



**Response to the Education Committee of the
Assembly**

On the

**Draft Education Bill and Explanatory and
Financial Memorandum**

November 2012

Introduction

NIPSA is the largest public sector trade union based locally and also the biggest union representing academic support staff in the Education Sector with well in excess of 8000 members. We represent the full range of workers in Education across the administrative and managerial grades and every category of school based staff and professional support staff. As such, we are well placed to articulate the views and interests of those staff who are impacted by the establishment of the Education and Skills Authority (ESA).

Clause 2(2) (a) & (b)

ESA should not have a ***“duty” to “contribute towards the spiritual development of children and young persons”***. That is a role for religious organisations and not one for the State or a Government Department or Agency. This Bill should provide an opportunity to differentiate between the duty that a Government has and a duty which a religious institution has in relation to its members. Many people in society have different faiths, some have none at all. ESA should not impose spirituality on any child or young person.

Clause 2(7)

Although there is a reference here to DEL and in particular ESA exercising administrative functions on DEL’s behalf *“if it so directs”* there is no detail on what is envisaged. There is also no further detail or other reference in the Bill in relation to the *“Skills”* part of the Educational and Skills Authority. Perhaps a new name for the new organisation should be considered.

Clearly there would be a need for further consultation if decisions were taken to take on any of DEL’s current functions in respect of further or higher education (or indeed any other aspect).

Clause 3(1)

This clause makes it clear that all staff employed in a *“grant aided”* school shall be *“employed by ESA”*. Elsewhere however the Bill also provides for Boards of Governors having the power to hire, fire or discipline staff who in essence and also in fact are *“employed”* by another body, ie ESA. This appears contradictory and will be a cause of confusion and likely challenge as the draft Bill appears to attempt to be different things to different sectors and different interest groups.

Clause 3(2)(a)

It is not clear what *“the submitting authority”* actually means or what powers it will possess.

Clause 5

- (i) See also comments in respect of Schedule 2 in respect of Employment Schemes.

- (ii) Employment Schemes for individual schools should be standard schemes developed by ESA to ensure consistency and equality of treatment of those employed in schools. The scope provided for in this legislation is too wide for individual schools to determine its own employment schemes.
- (iii) Notwithstanding the point at (ii) above there would be a need for consultation with unions in each and every occasion on any proposed amendment or deviation from the ESA Model Employment Scheme. This does not provide for sensible government or efficient administration or good practice.
- (iv) Further detail is required in respect of the Tribunal to be established as referred to in this clause and in Clause 62 by OFMDFM. Further discussion on the make up of that Tribunal and how it will be appointed is required.

Clause 9(3)

Requiring a Board of Governors to “*reconsider that matter*” confers no requirement on that Board of Governors to change their position nor does it provide for ESA having the power to impose a change in relation to an employment scheme, despite the fact that ESA **employs the staff**. The clause should be amended to reflect the authority of ESA in this regard.

Clause 12

This clause should be removed or significantly amended. The responsibility for the payment of wages for all staff should transfer to the ESA. In this way ESA can ensure efficiency as well as uniformity and equity of treatment of all staff employed by ESA. It should not be left to individual voluntary grammar schools, or integrated schools or any other school to opt in to this arrangement. On the contrary the onus should be on these schools to present a legitimate argument about why the wages etc of staff should not be administered by ESA.

On a separate, but related point, as ESA will be the employer of all staff regardless of which school or sector they belong to it would offer additional protection against equal pay cases if ESA was solely responsible for determining pay levels and making payments to staff.

Clause 13(1)

The Education Department should not have the authority to unilaterally make modifications to “*any statutory provision relating to employment*”. Any such changes to employment law could have ramifications for other employment areas or workers in the public or private sector.

Clause 13(2)

There appears to be a requirement to consult with DEL before modifying the employment law. This would be insufficient as “consulting” clearly doesn’t infer any requirement to obtain DEL agreement.

Notwithstanding the points above, should any such proposed changes impact on staff there would be a requirement to consult with the staff representatives, not just staff.

Clause 15

In respect of library services it is not clear what “*other educational establishments*” actually refers to.

Clause 16(2)

The second part of the first sentence “..... *either alone or together with any other person*” should be amended. As currently worded this could facilitate privatisation of functions or future PPP/PFI projects. The Minister has already ruled out any privatisation and there is ample evidence to demonstrate that PPP/PFI is not in the public interest, not least in terms of the debt to future generations in repayment obligations. Comments made to the media by senior public servants in the last few days in respect of PPP/PFI projects in England reinforce this point.

Clause 28(5)(g)

There should be specific reference in this clause to consultation with “*staff representatives*”. The unions are a key constituent in education and it is entirely appropriate that the Bill reflects that position. At this point there is no specific reference anywhere in the draft Bill to staff representatives.

Clause 39(7)(b)

References to “*Irish speaking schools*” etc should be replaced with “*in schools or parts of schools where the curriculum is taught through the medium of Irish*”. It is the people, not schools who speak Irish.

Clause 48(3)

There appears to be a double negative in this sentence. I assume the person appointed should have “*significant personal experience*” rather than being “*without*” that experience. The paragraph should be amended to reflect this.

SCHEDULE 1

Clause 2(c)(iii)

Of the 4 persons appointed by the Department to be “*representative of the community*” at least one of those appointed should be from the Trade Union movement, as a Congress nominee. Not only does the Irish Congress of Trade Unions make a significant contribution to society in general, the non-teaching unions and teaching unions are key contributors within the Education Sector to developments at strategic, planning and operational level. With almost 250,000 members here Congress is the largest representative organisation of a significant

proportion of ordinary citizens and would make a valuable and positive contribution to the work of ESA.

Clause 6(6)

The provision should include a reference which facilitates ESA staff being seconded to the Civil Service, thereby ensuring that there is a potential for shared exchanges of experience and skills in both directions.

SCHEDULE 2

Clause 1(a)

In NIPSA's view ESA should develop an employment scheme, agreed with employee representatives and this scheme should then apply to all grant aided schools. There is no reason why a voluntary grammar or an integrated school or any other school for that matter should deviate from an agreed ESA scheme. The only way that ESA as the employer of all staff in all grant aided schools can ensure that employees are treated equally is by ensuring that schools don't deviate from the centrally agreed scheme. To do otherwise will leave ESA open to challenge on equality grounds and equal pay cases and inequity of treatment.

Clause 2

It would make sense if there was an agreed formula for staffing complements in schools, particularly non-teaching staff.

Clause 3

It is not how it is determined which posts would fall into each category at 1(a) and 1(b). As all staff in all schools will be employees of ESA it doesn't make sense that individual Boards of Governors would maintain the power and authority to make appointments of staff who will ultimately be the employee of another body, namely ESA.

Clause 4

There should be no question of individual schools having the authority to devise their own disciplinary or grievance procedures. This is a recipe for confusion, different practices developing, unequal treatment and inconsistency of outcomes. These paragraphs should be rewritten to make it clear that the ESA procedures on these matters should apply in all schools. There is no particular benefit to schools in developing their own procedures and there is certainly no benefit to the staff affected if schools deviate from a centrally agreed position.

Clause 5

This clause gives overall control to individual Boards of Governors to suspend staff with only a requirement to "*inform*" ESA of that decision. As the employer of that member of staff ESA should have significantly more input into a decision of this

nature, beyond being informed. The clause should be rewritten to provide for ESA having a more participatory role in decisions of this nature.

Clause 6

ESA must have a more central role in a process which may result in the dismissal of one of its employees. It is insufficient that the Board of Governors will merely “*notify ESA in writing of its determination and the reasons for it*”, and then separately that ESA has an entitlement to attend proceedings in an advisory capacity. That is not the role of an employer. The clause should be rewritten to reflect the responsibility which ESA has as the employer.

SCHEDULE 3

Clause 2(4)

It would be helpful if this clause was rewritten to stipulate in clearer terms confirming that TUPE will apply to all staff transferring to ESA.

Clause 2(6)(b) & (8)(a)

It would make sense if these particular clauses were worded to reflect the fact that current pension arrangements including pension providers will be protected and maintained following transfer to ESA.

SCHEDULE 4

Clause 3(4)

See comments earlier at Schedule 3 Clause 2(4) in respect of TUPE.

Clause 3(6)(b) & (8)(a)

See comments earlier at Schedule 3 Clause 2(6)(b) and Clause 2(8)(a) in respect of pension protection.

Clause 3(9)(a)

As ESA has yet to be established it is not clear how reference can be made in this paragraph to “*a member, or members of staff, of ESA*”.

SCHEDULE 6

The transfer of staff from the Department of Education is subject to separate discussion and agreement with the Civil Service. In particular the arrangements for transfer of those staff form part of the overall discussions. It is important therefore that the wording in this draft legislation does not in any way undermine or dilute the agreements reached elsewhere in respect of those civil servant staff. Clause 2(2); 2(4) and 2(5) refer.

Clause 2(9)(a)

These paragraphs need to be reflective of the rights of staff to continue with their current pension scheme and entitlements, in line with the position adopted in discussions with employers to date.

Clause 2(10)(b)

As ESA has yet to be established it is not clear how reference can be made in this paragraph to *“a member, or members of staff, of ESA”*.

General Comment

Given comments contained in the Explanatory and Financial Memorandum in respect of professional support functions, in particular the clear inter relationship between CASS, C2K, RTU and others including Education Welfare, it does not seem sensible at all for the Department to move ahead with changes in CASS from 1 April 2013 when it is clear that ESA will not be established by that date. It would make much more sense if changes to CASS were developed to coincide with the new date for the establishment of ESA.

NIPSA would welcome the opportunity to meet with the Education Committee to discuss its position in respect of the transfer of staff to the new organisation.