



Sullivan Upper School Submission to the Education Committee in relation to the Education Bill

In response to the invitation to submit views and opinions with regard to the draft Education Bill, please accept the following submission on behalf of the Board of Governors of Sullivan Upper School.

By way of introduction it should be noted that this school supports the need for a rationalisation of the current five-board system in order to maximise the money available for front-line services in schools. We understood that the driving force for the establishment of the Education and Skills Authority was the need to establish a more efficient system, primarily by streamlining services and saving money on administration. The draft Education Bill is, however, a very different animal – it goes significantly beyond the amalgamation of the Education & Library Boards and, in effect, removes fundamental powers from the Boards of Governors of Voluntary Grammar Schools (specifically the responsibility for employment and decision-making), powers which they have exercised successfully for more than six decades.

Why has the draft Education Bill moved from an amalgamation of the five ELBs to the creation of a body with much greater powers?

The draft Education Bill is in stark contrast to policy in England where the provision of education services is moving away from the ‘command and control’ centralised structure to much greater delegation to schools of responsibility for education services. Under the draft Education Bill, ESA would be the largest education authority in Europe.

What savings are predicted and how are these to be achieved?

The Voluntary Grammar sector educates one third of post-primary pupils in Northern Ireland yet there is no representation or recognition of this sector in the Bill. Great care, it seems, has been taken to ensure that other sectors are represented.

Why has sectoral representation for Voluntary Grammar schools been omitted from the Bill?

The Heads of Agreement drawn up in November 2011 attempted to address the concerns of Voluntary Grammar schools but they contain a fundamental contradiction between paragraphs 5 and 10.

How can Boards of Governors continue to employ and dismiss members of staff if ESA is the single employing authority?

In a recent speech to the Association of School and College Leaders, the Education Minister suggested that the ESA's powers would relate to 'terms and conditions' only, yet this is not specified in the Bill and it is unclear how this could be reconciled with employing-authority status.

The Heads of Agreement state that there will be "... no change to the ownership arrangements which negatively affects the respective role of the Boards of Governors of a school" (para 10), yet under Section 20 (1) of the Bill, ESA would have the power to "... enter into contracts for, or in connection with, the provision or alteration of the premises of a grant-aided school", clearly without the approval of the Board of Governors.

In what sense does the Board of Governors of a Voluntary Grammar school retain 'ownership arrangements' when ESA may act without its approval?

In relation to Area-Planning, there is a similar concern – firstly, that Area-Planning is to be the sole responsibility of ESA; and, secondly, that ESA would be under no obligation to consult the Board of Governors of a grant-aided school in relation to area plans.

The Governing Bodies Association (GBA) is the sectoral body which represents Voluntary Grammar schools in Northern Ireland. This school supports the amendments proposed by the GBA to the Education Bill as detailed in the following pages.

C J W Peel
Headmaster
15 November 2012

SCHEDULE OF PROPOSED AMENDMENTS TO THE EDUCATION BILL

A. 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

- (1) 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.

B. 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

- (2) 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.

- (3) 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.
- (4) 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.
- (5) 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.

C. 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

- (6) 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

D. 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

- (7) 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.

E. 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

- (8) 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.

F. 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

- (9) 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.

G. 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

- (10) 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.

H. 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

- (11) 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.

I. Section 22 (1)

“Except as otherwise provided by any statutory provision, ESA may do anything that appears to it to be conducive to the discharge of its functions”.

Proposed amendment to Section 22 (1)

“Except as otherwise provided by any statutory provision, ESA may do anything **which is reasonably necessary for** the discharge of its functions”.

Commentary

- (12) It is essential that any actions undertaken by ESA are reasonable and necessary for the discharge of its functions. The wording, as it stands, is ambiguous.

J. Section 28 (1) and (5)

“(1) It is the duty of ESA to make arrangements with a view to securing that the sectoral bodies and the persons mentioned in subsection (2) are involved in and consulted on –

- (a) the preparation of a plan or a revised plan for an area; and
- (b) any proposal to revoke a plan for an area”

Proposed amendment to Section 28 (1) and (5)

“(1) It is the duty of ESA to make arrangements with a view to securing that the sectoral bodies, **the Boards of Governors of grant-aided schools in the area**, and the persons mentioned in subsection (2) are involved in and consulted on –

- (c) the preparation of a plan or a revised plan for an area; and
- (d) any proposal to revoke a plan for an area”

Consequent amendment to subsection (5) by removing paragraph (f) which refers to the Boards of Governors of grant-aided schools in the area.

Commentary

- (13) It is unacceptable that ESA would not be required to involve or consult with Boards of Governors of grant aided schools in the relevant area on the preparation of a plan, a revised plan or any proposal to revoke a plan for an area.

K. 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

- (14) 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.

L. 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

- (15) 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.

M. 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

- (16) It is an obvious 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.

N. 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

- (17) 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.

O. 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

- (18) 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.

P. 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

- (19) 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.

Q. 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 subparagraph (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 subparagraph (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

- (20) 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.

R. 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

- (21) 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.

S. 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

- (22) 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.

T. 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

- (23) 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.

U. 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

- (24) 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.

V. 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

- (25) 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.

W. 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

- (26) 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.

X. 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

- (27) 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.