

## EXECUTIVE SUMMARY – GBA Analysis of Education Bill

- Within the wider context of the Reform of Public Administration the original purpose of the amalgamation of Education and Library Boards was to save money on administration and increase front-line spending in the classroom. Everyone agreed this should happen.
- However the present Education Bill goes far beyond this. In fact the new Education and Skills Authority will employ 50,000 staff including 20,000 teachers and is the most far reaching reform of educational governance since the 1947 Act.
- Voluntary Grammars educate more than one third of secondary pupils and in so doing achieve high levels of success and enjoy strong parental support. The legislation seeks to dismantle the role and responsibilities of these schools. Indeed the legislation envisages the demise of the entire sector. There is no recognition of, or reference to a sector which meets the needs of much larger numbers than, for example, the Irish language and integrated sectors, both of whom are recognised in the bill.
- In particular the ability of voluntary schools to employ their own staff has been removed. This has not been because there have been problems or a lack of accountability; it is simply due to an ideological reasons. The Minister and the Department favour command and control from the centre; the Voluntary schools know devolving powers to schools works well and has been successful for many decades.
- The Department is seeking to use the ESA legislation to control the Voluntary Grammars. On October 11th “the Minister said ‘no school will be able to plan on its own in terms of its future’”.
- The voluntary principle has been at the heart of excellence in education in Northern Ireland. The Bill if passed, would destroy the voluntary principle. The claimed purpose of rationalisation of public administration does not require the dismantling of the Voluntary Grammar Schools.

## EDUCATION BILL 2012

### ANALYSIS OF RELEVANT PROVISIONS FROM THE STANDPOINT OF VOLUNTARY SCHOOLS AND PROPOSED AMENDMENTS

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Appendix 1: The Voluntary Principle in Education: What It Means and Why It Should Be Preserved

**Introduction:**

- (1) The introduction of the ESA Bill represents a major setback for the voluntary sector and threatens the future of academic schools. Writing in the Irish News on 6<sup>th</sup> October 2012 Professor Patrick Murphy, a commentator on educational matters, and former Chief Executive of the Belfast Institute of Further and Higher Education, stated *inter alia* as follows:-

*“... Educationally, the big losers are the grammar schools which now enter the system’s mainstream administration for the first time ... Sinn Fein now clearly owns the ball and the pitch and the fixture list. In the party’s drive for education it has left little to chance. ESA will implement educational policy made by John O’Dowd ...”*

- (2) The purpose of this paper is to highlight the manner in which the voluntary principle, which has been at the heart of the success of the 51 voluntary grammar schools, has been undermined and to suggest amendments to the Bill currently before the Assembly. There has been a deliberate attempt to introduce a system where the emphasis is on the Department through ESA having command and control of all aspects of education in contra distinction to the current policy in England and Wales of encouraging decentralisation and a greater proportion of the educational budget reaching schools.
- (3) The paper makes a number of specific proposals to amend the legislation with the aim of preserving the integrity of the voluntary sector and ensuring that it continues to have a future in education in Northern Ireland.

**ESA as the Employer of All Staff:**

- (4) The critical power that has been lost in the draft Education Bill is the ability of voluntary schools to employ all of their own staff. Section 3 of the draft Bill states that ESA will be the employer of all staff in grant-aided schools. Voluntary schools have consistently argued that the failure to include an opt-out provision for those schools which have always employed their own staff, would change the essential nature of such schools.
- (5) A Heads of Agreement was drawn up in November 2011 which attempted to deal with the particular concern of voluntary schools.
- (6) The relevant provisions of the Heads of Agreement are set out below for ease of reference:-

5. ESA will also be the single employing authority of all staff in all grant aided schools. Board of governor's role will be enshrined in legislation as set out in the draft, The Education (Employment Schemes) Regulations 2010.

10. Notwithstanding the foregoing, nothing in the new arrangements will undermine the following principles;

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

- (7) There is a fundamental contradiction between being the single employing authority of all staff (Clause 5) and stating that nothing in the new

arrangements will undermine the principle that “where it is already the case, Boards of Governors will continue to employ and dismiss members of staff” (Clause 10).

- (8) It has been represented that ESA is merely an ‘administrative conduit’ or ‘filing cabinet’ as far as voluntary schools are concerned. It is likely that the Department take a different view and this issue will continue to be carefully scrutinised by all parties. It is now accepted as probable that ultimate clarity will not be achieved before the Bill is finally passed and that difficulties will be the responsibility of the independent tribunal set up by Section 62 of the draft Bill.<sup>1</sup> The purpose of the Tribunal is to determine whether Schemes of Employment and Schemes of Management comply with the statutory requirements. In this instance, the statutory requirements refer at Section 3(4) to the Heads of Agreement. Thus, the primary legislation directly imports on to the face of the Bill the contradiction between Sections 5 and 10 in the Heads of Agreement.
- (9) Voluntary schools have successfully employed their own staff and managed their own budgets since the last major reform of education in 1947. It is not clear why ESA insist upon removing the employment responsibility unless the aim is to dismantle the voluntary sector and effectively make the sector indistinguishable from the controlled sector. All stakeholders accept the good sense of amalgamating the Education and Library Boards into a single Education Authority. The prospect of releasing administrative savings to

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<sup>1</sup> By Section 62 of the Draft Education Bill the Office of the First Minister and Deputy First Minister shall by regulations make provision for the establishment of a tribunal to exercise functions under Section 8 (Procedure where ESA does not approve a submitted employment scheme) and Section 37 (Procedure where ESA does not approve a submitted Scheme of Management)

augment frontline education services is particularly welcome because the percentage of the educational budget, which goes directly to schools, is lower in Northern Ireland than any other part of the United Kingdom.<sup>2</sup>

- (10) The additional responsibilities now taken on by ESA raise a serious question about the extent to which the establishment of a single education authority will actually result in savings and greater frontline support. ESA will become the largest education authority in Europe employing some 50,000 people including 20,000 teaching staff.<sup>3</sup> A bureaucracy of that size will continue to swallow up a large slice of the education budget so that the percentage share of the budget which directly benefits the children in the class room in Northern Ireland is likely to remain significantly smaller than that in England. The irony is that in seeking to act on an ideological basis the initial aims and objectives of a reform of educational administration have been thwarted.

#### **The Voluntary Sector as a Distinct Sector:**

- (11) Section 63 of the draft Bill defines sectoral body and relevant sectoral body as follows:-

“sectoral body” means a body—  
(a) which is recognised by the Department as representing the interests of grant-aided schools of a particular description; and

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<sup>2</sup> “In 2006/07, £995m (approximately 62%) of schools-related current expenditure (over half of the education budget) was distributed to schools’ delegated budgets. This delegation level represents a key ministerial decision about the extent to which decisions on funding priorities are either made centrally or devolved to individual schools. The Northern Ireland delegation level of 62% is lower than in England where Local Education Authorities have been set tough targets to increase the level of delegated resources in individual schools’ budgets. As a result, levels of delegated funding in England typically exceed 80% and though targets for the overall level of delegation to schools have not been set since 2003, there are still mechanisms to limit the level of centrally held resources.” Schools for the Future: Funding Strategy, Sharing – Report of the Independent Strategic Review of Education – December 2006 (para 6.14 page 53) ([www.deni.gov.uk/review\\_of\\_education](http://www.deni.gov.uk/review_of_education))

<sup>3</sup> Education and Skills Authority Director Structure Implementation Team November 2009

(b) to which grants are paid under Article 115 of the 1986 Order, Article 64 of the 1989 Order or Article 89 of the 1998 Order; “relevant sectoral body”, in relation to the exercise by the Department or ESA of any function in relation to a school or schools of a particular description, means the sectoral body appearing to the Department or (as the case may be) ESA to represent the interests of schools of that description.

- (12) A point to note is that by any standard, the Governing Bodies Association has previously been recognised by the Department as representing the interests of “grant-aided schools of a particular description”. It is to be assumed that the purpose of the legislation was not the abolition of voluntary schools. The manner, however, in which the legislation has been drafted achieves this end.
- (13) Great care has been taken in the Bill to ensure that the rights of all other sectors are protected. Both the Catholic Trustees and the Transferors have their own sectoral body and have *ex officio* positions on the ESA Board. The integrated and Irish medium sectors have a sectoral body and are already specifically protected within the legislation<sup>4</sup>. The most noticeable omission in terms of the make up of the ESA Board and the funding of sectoral bodies, is the complete absence of any representation for the voluntary sector. It is hard to believe that this is a mere accident. The voluntary sector educates one third of the children in post primary education. The omission of the voluntary sector from the ESA Board is deliberate.

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<sup>4</sup> The Department have a pre-existing duty under Section 64<sup>4</sup> of the Education Reform Order (Northern Ireland) 1989 to encourage and facilitate the development of integrated education. In a similar manner, Section 89 of the Education (Northern Ireland) Order 1998 places the same duty on the Department to encourage and facilitate the development of Irish medium education

- (14) If the alleged purpose of the legislation is to ensure administrative efficiencies, increase standards and release a greater proportion of the education budget to schools, the deliberate attempt to weaken the voluntary principle appears to be part of a more deliberate strategy to dismantle the influence of voluntary schools and render that sector effectively redundant in future discussion about education in Northern Ireland. Funding of the relevant sectoral body and/or *ex officio* representation on the ESA Board would at least give the voluntary sector a voice in the continuing debate about educational standards. The Department have always consulted with voluntary schools in relation to proposed reform but the draft legislation seems to represent a concerted attempt to write the sector out of future influence.

**Employment Schemes:**

- (15) A further important section of the draft Bill is set out in Schedule 2 which imports into the face of the Bill provisions required in employment schemes. The provisions were originally proposed as draft Regulations<sup>5</sup>, but due to concerns about the ability of a Minister or Department to amend same by negative resolution the Regulations are included in the Bill. On the face of it, this gives to all schools some protection with regard to the retention of existing powers in employment schemes. However, section 4(6)<sup>6</sup> of the draft Bill affords the Department an unfettered power to produce regulations that make provision as to the form and content of employment schemes. Consequently, the Department reserves the right to intervene if the employment schemes being agreed between boards of Governors and ESA are not to its liking. If

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<sup>5</sup> Various iterations of the *Education (Employment Schemes) Regulations* were circulated prior to provisional agreement having been reached on the ESA legislation

<sup>6</sup> 4(6) “The Department may by order amend Schedule 2 (and make any necessary consequential amendment to subsection (4))”

exercised, such a power could reduce the autonomy of Boards of Governors in employment matters to the most minimal level.

**The Department's Strategy with the Establishment of ESA:**

- (16) In an article in the Irish News on the 11<sup>th</sup> October 2012, the Minister of Education, interviewed by the paper's education correspondent Simon Doyle, in response to a query about whether selection would still be with us in 10 years, stated: *"We will be in a different place. Area-planning will have kicked in. We will see a rationalisation of our schools estate. We are dealing more and more with restricted budgets"... "Schools will be dealing with the entitlement framework and no school will be able to plan on its own in terms of its future."*

**Emphasis Added**

The clear inference is that a voluntary school cannot plan for its own future; that is anathema to the voluntary principle and shows exactly what the Minister intends that this legislation should achieve.

- (17) It is critical that purpose of the new Bill is properly understood. The entitlement framework<sup>7</sup> is already enshrined in legislation and will come into effect in September 2013. Area planning, which is the subject of detailed guidance,<sup>8</sup> will become the responsibility of ESA when the Education Bill comes into law. The establishment of ESA will permit the Department to implement its overall strategy with a view to rationalising the school estate, imposing a curriculum framework (which few schools will presently be able to meet) and essentially controlling the sector. The overall approach is one of centralisation.

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<sup>7</sup> The Education (2006 Order) Commencement No. 3 Order (NI) 2011 indicates that Articles 18-20 of the Education (NI) Order 1996 will come into effect on 1<sup>st</sup> September 2013. Articles 18-20 highlight the requirements of the entitlement framework

<sup>8</sup> See Guidance dated 14<sup>th</sup> February 2012 on Area Planning

The whole becomes greater than the sum of the parts, and without schools necessarily realising the direction of travel, the running of schools is increasingly directed from the Department through ESA. The new scenario fully assists a Minister who is ideologically driven and though academic selection may be legally safe schools, can be pressured in a myriad of alternative ways by the new arrangements.

- (18) The voluntary principle is not easily grasped or commonly understood. At its heart, however, is the profound conviction that good schools flourish when they are controlled by people who understand the ethos of the school, who are committed to that School and are able to respond quickly and effectively to changing circumstances. No one disputes that they must be fully accountable with the public money or in the educational outcomes they achieve but, as with the current direction of travel in education in England and Wales, schools do best when they are not overburdened with policy emanating from the Department. There is no single formula for a good school, but the voluntary system in Northern Ireland has illustrated how the devolution of power to the individual schools can bring real excellence and opportunity to education. The present proposed arrangements have conceived a model which rejects entirely the benefits of the voluntary system and seeks to undermine their ability to operate.

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**Schedule of proposed amendments to the Education Bill 2012**

**Section 2(5):**

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

Proposed amendment to Section 2(5)

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

Commentary

- (19) As drafted this requires ESA to exercise its functions relating to all schools to facilitate the development of education provided in an Irish speaking school. This is discriminatory. ESA should not exercise its functions as regards a non-Irish speaking school so as to encourage and facilitate the development of education in an Irish speaking school. This could run contrary to the legitimate interests of the non-Irish speaking school. There is no corollary; so that there is no duty on ESA to exercise its functions to encourage and facilitate the development of education provided in a non-Irish speaking school.

**Section 3(1):**

“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”

Proposed amendment to Section 3(1)

“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 save that in the case of a voluntary school such teachers and other persons appointed to work under a contract of employment shall be employed by ESA as the agent for the Board of Governors of that school.”

### Commentary

- (20) The Heads of Agreement contain an inherent contradiction between paragraphs 5 and 10. Paragraph 10 acknowledges the existing powers of Boards of Governors of voluntary schools must be preserved; Boards of Governors of voluntary schools are to have the same powers after the enactment of the proposed Education Bill as they had before. One of the lynchpin powers of a Board of Governors is to be the employing authority for the staff of the school.
- (21) Section 3(1), as it appears in the draft Bill, removes this power; hence it is not compatible with paragraph 10 of the Heads of Agreement. It is of course recognised that paragraph 5 of the Heads of Agreement provided that ESA was to be the employing authority for all schools.
- (22) However, the Minister of Education has stated in the Assembly that ESA is not an authority taking control of schools, and that schools should continue to be run and managed by the existing Boards of Governors; ESA is not to be created to take over the reins from of Boards of Governors. Notwithstanding the provisions of Schedule 2, which sets out the functions of the Boards of Governors in employment matters, the fact that Boards of Governors cease to be the employing authority, is an emasculation of the Boards of Governors.

- (23) The contradiction between paragraphs 5 and 10 of the Heads of the Agreement can be addressed if ESA is the employing authority as agent for the Boards of Governors of voluntary schools. This means that Boards of Governors retain exactly the same powers as they have at present and ESA's function as the administrator, is recognised by its carrying out its function under the act as the agent of the Board of Governors. This amendment thus accommodates both paragraph 5 and paragraph 10 of the Heads of Agreement, and recognises the spirit of the Heads of Agreement.

**Section 4(3)(c):**

“(c) imposing duties on ESA and the Board of Governors or principal of the school;”

Proposed amendment to Section 4(3)(c)

“(c) imposing duties on ESA **or** the Board of Governors or principal of the School **as may be appropriate;**”

Commentary

- (24) This is to recognise that ESA will carry out its functions as agent for the Board. It has to be up to the School as to whether it chooses to impose duties on ESA

**Section 4(3)(d):**

“(d) for functions of the Board of Governors or principal under the scheme to be exercised on behalf of, and in the name of, ESA.

Proposed amendment to Section 4(3)(d)

“(d) **Save in the case of a voluntary school** for functions of the Board of Governors or principal under the scheme to be exercised on behalf of, and in the name of, ESA.”

Commentary

- (25) In the case of a voluntary school, ESA should act as the agent of the Board of Governors, the paragraph as drafted is, therefore, inappropriate for voluntary schools because it assumes that Boards of Governors of voluntary schools will carry out their functions as agents of ESA, and not the other way round.

**Section 4(6):**

“The Department may by order amend Schedule 2 (and make any necessary consequential amendment to subsection (4)).”

Proposed amendment to Section 4(6)

This provision should be deleted

Commentary

- (26) It is inappropriate that the Department should have the ability to amend schedule 2 by order rather than by amending legislation. Schedule 2 contains much of what was seen as necessary to ensure that Boards of Governors continue to have the powers which they presently have, and to give effect of paragraph 10 of the Heads of Agreement.

**Section 9(3):**

“Where ESA is of the opinion that a decision of the Board of Governors on any matter which falls to be taken in accordance with such a scheme was taken otherwise than in accordance with the scheme, ESA may require the Board of Governors to reconsider that matter.”

Proposed amendment to Section 9(3):

“Where ESA is of the opinion that a decision of the Board of Governors on any matter which falls to be taken in accordance with such a scheme was taken otherwise than in accordance with the scheme, ESA may require **or in the case of the voluntary school may request** the Board of Governors to reconsider that matter.”

Commentary

- (27) It is inconsistent with the preservation of the existing powers of Boards of Governors as envisaged by paragraph 10 of the Heads of Agreement that ESA can insist upon a Board of Governors taking any particular step. At the end of the day, the Board of Governors has to be the final arbiter in employment matters. As the agent, ESA cannot “require” the Board of Governors to



reconsider a matter. There is no objection to ESA pointing out something which the Board might wish to reconsider, and inviting the Board to do so.

**Section 12(1):**

“The Board of Governors of a voluntary grammar school may, in accordance with arrangements agreed with ESA, issue payment on behalf of ESA of—”

Proposed amendment to Section 12(1)

“The Board of Governors of a voluntary grammar school may, upon notice given to ESA issue payment in accordance with the provisions of Schedule [ ], issue payment on behalf of ESA of—”

Commentary

- (28) It is unacceptable to leave the important function of paying staff to an agreement which a Board may, or may not, be able to conclude with ESA, and which will depend on the willingness of ESA to conclude such agreement. Accordingly, the arrangements for the paying of staff should be set out in a Schedule to the Bill.

**Section 20(1):**

“ESA may enter into contracts for, or in connection with, the provision or alteration of the premises of a grant-aided school.”

Proposed amendment to Section 20(1)

“ESA may enter into contracts for, or in connection with, the provision or alteration of the premises of a grant-aided school save that in the case of a voluntary school, ESA may only enter into such contracts with the consent of the Board of Governors of that school.”

Commentary

- (29) It is inappropriate that ESA should have blanket authority to enter into contracts relating to the provision or alteration of premises which are not vested in ESA. This is particularly so in the cases of the two “B” schools, RBAI and



Campbell College who do not take any funding at all for capital expenditure on their estate.

**Section 63:**

“sectoral body” means a body—

- (a) which is recognised by the Department as representing the interests of grant-aided schools of a particular description; and
- (b) to which grants are paid under Article 115 of the 1986 Order, Article 64 of the 1989 Order or Article 89 of the 1998 Order;”

Proposed amendment to Section 63

“sectoral body” means a body—

- (a) which is recognised by the Department as representing the interests of grant-aided schools of a particular description; and
- (b) to which grants are paid under Article 115 of the 1986 Order, Article 64 of the 1989 Order or Article 89 of the 1998 Order; **or**
- (c) which is recognised by the Department as representing the interests of the voluntary grammar schools”

Commentary

- (30) The voluntary grammar schools are entitled to recognition as a “sectoral body”. The definition of “sectoral body” is restricted. It does not include voluntary grammar schools while it does include integrated schools or Irish medium schools. This is clearly discriminatory and therefore the definition of “sectoral body” in section 63 must be extended to include the following “which represents the voluntary grammar schools”. In the absence of a sectoral body representing the interests of voluntary grammar schools, the latter’s interests will not be consulted where there is an obligation to consult sectoral bodies.

**Section 66(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;

“the 1989 Order” means the Education Reform (Northern Ireland) Order 1989;

“the 1998 Order” means the Education (Northern Ireland) Order 1998;

“the 2003 Order” means the Education and Libraries (Northern Ireland) Order 2003;

“the 2006 Order” means the Education (Northern Ireland) Order 2006.”

#### Proposed amendment to Section 66(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;

“the 1989 Order” means the Education Reform (Northern Ireland) Order 1989;

“the 1998 Order” means the Education (Northern Ireland) Order 1998;

“the 2003 Order” means the Education and Libraries (Northern Ireland) Order 2003;

“the 2006 Order” means the Education (Northern Ireland) Order 2006;

“the Heads of Agreement” means the terms which are set out in Schedule [ ]”

#### Commentary

- (31) The Heads of Agreement feature in the Bill, but they are not defined. To avoid any debate, they should be set out in extensor in a Schedule to the Bill.

#### **Paragraph 2(1) of Schedule 1:**

“ESA shall consist of—

(a) a Chair appointed by the Department,

(b) 8 persons nominated in accordance with paragraph 3 (“political members”),  
and

(c) 12 persons appointed by the Department (“appointed members”) of  
whom—

(i) 4 shall be persons appearing to the Department to represent the interests of  
transferors of controlled schools, appointed after consultation with persons or  
bodies appearing to the Department to represent such interests;

- (ii) 4 shall be persons appearing to the Department to represent the interests of trustees of maintained schools, appointed after consultation with persons or bodies appearing to the Department to represent such interests; and
- (iii) 4 shall be persons appearing to the Department, so far as practicable, to be representative of the community in Northern Ireland.”

Proposed amendment to Paragraph 2(1) of Schedule 1

“ESA shall consist of—

- (a) a Chair appointed by the Department,
- (b) 8 persons nominated in accordance with paragraph 3 (“political members”), and
- (c) 16 persons appointed by the Department (“appointed members”) of whom—
  - (i) 4 shall be persons appearing to the Department to represent the interests of transferors of controlled schools, appointed after consultation with persons or bodies appearing to the Department to represent such interests;
  - (ii) 4 shall be persons appearing to the Department to represent the interests of trustees of maintained schools, appointed after consultation with persons or bodies appearing to the Department to represent such interests; and
  - (iii) 4 shall be persons appearing to the Department, so far as practicable, to be representative of the community in Northern Ireland;
  - (iv) 4 shall be persons appearing to the Department to represent the interests of the voluntary grammar schools, appointed after consultation with persons or bodies appearing to the Department to represent such interests”

Commentary

- (32) It is a glaring omission from the Bill that voluntary grammar schools are so strikingly ignored in the composition of ESA. If controlled schools and maintained schools are to be represented on ESA, so should voluntary grammar schools, except if the Bill is amended so as to exclude voluntary grammar schools from its provisions.

**Paragraph 3(1) of Schedule 2:**

“The scheme shall provide for the selection of a person for appointment to a post on the staff of the school to be carried out—

- (a) in the case of a specified post, by ESA;
- (b) in the case of any other post, by the Board of Governors.”

Proposed amendment to Paragraph 3(1) of Schedule 2

“The scheme shall provide for the selection of a person for appointment to a post on the staff of the school to be carried out—

- (a) in the case of a specified post, by ESA **save that in the case of a voluntary school no post shall be a specified post;**
- (b) in the case of any other post, by the Board of Governors.”

Commentary

- (33) This is to preserve the integrity of paragraph 10 of the Heads of Agreement, and the existing powers enjoyed by the Boards of Governors of voluntary schools. Appointments to posts in a voluntary school should only be made by its Boards of Governors.

**Paragraph 4(2) of Schedule 2:**

“(2) The scheme shall provide that Board of Governors shall, after consultation with ESA, establish—

- (a) disciplinary rules and procedures, and
- (b) procedures such as are mentioned in sub-paragraph (1)(b), and shall take such steps as appear to the Board to be appropriate for making them known to the staff of the school.”

Proposed amendment to Paragraph 4(2) of Schedule 2

“(2) The scheme shall provide that Board of Governors shall, after consultation with ESA, establish—

- (a) disciplinary rules and procedures, and
- (b) procedures such as are mentioned in sub-paragraph (1)(b), and shall take such steps as appear to the Board to be appropriate for making them known to the staff of the school **save that in the case of a voluntary school the Board of Governors shall not be under any obligation to consult with ESA”.**

Commentary

- (34) Again, this is to preserve the integrity of paragraph 10 of the Heads of Agreement, and the existing powers enjoyed by the Boards of Governors of voluntary schools. The promulgation of disciplinary rules and procedures in a voluntary school have always been, and should remain, the sole responsibility of the Board of Governors.

**Paragraph 5(1) of Schedule 2:**

“The scheme shall provide that the Board of Governors and the principal shall both have power to suspend any person employed on the staff of the school where, in the opinion of the Board of Governors or (as the case may be) of the principal, the exclusion of that person from the school is required.”

Proposed amendment to Paragraph 5(1) of Schedule 2

“The scheme shall provide that the Board of Governors ~~and the principal~~ shall ~~both~~ have power to suspend any person employed on the staff of the school where, in the opinion of the Board of Governors or (as the case may be) of the principal, the exclusion of that person from the school is required.”

Commentary

- (35) It is clear that Boards of Governors should have the power to suspend staff. Whether or not the principal should also have that power has to be a matter for each individual school. There should be no statutory prescription. Some schools may accord that power to principals; others may accord it only after consultation with the Chairman or committee of the Board; and yet others may confine the power to the Board.

**Paragraph 6(7) of Schedule 2**

“The scheme shall provide that—

- (a) an officer of ESA shall be entitled to attend, for the purpose of giving advice, all proceedings of the Board of Governors relating to any determination mentioned in sub-paragraph (1); and
- (b) the Board of Governors shall consider any advice given by that officer before making any such determination.”

Proposed amendment to Paragraph 6(7) of Schedule 2

“The scheme shall provide that—

- (a) an officer of ESA shall be entitled to attend, for the purpose of giving advice, all proceedings of the Board of Governors relating to any determination mentioned in sub-paragraph (1) save that in the case of a scheme for a voluntary school an officer of ESA shall be entitled to attend only if invited so to do by the Board of Governors; and
- (b) the Board of Governors shall consider any advice given by that officer before making any such determination save that in the case of a scheme for a voluntary school the Board of Governors shall only be required to consider any advice given by an officer of ESA who, at its invitation, has attended the proceedings of the Board relating to the determination.”

Commentary

- (36) Again, this is to preserve the integrity of paragraph 10 of the Heads of Agreement, and the existing powers enjoyed by the Boards of Governors of voluntary schools. Hitherto, there has been no requirement on Boards of Governors to have the attendance of an ELB or Department representative at meetings where such determinations are made. The Boards of Governors of voluntary schools are experienced in dealing with matters of dismissal; many of them have members who are well versed in the procedures which have to be adopted in such cases, and who may well be experts in this field. Accordingly, there should be no obligation on the Boards of voluntary schools to have a representative of ESA attend such meetings. On the other hand, if a Board

opines that the attendance of a representative of ESA would be of advantage to its deliberations, it should be able to issue the appropriate invitation.

### **Paragraph 6 of Schedule 2**

#### Proposed amendment to Paragraph 6 of Schedule 2

The following sub paragraph (9) should be added:-

*“(9) In the case of a voluntary grammar school, the scheme shall provide that ESA will exercise the powers conferred on it by the scheme as the agent for the Board of Governors of that voluntary grammar school”.*

#### Commentary

- (37) Again, this is to preserve the integrity of paragraph 10 of the Heads of Agreement, and the existing powers enjoyed by the Boards of Governors of voluntary schools. It is to recognise that ESA has an administrative function only in the case of voluntary schools.

### **Paragraph 7 of Schedule 2:**

#### Proposed amendment to Paragraph 7 of Schedule 2

The following two additional sub paragraphs shall be added:-

*“(5) In the case of a voluntary grammar school, the scheme shall provide that powers exercised by ESA under this clause 7 shall be exercised by it as agent for the Board of Governors of that school.*

*(6) The scheme shall provide that, in the case of a voluntary grammar school, the Board of Governors alone shall determine what legal representation it requires to deal with any matter arising out of any dismissal or resignation and the power to appoint legal representatives to advise in connection therewith shall rest solely with the Board of Governors of that school”.*

Commentary

- (38) Again, this is to preserve the integrity of paragraph 10 of the Heads of Agreement, and the existing powers enjoyed by the Boards of Governors of voluntary schools. In particular, it is essential that in the event of any legal challenge to a decision to a dismissal, there can be no dichotomy between the Board and ESA. Such would be a recipe for disaster. Accordingly, as it has hitherto been the function of a Board as to how a legal challenge should be met, that must remain the position.

**Paragraph 2(3) of Schedule 3:**

“A scheme may provide for the transfer as from the appointed day of persons to whom this paragraph applies from the employment of a relevant Board of Governors to the employment of ESA.”

Proposed amendment to Paragraph 2(3) of Schedule 3

“A scheme may provide for the transfer as from the appointed day of persons to whom this paragraph applies from the employment of a relevant Board of Governors to the employment of ESA **save that in the case of a voluntary grammar school to which section 10 applies, the employment of such persons by ESA shall be as agent for the relevant Board of Governors**”.

Commentary

- (39) This is for consistency as between staff entering into new contracts after the enactment of the Bill with those whose contracts transfer pursuant to the Bill.

**Paragraph 2(7) of Schedule 3:**

“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.”

Proposed amendment to Paragraph 2(7) of Schedule 3

“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;

(c) The relevant Board of Governors”

Commentary

- (40) This is self-explanatory. If, as is proposed, ESA acts as agent for the Board of a voluntary school, it should consult with the Board on the transfer scheme.

**Paragraph 3(1) of Schedule 3:**

“In any statutory provision or document any reference to a relevant Board of Governors in its capacity as the employer of any person shall, in relation to any time after the appointed day, be construed as a reference to ESA.”

Proposed amendment to Paragraph 3(1) of Schedule 3

“In any statutory provision or document any reference to a relevant Board of Governors in its capacity as the employer of any person shall, in relation to any time after the appointed day, be construed as a reference to ESA or as the case may be to ESA as agent of the relevant Board of Governors in the case of a voluntary grammar school.”

Commentary

- (41) This has to follow if, as has to be the case to preserve the integrity of the Heads of Agreement, ESA is regarded as the agent of the Board of Governors of a voluntary school.



**Paragraph 3(5) of Schedule 3**

“Anything (including any legal proceedings) in the process of being done by or in relation to a relevant Board of Governors in its capacity as the employer of any person immediately before the appointed day may be continued by or in relation to ESA.”

**Proposed amendment to Paragraph 3(5) of Schedule 3**

“Anything (including any legal proceedings) in the process of being done by or in relation to a relevant Board of Governors in its capacity as the employer of any person immediately before the appointed day may be continued by or in relation to ESA either, as the case may be, on its own behalf in its capacity as agent for the relevant Board of Governors of a voluntary school.”

**Commentary**

- (42) This has to follow if, as has to be the case to preserve the integrity of the Heads of Agreement, ESA is regarded as the agent of the Board of Governors of a voluntary school.

**Paragraph 13 of Schedule 7 (Determination of disputes):**

“100.—(1) Any dispute arising between—  
(a) ESA and the trustees of a voluntary school,  
(b) ESA and the Board of Governors of a grant-aided school,  
with respect to the exercise of any power conferred or the performance of any duty imposed by or under the Education Orders may be referred by either party to the dispute to the Department.”

**Proposed amendment to Paragraph 13 of Schedule 7 (Determination of disputes)**

“100.—(1) Any dispute arising between—  
(a) ESA and the trustees of a voluntary school,  
(b) ESA and the Board of Governors of a grant-aided school,  
with respect to the exercise of any power conferred or the performance of any duty imposed by or under the Education Orders may be referred by either

party to the dispute to the Department to the Tribunal established pursuant to section 62 of the Education Act (Northern Ireland) 2012.”

Commentary

(43) Given the history of this piece of legislation, and the importance accorded to the Heads of Agreement, it would not be advisable for the Department to adjudicate upon disputes. This should fall to an independent third party and the Tribunal established under the Act is the obvious candidate.

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**Brett Lockhart QC**

**October 2012**

**Adopted and endorsed by the GBA Executive Committee**

**November 2012**

## APPENDIX 1:

### **The Voluntary Principle in Education: What It Means and Why It Should Be Preserved<sup>9</sup>**

#### **1. The range of schools**

There are currently 51 voluntary grammar schools. Between them, they educate one-third<sup>10</sup> of children and young people aged between 11 and 18.

There is also a growing number of grant-maintained integrated primary and post-primary schools whose governance arrangements are essentially the same as those found in voluntary grammar schools.

The Northern Ireland system also includes a large number of schools described as 'voluntary maintained'. They are almost entirely in the Catholic sector and are not the subject of this short paper.

#### **2. The chief characteristics of these schools and of the voluntary principle**

Although the schools are as different from each other in age, size, composition and purposes as could be imagined, they have a number of important common characteristics:

- they are owned by their trustees, whose responsibilities are commonly set down in a foundation document or deed of trust which describes the purposes for which each school was created and sets out the obligations that fall on their trustee governors to protect and promote the values on which they have been built;
- the trustee governors make up either the entire membership (apart from elected teacher and parents members) or comprise the largest group of each school's governing body;

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<sup>9</sup> Paper produced by John Young former Headmaster of Sullivan Upper School and Dr Wilfred Mulryne former Headmaster Methodist College Belfast

<sup>10</sup> According to last year's DENI census 48,963 out of a total post-primary population of 146,747 i.e. 33.36% of the post-primary population (78.3% of the grammar school population)

- their recurrent funding comes directly from – and they are therefore directly accountable to - the Department of Education : there is no intervening body;
- their approved capital funding also comes from the Department of Education, the percentage payable varying from one type of 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 in and for the schools concerned : they are also responsible for entering into contracts or making arrangements for services of different kinds, ordering the materials and equipment they need, insuring and protecting all members of staff and pupils, buildings, facilities and equipment and dealing with all the financial issues arising; and
- in addition to the duties laid on them by their foundation documents, they are charged with carrying out exactly the same statutory duties and responsibilities as every other grant-aided school

### **3. The principal benefits of the voluntary principle**

There is more than enough evidence to demonstrate that the strengths and benefits of the voluntary principle in education are such that it should not only be maintained but offered and extended to other categories of schools.

These benefits and advantages may be summarised as follows:

#### **3.1 Governors are closely and directly involved in both the business and the fundamental values and principles of their schools**

Because the governors of voluntary schools have a much wider range of roles and responsibilities than governors in other types of schools and are much more directly accountable for what happens in them, they both have and are expected to take a very close interest in the leadership, management, direction, development and performance of their schools. The fact that governing bodies are the owners of the schools and required by their foundation documents to promote the values on which they are based gives them a powerful sense of trusteeship and engagement. Other bodies may be asked for guidance, information or advice, but it is the governing bodies of voluntary schools that make the key decisions and are accountable for them. It is therefore not surprising that they take great care to ensure that their decisions are well-founded.

It is, for example, the governing body of each voluntary school that is responsible for the appointment of its principal and other senior staff, which is not the case in other sectors. There is no other body to which these key decisions – or any others – can or must be referred.

#### **3.2 Governors ensure that the resources available are used efficiently and effectively**

Because the governors of voluntary schools are individually and collectively accountable for the management of their schools' finances and are individually and collectively liable, within their legal framework, for any deficits that might arise, they monitor the ways in which the available resources are used very carefully,

seeking always to ensure best value and to use the funds provided to best effect. Voluntary grammar schools are generally acknowledged to have managed public funds remarkably efficiently and to have ensured that they are used to best effect.

When in the past pressures such as, for example, those associated with falling enrolments have made it impossible for governors to run a school efficiently, they have taken the decision either to amalgamate with another school or to close their own school completely.

### **3.3 Governing bodies are successful in recruiting new members**

Because those who serve as governors in voluntary schools have – and are seen to have – both significant responsibilities and real opportunities to work with their principals and others to shape the direction and development of their schools, they see themselves as having very worthwhile roles. Those interested in becoming governors are, as a result, a good deal easier to recruit than seems to be the case in other types of schools because they can see that they are in a position to make a difference. It may also be easier for voluntary schools to find new governors because (a) no political party is entitled to membership, (b) party political considerations play no part in their business and (c) the schools have the kinds of defining values and purposes with which potential governors can easily associate themselves.

### **3.4 Governors know and understand their schools' central purposes**

Voluntary schools have come into existence for all kinds of reasons. Some, for example, are avowedly denominational, some are inter-denominational (or non-denominational) and some seek to promote integrated education. Precisely because they were not established by the state, they have a degree of autonomy and a sense of purpose that help give them distinctive personalities. Those who agree to become governors of such schools understand what these personalities are and how they were formed but they also recognise their responsibility to ensure that the central purposes of their schools are maintained and promoted. This alone ensures a degree of commitment by governors to the schools they serve that is not always found elsewhere in the schools system.

In addition to their core purpose of providing education for pupils' aged 11 to 18, voluntary grammar schools often assume additional responsibilities such as primary and/or boarding education. They are also permitted to charge fees which are usually

quite small and confined to covering each school's share of the costs of approved capital building expenditure. In all cases, schools have arrangements for ensuring that no pupil is prevented from attending their secondary departments by reason of cost.

### **3.5 Governing bodies can and do act quickly to respond to changing circumstances**

Because of the degree of autonomy they enjoy as employers and as managers of their own resources, and also because of their close engagement with their schools, governing bodies are not only well aware of the challenges created by changing circumstances but also well equipped to respond swiftly and flexibly to them. They are – and have to be - the shapers of their schools' destinies and, as a result, they are – and have to be - ready to enable their schools to acquire the accommodation, facilities and equipment they need to respond to the challenges and opportunities they face.

The governing bodies of voluntary schools have an established record for enabling their schools to build or adapt accommodation and to equip it with the facilities and equipment that are needed in a swift and economical manner. Their freedom to instruct their own architects and project managers as to the needs of their schools ensures that they get what they want within an agreed timescale and budget. This is not always or invariably the case in other sectors.

#### **4. Conclusion**

The governing bodies of both voluntary grammar and grant-maintained integrated schools have demonstrated by and through their actions that they can be relied on to discharge the various duties and responsibilities laid on them by government. No serious challenge has been made to the performance of these schools or to their efficiency in using public funds.

Their record in these and other areas stands up remarkably well when it is compared with the record of those sectors of the school system that are either controlled or maintained and which have, therefore, the support and advice of bodies that stand between the schools and central government. A compelling case for these expensive additional layers remains to be made.

The benefits of voluntary status for the schools concerned, the pupils who attend them and their parents, the staff employed by them, the communities they serve and those who govern them are such as to indicate that it ought to be made more widely available. And the record of these schools indicates that it is a model that works, and works well. That a deliberate attempt should be made now to undermine the voluntary principle beggars belief, especially at a time when government policy elsewhere in the United Kingdom is driven by a determination to devolve decision-making away from local education authorities to the schools themselves because this is seen as one of the keys to sustainable school improvement.