCC) has proposed a change to the child protection provisions in clause 47. Under Clause 44 of the Bill, the Education and Skills Authority (ESA) will have a duty to ensure that its functions are exercised with a view to safeguarding and promoting the welfare of children and young persons. As part of this duty, the ESA must ensure that the Boards of Governors of schools comply with a similar duty. Under Clause 47, ESA will have the power to issue directions to a Board of Governors to require compliance with the statutory duty.

NSPCC has proposed that Clause 47 be amended to allow ESA to issue directions to either the Boards of Governors and/or the Principal dependent on the situation or non-compliance. Whilst this is well-intentioned, the proposed amendment, if included, would break the line of accountability within schools. It is not appropriate for ESA to issue a direction to a Principal and, in effect, 'by-pass' the Board of Governors. Boards of Governors are accountable for the actions of school-based staff, and it is for the Boards to issue instructions to those staff. Issuing directions to the Board of Governors, albeit on foot of a failure by the Principal, will ensure that they are kept informed of the position and have the opportunity to consider the issue and wider safeguarding practice within the school.

Thirdly, Comhairle na Gealscoláiochta (CnaG) has suggested the need for provisions to ensure that the boards of governors of Irish-medium schools are committed to Irish-medium education. CnaG has pointed out that similar provisions already exist in relation to integrated schools. I have considered this carefully in the light of the recent review of policy on Irish-medium education. I agree that there is a need to ensure that the governors of Irish-speaking schools are committed to maintaining the Irish-speaking ethos and character of those schools, and I am minded to bring forward a further amendment to the Bill to address this. The precise wording of the amendment will depend on advice from Legislative Counsel. I will endeavour to let the Committee have the wording before the end of Committee stage if possible.

Related to this, CnaG has asked for the inclusion of a new definition of Irish-medium school to be added to the Bill. In support of its argument, CnaG refers to the various definitions of school types already within the legislation.

It is indeed the case that many definitions have been added to the Education Orders down the years, often associated with differing administrative, governance and financial arrangements. The net result is a body of legislation that is unduly complex, difficult to understand, and in clear need of reform. The diversity of the education system is something to be valued, and the Education Bill will not change the ethos or character of any type of school. However, it is no longer necessary for each type of school to be associated with separate administrative arrangements and legislative provisions. Against that background, I do not wish to introduce additional definitions of school types, unless there is a compelling case for doing so.

Development proposals

CnaG also suggested a requirement for it to be consulted about development proposals to establish Irish-medium schools or units, or proposals that would affect existing Irish-medium schools or units.

I recognise the need to ensure that all school sectors have a role in the strategic planning of the education estate and the delivery of the curriculum, and that all sectors are consulted about specific development proposals. This will be provided for in two ways. The area planning clauses in the second Education Bill will provide for each sectoral body to be involved in the ESA's area planning process. Secondly, the new provisions on development proposals (in the new article 14 contained in paragraph 9 (4) of schedule 7) already provide for boards of governors and sectoral representatives to be consulted by the ESA about development proposals that would affect existing schools.

I am satisfied that, taken together, these provisions allow for the proper involvement of all sectoral bodies and other education interests throughout the planning process; from initial area planning through to specific development proposals. I do not, therefore, propose further amendments in relation to this matter.

Employment arrangements

I understand that some members expressed concern that the Governing Bodies Association (GBA) had not been consulted about the proposed changes to the provisions on employment arrangements. Members are already aware that I have arranged to meet the GBA this week, and I am pleased to say that, following the Committee meeting, the GBA has also requested a meeting with officials. I welcome the GBA's request, and hope that dialogue will continue.

Modification of employment law (clause 12)

Some members suggested that subordinate legislation made under this provision ought to be subject to the affirmative resolution procedure rather than the negative resolution procedure (as currently drafted). In giving evidence to the Committee, officials have pointed out that the power to modify employment law may only be used in order to give effect to the other provisions of the Bill. As those provisions are themselves subject to the approval of the Assembly, I do not consider that there is a strong case for making their use subject to the affirmative resolution procedure. Nevertheless, this is primarily a matter for the Assembly itself, and the Committee may wish to consider its own amendment.

Committee and local structure of the ESA

I understand that some members remain of the view that there ought to be greater scope for regulation of the Committee and local structure of the ESA, and the arrangements within the organisation to delegate functions. As I said in my previous letter, I remain of the view that it would be neither practicable nor desirable to anticipate the full details of a programme of organisational

transformation that will take some years to complete, and I am not persuaded of the need to regulate these matters at this juncture. However, if the Committee is suggesting a reserve power (not duty) to make regulations, should the need to do so arise, then I would be prepared to consider [supporting an amendment to that effect if proposed by the Committee / such an amendment]. However, this must be on the clear understanding that I do not propose to make regulations now, and would only do so in the future if there was clear evidence of need.

Promoting mental health/well-being

The Committee discussed the role of education in relation to mental health, and the scope for underpinning this role in the general duties of the ESA. I recognise the important contribution that education can make to promoting the mental health and well-being of children and young people. In particular, education is a vital component of the cross-sectoral approach to tackling the worrying incidence of suicide amongst young people.

I would like to accommodate the Committee's wishes on this matter, and to do so in a way that promotes co-operation between statutory agencies, without giving rise to damaging duplication or confusion in roles and responsibilities. I consider that the best approach would be to place a statutory duty on the ESA to co-operate with the Regional Health and Social Services Board and Health and Social Services Trusts in promoting the mental health of children and young people. I am writing to Michael McGimpsey to seek his views on this, and would welcome the views of the Committee. If this approach commands support, then I am prepared to table an amendment to that effect.



CAITRÍONA RUANE MLA

SCOPE OF PROPOSED DEL AMENDMENT

1. DEL's Careers Service provides impartial careers information, advice and guidance to young people and adults. The overall aim is to develop effective career decision makers, leading to increased and appropriate participation in education, training and employment. The careers advisers are based in Job Centres, Jobs and Benefits Offices and Careers Offices. Through partnership agreements, the advisers provide careers information, advice and guidance to young people in all post-primary schools.

2. The Careers Service requires access to relevant pupil data to support the provision of effective careers guidance in school. In the past the Careers and Guidance Services Branch has received pupil data from Classroom 2000 (C2K). C2k is responsible on behalf of the five education and library boards, for the provision of an information and communications technology (ICT) managed service to all schools. The organisation is supported by DE. Information was provided to DEL through the CLASS system. The CLASS download provided the Careers Service with personal data on pupils from year 9 upwards and was held on the DEL's Client Management System (CMS).

3. Previously information was obtained through data interchange agreements with each individual school. This was a cumbersome arrangement and these agreements are no longer valid due to technical changes in C2K. The CLASS information has not been transferred in recent years.

4. The Careers Service also requires school leaver information to track young people who are no longer in education, employment or training with a view to re-engagement. This information is currently collected by DE through the annual school census.

Wording of amendment

Schedule 7, page 64, line 4, at end insert—

(4) In Article 37(8) after sub-paragraph (c) insert—

“(ca) the Board of Governors of a grant-aided school; and
(cb) the proprietor of an independent school.”

Correspondence from the Department of Education - Further Two Amendments

From: Stewart, Eve [mailto:Eve.Stewart@deni.gov.uk]

Sent: 30 September 2009 08:35

To: Simmons, John

Cc: Stewart, Chris; Black, Desiree; Brown, Jeff; Burns, Peter; O'Neill, Peter; Quinn, Geraldine; Reynolds, Joe

Subject: Education Bill - 2 additional amendments

John

We have just finalised 2 additional amendments and I am forwarding them on for the Committee's information. They relate to the increase in ESA numbers and ensuring governors commitment in Irish speaking schools. The wording is below:

Schedule 1, page 31, line 15, leave out '7 or more than 11' and insert '11 or more than 14'

Clause 30, page 17, line 3 at end insert—

'() The scheme of management for an Irish speaking school 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 are likely to ensure the continuing viability of the school as an Irish speaking school.

() 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 are likely to ensure the continuing viability of the Irish speaking part of the school.'

Eve Stewart
RPA Legislation Team
Ext 59768

Education (No 2) Bill

From: Brown, Jeff [mailto:Jeff.Brown@deni.gov.uk]
Sent: 29 September 2009 16:50
To: Simmons, John
Cc: Stewart, Eve; Stewart, Chris; Leonard, John; Haire, Will; McGrath, John (DE)
Subject: Education (No 2) Bill
Importance: High

John,

With apologies for the delay, please find attached the Education (No. 2) Bill, for Committee members' attention.

We would be more than happy to offer a presentation on the Bill's contents at the Committee's convenience.

Regards,
Jeff
Ext. 59872

Education (No. 2) Bill

[28/08/2009 11:01:55]

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Schedules:

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Schedule 2 The Education Advisory Forum [s1eaf]

Schedule 3 The Holding Body for Controlled Schools [s1cs]

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A

B I L L

TO

Make provision for area education plans; to provide for the establishment and functions of the Education Advisory Forum; to provide for the management of controlled schools and for the establishment and function of the Holding Body for Controlled Schools; and for connected purposes.

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

Area planning

Area education plans [j1aep]

1.— (1) An area education plan is a document which contains—

(a) a map of the area to which the plan applies;

(b) a written statement setting out in such detail as ESA thinks appropriate—

(i) an assessment of the need for primary and secondary education, education services and youth services in that area in the period for which the plan is to be in force;

(ii) an assessment of the adequacy of the provision of that education and those services in that area at the time the plan is prepared; and

(iii) proposals for meeting the need mentioned in sub-paragraph (i) in the period so mentioned;

(c) such descriptive matter as ESA thinks appropriate to explain or illustrate those proposals; and

(d) a statement of the period for which the plan is to be in force and the arrangements for review of the plan.

(2) In sections 2 to 8—

"plan" means an area education plan;

"area", in relation to an area education plan, means the area to which the plan applies.

Preparation and revision of plans [2aep]

2.— (1) ESA may, and must if the Department so directs—

- (a) prepare a plan for an area; and
- (b) submit that plan to the Department for its approval.

(2) ESA—

- (a) must if the Department so directs, and
- (b) may at any other time,

prepare a revised plan for an area and submit that plan to the Department for its approval.

(3) The Department may approve a plan or revised plan submitted to it either without modifications or with such modifications as it thinks fit.

(4) A plan or revised plan submitted to the Department—

- (a) does not come into force unless it has been approved by the Department;
- (b) comes into force on such date as the Department may, in giving its approval, specify.

Revocation of plans [j3aep]

3.— (1) ESA—

- (a) must if the Department so directs, and
- (b) may at any other time with the approval of the Department,

revoke the plan for an area.

(2) A plan revoked under subsection (1) ceases to be in force on such date as the Department may direct.

(3) The revocation of a plan for an area does not prevent the preparation by ESA of another plan for that area or an area which includes all or part of that area.

Involvement of relevant interests [j5aep]

4.— (1) It is the duty of ESA to make arrangements with a view to securing that the persons mentioned in subsection (2) are involved in and consulted on—

- (a) the preparation of a plan or revised plan for an area; and
- (b) any proposal to revoke a plan for an area.

(2) Those persons are persons appearing to ESA to represent the interests of—

- (a) controlled schools in the area;
- (b) transferors of schools in the area;

- (c) trustees of Catholic schools in the area;
- (d) Irish speaking schools in the area;
- (e) integrated schools in the area;
- (f) grammar schools in the area;
- (g) providers of youth services in the area; and
- (h) providers of educational services in the area.

(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.

(4) ESA may make arrangements with a view to securing that the persons mentioned in subsection (5) are involved in and consulted on—

- (a) the preparation of a plan or revised plan for an area; and
- (b) any proposal to revoke the plan for an area.

(5) Those persons are persons appearing to ESA to represent the interests of —

- (a) children and young persons living, or receiving education, in the area;
- (b) persons for whom educational services are provided in the area;
- (c) persons for whom youth services are provided in that area;
- (d) the parents of children or young persons falling within paragraph (a), (b) or (c);
- (e) the staff of grant-aided schools in the area and of providers of educational or youth services in the area;
- (f) the Boards of Governors of grant-aided schools in the area;
- (g) such other groups or bodies as ESA may consider appropriate.

(6) For the purposes of subsection (2) "Catholic schools" are maintained or voluntary grammar schools whose trustees are appointed by, or on behalf of, the Roman Catholic church.

Publicity and consultation [j4aep]

5.— (1) Before—

- (a) submitting any plan or revised plan to the Department under section 2, or
- (b) seeking the approval of the Department to revoke a plan under section 3,

ESA must comply with subsections (2) to (4).

(2) ESA must consult the district council for any district all or part of which is within the area of the plan.

(3) ESA must also take such steps as it thinks necessary to ensure that—

(a) adequate publicity is given to the plan, revised plan or proposal to revoke a plan in the area to which the plan applies;

(b) persons who wish to make representations about the plan, revised plan or proposal are made aware that they may do so; and

(c) an adequate opportunity is provided to such persons to make such representations to ESA.

(4) ESA must consider any representations made under subsection (3) and may revise the plan or revised plan before submitting it to the Department or (as the case may be) may withdraw its proposal to revoke the plan.

(5) Where a plan or revised plan for an area is approved by the Department under section 2, ESA must take such steps as it thinks necessary to ensure that adequate publicity is given to the plan or revised plan in the area to which the plan or revised plan applies.

(6) Where the plan for an area is revoked under section 3, ESA must take such steps as it thinks necessary to ensure that adequate publicity is given to that fact in the area to which the plan applied.

Guidance [j6aep]

6.— (1) In preparing, revising or revoking a plan, ESA must take into account any guidance issued by the Department under this section.

(2) The Department may issue such guidance as it thinks fit as to—

(a) the content of plans; and

(b) the procedure for preparing a plan or revised plan or revoking a plan.

Regulations [j7aep]

7. The Department may by regulations make provision as to—

(a) the form and content of plans;

(b) the procedure to be followed in connection with the preparation of a plan, a revised plan or a proposal to revoke a plan;

(c) the arrangements to be made under section 4(1).

Effect of plans [j8aep]

8. Schedule 1 (which contains amendments of the Education Orders in relation to plans) has effect.

The Education Advisory Forum

The Education Advisory Forum [j1eaf]

9.— (1) There shall be a body corporate to be known as the Education Advisory Forum (referred to in this Act as "the Forum").

(2) Schedule 2 applies in relation to the Forum.

Functions of the Forum [j2eaf]

10. The functions of the Forum are—

(a) to advise the Department on such matters relating to education, educational services or youth services as the Department may refer to it; and

(b) to advise DEL on such matters relating to further or higher education as DEL may refer to it.

Controlled schools

The Holding Body for Controlled Schools [j1cs]

11.— (1) There shall be a body corporate to be known as the Holding Body for Controlled Schools (referred to in this Act as "the Holding Body").

(2) Schedule 3 applies in relation to the Holding Body.

Function of the Holding Body [j2cs]

12.— (1) The function of the Holding Body is to hold land which is transferred to it by or under—

(a) paragraph 1(1) of Schedule 4 (existing controlled schools);

(b) section 16(2) or (3) (newly established or altered controlled schools);

(c) Article 17(3)(a) of the 1986 Order (voluntary school becoming controlled school);

(d) Article 83(1)(a) of the 1989 Order (establishment of controlled school on premises of discontinued grant-maintained integrated school); or

(e) Article 95(1)(a) of the 1989 Order (voluntary school becoming controlled integrated school).

(2) That function is exercisable in relation to any land only for the purpose of enabling that land to be used for the purposes of a controlled school.

(3) Accordingly, if any land held by the Holding Body ceases to be used for the purposes of a controlled school, the Holding Body must as soon as is practicable transfer that land to ESA.

(4) Subsection (3) does not apply where Article 75(1)(a) of the 1989 Order applies (transfer of land where controlled school becomes grant-maintained integrated school).

(5) The Holding Body must take such steps as it considers necessary to ensure that such persons as appear to it to represent the interests of controlled school are kept aware of the activities of the Holding Body.

(6) For the purposes of this section land is used for the purposes of a controlled school if (and only if) that land forms all or part of—

(a) the premises of the school; or

(b) a dwelling occupied by a caretaker of, or teacher at, the school.

Transfer of land and staff to Holding Body [j3cs]

13.— (1) Schedule 4 makes provision for the transfer to the Holding Body on the appointed day of certain land, liabilities and staff of ESA and contains other supplementary provisions.

(2) In this section and Schedule 4 "the appointed day" means the day appointed under section 23(2) for the coming into operation of section 12.

Controlled school: definition [j4cs]

14.— (1) For the purposes of the Education Orders and Acts, a controlled school is a grant-aided school whose premises are vested in the Holding Body.

(2) In relation to any time before the coming into operation of section 12, subsection (1) has effect with the substitution of a reference to ESA for the reference to the Holding Body.

Controlled school: responsibilities of ESA [j9cs]

15. In relation to a controlled school ESA is responsible for—

(a) the maintenance of the school premises;

(b) providing and replacing equipment;

(c) employing, in accordance with section 3 of the Education Act (Northern Ireland) 2009, all teachers and other staff required on the staff of the school; and

(d) meeting the cost of doing all such other things as may be necessary for the carrying on of the school, including the cost of providing or altering the premises of the school.

Establishment of controlled schools [j7cs]

16.— (1) For the purpose of fulfilling its duties under the Education Orders and Acts, ESA—

(a) may establish controlled schools (whether as nursery, primary, secondary or special schools); and

(b) may secure the provision of nursery classes in controlled schools which are not nursery schools.

(2) On establishing a controlled school, ESA must transfer the premises of the school to the Holding Body.

(3) Where ESA acquires or appropriates land for the purposes of altering the premises of a controlled school, ESA must transfer to the Holding Body so much of that land as, on completion of the alteration, becomes part of the premises of the school.

Management of controlled schools [j5cs]

17. For Article 10 of the 1986 Order substitute—

"Management of controlled schools

10.— (1) Subject to paragraph (2), each controlled school shall be under the control and management of a Board of Governors.

(2) Two or more controlled primary schools (other than controlled integrated primary schools or nursery schools) may be grouped under one Board of Governors if ESA, with the approval of the Department, so determines.

(3) The Board of Governors of a controlled school shall be constituted in accordance with Schedule 4."

Controlled schools: consequential amendments [j6cs]

18. The statutory provisions set out in Schedule 5 have effect subject to the amendments specified in that Schedule (which relate to the management of controlled schools or the holding of land used for the purposes of such schools).

Supplementary

Supplementary, incidental, consequential, transitional provision, etc. [j502]

19.— (1) The Department may by order make—

(a) such supplementary, incidental or consequential provision,

(b) such transitory, transitional or saving provision,

as it considers appropriate for the general purposes, or any particular purpose, of this Act, or in consequence of, or for giving full effect to, any provision made by this Act.

(2) An order under subsection (1) may amend, repeal, revoke or otherwise modify any statutory provision (including this Act).

Regulations and orders [j503]

20.— (1) Regulations under section 7 are subject to negative resolution.

(2) No order shall be made under section 19(1) unless a draft of the order has been laid before, and approved by resolution of, the Assembly.

(3) Regulations and orders under this Act may contain such incidental, supplementary, transitional and savings provisions as appear to the Department to be necessary or expedient.

Interpretation [j506]

21.— (1) In this Act—

"DEL" means the Department for Employment and Learning;

"DFP" means the Department of Finance and Personnel;

"the 1986 Order" means the Education and Libraries (Northern Ireland) Order 1986 (NI 3);

"the 1989 Order" means the Education Reform (Northern Ireland) Order 1989 (NI 20);

(2) This Act shall be construed as one with the 1986 Order; and accordingly Article 2 of that Order, in so far as it relates to the interpretation of words or expressions used in that Order and in this Act, applies for the purposes of this Act as it applies for the purposes of that Order.

Minor amendments and repeals [j508]

22.— (1) The statutory provisions set out in Schedule 6 have effect subject to the minor amendments specified in that Schedule.

(2) The statutory provisions set out in Schedule 7 are repealed to the extent specified in the second column of that Schedule.

Commencement [j509]

23.— (1) The following provisions come into operation on Royal Assent—

(a) sections 19 to 21;

(b) this section;

(c) section 22(1) and Schedule 6;

(d) section 24; and

(e) paragraph 3 of Schedule 4 and section 18 so far as relating thereto.

(2) The other provisions of this Act come into operation on such day or days as the Department may by order appoint.

Short title [j510]

24. This Act may be cited as the Education (No. 2) Act (Northern Ireland) 2009.

Schedules

Schedule 1

Amendments: area education plans [s1aep]

The Education (Northern Ireland) Order 1986 (NI 3)

1. After Article 14 (proposals for primary and secondary schools) insert—

"Article 14: additional requirements where area education plan in force

14A.— (1) This Article applies where the school to which a proposal under Article 14 relates is, or is proposed to be, situated in an area for which an area education plan is in force.

(2) A proposal under Article 14(1) or (2) must be in conformity with the plan.

(3) Where a proposal is submitted to ESA under Article 14(2)(i), then—

(a) if ESA considers that the proposal is not in conformity with the plan—

(i) ESA must reject the proposal; and

(ii) if ESA does so, no further proceedings shall be taken under Article 14 in relation to the proposal;

(b) in any other case, the views of ESA submitted under Article 14 (2)(ii) must include an assessment of the extent to which the proposal would contribute to meeting a need as set out in the plan.

(5) A direction given by the Department under Article 14(3)(a) must be in conformity with the plan.

(6) A proposal submitted by ESA under Article 14(1) or (3)(a) must be accompanied by an assessment by ESA of the extent to which the proposal would contribute to meeting a need as set out in the plan.

(7) In determining under Article 14(10) whether to approve (with or without modifications) a proposal under Article 14(1), (2) or (3)(a), the Department must act in conformity with the plan."

The Education (Northern Ireland) Order 1989 (NI 3)

2.— (1) Article 69 (acquisition of grant-maintained integrated status by existing school) is amended as follows.

(2) In paragraph (4) for sub-paragraph (b) substitute—

"(b) give written notice to ESA that such a ballot is to be held and seek the views of ESA on the proposal for the acquisition of grant-maintained integrated status for the school; and

(c) if the school is a voluntary school, give written notice that such a ballot is to be held to the trustees of the school."

3,— (1) Article 70 (ballot of parents) is amended as follows.

(2) In paragraph (3) after sub-paragraph (a) insert—

"(aa) given a summary of any views expressed by ESA under Article 69(4)(b);".

4.— (1) Article 71 (proposals for acquisition of grant-maintained integrated status) is amended as follows.

(2) After paragraph (5) insert—

"(5A) Where the school concerned is (or is proposed to be) situated in an area for which an area education plan is in force, then if ESA considers that a proposal under paragraph (1) or (2) is not in conformity with the plan—

(a) ESA must reject the proposal; and

(b) if ESA does so, no further proceedings shall be taken under this Article in relation to the proposal (and accordingly the following provisions of this Article do not apply in relation to the proposal).".

(3) In paragraph (7) after "paragraphs" insert "(7A),".

(4) After paragraph (7) insert—

"(7A) Where the school concerned is situated in an area for which an area education plan is in force, the Department in determining under paragraph (7) whether to approve (with or without modifications) a proposal must act in conformity with the plan.".

5. In Article 79(2) (significant change to grant-maintained integrated school) for the words from the beginning to "(as so applied)" substitute "Articles 14 and 14A of the principal Order apply in relation to a proposal under paragraph (1) as they apply in relation to a proposal under Article 14(2); but the Department shall not approve any proposal under Article 14(10) (as so applied)".

6. In Article 80 (discontinuance of grant-maintained integrated school) for paragraph (7) substitute—

"(7) Articles 14 and 14A of the principal Order apply in relation to a proposal under paragraph (6) as they apply in relation to a proposal under Article 14(2).".

7.— (1) Article 92 (proposals for acquisition of controlled integrated status) is amended as follows.

(2) In paragraph (1) after "it shall" insert ", subject to paragraph (1A),".

(3) After paragraph (1) insert—

"(1A) The duty in paragraph (1) does not apply if—

(a) the school concerned is situated in an area for which an area education plan is in force; and

(b) ESA considers that the acquisition of controlled integrated status for the school would not be in conformity with the plan.".

(4) After paragraph (2) insert—

"(2A) Where the school concerned would be situated in an area for which an area education plan is in force, a proposal under paragraph (2) must be in conformity with the plan."

(5) In paragraph (5) after "paragraphs" insert "(5A),".

(6) After paragraph (5) insert—

"(5A) Where the school concerned is, or is proposed to be, situated in an area for which an area education plan is in force, the Department in determining under paragraph (5) whether to approve (with or without modifications) a proposal must act in conformity with the plan."

The Education (Northern Ireland) Order 1998 (NI 13)

8. Article 17(1) to (7) (plans for pre-school education) shall cease to have effect.

Schedule 2

The Education Advisory Forum [s1eaf]

Status

1.— (1) The Forum shall not be regarded—

(a) as the servant or agent of the Crown; or

(b) as enjoying any status, immunity or privilege of the Crown.

(2) The property of the Forum shall not be regarded as property of, or held on behalf of, the Crown

(3) Subject to the following provisions of this Schedule, section 19 of the Interpretation Act (Northern Ireland) 1954 (c.33) applies to the Forum.

Membership

2.— (1) The Forum shall consist of—

(a) a Chair,

(b) a deputy Chair, and

(c) a prescribed number of other members,

appointed by the Department after consultation with DEL.

(2) A person who is a member of ESA or the Holding Body is disqualified for membership of the Forum.

(3) Appointments under sub-paragraph (1)(c) are to be made in accordance with regulations.

(4) Before making regulations under this paragraph the Department must consult DEL.

Tenure of office

3.— (1) Subject to the provisions of this paragraph, the Chair, the deputy Chair and the other members of the Forum shall hold and vacate office in accordance with the terms of their respective appointments.

(2) An appointment as Chair, deputy Chair or other member shall be for a specified period of not more than 4 years.

(3) A person whose period of office as Chair, deputy Chair or other member has expired may be re-appointed on one occasion only.

(4) A person holding office as Chair, deputy Chair or other member of the Forum may at any time resign that office by notice in writing to the Department.

(5) The Department may by notice in writing remove a person from office as Chair, deputy Chair or other member of the Forum if satisfied that the person—

(a) has, without reasonable excuse, failed to discharge the functions of the office for a continuous period of 6 months;

(b) is the subject of a bankruptcy restrictions order (or interim order),

(c) has failed to comply with the terms of appointment,

(d) has been convicted of an indictable offence, or

(e) is otherwise unable, unfit or unwilling to perform the functions of the office.

Remuneration and allowances of members

4. The Forum shall pay to—

(a) its Chair and deputy Chair such remuneration and allowances as the Department may determine;

(b) its other members such allowances as the Department may determine.

Employees

5.— (1) The Forum shall have—

(a) a chief executive, with responsibility to the Forum for the carrying out of its functions and the management of its employees; and

(b) such other employees as the Forum may determine.

(2) The first chief executive of the Forum shall be appointed by the Department.

- (3) Every subsequent chief executive shall be appointed by the Forum.
- (4) The Forum shall not appoint a person as chief executive unless the Department approves the appointment.
- (5) A person shall, so long as that person is, and for 12 months after ceasing to be, a member of the Forum, ESA or [the new body] be disqualified for being an employee of the Forum.
- (6) The Forum may make arrangements with a Northern Ireland department for persons employed in the Northern Ireland civil service to be seconded to the Forum.
- (7) Arrangements made with a department other than DFP require the approval of DFP.

Remuneration, allowances and pensions of employees

- 6.— (1) Subject to sub-paragraph (2), the Forum shall pay to its employees such remuneration and allowances as it may determine.
- (2) The Department may direct that the remuneration and allowances of the chief executive and other employees of such class or description as may be specified in the direction shall not be determined under sub-paragraph (1) without the approval of the Department.
- (3) The Forum shall—
- (a) pay, or make payments in respect of, such pensions or gratuities to or in respect of its employees or former employees as it may, with the approval of the Department, determine; or
 - (b) provide and maintain such schemes (whether contributory or not) as it may, with the approval of the Department, determine, for the payment of pensions or gratuities to or in respect of its employees or former employees.
- (4) References in this paragraph to pensions and gratuities include references to pensions or gratuities by way of compensation to or in respect of employees who suffer loss of employment or loss or diminution of emoluments.

Ancillary powers

- 7.— (1) Except as otherwise provided by any statutory provision, the Forum may do anything that appears to it to be conducive or incidental to the discharge of its functions.
- (2) In particular the Forum may—
- (a) enter into agreements;

- (b) carry out, or commission or assist in the carrying out of, research;
 - (c) co-operate with, or provide advice to, other bodies established by or under a statutory provision.
- (3) The Forum may not borrow money.

Committees

- 8.— (1) The Forum may establish committees.
- (2) A person who is not a member of the Forum shall not, except with the approval of the Department, be appointed to a committee of the Forum.
- (3) The Forum may pay to members of its committees who are neither members nor employees of the Forum such remuneration and allowances as the Forum may, with the approval of the Department, determine.

Proceedings

9. Without prejudice to section 19(1)(a)(v) of the Interpretation Act (Northern Ireland) 1954, the Forum shall make standing orders regulating the procedure of the Forum and its committees, including provision regulating—

- (a) the convening of meetings;
- (b) the fixing of the quorum;
- (c) the conduct of business at meetings;
- (d) the disclosure by a member of any pecuniary interest in, or family relationship relevant to, any matter to be discussed at a meeting and the withdrawal by such a member from any discussion on that matter;
- (e) the admission or exclusion of the public and press from meetings;
- (f) the keeping of minutes and other records;
- (g) the custody of documents;
- (h) the duties of officers;
- (i) such other matters connected with the conduct of its business as the Forum thinks fit.

10. The validity of any proceedings of the Forum, or of any of its committees, shall not be affected by—

- (a) any vacancy among the members of the Forum or of the committee;
- (b) any vacancy in the office of the Chair or deputy Chair of the Forum;
- (c) any defect in the appointment of any one or more members of the Forum or in the appointment of the Chair or deputy Chair of the Forum; or
- (d) any failure to comply with paragraph 9.

Application of seal and documents

11. The application of the seal of the Forum shall be authenticated by the signature—

- (a) of the Chair of the Forum or the chief executive; or
- (b) of any other member or employee who has been authorised by the Forum (whether generally or specially) for that purpose.

12.— (1) Any document which if executed by an individual would not require to be executed as a deed may be executed on behalf of the Forum by any person generally or specially authorised by the Forum for that purpose.

(2) In any legal proceedings any document purporting to have been so executed on behalf of the Forum shall be deemed to be so executed until the contrary is proved.

Finance

13.— (1) A funding department may make payments to the Forum.

(2) Payments made under this paragraph by a funding department shall be made on such terms and conditions as the funding department may determine.

(3) The funding departments are—

- (a) the Department; and
- (b) DEL.

Accounts

14.— (1) The Forum shall—

- (a) keep proper accounts and proper records in relation to the accounts; and
- (b) prepare a statement of accounts in respect of each financial year.

(2) The statement of accounts shall—

(a) be in such form, and

(b) contain such information,

as the Department may, with the approval of DFP, direct.

(3) The Forum shall, within such period after the end of each financial year as the Department may direct, send copies of the statement of accounts relating to that year to—

(a) the Department;

(b) DEL; and

(c) the Comptroller and Auditor General.

(4) The Comptroller and Auditor General shall—

(a) examine, certify and report on every statement of accounts received under this paragraph; and

(b) send a copy of each report to the Department.

(5) The Department shall lay a copy of the statement of accounts and of the Comptroller and Auditor General's report before the Assembly.

Annual report

15.— (1) As soon as practicable after the end of each financial year, the Forum shall send to the Department and DEL a report on the carrying out of its functions during that year.

(2) A report under this paragraph shall contain such information as the Department may direct.

(3) The Department shall lay a copy of the report before the Assembly.

Assembly disqualification

16. In Part II of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c.25) (bodies whose members are disqualified) there shall be inserted, at the appropriate place—

"The Education Advisory Forum".

Freedom of information

17. In Part 7 of Schedule 1 to the Freedom of Information Act 2000 (c.36) (bodies, etc. which are public authorities for the purposes of the Act) at the appropriate place insert—

"The Education Advisory Forum".

Interpretation

18. In this Schedule "financial year" means—

(a) the period beginning with the day on which the Forum is established and ending on the next following 31st March; and

(b) any subsequent period of 12 months ending on 31st March.

Schedule 3

The Holding Body for Controlled Schools [s1cs]

Status

1.— (1) The Holding Body shall not be regarded—

(a) as the servant or agent of the Crown; or

(b) as enjoying any status, immunity or privilege of the Crown.

(2) The property of the Holding Body shall not be regarded as property of, or held on behalf of, the Crown

(3) Subject to the following provisions of this Schedule, section 19 of the Interpretation Act (Northern Ireland) 1954 (c.33) applies to the Holding Body.

Membership

2.— (1) The Holding Body shall consist of—

(a) a Chair appointed by the Department,

(b) 3 other members appointed by the Department, and

(c) the chief officer of the Holding Body.

(2) A person who is a member or employee of ESA or an employee of the Holding Body is disqualified for appointment under sub-paragraph (1)(a) or (b).

(3) The Department may by order amend sub-paragraph (1)(b).

Tenure of office

3.— (1) Subject to the provisions of this paragraph, persons appointed under paragraph 2(1)(a) and (b) shall hold and vacate office in accordance with the terms of their respective appointments.

(2) An appointment under paragraph 2(1)(a) or (b) shall be for a specified period of not more than 4 years; but a person whose period of office has expired may be re-appointed.

(3) A person holding office under paragraph 2(1)(a) or (b) may at any time resign that office by notice in writing to the Department.

(4) The Department may by notice in writing remove a person appointed under paragraph 2(1)(a) or (b) from office if satisfied that the person—

(a) has, without reasonable excuse, failed to discharge the functions of the office for a continuous period of 6 months;

(b) is the subject of a bankruptcy restrictions order (or interim order),

(c) has failed to comply with the terms of appointment,

(d) has been convicted of an indictable offence, or

(e) is otherwise unable, unfit or unwilling to perform the functions of the office.

Remuneration and allowances of members

4. The Holding Body shall pay to persons appointed under paragraph 2(1)(a) or (b) such remuneration and allowances as the Department may determine.

Employees

5.— (1) The Holding Body shall have—

(a) a chief officer, with responsibility to the Holding Body for the carrying out of its functions and the management of its employees; and

(b) such other employees as the Holding Body may determine.

(2) The first chief officer of the Holding Body shall be appointed by the Department.

(3) Every subsequent chief officer shall be appointed by the Holding Body.

(4) The Holding Body shall not appoint a person as chief officer unless the Department approves the appointment.

(5) A person shall, so long as that person is, and for 12 months after ceasing to be, a member of the Holding Body or ESA be disqualified for being an employee of the Holding Body.

Remuneration, allowances and pensions of employees

6.— (1) Subject to sub-paragraph (2), the Holding Body shall pay to its employees such remuneration and allowances as it may determine.

(2) The Department may direct that the remuneration and allowances of the chief executive and other employees of such class or description as may be specified in the direction shall not be determined under sub-paragraph (1) without the approval of the Department.

(3) The Holding Body shall—

(a) pay, or make payments in respect of, such pensions or gratuities to or in respect of its employees or former employees as it may, with the approval of the Department, determine; or

(b) provide and maintain such schemes (whether contributory or not) as it may, with the approval of the Department, determine, for the payment of pensions or gratuities to or in respect of its employees or former employees.

(4) References in this paragraph to pensions and gratuities include references to pensions or gratuities by way of compensation to or in respect of employees who suffer loss of employment or loss or diminution of emoluments.

Arrangements for assistance to Holding Body

7.— (1) The Holding Body may make arrangements with—

(a) a Northern Ireland department for persons employed in the Northern Ireland civil service to be seconded to the Holding Body;

(b) ESA for persons employed by ESA to be seconded to the Holding Body.

(2) Arrangements made under sub-paragraph (1)(a) with a department other than DFP require the approval of DFP.

(3) The Holding Body may make arrangements with such persons (including ESA or a Northern Ireland department) as it considers appropriate for administrative services or other assistance to be provided to it.

(4) Arrangements under sub-paragraph (3) with a person other than ESA or a Northern Ireland department—

(a) require the approval of the Department;

(b) may provide for the payment of fees by the Holding Body.

Committees

8.— (1) The Holding Body may establish committees.

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

(3) The Holding Body may pay to members of its committees who are neither members nor employees of the Holding Body such remuneration and allowances as the Holding Body may, with the approval of the Department, determine.

(4) The Holding Body may, to such extent as it may determine, delegate any of its functions to a committee.

Proceedings

9. Without prejudice to section 19(1)(a)(v) of the Interpretation Act (Northern Ireland) 1954, the Holding Body shall make standing orders regulating the procedure of the Holding Body and its committees, including provision regulating—

(a) the convening of meetings;

(b) the fixing of the quorum;

(c) the conduct of business at meetings;

(d) the disclosure by a member of any pecuniary interest in, or family relationship relevant to, any matter to be discussed at a meeting and the withdrawal by such a member from any discussion on that matter;

(e) the admission or exclusion of the public and press from meetings;

(f) the keeping of minutes and other records;

(g) the custody of documents;

(h) the duties of officers;

(i) such other matters connected with the conduct of its business as the Holding Body thinks fit.

10. The validity of any proceedings of the Holding Body, or of any of its committees, shall not be affected by—

(a) any vacancy among the members of the Holding Body or of the committee;

- (b) any vacancy in the office of Chair of the Holding Body;
- (c) any defect in the appointment of any one or more members of the Holding Body or in the appointment of the Chair of the Holding Body; or
- (d) any failure to comply with paragraph 9.

Application of seal and documents

11. The application of the seal of the Holding Body shall be authenticated by the signature—

- (a) of the Chair of the Holding Body or the chief officer; or
- (b) of any other member or employee who has been authorised by the Holding Body (whether generally or specially) for that purpose.

12.— (1) Any document which if executed by an individual would not require to be executed as a deed may be executed on behalf of the Holding Body by any person generally or specially authorised by the Holding Body for that purpose.

(2) In any legal proceedings any document purporting to have been so executed on behalf of the Holding Body shall be deemed to be so executed until the contrary is proved.

Finance

13.— (1) The Department may make payments to the Holding Body.

(2) Payments made under this paragraph shall be made on such terms and conditions as the Department may determine.

(3) The Holding Body may not borrow money.

Accounts

14.— (1) The Holding Body shall—

- (a) keep proper accounts and proper records in relation to the accounts; and
- (b) prepare a statement of accounts in respect of each financial year.

(2) The statement of accounts shall—

- (a) be in such form, and
- (b) contain such information,

as the Department may, with the approval of DFP, direct.

(3) The Holding Body shall, within such period after the end of each financial year as the Department may direct, send copies of the statement of accounts relating to that year to—

(a) the Department; and

(b) the Comptroller and Auditor General.

(4) The Comptroller and Auditor General shall—

(a) examine, certify and report on every statement of accounts received under this paragraph; and

(b) send a copy of each report to the Department.

(5) The Department shall lay a copy of the statement of accounts and of the Comptroller and Auditor General's report before the Assembly.

Annual and other reports, etc.

15.— (1) As soon as practicable after the end of each financial year, the Holding Body shall send to the Department a report on the carrying out of its functions during that year.

(2) That report shall contain such information as the Department may direct.

(3) The Department shall lay a copy of that report before the Assembly.

(4) The Holding Body shall make such other reports and give such information to the Department as the Department may reasonably require for the purposes of its functions under any statutory provision.

Assembly disqualification

16. In Part II of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c.25) (bodies whose members are disqualified) there shall be inserted, at the appropriate place—

"The Holding Body for Controlled Schools".

Freedom of information

17. In Part 7 of Schedule 1 to the Freedom of Information Act 2000 (c. 36) (bodies, etc. which are public authorities for the purposes of the Act) at the appropriate place insert—

"The Holding Body for Controlled Schools".

Interpretation

18. In this Schedule "financial year" means—

- (a) the period beginning with the day on which the Holding Body is established and ending on the next following 31st March; and
- (b) any subsequent period of 12 months ending on 31st March.

Schedule 4

Transfer of certain land, liabilities and staff of ESA to Holding Body [s2cs]

Transfer of land

1.— (1) All land which immediately before the appointed day is vested in ESA for the purposes of a controlled school shall on that day be transferred to, and by virtue of this paragraph vest in, the Holding Body.

(2) All liabilities to which ESA is subject immediately before the appointed day in its capacity as the owner of any land transferred to the Holding Body by sub-paragraph (1) shall on that day be transferred to, and by virtue of this sub-paragraph become the liabilities of, the Holding Body.

(3) This paragraph has effect in relation to land and liabilities mentioned in sub-paragraphs (1) and (2) in spite of any provision (of whatever nature) which would prevent or restrict the transfer of the land or liabilities otherwise than by this paragraph.

(4) A certificate issued by the Department that any land or liabilities have been transferred to the Holding Body by this paragraph is conclusive evidence of that fact.

(5) For the purposes of this paragraph land vested in ESA is so vested for the purposes of a controlled school if (and only if) that land forms all or part of—

- (a) the premises of a controlled school; or
- (b) a dwelling occupied by a caretaker of, or teacher at, the controlled school.

Transfer of land: supplementary

2.— (1) In any statutory provision or document—

- (a) which relates to anything transferred under paragraph 1, and
- (b) which is in effect immediately before the appointed day,

any reference to ESA shall, in relation to any time after the appointed day, be construed as a reference to the Holding Body.

(2) Sub-paragraph (1) applies unless contrary provision is made by or under this Act or the context otherwise requires.

(3) A transfer under paragraph 1 does not affect the validity of anything done by, or in relation to, ESA before the appointed day.

(4) Anything which—

(a) before the appointed day was done by or in relation to ESA for the purposes of or otherwise in connection with anything transferred by paragraph 1, and

(b) is in effect immediately before the appointed day,

shall continue to have effect to the same extent and subject to the same provisions as if it had been done by, or in relation to, the Holding Body.

(5) Anything (including any legal proceedings) which—

(a) relates to anything transferred by paragraph 1, and

(b) is in the process of being done by or in relation to ESA immediately before the appointed day,

may be continued by or in relation to the Holding Body.

(6) References in this paragraph to ESA are to ESA in its capacity as the owner of any land transferred by paragraph 1.

Transfer of certain staff of ESA

3.— (1) The Department may make a scheme with respect to persons to whom this paragraph applies.

(2) This paragraph applies to persons who—

(a) immediately before the appointed day are employed by ESA; and

(b) are engaged wholly or mainly in work of a kind required to be undertaken for the purposes of the Holding Body.

(3) The scheme may provide for the transfer as from the appointed day of persons to whom this paragraph applies from the employment of ESA to the employment of the Holding Body.

(4) The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246) apply to a transfer effected by the scheme whether or not the transfer would, apart from this paragraph, be a relevant transfer for the purposes of the regulations.

(5) The scheme may include supplementary, incidental, transitional and consequential provision.

(6) The scheme shall—

(a) identify transferring employees (whether by name or otherwise);

(b) include provision securing pension protection for such employees;

(c) include provision for procedures designed to resolve any grievances of such employees arising in relation to matters dealt with by the scheme; and

(d) include provision for the payment of compensation by the Department to any such employee who suffers loss or detriment in consequence of the scheme.

(7) Before making a scheme the Department shall consult—

(a) in the case of a scheme which identifies transferring employees by name, those employees; and

(b) in the case of a scheme which identifies transferring employees in any other way, such persons as appear to the Department to be representative of transferring employees.

(8) For the purposes of this paragraph—

(a) "pension protection" is secured for a transferring employee if after the change of employer effected by the scheme the employee has, as an employee of the Holding Body rights to acquire pension benefits and those rights are the same as or (taken as a whole) no less favourable than those that the transferring employee had as an employee of ESA;

(b) "scheme" means the scheme made under this paragraph; and

(c) "transferring employee" means an employee of ESA who is transferred by virtue of this paragraph to the employment of the Holding Body.

(9) Procedures under sub-paragraph (6)(c) shall involve consideration of grievances by a person other than—

(a) a member, or member of staff, of ESA; or

(b) a member, or member of staff, of the Holding Body.

Schedule 5

Amendments: controlled schools [s3cs]

The Education (Northern Ireland) Order 1986 (NI 3)

1.— (1) Article 2(2) (interpretation) is amended as follows.

(2) In the definition of "controlled school" for the words from "means" to the end substitute "has the meaning given by section 14 of the Education (Northern Ireland) Act 2010;".

(3) After the definition of "grant-maintained integrated school" insert—

"Holding Body" means the Holding Body for Controlled Schools;".

(4) In the definition of "managers" for paragraphs (a) and (b) substitute—

"(a) in relation to a grant-aided school, the Board of Governors of the school;".

(5) In the definition of "transferors" omit paragraph (b).

2. For Article 17 substitute—

"Transfer of voluntary schools

17.—(1) Notwithstanding anything in any instrument of government of a voluntary school, the trustees of the school may, with the consent of the Department given after consultation with ESA, transfer the school to ESA on such terms as may be agreed by the trustees and ESA; and the provisions of Schedule 9 shall apply to any such transfer.

(2) After the transfer of a school to it under paragraph (1) ESA—

(a) shall as soon as practicable transfer to the Holding Body any land which is used for the purposes of the school;

(b) may, subject to the terms on which the school was transferred to ESA, transfer to the Board of Governors of the school any other property used for the purposes of the school.

(3) A school transferred under paragraph (1) shall, on the date of the transfer under paragraph (2)(a) of the land used for the purposes of the school, become a controlled school.

(4) The trustees of a school transferred under paragraph (1) shall, from the date of the transfer, be absolutely freed and discharged from all responsibility in connection with the school whether under any deed of trust or otherwise.

(5) For the purposes of this Article—

(a) references to the transfer of a school are references to the transfer of—

(i) any land which is used for the purposes of the school, and

(ii) any other property used in connection with the school by the trustees or Board of Governors of the school;

(b) land is used for the purposes of a school if (and only if) that land forms all or part of—

(i) the premises of the school; or

(ii) a dwelling occupied by a caretaker of, or teacher at, the school."

3. In Article 18 (2) (standard of school premises) for sub-paragraphs (a) and (b) substitute—

"(a) the Board of Governors of a controlled or grant-maintained integrated school;".

4. In Article 100 (determination of disputes) in paragraph (1) after sub-paragraph (b) insert—

"(c) ESA and the Board of Governors of a controlled school,

(d) ESA and the Holding Body,

(e) the Holding Body and the Board of Governors of a controlled school,".

5. In Article 101 (directions by Department) in paragraph (3) after sub-paragraph (d) add—

"(e) the Holding Body.".

6.— (1) In Article 127 (transfer of certain establishments) in paragraph (1) for "the Department", wherever occurring, substitute "ESA".

(2) Omit Article 127(3).

7. In Schedule 4 (Boards of Governors of controlled schools) in paragraph 7 in the definition of "superseded manager" for "schools under the management of ESA" substitute "controlled schools".

8. In Schedule 9 (transfer of voluntary schools)—

- (a) in the heading to the Schedule and in paragraph 1 for "the Department" (wherever occurring) substitute "ESA";
- (b) omit paragraph 2;
- (c) in paragraph 3 omit the words from "for the transfer to the Department" to "school or" and for "the Department" substitute "ESA";
- (d) in paragraph 4 for "the Department" substitute "ESA" and omit the words from "or such smaller estate" to the end;
- (e) in paragraph 6 for "The Department" substitute "ESA";
- (f) in paragraph 8 for "the consent of the Department" substitute " a certificate given by ESA";
- (g) omit paragraph 9.

The Education Reform (Northern Ireland) Order 1989 (NI 3)

9.— (1) Article 75 (transfer of property to Board of Governors of grant-maintained integrated school) is amended as follows.

(2) In paragraph (1) for sub-paragraphs (a) and (b) substitute—

"(a) all land which immediately before that date, was vested in the Holding Body for the purposes of the school;

(b) all other property, rights or liabilities subsisting immediately immediately before that date and acquired or incurred by ESA for the purposes of the school, and".

(3) In paragraph (8) for the words from "duty of" to "accordingly" substitute "school shall".

10.— (1) Article 83 (establishment of controlled school on premises of discontinued grant-maintained integrated school) is amended as follows.

(2) In paragraph (1) for sub-paragraph (a) substitute—

"(a) if the new school is to be a controlled school, an order under Article 82—

(i) must vest in the Holding Body all land held for the purposes of the school;

(ii) may vest all, or any part of, the other school property in ESA;"

(3) In paragraph (3) for "paragraph (1) or (2)" substitute "paragraph (1)(a)(ii) or (b) or (2)".

(4) In paragraph (5) for "ESA or a person" substitute "a body or person".

(5) In paragraph (6) for "ESA" substitute "the body to which".

11.— (1) Article 95 (voluntary school acquiring controlled integrated status) is amended as follows.

(2) In paragraph (1) for sub-paragraphs (a) to (c) substitute—

"(a) all land which immediately before that date was land held by the trustees of the school for the purposes of the school shall be transferred to, and by virtue of this Article vest in, the Holding Body;

(b) there shall be transferred to, and by virtue of this Article be vested in, ESA—

(i) all other property which immediately before that date was property held by those trustees for the purposes of the school and all rights or liabilities subsisting immediately before that date which were acquired or incurred by those trustees for those purposes; and

(ii) any property, rights and liabilities of the former Board of Governors of the school."

(3) In paragraph (3) omit "to ESA" and for "in ESA" substitute "in the Holding Body or ESA".

12. In Article 140 (community use of school premises)—

(a) in paragraph (a) omit "managers and";

(b) for the words from "Article 62" to "1993" substitute "Article 72 of the Education (Northern Ireland) Order 1998".

The Education (Northern Ireland) Order 1998 (NI 13)

13. In Article 67(1) (financial statements for special schools) for "special schools under the management of, or maintained by, ESA" substitute "controlled or maintained special schools".

14.— (1) Article 72 (charges for educational facilities and services) is amended as follows.

(2) In paragraph (1) for sub-paragraphs (a) to (c) substitute "the Board of Governors of a grant-aided school".

(3) In paragraph (2)—

(a) after "may" insert ", with the agreement of the Board of Governors of the school,"; and

(b) omit "and does not have a delegated budget".

(4) Omit—

(a) paragraph (5)(b) and the word "and" immediately preceding it;

(b) paragraph (6);

(c) in paragraph (7) the definition of "educational services" and the words from "and references" to the end.

The Special Educational Needs and Disability (Northern Ireland) Order 2005 (NI 6)

15. Omit Article 17 (ESA accessibility strategy for controlled schools).

The Education Act (Northern Ireland) 2009 (c.)

16. Omit section 2(3) (general duties of ESA).

Schedule 6

Minor amendments [s500]

The Education Orders

1. In the Education Orders after "the Education Orders" (wherever occurring) insert "and Acts".

The Education and Libraries (Northern Ireland) Order 1986 (NI 3)

2.— (1) In Article 2(2)—

(a) in the definition of "the Education Orders" omit paragraph (j);

(a) after that definition insert—

"the Education Orders and Acts" means—

(a) the Education Orders;

(b) the Education Act (Northern Ireland) 2009; and

(c) the Education (No. 2) Act (Northern Ireland) 2009."

The Education (Northern Ireland) Act 2009

3.— (1) In sections 2, 4, 10 and 30 after "the Education Orders" (wherever occurring) insert "and Acts".

(2) In Schedule 7, omit paragraph 9 (f).

Schedule 7

Repeals [s501]

Short Title	Extent of repeal
The Education and Libraries (Northern Ireland) Order 1986 (NI 3)	In Article 2(2), in the definition of "the Education Orders", paragraph (j).
	In Article 2(2), in the definition of "transferors", paragraph (b).
	Article 6(2).
	Article 7.
	In Schedule 9—
	(a) paragraph 2;
	(b) in paragraph 3 the words from "for the transfer to the Department" to "school or";
	(c) in paragraph 4 the words from "or such smaller estate" to the end;
	(d) paragraph 9.
	Article 127(3).
The Education Reform (Northern Ireland) Order 1989 (NI 20)	In Article 95(3) the words "to ESA".
	In Article 140(a) the words "managers of".
	In Schedule 9, the amendments to Article 10 of the Education and Libraries (Northern Ireland) Order 1986.

The Education and Libraries
(Northern Ireland) Order
1993 (NI 12)

In Part 2 of Schedule 4, the amendment to the
definition of "managers" in Article 2(2) of the
Education and Libraries (Northern Ireland) Order
1986.

The Education (Northern
Ireland) Order 1998 (NI 13)

Article 17(1) to (7).

In Article 72—

(a) in paragraph (2) the words "and does not
have a delegated budget";

(b) paragraph (5)(b) and the word "and"
immediately preceding it;

(c) paragraph (6);

(d) in paragraph (7) the definition of "educational
services" and the words from "and references" to
the end

The Special Educational
Needs and Disability
(Northern Ireland) Order
2005 (NI 6)

Article 17.

The Education (Northern
Ireland) Act 2009 (c.)

Section 2(3).

In Schedule 7 paragraph 9(f).

Appendix 5

List of Witnesses

Department of Education

Mr John McGrath
Mr Chris Stewart
Mr Joe Reynolds
Ms Catherine Daly
Mr Eugene Rooney
Mr Denis McMahon
Mr Tom Flynn
Mr Jeff Brown
Ms Eve Stewart
Mr Peter Burns

Education and Skills Authority

Mr Gavin Boyd
Mr Mark Browne

Governing Bodies Association

Dr Evelyn Dermott
Mr Brett Lockheart
Mr Finbar McCallion

Northern Ireland Voluntary Grammar Schools' Bursars Association

Northern Ireland Commission for Catholic Education

Council for Catholic Maintained Schools

Teachers' Unions

UTU

INTO

NASUWT

Education and Library Boards

North Eastern Education and Library Board

Belfast Education and Library Board

South Eastern Education and Library Board

Western Education and Library Board

Southern Education and Library Board

Transferor Representatives' Council

General Teaching Council for Northern Ireland

NIPSA

Northern Ireland Council for Integrated Education

Comhairle na Gaelscolaíochta

Association for Quality Education

The Association of Education and Library Boards

Mr Stephen McConnell

Mr John Robinson

Mr Shane McBrien

Cardinal Sean Brady

Bishop Donal McKeown

Bishop Patrick Walsh

Sister Eithne Woulfe

Mr John Gordon

Bishop John McAreavey

Mr Donal Flanagan

Mr Jim Clarke

Mrs La'Verne Montgomery

Ms Avril Hall-Callaghan

Frank Bunting

Seamus Searson

Mr Gordon Topping OBE

Mr David Cargo

Mr Stanton Sloan

Mr Barry Mulholland

Mr Gregory Butler

Reverend R Herron

Reverend T Gribben

Reverend JT Jamieson

Reverend IW Ellis

Ms Sally McKee

Mr Eddie McArdle

Mr Barney Ball

Ms Alison Millar

Ms Heather McKinstry

Ms Helena McSherry

Mr Michael Wardlow

Ms Frances Donnelly

Ms Lorna McAlpine

Mr Caoimhín Ó Peatáin

Mr Seán Ó Coinn

Mr Liam MacGiolla Mheana

Sir Kenneth Bloomfield

Mr William Young

Mr Roy Liley

Alderman Roy Beggs

(NEELB)

Mr Peter Duffy (WELB)

Mr Gary Haire (SEELB)

Ms Hilary Sloan (BELB)