

WELB Response to ESA Education Bill (Dec 2012)

INTRODUCTION

The Western Education and Library Board (WELB) welcomes the opportunity to comment on the ESA Education Bill. The WELB has consulted with Board Members, relevant managers and staff, whose views are reflected in this response.

The WELB acknowledges the overall policy objective of the Bill to establish modern, fit for purpose, administrative arrangements for education with a focus on: raising standards; provision of support to schools and other education establishments; and ensuring effective planning and delivery of the education estate and access to the curriculum for learners.

Board Members recognise the need to maximise resources to the classroom and other front line services, but also emphasise the importance of maintaining and enhancing quality of service delivery. Whilst acknowledging that high levels of delegated authority will be devolved to Boards of Governors and schools, Members would point out that Governors and schools will still require a significant degree of support and, in this regard, would stress the need to ensure that a sufficient ESA staff complement is in place to provide such support. To ensure consistency, it is the view of Board Members that support should come from a single source (i.e. ESA).

Members are also aware of the immediate challenges ESA will face and have particular concerns regarding staff uncertainty and increasing workload, relocation of jobs and employment issues for staff. Members are eager to ensure that the potential contribution of WELB staff to the ESA in terms of their skills, experience and expertise is recognised and utilised.

Members point to the lack of detail in the Bill regarding the number, identity and funding of sectoral bodies. Members would seek clarification of these issues as well as governance and accountability arrangements for sectoral bodies and their interrelatedness with one another and ESA.

Members are aware of the identified timeline for ESA implementation. Nevertheless, Members believe that the complex transitional arrangements, that will be required to establish and ensure the effectiveness of the new ESA, will take place over a longer period of time.

PART 1 – THE EDUCATION AND SKILLS AUTHORITY

The Education and Skills Authority (Clauses 1 and 2)

Clause 2 provides that the Bill, when passed by the Assembly to become an Act, will create the Education and Skills Authority (ESA). In the interest of learners, WELB has consistently endorsed the principles which underpin the Review of Public Administration and continues to be supportive of work to create the new ESA.

ESA to be Single Employing Authority for Grant-aided Schools (Clauses 3 – 13)

The Bill (Clause 3) sets out that ESA will be the 'employer' of all staff in grant-aided schools, as was agreed in the Establishing ESA - Heads of Agreement document of 16 November 2011 (point 5). However, Members note point 10c of the Establishing ESA - Heads of Agreement document, where it is stated - 'Where it is already the case, Boards of Governors will continue to employ and dismiss members of staff'. The wording of this statement appears to be incongruent with Clause 3 of the Bill. Clarification is required on this point to ensure a meaningful and rigorous process of scrutinising the Bill.

The Bill provides that the 'submitting authority' of every grant-aided school (i.e. the trustees in the case of Catholic Maintained schools, and the Board of Governors in the case of all other schools) will be responsible for drawing up its Employment Scheme, specifying the arrangements and procedures for employment and management of its staff (both teaching and non-teaching), and for submitting this to ESA for approval. ESA guidance and model schemes will be provided, but it would appear that there will be some latitude for schools to use discretion in relation to employment practices. In this respect, Board Members assume that schools will be required to operate within and comply with centrally agreed/negotiated procedures e.g. Redundancy, Discipline, Unsatisfactory Teachers, as a result of TUPE. Members are concerned that the new arrangements could create risks in terms of interpretation of guidance and implementation of employment procedures. Clarity is also required in relation to the new negotiating mechanisms with the trade unions.

There are concerns that the requirement for each school to produce its own Employment Scheme could place an additional burden on Boards of Governors, and create scope for confusion, inconsistency and increased risk; particularly if model schemes are not followed. It could potentially cause problems for ESA in defending the position of management in the event of LRA hearings and industrial tribunals (as the employer, ESA, will inevitably be conjoined with the individual Board of Governors in any cases of employment litigation, particularly in view of Clause 9, sub-section 2, which states that it is the duty of ESA to give effect to any decision of the Board of Governors of a grant-aided school which is taken in accordance with its Employment Scheme).

Furthermore, the task of scrutinising and approving every individual Employment Scheme could prove to be an enormous time-consuming task for ESA. Clause 5 states that an Employment Scheme shall not come into force until it has been approved by ESA. It is not clear how employment matters (including appointments and dismissals) are to be conducted by a Board of Governors during the interim period, pending receipt of ESA approval.

Board Members note that, where an Employment Scheme is not approved by ESA, the submitting authority has a right to challenge that decision – through a tribunal if necessary. Clarification is required as to the rules of procedure of the proposed tribunal and who will be responsible for costs and liabilities associated with this process.

Clause 12 (Staff administrative and financial arrangements) provides that Voluntary Grammar schools may continue to pay staff salaries and contributions on behalf of ESA. Similarly, Grant-Maintained Integrated schools may do so in respect of their non-teaching staff. Members suggest that care must be taken in the level of financial autonomy afforded to schools, which could result in a plethora of different payroll centres operating across Northern Ireland, as well as creating logistical problems for ESA, including inconsistencies in pay awards and problems with implementation and management of the imminent Automatic Enrolment Initiative. ESA must be mindful of its obligations in respect of Inland Revenue, Superannuation, prompt payment, CoPE, shared services, cash and bank reconciliation, etc. There is a contradiction between the delegation of financial responsibilities and ESA's accountability role, including the need to meet statutory obligations and to maintain financial probity and stewardship. In this respect, Members are unclear about the roles and responsibilities of the ESA Audit function and its relationship with schools in regard to regulatory and assurance mechanisms. Furthermore, as employer of all staff, ESA will have a legal responsibility to account to the Inland Revenue for all 'multi-jobbing' staff, including those who work in Voluntary Grammar, Integrated and other schools. ESA will need to address these issues in the arrangements it makes with schools that continue to pay staff directly.

Other Functions of ESA (Clauses 14 – 23)

Board Members note that it will be the duty of ESA to provide or secure the provision of training for Boards of Governors. Given that Boards of Governors will be required to operate with additional autonomy and responsibilities, e.g. producing their own Employment Schemes, Members would have concerns that potential inconsistencies in how Boards of Governors operate could make such training, and delivery of an agreed school-based framework of support, extremely problematic.

Members welcome the decision to retain responsibility for Youth Services within Education given the synergy between the formal education system and Youth Services.

Area Planning (Clauses 24 – 30)

Members support the duty on ESA to consult and involve relevant interests in preparation, revision or revoking of Area Plans, including sectoral bodies and providers of Youth and Education services, as well as a wider range of interests including: children and young people; service users; parents; school governors; and staff. However, Members also emphasise the importance of a community focus involving District Councils and the wider community in Area Planning, which will facilitate creative solutions as rationalisations progress.

There are concerns that there is nothing in the Bill which legislates for categorisation of the amalgamation of different types of school, or other sustainable solutions, which may relate to the establishment of federations or clusters of schools. This is particularly significant given the focus on Shared Education within the Programme for Government.

Members are of the view that, for Area Planning to be effective, there needs to be clarity from Government in relation to the future school system, particularly regarding what sectors and types of school there will be and how they will relate to each other and to ESA.

Dissolution of Certain Bodies and Transfers (Clauses 31 – 32)

Board Members acknowledge the provisions of these clauses in line with the move towards ESA.

PART 2 - MANAGEMENT OF GRANT-AIDED SCHOOLS

Schemes of Management for Grant-aided Schools (Clauses 33 - 37)

Clauses 33 to 37 provide that there shall be a Scheme of Management for every grant-aided school. The wording is almost identical to that of the comparable section of Clause 123 of the 1989 Order; the only significant difference being that there must be a separate Scheme prepared for each school by the 'submitting authority' (i.e. by the trustees in the case of Catholic Maintained schools, and by the Board of Governors in the case of all other schools) which should be submitting to ESA for approval. Previously, it was possible for all controlled schools to be subject to a common Scheme.

Whilst ESA guidance and model schemes will be provided, it would appear that there will be some latitude for schools to use discretion in relation to drawing up their own Schemes. Members have concerns that the requirement for each school to produce its own Scheme of Management will place an additional burden on Boards of Governors, and could create scope for confusion, inconsistency and increased risk in terms of interpretation of guidance and implementation of management procedures; particularly if model schemes are not followed.

Board Members note that, where a Scheme of Management is not approved by ESA, the submitting authority has a right to challenge that decision – through a tribunal if necessary. Clarification is required as to the rules of procedure of the proposed tribunal and who will be responsible for costs and liabilities associated with this process.

In addition, the task of scrutinising and approving every individual Scheme of Management could prove to be an enormous time-consuming task for ESA.

Boards of Governors of Grant-aided Schools (Clauses 38 - 43)

The Board notes that Clause 38 (duties of Boards of Governors in relation to achievement of high standards of educational attainment) places a duty and a significant change on Boards of Governors to exercise their functions to maintain educational standards, under Every School a Good School, with a view to promoting the achievement by pupils of high standards of attainment, and to co-operate with ESA in relation to actions which it takes in promoting such achievement.

Whilst Members welcome a legal duty on Boards of Governors to exercise their functions and promote the achievement by pupils of high standards of attainment, Members would urge caution in regard to the additional workload and responsibilities being placed on Governors. Some of the functions attributed to Boards of Governors, especially in respect of staffing complements, salary etc. and development of policy in respect of same could result in potential inconsistencies in how schools and Governors execute their employer and management functions. Furthermore, these arrangements would place major responsibilities on members of Boards of Governors, which could result in potential recruitment difficulties to Boards of Governors, particularly in rural areas with numerous small schools. The skills and competencies required by members of a Boards of Governors, with the suggested responsibilities, will be difficult to source both in terms of availability of the range of skills and also the willingness of persons to take on such roles and accountabilities.

PART 3 – INSPECTIONS (Clauses 44 – 48)

WELB notes Part 3 of the Bill which seeks to strengthen the legislation governing inspection and the Inspectorate. Members welcome confirmation that youth work is part of the ETI's remit.

Members have concerns regarding the level of independence afforded to a DE directed Inspectorate and express the view that ETI needs to be independent of DE. Given the wide remit of ETI, as detailed in Clause 44, Members would stress the importance of ETI having a multidisciplinary professional workforce composition.

Members welcome the legislation outlined in Clause 47 which gives appropriate powers to the ETI in respect of services which are the responsibility of DEL.

PART 4 – FUNCTIONS OF THE NI COUNCIL FOR CURRICULUM, EXAMINATIONS AND ASSESSMENT (Clauses 49 – 54)

In relation to the position of CCEA, Board Members support the argument that CCEA should remain outside ESA. Given the need for objectivity and transparency, the same body cannot be responsible for curriculum, examinations and assessment and at the same time be responsible for assessing itself on its achievements in respect of pupil attainment, in which examination performance is a key factor. However, Members note that the position of CCEA remains unresolved with no absolute proposals as to where such an important organisation will sit in relation to the wider educational structure. Members emphasise the importance of consultation on any future proposals in relation to CCEA.

Members welcome the duty placed on CCEA (Clause 54) to ensure that standards of Northern Ireland examinations and assessments are similar to the standards of examinations and assessments elsewhere in the UK.

PART 5 – PROTECTION OF CHILDREN AND YOUNG PERSONS (Clauses 55 – 59)

The WELB welcomes strong legislation which aims to ensure safeguarding and promotion of the welfare of children and young persons.

Members recognise that the extended remit of ESA will also mean an extension of ESA's role regarding safeguarding and promotion of welfare. In this respect, Members would stress the need to ensure that a sufficient staff complement is in place to provide this service.

PART 6 – MISCELLANEOUS AND SUPPLEMENTARY (Clauses 60 – 69)

Clause 63 allows for the provision of sectoral bodies. Members point to the lack of detail in the Bill regarding the number, identity and funding of sectoral bodies. Members seek clarification of these issues as well as governance and accountability arrangements for sectoral bodies and their interrelatedness with one another and ESA.

SCHEDULES

Schedule 1 – The Education and Skills Authority

The WELB acknowledges details regarding the ESA Board as set out in Schedule 1.

Schedule 1 sets out that DE will be responsible for the laying of Annual Accounts before the Assembly. The Board notes that this is currently the responsibility of ELBs.

Schedule 2 – Provisions Required in Employment Schemes

Members note that significant capacity and resourcing will be required within the Human Resources Department to facilitate progression of the arrangements, set out in Schedule 2, within an acceptable timeframe.

Schedule 3 – Transfer to ESA of Staff Employed by BoGs

Schedule 4 – Transfer of assets, liabilities and staff of dissolved bodies

Members would have concerns that a Location Strategy has not yet been developed for ESA.