

INTO Response to the Education Bill 2012

INTO has always been a major contributor to the educational debate in the North and welcomes the opportunity to comment on the Education Bill 2012 [the Bill].

INTO supported the establishment of a single employing authority when the idea was initially floated as part of the broader review of public administration in November 2005. We felt then that significant financial savings would be possible along with the streamlining of administrative processes as a consequence of the establishment of a single management structure for the entire system. INTO anticipated benefits for our members, the children in our schools and society as a whole. Fundamentally we anticipated these developments would translate into increased funding being directly passed to the chalk-face. Events since then, characterised by the repeated failure of the Department of Education to secure agreement allowing for the Education and Skills Authority [ESA] to come into being, has caused this good will to largely evaporate. Nevertheless INTO extends a guarded welcome to this second version of the Education and Skills Authority as proposed in the draft legislation.

The Education Bill as currently written does hold out the possibility of significant positive change in some areas but it also causes INTO significant concern in other areas. INTO is of the opinion that the Board of ESA must be reflective of the entire educational community but our initial assessment of the bill does support our viewpoint.

Schedule 1, section 2 of the Bill outlines the structure being proposed but it makes no provision for the appointment of trade union representatives to the Board. This is at odds with the Department of Education's [the Department] and successive Ministers of Education's [the Minister] oft stated desire to work in partnership with the education trade unions. To remove the representatives of the trade union movement from this strategic level is unacceptable to INTO. We believe the education trade unions should have two seats on the board as of right. We suggest that Section 2 of Schedule 1, sub sections (i) and (ii) be changed to reduce the number of representatives from the transferors of controlled schools and the trustees of maintained schools from four each to three and a new subsection (iv) be included to make provision for the appointment of two trade union representatives to the Board.

At present representative or nominees of the recognised trade unions do not automatically have a right to a position on the Boards of Governors [B of Gs] of individual schools. INTO would therefore urge that an opportunity is taken to address this matter in the draft Bill. This is in keeping with the Departments and the Ministers expressed desire to work in partnership with the education trade unions. Further modification of Schedule 4 of the 1986 Order, is required to give effect to this sensible provision. INTO is concerned that Paragraph 38 subsection (1) page 21 of the Bill places too narrow a definition on the function of a B of G. In so doing it appears to ignore the wider pastoral and social obligations traditionally associated with B of G. Perhaps that is the Department and Minister's intention but we would contend this will not assist in the smooth and effective functioning of schools and consequently serve to undermine other policy initiatives being pursued by the Department. Subsection (2) of the same paragraph (38) undermines further the ability of a B of G to manage a school in line with local circumstances and the particular needs of the young

people attending the school. While INTO can see the rationale for the ESA to have a reasonable expectation that B of Gs' will ensure the enactment of the policies designed to promote "high standards of educational achievement" B of Gs' need to have flexibility to contextualise policy and administrative directives in line with local circumstances. Such flexibility requires to be given legislative cover.

The introduction of an "ethos" qualification as indicated in Paragraph 39 pages 21 & 22 into the appointments processes to B of Gs' for certain types of schools is not something that INTO believes is neither helpful or indeed necessary. INTO is of the view that in light of the additional responsibilities and consequent accountability being thrust upon volunteer members of B of Gs' introducing this further qualifications will make populating B of Gs, more difficult than it already is. We believe this qualification should be removed from the proposed legislation. The Department has a commitment to promoting shared education. By promoting a commitment to a particular ethos as a necessary pre-condition for the membership of a B of Gs' in effect the Department is re-enforcing the divisions in our current balkanised system. The inclusion of an ethos qualification therefore appears contradictory when considered against other Departmental policies.

In practical terms INTO is interested to know how a commitment to a particular ethos is to be assessed. The Bill is silent on this point and therefore may leave appointments open to challenge on the basis of an undefined ethos. In the case of Irish medium schools what penalty will Governors suffer who fail to ensure the sustainability of the school? Are schools that have an Irish medium unit attached to be forced to prioritise the sustainability of this part of the school over the English speaking section of the school? INTO is concerned that these sections of the Bill need greater clarity to avoid placing Governors in jeopardy and to avoid potential discrimination.

INTO would have concerns as to where the notion of "autonomy" may take our system. The idea of autonomy being demonstrated in the Bill appears to be a continuum ranging from limited autonomy to maximised autonomy. ESA in receiving from each school "Schemes of Employment" and "Schemes of Management", plus allowing for the provision of model schemes from ESA is opening up the probability of a patchwork of management and employment schemes. The schemes of management and employment must be obliged to be clearly compliant with agreed procedures and current employment legislation. Trade Unions should also have the right to refer such schemes to tribunal where concerns about non or partial compliance arises. The overriding concern in this area for us is the lack of clarity as to who is the actual employer of teachers. Is it the B of G or is it ESA? This issue needs to be clearly defined as it is the key relationship from a trade union and employee perspective and all employment rights ultimately flow from this definition. A patchwork of employment schemes with a clear definition of the employment relationships is a recipe for significant legal challenges and disputes.

Further concern in this area for INTO is the apparent clearing of the way for the future establishment of the "free school" and "academy models" currently fashionable in the English system or the "chartered school" model prevalent at present in the United States. INTO is of the view that by holding out this possibility the Bill is again in conflict with Departmental policy with regard to a shared way forward in the education system. We would recommend the Bill be amended to provide clear guidelines as to the limits of the proposed autonomy and that these limits should make it impossible for the free school, academy and chartered schools variants to come into being. INTO is

not opposed to the idea of autonomy in principle, flexibility is essential for school leaderships, but in the absence of any real debate on this area it is worrying that a door is being opened without any real understanding of what lies on the other side.

INTO welcomes the conferring of statutory powers on ESA to carry out a reconfiguration of the educational estate. This allows for the development of a strategic view to inform this reconfiguration; something that has been absent from this area to date. However Clause 28 subsection 2(b) needs to be amended to include trade unions representing those employed in the education sector amongst the “providers of educational services” thus ensuring the views of this key group to be factored into area planning at the earliest stage. There is a remarkable lack of detail throughout this section in respect to how the adequacy of educational provision in an area will be decided and indeed how an area is to be defined. The provision of a map as indicated in Paragraph 24 subsection (1) (a) needs to be amended to include reference as to how the area has been identified. Failure to do so allows for inconsistencies and a loss of continuity in the overall planning of the school estate. No reference is made to wider consideration of the planning of the schools estate against the greater viability of the community in which a rural school, in particular, may be located. Rural proofing an area planning decision is essential. The process of drafting a new area plan must have regard of the ‘neighbouring area plans and must not bring about competition for resources or pupils. INTO would also like to see the establishment of a statutory duty on the part of ESA when engaged in an area planning exercise along the border to consult, in so far as is possible, with educational providers in the Republic of Ireland. It is clear from our limited experience of area planning to date that communities along the border, on both sides, are prepared to consider sending their children to school in either jurisdiction. ESA must be open to facilitating this.

INTO is disappointed to see the Bill seeking to enhance the powers of the Education and Training Inspectorate NI [ETI]. It was of course predictable that the Department wedded as it is to data would move to secure access to these data sources. It does however commit the Department to a pathway that is data driven into the future, and statistical data is not often the most appropriate indicator of educational progress or attainment.

Enhancing the challenge function of the ETI will undermine efforts to increase standards and attainment in schools. The Scottish model that promotes partnership working between schools and ETI is more effective in achieving significant improvements rather than the greater compliance that the challenge model of Ofsted delivers. Raising standards in schools is best achieved by promoting professional discourse between all stakeholders.

This ultimately suggests the Department has shut its mind to alternative future pathways to school improvement. Widening the remit of the ETI beyond the curriculum to “any aspect of establishments” signals a profound mistrust on the part of the Department for Governors, teachers and parents. Empowering the ETI in such a blanket fashion will only serve to further alienate the teaching profession and increasingly foster divisions between school leaders and communities and the Departments enforcement arm.

Paragraph 44 requires to be challenged in numerous areas:

- Subsection (4 (a) inspectors are charged with “promoting” the highest standards of education and professional standards amongst teachers, exactly how are they to do this? Will they model these

highest standards? It is the duty of the ETI to report on the standards in Education? It is the role of DENI, ESA and B of Gs to promote standards in Education and professional practice;

- Subsection (4) (b) effectively gives the ETI carte blanche to do as they please; this displays a complete lack of respect for the teaching profession, the volunteer Governors and the school community in general. Such an approach makes a nonsense of partnership working and will only further divide the Department from those it exists to serve;
- Section 45 will distort the work of schools by requiring excessive levels of compliance and the associated paper trail. This will divert focus from the core business of teaching and learning. It will be disruptive to schools as the requirements are burdensome and may impact upon their ability to operate while their paper work is within the possession of ETI. ETI requests may be made without due regard to the cost of compiling the information in time or money. Any requests should have to be cognisant of the cost of collating the material. Other sections of the bill indicate that requests should be reasonable; INTO must question why such a provision cannot be stated in respect of this matter as the current phraseology then reduces the role of Board of Governors and Principal to that of bystanders;
- There is no facility within this bill for the reports of ETI to be challenged. Section 46 should include an appeals procedure external to the ETI;
- Section 49 the makeup of ETI teams should include members with recent and relevant educational experience in the area that is being inspected.

These observations are just some of the difficulties that will arise should this section pass into law unaltered. INTO is concerned that this entire section of the Bill indicates the Department has decided teachers are a problem as opposed to valued colleagues. INTO wishes to see this entire section of the Bill re written to reflect a partnership approach designed to promote collaboration and unity across the entire educational community. Reference to powers for the ETI to inspect accommodation and resources imply that schools may find themselves held to account for deficiencies in these areas when by and large the finances necessary to address these issues are subject to Departmental control and smacks of further problems in the future.

With regards to the functions and operations of, arm's length bodies the bill is devoid of significant detail as to how these bodies will be managed or the extent of the control to be imposed. It is therefore essential to give clarity and confidence to the education community that this area of the bill is further developed.

From a purely trade union perspective INTO would have expected to see the formal negotiation machinery between the employing authority, ESA and those employed in the education sector included in the Bill. INTO believes this essential element of the effective functioning of the education system should be clearly set out in the legislation. This would indicate the Department and ESA are committed to ensuring teachers and their non-teaching colleagues in the education service would be afforded full access to their entitlements into the future.

INTO also recommends that the proposed Bill be amended to permit access to the Tribunal to be established in the Department of the First and Deputy First Minister by third parties namely the education trade unions. This would allow issues between ESA and the trade unions and those between the trade unions and B of G which are unable to be resolved through the established procedures and channels to be resolved more cost effectively and quicker than costly visits to the courts.

Ultimately the overall success of the Education and Skills Authority will be measured by its ability to deliver the range of functions and responsibilities subsumed from the outgoing employers or employing authorities or devolved to it through legislation to ensure the development of a world class education community. To this end a significant piece of legislation which has a general lack of clarity of detail in respect of matters raised in this response may not inspire such confidence or support. Rather it may lead to legal challenges, claims of inequality or bias within sectors or more worryingly a general feeling of apathy on behalf of teachers in our schools.

INTO therefore hope that you will consider our initial response to the draft legislation. We hope that the response is thought provoking and we would welcome the opportunity to respond in greater detail to the Committee before the bill moves too far through the legislative process.