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Assembly**

**Bill Research Paper 44/09**

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# **THE EDUCATION BILL (NIA 3/08)**

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This Bill Research Paper provides information on what is contained in the Education Bill which was introduced in the Northern Ireland Assembly on 25 November 2008 and received its Second Stage on 8 December 2008. It is the first of two Bills arising from the Review of Public Administration linked to the review of education policy. The Bill Paper gives an overview of what is contained in the Bill and highlights some of the issues that have caused concern and discussion among stakeholders.

Library Research Papers are compiled for the benefit of Members of The Assembly and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

## SUMMARY OF KEY POINTS

The Education Bill establishes the Education and Skills Authority (ESA) to rationalise the administration and delivery of education in line with the RPA review of education.

The key educational objectives of the Bill include:

- Raising standards;
- Ensuring equality of access to a broad curriculum; and
- Ensuring effective planning and administration of the school estate.

The ESA will take over the services that are currently delivered by:

- The five Education and Library Boards (“ELBs”);
- The Council for Curriculum Examination and Assessment (“CCEA”);
- The Staff Commission for the ELBs; and
- The Youth Council for Northern Ireland.

In addition, the ESA will deliver frontline functions currently undertaken by the Council for Catholic Maintained Schools (“CCMS”), the Northern Ireland Council for Integrated Education (“NICIE”), Comhairle na Gaelscolaíochta (“CnaG”) and some functions currently administered centrally by DE itself.

The Bill establishes the areas for which the ESA will have responsibility and these include inter alia:

- Provision of funding and support to grant - aided schools and youth services;
- Delivering school improvement programmes;
- Monitoring of school improvement and supporting and intervening as required;
- Advising on curriculum and qualifications development; and
- Operating as the employer of teaching and non-teaching staff in grant aided schools.

The Bill establishes the constitution of the ESA including, its structure, size and membership and the regulation of the appointment of its Chief Executive. It also provides for, as relevant, the dissolution of existing organisations and the transfer of powers and functions including the transfer of staff and assets from the relevant organisations to the ESA. All staff in grant – aided schools will be employees of the ESA.

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## **EDUCATION BILL (NIA 3/08)**

### **1.0 INTRODUCTION**

The purpose of this paper is to provide an overview of the Education Bill (NIA3/08) (“the Bill”) and to highlight a number of key issues that have been the focus of scrutiny by the Assembly during the policy development period of the legislation. The Bill was introduced to the Assembly on the 25<sup>th</sup> November 2008 and received its Second Stage on the 8<sup>th</sup> December 2008. The Bill is the first of two Bills arising from the Review of Public Administration (“RPA”) linked to the reform of education policy. The Committee stage of the Bill has been extended to 30 September 2009.

This Bill Paper will give a brief explanation of what is contained in the Bill and highlight some of the issues that have given rise to concern and discussion among stakeholders.

### **2.0 BACKGROUND AND POLICY OBJECTIVES<sup>1</sup>**

The Bill’s purpose is to establish the Education and Skills Authority (“ESA”). The Department of Education (“DE”) considers the establishment of the ESA as the most appropriate model for ensuring that the educational policy objectives arising from the RPA in education are delivered. These key educational objectives include:

- Raising standards;
- Ensuring equality of access to a broad curriculum; and
- Ensuring effective planning and administration of the school estate.

The establishment of the ESA seeks to rationalise the administration and delivery of education services that are currently delivered by:

- The five Education and Library Boards (“ELBs”);
- The Council for Curriculum Examination and Assessment (“CCEA”);
- The Staff Commission for the ELBs; and
- The Youth Council for Northern Ireland.

In addition, the ESA will deliver frontline functions currently undertaken by the Council for Catholic Maintained Schools (“CCMS”), the Northern Ireland Council for Integrated Education (“NICIE”), Comhairle na Gaelscolaíochta (“CnaG”) and some functions currently administered centrally by DE itself.

The Bill establishes the areas for which the ESA will have responsibility and these include inter alia:

- Provision of funding and support to grant - aided schools and youth services;
- Delivering school improvement programmes;
- Monitoring of school improvement and supporting and intervening as required;

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<sup>1</sup> Education Bill, Explanatory and Financial Memorandum, Department of Education, November 2008

- Advising on curriculum and qualifications development; and
- Operating as the employer of teaching and non-teaching staff in grant aided schools.

In establishing the ESA, the Bill makes provision for the duties and powers for which the ESA will have the responsibility for discharging. The Bill establishes the constitution of the ESA including, its structure, size and membership and the regulation of the appointment of its Chief Executive.

In addition, the Bill provides for, as relevant, the dissolution of existing organisations and the transfer of powers and functions from organisations as required. This includes the transfer of staff and assets from the relevant organisations to the ESA. All staff in grant – aided schools will be employees of the ESA.

The Bill also makes provision for the ESA to carry out functions including training, advisory and support services for schools; provision of a school library service; and the provision of educational and youth services and facilities. The ESA will also have the power to undertake commercial activities.

Provision in the Bill places a duty on the ESA in relation to examinations, assessments, qualifications and the curriculum. The management of schools, management schemes of grant-aided schools and provisions relating to Boards of Governors of certain schools will also come under the remit of the ESA.

The Bill makes provision regarding the powers of the General Teaching Council, the Department of Education, the Department for Employment and Learning and the Department of Culture, Arts and Leisure in relation to carrying out inspections of facilities.

## 2.1 Consultation Process: The RPA and The Education Bill

The Bill is a product of the RPA beginning back in 2002. The key chronology and consultation milestones leading to the legislation are summarised below.

Date	Policy Development / Consultation Milestone
June 2002	Review of RPA launched by former Executive
October 2002	Suspension of the assembly and Review of RPA taken forward by Direct Rule Ministers
November 2005	Secretary of State sets out broad proposals for reform of administration. DE develops a range of policies to give effect to RPA proposals.
Early 2006	DE sets up working group to consult and inform key educational stakeholders.
May 2006	Education stakeholders group established to assess issues emerging from the implementation of RPA.
December 2006	DE issues high level policy papers <sup>2</sup> to relevant parties for

<sup>2</sup> Topics considered in the policy paper series included, inter alia: Governance and Accountability; The Schools' Estate and Employer Authority and Employer Roles Under Post RPA Arrangements. [http://www.deni.gov.uk/index/8-admin\\_of\\_education\\_pg/100-review-of-public-administration/100-policy-documents.htm](http://www.deni.gov.uk/index/8-admin_of_education_pg/100-review-of-public-administration/100-policy-documents.htm)

to January 2007	comment. The policy papers were developed on the basis of issues raised during the general RPA consultation.
May 2007	Report analysing consultation responses published.
Since May 2007	Series of ongoing meetings and discussions with stakeholders on policy development issues.

## 2.2 Consolidated Policy Paper

Responses to the individual policy papers were analysed and reported by DE in May 2007<sup>3</sup>. A total of forty – four responses to the policy paper series were received by DE. While this total may appear quite low, it is important to note that two full consultations on the entire RPA process had already been undertaken and many of the views and issues expressed during this process had been adopted and developed in DE’s policy papers<sup>4</sup>. The proposed extensive reforms emanating from the RPA in education led to a somewhat complex and fragmented consultation process. This is reflected in DE’s response to many of the issues raised by consultation respondents. There is recognition by DE that policy papers were not the ideal vehicle for public consultation and that detail was lacking in respect of a number of the policy proposals. In addressing this issue, DE brought together a “consolidated” policy paper designed to add detail and tailored for the varied stakeholders within the education sector<sup>5</sup>.

Further Policy Papers providing more detail on key policies have since been published by the Department<sup>6</sup>.

## 2.3 The Education and Skills Authority (ESA)

The provisions contained in the Bill will bring radical changes to education in Northern Ireland by streamlining its delivery in one education authority; the Education and Skills Authority (‘the ESA’). Education has historically been delivered by five Education and Library Boards, the Council for Curriculum Examination and Assessment (CCEA) the Youth Council for Northern Ireland and the Council for Catholic Maintained Schools (CCMS). Under proposed legislation contained in the Bill, these bodies, along with the Staff Commission for Education and Library Boards, will be dissolved and their assets, liabilities and staff, together with staff to be transferred from the Department, will transfer to the ESA.

## 3.0 THE BILL

The Bill has a total of 55 clauses and 8 schedules. The following provides an overview of the provisions of the Bill along with comment on issues that have arisen during consultation.

<sup>3</sup> Department of Education Review of Public Administration, Analysis Report, Summary of Responses to Stakeholder Comments on the High Level Policy Papers December 2006 – January 2007.

[http://www.deni.gov.uk/analysis\\_report-summary\\_of\\_responses\\_to\\_stakeholder\\_comments.118kb\\_.pdf](http://www.deni.gov.uk/analysis_report-summary_of_responses_to_stakeholder_comments.118kb_.pdf)

<sup>4</sup> The RPA also assessed and reviewed structures and administration in health and local government policy.

<sup>5</sup> Consolidated Policy Paper covering Policy Papers 1-18 issued to stakeholders in November 2006 and available on DE website at: <http://www.deni.gov.uk/consolidatedpolicycopy.pdf>

<sup>6</sup> Policy Papers 20 – 22 are available on the DE website at: [http://www.deni.gov.uk/index/8-admin\\_of\\_education\\_pg/100-review-of-public-administration/100-policy-documents.htm](http://www.deni.gov.uk/index/8-admin_of_education_pg/100-review-of-public-administration/100-policy-documents.htm)

### 3.1 The Establishment of the ESA

Clauses 1 and 2 make provisions for the establishment of the ESA and define its general duties and functions. There will be a clear demarcation of responsibilities following the establishment of the ESA with the Department focusing on strategy and policy development, but with a duty to ensure that the ESA fulfils its legislative and policy obligations.

The ESA will focus on:

- Funding and support services to all schools;
- Delivering school improvement programmes;
- Monitoring school performance and intervention when necessary;
- Strategic planning and procurement of the schools' estate;
- Advice on curriculum and assessment;
- Development and delivery of qualifications; and
- Acting as employing authority for teaching and other staff in grant-aided schools.

#### Issues Arising - Relationship Between The Department And The ESA

Concerns were expressed that the Department may operate a 'command and control' relationship where it would try to micro-manage the ESA. The Consolidated Policy Paper<sup>7</sup> sought to clarify this stating that the Department will not become involved in the day to day running of the ESA. However, some functions including major capital development proposals will still require the Department's approval.

Plans for the structure of the ESA are not finalised. It is envisaged that areas the structure will support will include a local support element, area-based planning, support for youth and early-years education, a management and finance support function and a human resources capability to assist schools with local issues of recruitment and staff discipline<sup>8</sup>.

The Education and Skills Authority Implementation Team (ESAIT) has been revising the Service Delivery Models following discussions with stakeholders and further work is being taken forward on the composition, size and roles of Local Area Teams<sup>9</sup>.

### 3.2 Governance of The ESA

Clause 1 applies Schedule 1 which will put in place arrangements for membership of the ESA and its financing and accountability arrangements. These will require the ESA to produce a corporate plan and an annual business plan<sup>10</sup>.

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<sup>7</sup> Consolidated Policy Paper covering Policy Papers 1-18.

<sup>8</sup> Department of Education oral evidence to the NI Assembly Education Committee 14.1.2009.

<sup>9</sup> ESA Implementation Team update issue 5 march 2009 available on DE Website at: <http://www.esani.org.uk/>

<sup>10</sup> Policy Paper 5 'Governance and Accountability' available on DE website at: [http://www.deni.gov.uk/index/8-admin\\_of\\_education\\_pg/100-review-of-public-administration/100-policy-documents.htm](http://www.deni.gov.uk/index/8-admin_of_education_pg/100-review-of-public-administration/100-policy-documents.htm)

Paragraphs 7 and 8 of Schedule 1 allow for the establishment of local committees of the ESA, to whom any statutory function of the ESA can be delegated. The current policy is that local committees of the ESA should be established. However, the Bill retains the flexibility to change the model for local ESA representation if it does not appear to be working. The policy is aiming for flexibility in the legislation to strike a balance between local support and centralising the functions of the ESA.

During consultation it was proposed that the Board of management of the ESA should be 8 – 12 members. Appointments were to be based on merit in order to reflect the skills and expertise required for the roles<sup>11</sup>.

Consultees showed broad support for these proposals, although some were of the view that the Board membership should reflect sectoral interests and the diversity of society.

In paragraph 69 of the Analysis Report (May 2007)<sup>12</sup> on the outcome of the consultation, the Department stated that:

*The ESA board membership will not be selected on grounds of sectoral interest, but on skills and experience. It is the Department's position that a small highly skilled Board is essential to the effective management of the ESA. The board will, however, take advice from within the ESA, from other organisations on a range of issues, including sector-specific issues, and the EAF's views will also be of relevance.*

During consultation the need for locally elected representation was raised by some stakeholders. In the Bill as introduced, the number and type of members on the ESA Board of management has changed to 7 – 11 members, the majority of whom must be elected representatives. At the second reading of the Bill in the Assembly the Minister stated that the board of the ESA will be “*founded on democratic accountability. The majority of its members will be local councillors.*”

#### Issues Arising – The ESA Board of Management

Concern has been expressed that a Board of only 7 – 11 members, where the majority are elected representatives, may fail to meet the level of skills and expertise envisaged in Policy Paper 5 on the Governance of the ESA.

*In line with recommended good practice, the Board will consist of around 8-12 members, all appointed by the Minister on merit for the skills and experience they bring. The chair of ESA will be directly appointed by the Minister and not elected from within the board<sup>13</sup>.*

Appointments to the Board of ESA will last for 3 to 4 years. Concerns were also expressed that at the end of the first term of office a change of membership would mean that expertise and experience would be lost. The Department has responded

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<sup>11</sup> Policy Paper 5 ‘Governance and Accountability’

<sup>12</sup> Consolidated Policy Paper covering Policy Papers 1-18.

<sup>13</sup> Policy Paper 5 ‘Governance and Accountability’ paragraph 7.



with an assurance that measures would be taken to have some members stand for re-election to avoid this happening.

### **3.3 The ESA as Education Providers**

Education is the second largest expenditure in Northern Ireland with a budget of more than £2 billion. It is predicted that the streamlining of delivery with the establishment of the ESA will lead to a saving of £20 million per annum<sup>14</sup>.

Clause 2 of the Bill places a duty on the ESA to deliver education to children and young people in a framework that includes schools, youth services and pre school services. All schools will operate within a common administrative framework, managed centrally by the ESA.

The relationship between the Department and the ESA is primarily to 'empower and hold to account'. While the Department will focus on policy development, the role of the ESA will be to have responsibility for service delivery.

### **3.4 The ESA as Single Employing Authority**

Clauses 3 through to 12 make provision for the ESA to become the single employing authority for all teaching and non-teaching staff in grant-aided schools.

Historically there have been differences in who was responsible for employing staff in the various education sectors in Northern Ireland. In the Catholic Maintained sector CCMS employed all teaching staff, but with significant responsibility delegated to Boards of Governors, while non-teaching staff were employed by the ELBs. In the Controlled sector some senior appointments were determined by the teaching appointments committee of the Education and Library Boards from candidates short-listed by Boards of Governors. Voluntary Grammar schools selected and employed their own teaching and non-teaching staff. The Bill will establish the ESA as the single employing authority for all teaching and non-teaching staff in all of the education sectors in Northern Ireland. This is intended to provide equality in terms and conditions for staff across all education sectors in Northern Ireland.

### **3.5 Employment Schemes**

Clauses 4 – 8 specifically set out the requirement for all trustees and Boards of Governors of grant-aided schools to submit an employment scheme for their school to the ESA. The Minister is considering an amendment to the provision to define the 'submitting authority' of any grant-aided school as being the owners or trustees of the school, with an option to delegate the function to Boards of Governors. In the case of Irish-medium schools the owners or trustees already are the Boards of Governors<sup>15</sup>.

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<sup>14</sup> Education Bill Second Stage in Northern Ireland Assembly, 8 December 2008 available in the Official Report on the NI Assembly website at: <http://www.niassembly.gov.uk/record/reports2008/081208.pdf>

<sup>15</sup> Clauses 3 (2) and 31 (7) define 'submitting authority' as, in the case of a Catholic maintained school, the trustees of the school and in the case of any other grant-aided school, the Board of Governors.

The ESA will provide schools with guidance in the form of model schemes which will contain compulsory elements for inclusion in their schemes, for example in the appointment, conduct and discipline of staff. The Bill also provides for different provision in the employment schemes of controlled or maintained schools when the school does, or does not have a delegated budget.

No employment scheme can be implemented by a school until it has been approved by the ESA. There will be instances where the ESA may make an employment scheme for a school in consultation with its Board of Governors. This may be where an employment scheme is not submitted by a school, a school makes a request for the ESA to draft a scheme for it, or the ESA does not consider that a school's scheme accords with their guidance.

It will be up to each individual Board of Governors to decide the level of employment functions they feel competent to have delegated to them. In the instance that they do not feel competent in drawing up an employment scheme for their school, the ESA will consult with them to draw up a scheme for their school.

Policy papers indicate that Boards of Governors will have an autonomous role in employment and personnel issues with a support role provided by the ESA. Any decisions reached will be those of the Boards of Governors, although the ESA will have the power to challenge schools where necessary to ensure 'consistency and propriety in the discharge of the employer role.'<sup>16</sup>

#### Issues Arising - Employer Liability

All school staff will be appointed by the Board of Governors for each school, although the ESA will be their employer in law. This has raised a question regarding who will have a right to contest a case in the event of a grievance or disciplinary procedure; will someone with a grievance take a case against the Board of Governors or against the ESA. The Department have stated that an employee will take a case against the Board of Governors in the first instance as their employer, but that the Board of Governors will probably be co-joined in any case by the ESA.

*Both the ESA and Boards of Governors will carry responsibility for employment law matters. The current provisions giving Education and Library Boards the right to be joined in legal proceedings against Boards of Governors on employment matters will be retained in an amended form for the ESA. This is to ensure that the ESA can defend the interests of the public purse in these cases'<sup>17</sup>.*

The liability for governors in employment matters is collective - not individual. The Department does not want people being put off serving as governors in what is a voluntary capacity.

There was a degree of concern expressed by consultation respondents that the relationship proposed may place increased workload and responsibility on school governors with a potential negative impact on recruitment of volunteers for governing

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<sup>16</sup> Consolidated Policy Paper covering Policy Papers 1-18.

<sup>17</sup> Ibid.

boards. A further concern was raised that there would be significant pressure on school principals already requiring potentially a higher degree of support and that the system could lead to a 'survival of the fittest' in the school system. In responding, DE stresses that the ESA will ensure the appropriate level of support to fit the precise needs of the schools and that it will have the appropriate balance and flexibility to respond accordingly.

Concerns have been raised by the Governing Bodies Association (GBA) in relation to the scope the ESA will have to intervene where teaching appointments have been made. The Department argue that the only intervention is where it is believed the process has not been followed to the legal levels required and even then the power to intervene will only mean they will ask a Board of Governors to repeat the process.

### **3.6 Impact on School Staff**

Clause 9 of the Bill applies Schedule 2 which makes provision for the transfer of staff employed by Boards of Governors to the ESA and clause 10 which allows Boards of Governors to employ peripatetic teachers.

Clause 11 allows the Boards of Governors of Voluntary Grammar and Grant Maintained Integrated schools to continue to pay staff salaries on behalf of the ESA if they were doing so before the legislation is implemented. For all other schools the budget share under the Common Funding Scheme will not include salaries or other contributions for staff.

Clause 12 of the Bill allows the Department if it deems it necessary, to make modifications in employment law by Order.

Clause 13 places a duty on the ESA to provide certain services and facilities. These include training and advisory support services for Boards of Governors and teaching and non-teaching staff in grant-aided schools.

### **3.7 Library Services**

Clause 14 places a duty on the ESA to provide library services in all schools and other educational establishments that are grant-aided by the Department or the ESA.

### **3.8 Services and Facilities**

Clause 15 places a duty on the ESA to secure the provision of adequate facilities for educational and youth services. With the approval of the Department, the ESA can also carry out other activities that will include providing leaders, financial assistance to participants and paying grants to establish, manage or maintain facilities. The ESA will also be permitted to make bye-laws for the prevention of disorder or nuisance in youth service facilities.

Clauses 16 and 17 provide for the ESA to pay capital grants to voluntary and grant-maintained integrated schools and superannuation benefits for teachers. These are currently paid by the Department.

Clause 18 refers to the ancillary powers of the ESA, affording it the scope to do anything that it considers will be useful in carrying out its functions. For example, it will be able to form bodies corporate, carry out research, or provide advice to other bodies.

Clause 19 allows the ESA to charge for any goods and services it provides to other bodies or persons, with the approval of the Department.

### **3.9 Emergency Contingencies**

Clause 20 is an enabling clause to allow the Department to confer powers and duties on the ESA to prepare for and respond to civil emergencies.

### **3.10 Dissolution of Education Bodies**

Clause 21 formally dissolves the following statutory bodies; the five Education and Library Boards, the Council for Catholic Maintained Schools (CCMS), the Northern Ireland Council for the Curriculum, Examinations and Assessment (CCEA), the Staff Commission for Education and Library Boards and the Youth Council for Northern Ireland.

### **3.11 Transfer of Assets, Liabilities And Staff**

Clause 22 schedules 3, 4 and 5 set out the detail the transfer of assets, staff and liabilities from the dissolved bodies to the ESA will take place. Staff transferring from dissolved bodies or the Department to ESA will have their terms and conditions of employment protected under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).

Clause 23 places a new general duty on the Department and the Department for Employment and Learning (DEL) regarding the education of children and young people and the promotion of further and higher education.

### **3.12 Examinations and Assessments**

Clause 24 places a duty on the ESA to take over the functions of the dissolved CCEA. This will include conducting examinations and assessments, drawing up rules and specifications and specimen papers, charging fees, moderating examinations and awarding certificates to candidates.

Clause 25 allows the ESA to carry out other functions in relation to the curriculum, examination and assessments. These include the production of teaching materials and the publication of guidance regarding the curriculum. The ESA may also charge other examining bodies or authorities for carrying out functions on their behalf.

Clause 26 places a duty on the ESA to have regard to the requirements of industry, commerce, the professions and people with special educational needs and learning difficulties in carrying out its functions in relation to the curriculum, examinations and assessments.

Clauses 27 and 28 relate to external qualifications. The Department will be responsible for developing and publishing accreditation criteria for external qualifications and ensure that they are recognised as equivalent standards of qualification accredited by other UK bodies. Likewise institutions of further education will only provide courses of study approved by the Department for Employment and Learning.

### **3.13 General Teaching Council**

Clause 29 amends existing provision for the General Teaching Council (GTC) to discipline teachers by allowing the GTC to issue and revise a code of standards for the professional conduct and practice of teachers. The clause also inserts a new Schedule into existing legislation outlining the disciplinary powers and procedures for the GTC in carrying out a disciplinary case.

### **3.14 Schemes of Management**

Clause 30 provides a requirement that all grant-aided schools have a scheme of management. This will provide for the membership and procedures of the Board of Governors for that school and it will be their duty to give effect to their scheme of management.

Clause 31 places a duty on the 'submitting authority' of all grant-aided schools to prepare a scheme of management for their school. They must also submit the scheme to the ESA for approval, having taken account of any guidance issued by the ESA. If the guidance contains a model schemes any changes made by the 'submitting authority' must be highlighted when the scheme is submitted for approval. The ESA may approve a scheme without modifications or may modify a scheme following consultation with the Board of Governors or trustees.

Clause 32 provides for the ESA to produce a scheme for a school if it fails to submit its own, if requested to do so by the 'submitting authority', or if ESA considers a scheme does not conform to its guidelines. In any of these instances ESA will consult with the relevant trustees or Board of Governors.

Clause 33 ensures that the 'submitting authority' of all grant-aided schools will revise a management scheme if required to do so. The revised scheme will have to take into account any guidance issued by ESA and will not come into force until approved by ESA.

### **Issues Arising Maximised Supported Autonomy**

A key concept in the Bill underlying the relationship between the ESA and schools is maximised supported autonomy (MSA). The concept of MSA recognises that effective leadership within schools by boards of governors and principals is central to raising standards. However, it also recognises that schools vary not only in terms of their ethos and identity but also in terms of the level of autonomy with which they are comfortable, their capacity to manage the autonomy and the level of support they may wish to seek. It is proposed that the ESA will have sufficient flexibility to accommodate the spectrum of school needs dependent upon their particular requirements<sup>18</sup>.

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<sup>18</sup> Policy Paper 2 available on DE website at: [http://www.deni.gov.uk/rpa\\_policy\\_paper\\_2-2.pdf](http://www.deni.gov.uk/rpa_policy_paper_2-2.pdf)

### 3.15 Educational Attainment

Clause 34 places a duty on the Board of Governors of a grant-aided school to promote high educational attainment in their school and co-operate with ESA in any actions ESA take to promote the achievement of these standards.

#### Issues Arising – Focus on Educational Attainment

A key objective of the establishment of the ESA was the streamlining of services to provide a more cost-effective education system. Since the bill has been introduced, the focus appears to have changed:

*...raising standards and reducing the gap is now the primary objective. Achieving savings is still an objective, but it is clear where the savings have to go: to the front line in order to improve standards<sup>19</sup>.*

### 3.16 Boards of Governors

Clause 35 provides that community governors will serve on the boards of controlled, maintained, grant maintained integrated and certain voluntary grammar schools. These members will be people living or working in the local community. Clause 36 also allows part-time teachers to be eligible for election to a Board of Governors.

There are currently eleven different management compositions of school Boards of Governors in legislation. Governor categories will now be standardised into four categories:

- Foundation Governors – school owners or former owners who normally represent the character and ethos of the school;
- Community Governors – drawn from the local community, business community or someone with a vested interest in a school who must also bring a level of expertise, skills or knowledge to add to the effective management of the school;
- Staff Governors – from the school which will be extended to include part time and non-teaching staff; and
- Parent Governor – elected from among the parents of pupils currently attending the school.

The Department will draw up a Code of Practice for the appointment of governors in all four categories. The ESA will also have a role in recruiting and appointing community governors and processing the appointments of Foundation, Staff and Parent Governors. The ESA will monitor school performance and have the power to intervene where performance is unsatisfactory. In exceptional circumstances the ESA will have the power to remove and replace members of a Board of Governors<sup>20</sup>.

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<sup>19</sup> Department of Education oral evidence to the NI Assembly Education Committee 14.1.2009.

<sup>20</sup> Consolidated Policy Paper covering Policy Papers 1-18.

### Issues Arising – Community Governors and the Maintenance of Ethos

Concern has been expressed by the Catholic sector regarding how community governors will be appointed and how it can be ensured that they will uphold the ethos of the school.

The Department's response states that schemes of management and employment will be the vehicle by which schools will be governed and provide the ethos for individual schools in all the sectors. The Bill requires that the schemes be prepared and submitted to the ESA by the 'submitting authority' which in the proposed legislation would be the trustees of Catholic maintained schools and the Boards of Governors in all other grant-aided schools. However, as previously stated, the Minister is considering an amendment to the provision to define the 'submitting authority' of any grant-aided school as being the owners or trustees of the school, with an option to delegate the function to Boards of Governors. In the case of Irish-medium schools the owners or trustees already are the Boards of Governors.

#### **3.17 Inspections on Behalf of the Department**

Clause 37 allows inspectors appointed by the Department to conduct inspections in schools or establishments grant-aided by the Department or ESA where education or youth services are provided. In addition to reporting on standards of education, inspectors will also be able to monitor, inspect or report on wider aspects including management, staffing, equipment and accommodation. They will not be able to exercise their powers in relation to the provision of religious education in grant-aided schools without the permission of the Board of Governors. As a result of an inspection report, the Department may require the school to remedy any matter raised.

Clause 38 gives inspectors powers to inspect, copy or take away documents and to require production of documents.

Clause 39 requires inspectors to make a written report following an inspection. Copies must be sent to the Department, ESA and a Board of Governors, proprietor of a private school or body or individual responsible for activities at an inspected establishment, who must then prepare a written statement of the actions and proposed time scale to address any issues raised.

Clause 40 sets out arrangements for the inspection of library premises.

Clause 41 places a duty on establishments of further education to allow inspections on behalf of the Department for Employment and Learning. These inspectors will have a duty to promote high standards of education and professional practice among teaching staff and may advise DEL on the curriculum. They may also monitor, inspect or report on wider aspects of the establishment including management, staffing, equipment and accommodation. DEL may require the establishment to remedy any matter raised.

Clause 42 provides for inspectors to be accompanied and assisted by assessors and lay persons appointed by the Department.

Clause 43 refers to grants for educational or youth services to be paid by the Department, DEL and the Department for Culture Arts and Learning (DCAL) for various services and research related to education. The grants will not be paid to ESA, the trustees or managers of a voluntary or grant-maintained integrated school, or the governing body of an institution of further education.

Clauses 44 through to 48 are concerned with the welfare and protection of children and place duties variously on the ESA, providers of funded pre-school education, providers of educational and youth services and Boards of Governors of grant-aided schools. Clause 48 places a duty on the above groups and any other person on whom a duty has been imposed, to *'co-operate with ESA or any authority discharging functions under the Children Order in its duty to safeguard and protect the welfare of children and young persons'*<sup>21</sup>.

Clause 49 defines a Catholic maintained school as: *'a maintained school which is designated as such in a scheme made by the Department and after consultation with relevant church authorities'*<sup>22</sup>.

Clauses 50 to 55 refer to general provisions of the Bill.

### **3.18 Financial Effects of The Bill**

Prior and following implementation the Bill is expected to lead to an initial increase in public expenditure. Implementation costs are estimated at £43 million, but savings thereafter are estimated to be £19.8 million per annum.

## **4.0 KEY POLICY ISSUES RELATING TO THE BILL**

### **4.1 Ownership of the School's Estate**

The ownership of schools will not change under the RPA except in the case of 'controlled' schools. Under the RPA proposals ownership of these schools will pass to the ESA. However, since the relationship between the ESA and all schools in every sector will be one of 'accountable autonomy', there is potential for there to be a perceived 'conflict of interest' where the ESA is responsible for planning the entire school's estate while owning a block of it. Therefore a new body will need to be established to take legal ownership of what will no longer be known as the 'controlled sector', but will become 'publicly-owned schools'.

Options for various types of bodies to take legal ownership are described in Policy Paper 20<sup>23</sup>. Bearing in mind the various requirements that would be placed on the body and the financial implications the Department's preferred option is to establish a statutory public body that would then be subject to financial controls, governance and

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<sup>21</sup> Education Bill, Explanatory and Financial Memorandum, Department of Education, November 2008.

<sup>22</sup> Ibid.

<sup>23</sup> Consultation closed 9 March 2009 on RPA Policy Paper 20: 'Publicly Owned Schools – Ownership and Representation'. Document available on DENI website at: [http://www.deni.gov.uk/policy\\_paper\\_20\\_-\\_publicly\\_owned\\_schools\\_-\\_ownership\\_and\\_representation.pdf](http://www.deni.gov.uk/policy_paper_20_-_publicly_owned_schools_-_ownership_and_representation.pdf)



accountability as set out in *Managing Public Money Northern Ireland*<sup>24</sup>. The Department's rationale for preferring this option includes avoiding the added bureaucracy for the organisation of establishing it as a separate legal entity with whatever additional legal requirements that would entail, for example Company Law or Trust Law.

The schools estate is worth in excess of £2.3 billion. This asset will remain publicly-owned and any new legal owner of the publicly-owned sector will have to be accountable to the Minister and Assembly for its stewardship. There will also need to be a clearly defined relationship with the ESA and the Department as they will retain some control over its use, development and disposal.

The Committee for Education has raised concerns regarding the Department's proposals.

#### **4.2 Area – Based Planning**

Policy Paper 22 contains details of 'Area-based Planning'<sup>25</sup> which is about anticipating future education needs. Statutory area-based planning will be included in the second Bill and forms part of the Department's overall policy on sustainable schools<sup>26</sup>. Area-based planning will determine and address the need for provision in a geographical area covering all sectors from nursery to higher education. The process will incorporate Asset Management Information to assess the condition and suitability of school buildings on a common basis. It is proposed that the ESA will produce Area Plans that take account of local views across the sectors. Strategic Investment Plans will be prepared by ESA which would be 'statements of intent' relating to the capital investment requirements and informed by Area Plans and Asset Management Information<sup>27</sup>. Area-based planning on a cross-sector basis will be the responsibility of the ESA when it is fully established<sup>28</sup>. Strategic planning of future education needs aims to introduce co-ordination and consistency between the different education sectors rather than the previous focus on individual facilities<sup>29</sup>.

Area-based planning will be based on numbers of pupils as well as buildings and therefore will have an impact on transfer issues and 'sustainable schools'.

Major capital proposals will still require the approval of the Department and the flexibility allowed to the ESA will be contained in management statements drawn up by the Department.

Boards of Governors will be involved in school estate planning. However, any proposals will be part of area-based planning details of which will be included in the second Bill. Any plans for estate development will have to comply with the area plan.

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<sup>24</sup> *Managing Public Money Northern Ireland (MPMNI)* available on DFP website at: <http://www.aasdni.gov.uk/frab/browse.asp?branch=1&category=43&maxres=20&orderby=3&start=0>

<sup>25</sup> Policy Paper 22: 'Area –Based Planning' available on DE website at: [http://www.deni.gov.uk/policy\\_paper\\_22\\_area-based\\_planning.pdf](http://www.deni.gov.uk/policy_paper_22_area-based_planning.pdf)

<sup>26</sup> *Schools for the future: A Policy for Sustainable Schools (January 2009)*. Document available on DE website at: [http://www.deni.gov.uk/a\\_policy\\_for\\_sustainable\\_schools-3.pdf](http://www.deni.gov.uk/a_policy_for_sustainable_schools-3.pdf)

<sup>27</sup> Policy Paper 22 Area-Based Planning of the Education Estate.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

### 4.3 Education Advisory Forum

Policy Paper 4<sup>30</sup> and the Consolidated Policy Paper<sup>31</sup> set out proposals for an Education Advisory Forum (EAF). The consultation showed a desire for social partnership arrangements to be put in place. In this regard the role of the proposed EAF was welcomed, with some consultees suggesting that it should include trade union representation. The Department supports a social partnership ethos for the EAF and its aim is that the Forum should provide a balance between providers and consumers of education. It should provide an opportunity for sectoral bodies, parents, young people and voluntary and community organisations to have a voice.

The Minister has stated that the timescale to complete the necessary policy development work for the establishment of the EAF is insufficient for inclusion in the Bill. The Minister sees the EAF as a key element in the future delivery of education and it will therefore be established on an interim or pilot basis using existing general powers, with the commencement of specific powers included in a second Education Bill. Fears were expressed during the second reading of the Bill in the Assembly that since this is a body that will advise the Department and DEL, the failure to have definitive policies developed in time for the current Bill could have ramifications for the ESA when the second Bill is introduced.

### 4.4 Maintaining and Creating Ethos

The Catholic sector has raised concerns in relation to the maintenance of the ethos of their schools with the changes being proposed in the Bill. The issue for the 'controlled' sector is defining its ethos and the responsibility for safeguarding that ethos.

It is envisaged that the role sectoral groups will play will include:

- Membership of the Education Advisory Forum;
- Representation and advocacy for the sector;
- Development and maintenance of sectoral ethos;
- Identification and nomination of foundation governors;
- Active encouragement of suitable nominees for Community governors;
- Participation in area planning of the school's estate; and
- Engagement and co-operation with other sectors.<sup>32</sup>

The Department are working with the sectoral interest groups in preparing business cases. However, for the controlled sector there is as yet no clear group for the Department to work with. The sectoral groups will receive funding from the Department, although the Minister has said that this must remain modest in order to maximise funding to front-line services<sup>33</sup>.

The Department make no attempt to define ethos which will be defined by the trustees and Boards of Governors of individual and groups of schools. Schools will still have the

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<sup>30</sup> Policy Paper 4 available at: [http://www.deni.gov.uk/rpa\\_policy\\_paper\\_4-2.pdf](http://www.deni.gov.uk/rpa_policy_paper_4-2.pdf)

<sup>31</sup> Consolidated Policy Paper covering Policy Papers 1-18.

<sup>32</sup> Consolidated Policy Paper covering Policy Papers 1-18.

<sup>33</sup> Ibid.

right to develop their own ethos and use descriptions such as 'Catholic' or 'Integrated'. However, this raises issues around the sectoral bodies that will represent these groups. There is no sectoral body representing the 'controlled' sector, nor does this sector have a distinctive collective ethos. The Transferor Representatives' Council<sup>34</sup> and whatever body assumes ownership of the controlled sector will be part of establishing an ethos for the controlled sector. The lack of a 'sectoral body' for the Controlled sector to represent their interests in the run up to the creation of the ESA has been raised as a concern by the Committee for Education.

## **5.0 CONCLUSION**

The legislation in the Bill establishing the ESA has been largely welcomed by those involved in the delivery of education in Northern Ireland. A main criticism of the Bill is that it lacks clarity and some of the key policy issues are still being developed by the Department.

Many of the policies that will implement the legislation and are highlighted in this Bill Paper are still the subject of discussion and debate among key stakeholders. A second Bill is to be introduced to provide detail and clarification on some of the issues raised in the scrutiny of the current Bill.

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<sup>34</sup> Clergy representing the Protestant churches on controlled schools Boards of Governors.