

# **EDUCATION BILL**

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## **EXPLANATORY AND FINANCIAL MEMORANDUM**

### **INTRODUCTION**

1. This Explanatory and Financial Memorandum has been prepared by the Department of Education (DE) in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It does not provide, and is not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause or Schedule does not seem to require an explanation or comment, none is given.

### **BACKGROUND AND POLICY OBJECTIVES**

#### **Background to the proposals**

3. The Bill is intended to provide for the establishment of the Education and Skills Authority (“ESA”). The proposal stems originally from the outcome of the Review of Public Administration (“RPA”), which was announced in November 2005. The focus of the RPA was on improving the efficiency and effectiveness of public services.
4. The policy objective to be delivered by the Bill is the establishment of modern, fit for purpose administration arrangements for education. The new arrangements will focus on: assisting the raising of standards; providing support to schools and other education establishments; and ensuring the effective planning and delivery of the education estate, and access to the curriculum for learners.
5. It is considered that the creation of ESA meets that objective.
6. ESA will replace eight existing organisations, namely: Education and Library Boards; the Staff Commission for Education and Library Boards; the Council for Catholic Maintained Schools (CCMS); and the Youth Council for Northern Ireland.

7. ESA's principal functions will be:

- acting as the employing authority for all staff in all grant-aided schools;
- funding grant-aided schools, youth services, and educational services;
- providing (or securing the provision of) support to grant-aided schools, youth services, and other educational services;
- providing library services to grant-aided schools and other educational establishments;
- equipping and maintaining controlled and maintained schools;
- planning and securing the delivery of the education estate; and
- ensuring the adequacy of arrangements within education for safeguarding and promoting the welfare of children and young persons.

**Purpose of the Bill and summary of its main provisions**

8. The Bill is in six parts.
9. In Part 1, the Bill establishes ESA, and makes provision for: its powers and duties; constitution; membership; proceedings; governance; and staffing. Part 1 makes ESA the employing authority for staff in grant-aided schools, and transfers staff employed by Boards of Governors to ESA.
10. Part 1 provides for the role of ESA in planning the education estate, and gives ESA a range of other functions related to the funding of, and provision of support for, grant-aided schools and other education providers. This includes: provision of training, advisory and support services for schools; the provision of a school library service; and the provision of educational and youth services and facilities. The Bill also confers various powers on ESA, including a power to undertake commercial activities.
11. Part 1 also dissolves the eight organisations referred to at paragraph 6, and transfers the assets, liabilities and staff of those organisations to ESA. The Bill also provides for the transfer of certain staff from DE to ESA. In the case of CCMS, the Bill provides for certain assets that were originally funded by the Roman Catholic Church to be transferred to the church.
12. Part 2 makes provision for the management arrangements that will apply to grant-aided schools, and the role of ESA in approving those arrangements.

13. Part 2 also includes provisions on Boards of Governors of grant-aided schools, including the appointment of governors by ESA; and the duty of Boards of Governors in relation to the achievement of high standards of educational achievement.
14. Part 3 provides for inspections of facilities on behalf of DE, and the Department for Employment and Learning (DEL).
15. Part 4 of the Bill re-enacts (with some modifications) the functions of the Council for the Curriculum, Examinations, and Assessments (CCEA).
16. Part 5 makes provision for the duties of ESA, Boards of Governors, and other education providers in relation to safeguarding and promoting the welfare of children and young persons.
17. Part 6 makes provision for the general duties of DE and DEL, and includes other miscellaneous provisions.

## **CONSULTATION**

18. The RPA was launched by the former Executive in June 2002. Following suspension of the Northern Ireland Assembly in October 2002, the review was taken forward by Direct Rule Ministers. The objective was to review the existing arrangements for accountability, development, administration and delivery of public services, and bring forward options for reform that were consistent with the arrangements and principles of the Belfast / Good Friday Agreement, within an appropriate framework of political and financial accountability.
19. In November 2005 the then Secretary of State set out the broad proposals for the RPA. Detailed proposals in relation to education were set out in a statement by the former education Minister on 22 November 2005. In early 2006, the Department of Education set up a working group to consult with education stakeholders to keep them informed of policy developments. This series of stakeholder meetings also provided stakeholders with the opportunity to offer their views. In addition, officials held meetings with particular sectoral representatives. In May 2006, an Education stakeholders group was established in order to discuss issues emerging from the implementation of RPA. On 28 November 2006, the Department of Education issued to interested parties a number of high level policy papers, giving them the opportunity to comment on

the content of those policy papers. The views of the education stakeholders group were also reflected in these policy papers. An analysis report of consultation responses was published in May 2007. Since that date there have been ongoing meetings with stakeholders and other interested parties which have helped further shape policy decisions.

20. During the current Assembly mandate, on 16 December 2011, the First Minister and deputy First Minister published Heads of Agreement on establishing the ESA. Subsequently, the draft Programme for Government was published for consultation on 17 November, and included the commitments of completing legislation to establish the ESA by July 2012, and establishing the organisation by 1 April 2013.

## **OPTIONS CONSIDERED**

### **Education administration structures**

21. The consultation document published in March 2005, contained an option for the establishment of two organisations: an education support services body; and a curriculum and teacher support body. The former was intended to bring together the functions of the Education and Library Boards, and the Staff Commission, and the direct support functions of: CCMS; CnaG; and NICIE. The body was also intended to take on the operational functions of DE, and to be the single employing authority for all staff in grant-aided schools.
22. The curriculum and teacher support body was intended to bring together the professional support functions discharged by: CCEA; the Curriculum Advisory Support Service (CASS); Classroom 2000 (C2K); and the Regional Training Unit (RTU).
23. Following consultation it was concluded that the establishment of a single body discharging all of these functions would meet the objectives of the RPA more fully, and that the two-body option would offer no additional advantages.

## **Curriculum for children and young people aged 14 to 19**

24. Following the RPA announcements of November 2005, direct rule Ministers decided that the ESA should have responsibility for securing the delivery of the entire curriculum for children and young people aged between 14 and 19, including teaching and learning in schools and further education colleges. This would have involved the transfer of some operational functions from DEL to ESA. Following the restoration of devolution, the Minister for Employment and learning decided that, whilst DEL and DE would work together on the curriculum, the transfer of functions from DEL to the ESA would not proceed.

## **Youth services**

25. The March 2005 consultation document included an option for the transfer of responsibility for youth services from education to local government. This was in recognition of the opportunities for better synergy with council activities such as: community services; safety and relations; sport and leisure; and health education.

26. Following consultation, it was decided not to proceed with this option. This was in recognition of the synergy between the formal education system and youth services, particularly for the most disadvantaged children and young people, and those at greatest risk of educational under attainment.

27. In the Heads of Agreement published on 16 November 2011, it was agreed that further consideration would be given to curriculum, examinations, and assessment functions, and to the inspection functions carried out on behalf of DE, DEL and DCAL. The Executive subsequently decided that CCEA should remain as a separate organisation, and that DE's Education and Training Inspectorate should continue to provide inspection services for DE, DEL, and DCAL.

## **OVERVIEW**

28. The Bill has 69 clauses and 8 Schedules. A commentary on each of the clauses and Schedules follows below. However, where a clause or part of a clause or Schedule does not seem to require an explanation or comment, none is given.

## **COMMENTARY ON CLAUSES**

### **Clause 1: The Education and Skills Authority**

This clause provides for the establishment of ESA and applies Schedule 1, which puts in place arrangements for membership of the Authority and also provides for the financing of the Authority and the governance and accountability arrangements.

### **Clause 2: Functions and general duty of ESA**

This clause places a duty on ESA to contribute towards the development of children, young people, and the community. ESA will perform that duty by planning and ensuring the provision of efficient and effective schools, youth services and other educational services (such as ‘early years’ services for children below schools age).

The clause gives ESA a central role in raising standards of educational attainment, by placing a duty on ESA to exercise its functions with a view to promoting the achievement of high standards.

### **Clause 3: ESA to employ all staff of grant-aided schools**

This clause makes provision for ESA to be the employer of all staff in all grant-aided schools. This clause also provides a definition of the term ‘submitting authority’ that is used in subsequent clauses. The clause places a duty on the trustees of voluntary schools who are the submitting authorities for those schools, requiring them to consult the boards of governors about the exercise of their submitting authority functions, and have regard to any views expressed by them. The Clause also gives boards of governors a right to refer an approved scheme to a tribunal, for a test of compatibility with the Heads of Agreement.

### **Clause 4: Employment schemes for grant-aided schools**

This clause provides that there will be an employment scheme for every grant-aided school, setting out the employment arrangements. Each employment scheme will determine the employment functions to be carried out in relation to the school by the Board of Governors, and will set out the detailed arrangements and procedures for the carrying out of those functions.

Each employment scheme will set out the posts (or types of post) for which the appointments will be made by the Board of Governors, or ESA (see Schedule 2).

The clause provides that each employment scheme must meet the statutory requirements set out in the clause. In particular:

- Each scheme must contain the compulsory elements set out in Schedule 2, such as: the determination of the staff complement of the school; arrangements for the suspension of members of staff; and the arrangements for dismissal.
- Schemes must not contain any provision that is inconsistent with education legislation (or other legislation).
- Each scheme must be consistent with any instrument of government and scheme of management for the school, unless education law requires or authorises otherwise.
- Each scheme must be prepared having regard to any guidance issued by the Department (under the provision in Clause 5(2)).

Employment schemes may also contain other matters set out in the clause or elsewhere in employment legislation. The clause provides for the Department to modify by order the provisions on the compulsory elements of employment schemes.

The clause requires ESA to draw up and publish the procedures that it will use in appointing staff.

#### **Clause 5: Preparation and approval of employment schemes**

The clause provides for an employment scheme for each school to be prepared by the ‘submitting authority’ for the school (as defined in Clause 3), and submitted to ESA for its approval. A scheme will not come into force until it is approved by ESA. The clause requires ESA to approve a submitted scheme unless it does not meet the statutory requirements (as defined in Clause 4). If a scheme does not meet the statutory requirements, ESA must seek to agree with the submitting authority the modifications to the scheme that would be necessary in order to meet the statutory requirements. If there is agreement, ESA must approve the scheme with the agreed modifications. In any other case, ESA must refer the scheme to the tribunal established by regulations made under the provisions in Clause 62. The Department may, with the approval of the Office of the First Minister and deputy First Minister, issue guidance containing model schemes.

#### **Clause 6: Reserve power of ESA to make employment scheme**

The clause gives ESA a reserve power to make an employment scheme for a school. The reserve power may be used, subject to the approval of the Department if:

- a submitting authority fails to submit a scheme; or
- a submitting authority asks ESA to draft a scheme for it.

Before making such a scheme, ESA shall consult the submitting authority.

#### **Clause 7: Revision of employment schemes**

This clause requires a submitting authority to prepare and submit a revised employment scheme if revised guidance issued by the Department requires it, and empowers a submitting authority to do so at any other time.

The clause includes provisions on the approval of a revised scheme that are similar to those in Clause 5.

#### **Clause 8: Review of certain decisions relating to employment schemes**

This clause provides for the consideration by a tribunal of employment schemes that are submitted to ESA for approval under Clause 5 or Clause 7, but which are not approved by ESA.

The tribunal will consider whether the submitted scheme complies with the statutory requirements. The tribunal may order ESA to:

- approve the submitted scheme; or
- approve the submitted scheme with modifications specified by the tribunal.

If the tribunal considers that the scheme does not meet the statutory requirements, and cannot be modified to do so, the tribunal may make a scheme for the school.

The Clause provides for the submitted scheme (or the scheme in force if the submitted scheme is a revised scheme) to apply during the interim period before the tribunal makes an order. During this period, ESA may apply to the tribunal for an order to modify the submitted scheme.

#### **Clause 9: Effect of employment scheme**

This clause places a duty on Boards of Governors and ESA to give effect to employment schemes. If ESA considers that a Board of Governors has made a decision which is not in accordance with the employment scheme, ESA may require the Board of Governors to reconsider that decision.

**Clause 10: Transfer to ESA of staff employed by Boards of Governors**

This clause applies Schedule 3, which makes provision for the transfer of staff employed by Boards of Governors of voluntary schools (other than Catholic maintained schools) and grant-maintained integrated schools to ESA.

**Clause 11: ESA to employ peripatetic teachers**

This clause allows ESA, in accordance with a scheme, to employ peripatetic teachers. This scheme shall be prepared or revised in consultation with Boards of Governors; schools; sectoral bodies (see clause 63); and in accordance with any guidance issued by the Department. The Clause defines ‘peripatetic teacher’ and provides that the appointment of such a teacher to work in a particular school is subject to the approval of the Board of Governors.

**Clause 12: Salaries, etc of staff: administrative and financial arrangements**

This Clause provides that, whilst ESA will be the employer of all staff in all grant-aided schools, certain schools that currently operate their own payment systems for salaries etc. may continue to do so. The clause provides that ESA may set off any such payments made against the budget shares of the respective schools under the Common Funding Scheme. Schools may, with three months notice, end these arrangements and opt in to the payment arrangements operated by ESA.

**Clause 13: Modification of employment law**

This clause allows the Department, by order, to make modifications to employment law if necessary for the operation of the employment provisions in the Bill. This is to ensure that the carrying out of employment functions by Boards of Governors in the name of and on behalf of the ESA, is compatible with the requirements of employment law.

**Clause 14: ESA to provide or secure provision of training and advisory and support services for schools**

This clause places a duty on ESA to provide or secure such training, advisory and support services for Boards of Governors and staff in grant-aided schools as ESA considers necessary.

**Clause 15: ESA to provide library services to grant-aided schools and other educational establishments**

This clause places a duty on ESA to provide library services in grant-aided schools and other educational establishments which are grant-aided by the Department or ESA.

**Clause 16: ESA to secure provision of educational and youth services and facilities**

This clause places a duty on ESA to secure the provision of adequate facilities for educational and youth services. ESA may discharge this duty by: establishing facilities; organising activities; providing grant aid or other assistance; providing or supporting the provision of leaders; or defraying or meeting expenses. This clause also allows ESA to make bye-laws, for example, preventing disorder and nuisance in these facilities.

**Clause 17: ESA to pay capital grants to voluntary and grant-maintained integrated schools**

This clause provides that capital grants to these schools, which were formerly paid by the Department, will be paid by ESA.

**Clause 18: Establishment of controlled schools**

This clause gives ESA the power to establish controlled schools.

**Clause 19: Responsibilities of ESA in relation to controlled schools**

This clause defines the responsibilities of ESA for controlled schools in relation to: maintenance; equipment; employment of staff; and funding.

**Clause 20: ESA to contract for certain works**

This clause gives ESA the power to enter into contracts for the provision or alteration of school premises. Such contracts may be with:

- a person or body who provides (or alters) the premises - usually referred to as 'traditional procurement';
- the trustees or board of governors of a voluntary or grant-maintained integrated school; or
- a person or body who provides, equips, services and maintains the premises in return for payments over the course of the contract –usually referred to as a 'Public Private Partnership' arrangement.

**Clause 21: ESA to pay superannuation benefits of teachers**

This clause provides that superannuation benefits for teachers, which were formerly paid by the Department, will be paid by ESA.

**Clause 22: Ancillary powers of ESA**

This clause affords ESA the scope to do anything which in its opinion would be useful in fulfilling its functions, for example, the ability to form bodies corporate, carry out research, or provide advice to other statutory bodies.

**Clause 23: Power of ESA to undertake commercial activities**

This clause allows ESA to charge other bodies or persons for goods or services provided by ESA. The exercise of this power must be approved by the DE and may be subject to certain conditions placed on ESA by DE.

**Clause 24: Area education plans**

This clause defines ‘area education plan’ as a document (including a map) setting out, for an area defined in the plan:

- an assessment of need for schools, youth services and educational services;
- an assessment of the adequacy of current provision; and
- proposals for meeting need.

**Clause 25: Preparation and revision of plans**

This clause provides for ESA to prepare or revise plans from time to time (or when directed to do so by DE) and submit them to DE for approval.

**Clause 26: Revocation of plans**

This clause provides that ESA may revoke a plan, and must do if directed by DE.

**Clause 27: Publicity and consultation**

This clause places a duty on ESA to publicise and carry out consultation before submitting new or revised plans for approval, or seeking approval to revoke a plan. ESA must also publicise approved plans or the approved revocation of plans.

**Clause 28: Involvement of relevant interests**

This clause places a duty on ESA to consult and involve relevant interests in the preparation, revision, or revoking of plans (other than in the case of minor revisions to a plan). The relevant interests include sectoral bodies, and providers of youth services and education services. The clause also gives ESA the power to consult and involve a wider range of interests, including children and young people, service users, parents, school governors, and staff.

### **Clause 29: Guidance**

This clause gives DE the power to provide guidance on the content of plans, and the procedure for preparing, revising, or revoking a plan. The clause requires ESA to take such guidance into account.

### **Clause 30: Regulations**

This clause gives DE the power to make regulations on:

- the form and content of plans;
- the procedures for preparing, revising or revoking plans; and
- the arrangements for consulting and involving relevant interests.

### **Clause 31: Dissolution of certain statutory bodies**

This clause formally dissolves the Education and Library Boards, the Council for Catholic Maintained Schools, the Staff Commission for Education and Library Boards and the Youth Council for Northern Ireland.

### **Clause 32: Transfer of assets, liabilities and staff**

This clause applies Schedules 4, 5 and 6 which set out the detail for transferring the assets, liabilities and staff of the dissolved bodies, together with staff to be transferred from the Department to ESA.

### **Clause 33: Schemes of Management**

This clause requires every grant-aided school to have in place a scheme of management, which provides for the membership and procedures of the Board of Governors of that school and the management of the school. It is the duty of the Board of Governors to give effect to the scheme of management.

The clause requires schemes of management to comply with the statutory requirements set out in the clause. In particular:

- Schemes of management must not contain any provision that is inconsistent with education legislation (or other legislation).
- Each scheme must be consistent with any instrument of government for the school, unless education law requires or authorises otherwise.
- Each scheme must be prepared having regard to guidance issued by the Department (under the provision in Clause 34).

- A scheme of management for an Irish-speaking school (usually known as Irish-medium schools) or a school with an Irish-speaking unit must require the Boards of Governors to use their best endeavours to secure the viability of the school or unit.

#### **Clause 34: Preparation and approval of schemes of management**

The clause provides for the management scheme for each school to be prepared by the 'submitting authority' for the school, and submitted to ESA for its approval. The scheme will not come into force until it is approved by ESA. The clause requires ESA to approve a submitted scheme unless it does not meet the statutory requirements (as defined in Clause 33). If a scheme does not meet the statutory requirements, ESA must seek to agree with the submitting authority the modifications to the scheme that would be necessary in order to meet the statutory requirements. If there is agreement, ESA must approve the scheme with the agreed modifications. In any other case, ESA must refer the scheme to the tribunal established by regulations made under the provisions in Clause 62. The Department may, with the approval of the Office of the First Minister and deputy First Minister, issue guidance containing model schemes. The clause places a duty on the trustees of voluntary schools who are the submitting authorities for those schools, requiring them to consult the boards of governors about the exercise of their submitting authority functions, and have regard to any views expressed by them. The Clause also gives boards of governors a right to refer an approved scheme to a tribunal, for a test of compatibility with the Heads of Agreement.

#### **Clause 35: Reserve power of ESA to make scheme of management**

The clause gives ESA a reserve power to make a scheme of management for a school. The reserve power may be used, subject to the approval of the Department, if:

- a submitting authority fails to submit a scheme; or
- a submitting authority asks ESA to draft a scheme for it.

Before making such a scheme, ESA shall consult the submitting authority.

#### **Clause 36: Revision of schemes of management**

This clause requires a submitting authority to prepare and submit a revised scheme of management if revised guidance issued by the Department requires it, and empowers a submitting authority to do so at any other time.

The clause includes provisions on the approval of a revised scheme that are similar to those in Clause 34.

**Clause 37: Review of certain decisions relating to schemes of management**

This clause provides for the referral to a Tribunal of schemes of management that are submitted to ESA for approval under Clause 34 or Clause 36, but which are not approved by ESA.

The tribunal will consider whether the submitted scheme complies with the statutory requirements. The tribunal may order ESA to:

- approve the submitted scheme; or
- approve the submitted scheme with modifications specified by the tribunal.

If the tribunal considers that the scheme does not meet the statutory requirements, and cannot be modified to do so, the tribunal may make a scheme for the school.

The clause provides for the submitted scheme (or the scheme in force if the submitted scheme is a revised scheme) to apply during the interim period before the tribunal makes an order. During this period, ESA may apply to the tribunal for an order to modify the submitted scheme.

**Clause 38: Duties of Board of Governors in relation to achievement of high standards of educational attainment**

This clause places a duty on the Board of Governors of a grant-aided school to promote high standards of educational attainment by pupils of the school. It is also the duty of the Board of Governors to co-operate with ESA regarding actions that ESA has undertaken to promote the achievement of high standards of educational attainment.

**Clause 39: Appointment by ESA of governors for controlled, maintained, grant-maintained integrated and certain voluntary grammar schools**

This clause transfers to ESA the function of making appointments to the Boards of Governors schools that currently falls to DE and Education and Library Boards.

The clause places a duty on the ESA, before choosing persons to appoint as governors, to consult: Boards of Governors; and relevant sectoral bodies.

The clause also places duties on the ESA to appoint governors who are committed to the ethos of the school to which they are appointed and, in the case of Irish-speaking schools, to the viability of those schools.

**Clause 40: Part-time teachers to be eligible for election as governors**

This clause allows part-time assistant teachers to be eligible for election to a Board of Governors.

**Clause 41: Management of controlled schools**

This clause makes the Boards of Governors of controlled schools responsible for their control and management. The clause also permits more than one controlled nursery school to be grouped under a single Board of Governors.

**Clause 42: Management of maintained nursery schools**

The clause permits more than one maintained nursery school to be grouped under a single Board of Governors.

**Clause 43: Controlled school: definition**

This clause defines ‘controlled school’ for the purposes of education legislation, as a school whose premises are vested in ESA.

**Clause 44: Inspections on behalf of the Department**

This clause allows inspectors appointed by DE to conduct inspections in schools, establishments which are grant-aided by DE or ESA, or establishments where education, educational or youth services are provided. The powers of inspection do not extend to dwelling houses. These establishments shall be open at all reasonable times to inspection.

The clause places duties on inspectors to:

- promote the highest standards of education and professional practice by monitoring, inspecting and reporting;
- advise DE about inspected establishments;
- monitor, inspect and report on any advisory and support services provided to the establishment by ESA; and
- monitor, inspect and report on the discharge by CCEA of relevant functions

Inspectors may also monitor, inspect or report on wider aspects of establishments, including the management, staffing, equipment and accommodation. Inspectors will not be able to exercise their powers in relation to the provision of religious education in grant-aided schools, except with the agreement of the Board of Governors of that school. As a result of an inspection report, DE may give directions to require the school to remedy any matter raised in the report.

#### **Clause 45: Powers of inspectors**

This clause provides inspectors with the power to inspect, take copies of, or take away any documents relating to the establishment they are inspecting. It also gives inspectors the power to require the production of any document. These powers may be exercised at reasonable times only.

#### **Clause 46: Reports and action plans**

This clause requires inspectors, upon completion of an inspection, to make a written report and send copies of that report to DE, ESA and a Board of Governors, a proprietor of an independent school or a body or person in charge of activities carried on at the inspected establishment. A Board of Governors, a proprietor or a body in charge of activities may be required to prepare a written statement containing the action it proposes to take as a result of the report and the timescale in which it proposes to take that action.

#### **Clause 47: Inspections on behalf of DEL**

This clause places a duty on institutions of further education and colleges of education to be open at all reasonable times for inspection. These inspections shall be carried out by inspectors authorised by DEL. These inspectors have a duty to promote high standards of education and professional practice among teachers. Inspectors shall monitor, inspect and report on the standard of education and the standards of professional practice among teachers on the staff and may advise DEL on any aspect of the curriculum. Inspectors may also monitor, inspect or report on wider aspects of the establishment, including its management, staffing, equipment and accommodation. DEL may give directions to require the establishment to remedy any matter raised in the report. DEL may authorise inspectors appointed by DE to exercise its inspection powers.

#### **Clause 48: Assessors and lay persons**

This clause provides that inspectors carrying out inspections on behalf of DE or DEL may be accompanied and assisted by assessors and lay persons appointed by the Department. Lay persons are intended to bring a broader, non-educational perspective to inspections. Therefore, a person shall not be appointed to a panel of lay persons unless he or she is without significant experience in management or provision of education. The Department will ensure that a lay person shall not be assigned to any inspection if that person has, or has had, any connection with the establishment in question which may raise doubts about that person's ability to act in impartial manner.

#### **Clause 49: Interpretation of this Part**

This clause defines certain terms used in Part 4 of the Bill.

**Clause 50: Functions of the Council in relation to the designated examinations and the statutory assessments**

This clause gives CCEA the power to conduct (or arrange for other bodies to conduct) examinations designated by DE or DEL, and statutory assessments.

**Clause 51: Functions of the Council in relation to the accreditation of the designated qualifications**

This clause gives CCEA the function of accrediting qualifications designated by DE or DEL. The clause also gives CCEA the power to co-operate and share information with other accrediting bodies.

**Clause 52: Other functions of the Council**

This clause gives CCEA a range of functions:

- keeping under review designated examinations and statutory assessments, advising the relevant Departments, and publishing and disseminating information thereon;
- keeping under review the curriculum for grant-aided schools, producing teaching materials, advising the Department, publishing and disseminating information;
- producing guidance and teaching materials on the curriculum for pre-school children ;
- research and development; and
- providing advice and assistance to those providing courses leading to designated qualifications.

**Clause 53: Ancillary functions of the Council**

This clause gives CCEA a range of ancillary functions, such as carrying out or commissioning research, and providing services to other bodies.

**Clause 54: Discharge by the Council of its functions**

This clause places a duty on CCEA in relation to the discharge of its functions to have regard to:

- the requirements of industry, commerce and the professions regarding education;
- the requirements of people with special learning needs; and

- the requirements of people who are taught in Irish.

The clause also places a duty on CCEA to ensure that the standards of Northern Ireland examinations and assessments are similar to the standards of examinations and assessments elsewhere in the United Kingdom.

**Clause 55: Safeguarding and promoting welfare of children and young persons**

This clause places a duty on ESA to ensure that its functions are exercised with a view to safeguarding and promoting the welfare of children and young persons. In carrying out that duty, ESA shall have regard to any guidance issued by the Department. ESA shall review the exercise of child protection functions by Boards of Governors, providers of funded pre-school education and persons in receipt of certain grants. ESA may issue such guidance or directions as necessary to ensure compliance with child protection duties.

**Clause 56: Duty on providers of funded pre-school education to safeguard and promote welfare of children**

This clause places a duty on persons providing funded pre-school education to safeguard and promote the welfare of those children on their premises or under their lawful control. It shall be the duty of such a person to determine and review measures that will protect children from abuse, having regard to any guidance given by DE or ESA. DE may direct such persons to review those measures. Such persons shall be required to prepare a written statement of those measures and provide copies free of charge to parents and staff, and to ensure that those measures are taken.

**Clause 57: Duty of providers of educational and youth services to safeguard and promote welfare of children**

This clause places a duty on ESA and DE to ensure that grants for educational or youth services are made subject to such conditions as are necessary or expedient to safeguard and protect the welfare of children and young persons. The clause also places a duty on ESA and DE to ensure that any agreement or arrangement for the purposes of the provision of educational or youth services or activities contain similar conditions.

**Clause 58: Directions as to exercise of child protection duties by Board of Governors**

This clause allows ESA to direct a Board of Governors of a grant-aided school in relation to the performance of any duty to safeguard and protect the welfare of children and young persons.

**Clause 59: Duty of co-operation concerning welfare and protection of children and young persons**

This clause provides that it is the duty of Boards of Governors of grant-aided schools, the providers of funded pre-school education 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.

**Clause 60: General duty of the Department and DEL**

This clause places new general duties on DE and DEL regarding the education of children and young persons; and the promotion of further and higher education, respectively.

**Clause 61: Grants for educational and youth services, etc**

This clause allows DE, DEL and DCAL to pay grants to persons for various services and research connected to education. These grants shall 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.

**Clause 62: Tribunal to review certain decisions in relation to employment schemes and schemes of management**

This clause places a duty on the Office of the First Minister and deputy First Minister to make regulations for the appointment by the Department of Education of a Tribunal to review decisions on employment schemes and schemes of management (clauses 8 and 37).

**Clause 63: Sectoral bodies**

This clause defines the terms ‘sectoral body’ and ‘relevant sectoral body’ for the purposes of the Education Orders. Sectoral bodies are bodies in receipt of grant from the Department of Education, and recognised by the Department as representing grant-aided schools of a particular description.

**Clause 64: Supplementary, incidental, consequential, transitional provisions etc.**

This clause allows the Department to make such supplementary, incidental, consequential, transitory, transitional or saving provisions by order as it considers appropriate to give full effect to the legislation.

**Clause 65: Regulations and orders**

This technical clause provides that regulations under this legislation shall be subject to the negative resolution Assembly procedure, apart from commencement orders (which are not subject to Assembly control) and supplementary, incidental, consequential and transitional provisions, and regulations made under clause 63 to establish a tribunal, all which would be subject to the affirmative resolution procedure.

**Clause 66: Interpretation**

This clause contains definitions of terms used in the legislation.

**Clause 67: Minor and consequential amendments and repeals and revocations**

This clause applies Schedules 7 and 8, which contain minor and consequential amendments and repeals, respectively.

**Clause 68: Commencement**

This clause contains provisions for the commencement of the legislation.

**Clause 69: Short title**

This clause contains the short title of the legislation.

**SCHEDULES**

**Schedule 1: The Education and Skills Authority**

This Schedule contains provisions in relation to the status, membership, tenure of office of members, remuneration of allowances of members and employees and proceedings of ESA. The Schedule also makes provision in relation to finance, accounts and reporting and returns.

**Schedule 2: Provisions required in employment schemes**

This Schedule sets out a range of matters that must be included in schemes of employment, including:

- the determination of staff complement;
- appointment of staff;
- discipline;
- suspension;

- dismissal etc; and
- payments in respect of dismissals, resignations etc.

In relation to the determination of staff complement, and payments in respect of dismissals etc, the Schedule provides for these matters to become the responsibility of ESA if a controlled or maintained school in receipt of a delegated budget has that delegation withdrawn.

### **Schedule 3: Transfer to ESA of staff employed by Boards of Governors**

This Schedule makes provision for the transfer to ESA of staff employed by Boards of Governors. Staff will be afforded protection of their terms and conditions of employment under the Transfer of Undertakings (Protection of Employment) Regulations 2006, and protection of their rights to accrue pension benefits.

### **Schedule 4: Transfer of assets, liabilities and staff of dissolved bodies**

This Schedule makes provision for the transfer of assets, liabilities and staff of Education and Library Boards; the Council for Catholic Maintained Schools; the Staff Commission for Education and Library Boards; and the Youth Council for Northern Ireland. Staff will be afforded protection of their terms and conditions of employment under the Transfer of Undertakings (Protection of Employment) Regulations 2006, and protection of their rights to accrue pension benefits.

### **Schedule 5: Transfer of certain assets and liabilities of CCMS before appointed day**

This Schedule makes provision for the transfer of certain assets or liabilities from CCMS, before the commencement of the body of the legislation. This is to provide for the return to the Roman Catholic church of certain assets of the organisation that were funded by the church. The remainder of the assets and liabilities of CCMS will transfer to ESA under Schedule 4.

### **Schedule 6: Transfer of certain staff of the Department**

This Schedule makes provision of staff from DE to ESA. Staff will be afforded protection of their terms and conditions of employment under the Transfer of Undertakings (Protection of Employment) Regulations 2006, and protection of their rights to accrue pension benefits.

### **Schedule 7: Minor and consequential amendments**

This Schedule makes provision for minor and consequential amendments.

## **Schedule 8: Repeals**

This Schedule makes provision for various repeals of existing legislation.

## **FINANCIAL EFFECTS OF THE BILL**

29. The establishment of a single organisation for the administration of education and the rationalisation of current management structures provide the basis for savings in staffing costs, through the elimination of duplication, particularly in management. It is the intention that this will be achieved through voluntary redundancy, and early retirement as well as normal retirements and natural turnover. The outline business case was predicated the delivery of savings of £20m per annum by year 3. By the end of the budget period, through the establishment of the ESA and other measures, the Department of Education's savings delivery plan will achieve savings of £40 million.

## **HUMAN RIGHTS ISSUES**

30. The Bill is in compliance with the Convention Rights.

## **EQUALITY**

31. The ESA has the potential to make a positive contribution, by enabling equality of access to a modernised curriculum; delivering more effective planning and delivery of infrastructure for all sectors; and by tackling inequalities in educational attainment. The policy proposals that underpin the Bill have previously been subject to screening and equality impact assessment, as appropriate. Establishing ESA will involve a programme of change to service delivery that will span a number of years. Equality of opportunity will continue to be assessed throughout the passage and implementation of the provisions of the Bill.

## **SUMMARY OF THE REGULATORY IMPACT ASSESSMENT**

32. The effects of this Bill have been assessed and it is concluded that the provisions will not result in savings for, or costs to, businesses, charities, social economy exercises or voluntary bodies.

## **LEGISLATIVE COMPETENCE**

33. The Minister of Education had made the following statement under section 9 of the Northern Ireland Act 1998:

*“In my view the Education Bill would be within the legislative competence of the Northern Ireland Assembly.”*

## **SECRETARY OF STATE’S CONSENT**

The Secretary of State has consented under section 8 of the Northern Ireland Act 1998 to the Assembly considering this Bill.