

## **Submission to the Northern Ireland Assembly Committee for Education on the Education Bill**

**16 November 2012**

### **Introduction**

The office of the Northern Ireland Commissioner for Children and Young People (NICCY) was created in accordance with The Commissioner for Children and Young People (Northern Ireland) Order 2003 to safeguard and promote the rights and best interests of children and young people in Northern Ireland.

The age remit of the office is children and young people up to 18 years, or 21 years of age where a young person is care experienced or has a disability.

Under article 7(2) of the 2003 Order, NICCY has a duty to keep under review the adequacy and effectiveness of law and practice relating to the rights and welfare of children. Under article 7(3), we have a duty to keep under review the adequacy and effectiveness of services provided for children by relevant authorities.

### **The proposed Education Bill**

In carrying out our function, NICCY's paramount consideration is the rights of the child and our work is based on the United Nations Convention on the Rights of the Child (UNCRC).

NICCY strongly supports the objective of creating an improved infrastructure for education in Northern Ireland. While recognising the fundamental importance of the establishment of the Education and Skills Authority (ESA), at the same time we must acknowledge that the creation of ESA represents one of a number of interrelated aspects of education provision in Northern Ireland which has required attention for some time. Pressing areas include the need to agree a resolution to post-primary transfer; to address issues with the new Special Educational Needs (SEN) and Inclusion Policy; to agree an improved 'common funding scheme' framework; to continue to target educational disadvantage and improve the educational experiences and outcomes of those who need it most: such as children and young people from socio-economically disadvantaged areas; Protestant males in lower socio-economic groups; children and young people from the Irish Traveller community; disabled children and young people; gay, lesbian and bisexual young people; looked after children; and black and minority ethnic children.

The needs of children and young people and their families and communities must be at the centre of the legislative reforms. Children and young people themselves can often be forgotten in the most complex and detailed of proposals for legislative change, and therefore our submission focuses on a

number of aspects of the Bill in which we have a particular interest and where there is a children's rights concern.

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

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

NICCY welcomes the language and intentions of Section 2(2) in that ESA will be required to 'contribute towards the spiritual, moral, cultural, social, intellectual and physical development' of children and young people in Northern Ireland, by ensuring that 'efficient and effective primary and secondary education and educational services are available to meet the needs of such children and young people'. In addition we welcome the complementary duty upon ESA in relation to the provision of youth services. We note the absence of explicit reference to early years' provision within clause 2, or indeed the Bill. The Explanatory and Financial Memorandum does clarify that 'educational services' includes "*early years' services for children below school age*", however, NICCY recommends that early years is explicitly cited within the Bill itself. We would also welcome clarity regarding the definition of early years' services within the context of the Bill.

In relation to Section 2(2)(e), the requirement for ESA 'to advise the Department on such matters relating to schools, educational services and youth services as the Department may refer to ESA, or as ESA may think fit', the Commissioner would recommend clarification as to what, if any, onus will be on the Department to take account of 'advice' submitted to it by ESA? Indeed, what will be the nature of the advice that it is anticipated that ESA will provide, and will there be a formal mechanism for the provision of advice?

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

NICCY understands that by virtue of Section 3(5), the duty on Boards of Governors to set school admissions criteria remains unchanged. In relation to this, NICCY is concerned that there is no reference within the developing legislation to the continuing lack of resolution to post-primary transfer.

The Committee may recall that NICCY conducted a consultation with Primary 7s in 2009-2010, following the withdrawal of the Department-sponsored transfer tests and the subsequent introduction of the current arrangements. We remain frustrated that since publishing our report, the situation has not been addressed, with pupils continuing to experience a stressful process with currently two separate tests in place, each of which is associated with a different school type.

While NICCY's position favours the withdrawal of academic selection in the long-term, our present priority is for a workable resolution to be found to post-primary transfer in the interests of children and young people. We do not believe it helpful that on one hand, the Department is calling on schools to withdraw academic selection, while on the other, it appears to ignore many

schools' continued operation of an admissions process based on academic selection through two different transfer tests.

## **Sections 24-32: Area planning**

NICCY is disappointed that the area planning clauses in the Education Bill make no reference to collaboration among schools.

The Children's Commissioner's office is currently undertaking research with children, young people and school staff, exploring views and experiences of shared education and area-based planning. In NICCY's view, the two issues are strongly linked. With regard to the implementation of the entitlement framework in post-primary schools, we are particularly mindful of the important role which shared education initiatives can play in terms of broadening the subject choices for pupils in Key Stage 4 and Years 13 and 14. We believe there should be greater emphasis within area planning on the importance of shared education initiatives in particular localities, and the benefits they can provide to pupils in enhancing their learning and development.

### **Section 24: Area education plans**

We believe consideration should be given to referencing shared education within the area education planning clauses. For example, at section 24(1)(ii), which states 'An area education plan is a document which contains an assessment of the adequacy of the provision of that education and those services in that area at the time the plan is prepared', the Committee may wish to consider whether the phrase 'including shared education initiatives' could be included. In such a case, a definition of shared education would be required.

NICCY also believes that clarification is required within the Bill regarding the term 'area'. We note that section 24(2) provides that 'area', in relation to an area education plan, 'means the area to which the plan applies'. We do not believe this is sufficiently clear. For example, in future will plans be provided always at a NI level? Or could plans also be prepared according to the traditional education and library board boundaries? Alternatively, will plans be at district council level? We note that Section 27(2) states that 'ESA shall consult the district council for any district all or part of which is within the area of the plan'.

NICCY would also recommend that the Bill give consideration to the potential for cross-border initiatives.

### **Section 28: Involvement of relevant interests**

Section 28(1) places a duty on ESA to involve and consult the 'sectoral bodies', youth service providers and educational services providers in the preparation of a plan/revised plan and any proposal to revoke a plan (subject to Section 28(3) which states that the duty does not apply if ESA determines

the changes to the plan not to be of sufficient importance to warrant involvement or consultation). Meanwhile, under Section 28(4) there is not a duty, but a power, to involve and consult additional bodies to include 'persons who represent the interests of' children and young people living/receiving education in the area; persons who receive educational services and youth services; parents; school staff and educational and youth services providers, Boards of Governors and 'such other groups' as ESA may consider appropriate.

NICCY is concerned at the disparity in these provisions where ESA has a duty to consult some bodies, but a power to consult others. NICCY is particularly concerned that there is no duty within Section 28 to consult with affected children and young people. Poor levels of consultation are often carried out with children and young people and therefore we strongly believe that a clear duty must be inserted within the primary legislation which requires consultation with children and young people and their parents regarding the preparation, revisions and proposals in relation to any area-based plans for education provision.

Some clarification is also required in terms of the application of the consultation duty in respect of 'sectoral bodies', 'providers of youth services in the area' and 'providers of educational services in the area'. Will an appropriate sectoral body be available to represent the full range of children and young people and educational establishments affected by a proposed plan or proposed revision to a plan? Furthermore, a definition of the terms 'providers of youth services in the area' and 'providers of educational services in the area' is required.

## **Part 2: Management of grant-aided schools**

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

NICCY notes the new statutory duty on Boards of Governors in Section 38 to 'exercise its function with a view to promoting the achievement of high standards of educational attainment'. NICCY assumes that Boards of Governors will already have identified educational attainment as a major concern, particularly since Departmental Guidance already requires this. However, by placing a duty in primary legislation, NICCY also presumes that the Department means to impose a higher level of accountability on Boards of Governors than at present in respect of standards of educational attainment. What will be the implications for a Board of Governors if the school does not duly promote the achievement of high standards of educational attainment? Indeed, how is 'promote' defined? Also how are 'high standards' defined? Will there be a range of standards set depending on the needs any additional requirements of the pupils registered at the school? Will there be provision for the application of sanctions on Boards of Governors where duties are not complied with? NICCY appreciates that educational attainment is dependent on many factors influencing the overall educational 'experience' of children

and young people – part of which includes their effective ‘participation’, for example, through schools’ councils. It is apparent that governors may require further training to fulfil this duty. All of these issues require additional clarification.

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

In terms of Section 39(7) which requires the appointment of persons to the Boards of Governors of a school appearing to be committed to the school ‘ethos’, the Committee may wish to give consideration to how the term ‘ethos’ may be defined. For example, could ethos be defined in respect of a school’s integrated status; in its affiliation with a particular religious denomination; or in its particular commitment to children and young people with special educational needs or other disability? How would an applicant’s commitment to any such ethos be assessed? Alternatively, could ethos be defined in respect of a ‘commitment to academic selection at post-primary transfer’? If so, our comments above in respect of Section 3 of the Bill are relevant, in the sense that we remain concerned that there is no reference within the developing legislation to the continuing lack of resolution to post-primary transfer.

## **Part 3: Inspections**

### **Section 44: Inspections on behalf of the Department**

NICCY notes that Section 44 would widen the current remit of the Education and Training Inspectorate (ETI) in terms of the areas which inspectors may consider in conducting inspections.

NICCY particularly notes the proposed power for the Inspectorate to monitor, inspect and report on “*the staffing, equipment, accommodation and other resources*” (Section 44(6)(c)). The Committee may wish to consider the implications of such a provision in light of current financial pressures on schools. So for example, what weight would be attached to the standards in school accommodation within inspection reports? How *should* “*other resources*” be defined? Would the power to inspect and report on “*teaching and learning activities*” and “*staffing, equipment, accommodation and other resources*” also take into account collaboration or shared resource initiatives of which the school is part? We note that the relevant clause relates to the inspection of provision in “*the establishment*”.

NICCY also acknowledges that the Independent Panel conducting the Review of the Common Funding Scheme (CFS) will also shortly report, and therefore there is potential that the Panel may make recommendations to the Department regarding the role of ETI. NICCY believes it is important that the Review Panel are consulted on this aspect of the Education Bill, and indeed any additional aspects which are relevant in terms of the CFS Review.

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

### **Paragraph 2: Membership**

It is important that the educational needs of children and young are the major concern for the Education and Skills Authority. We note that four of the 12 “appointed members” of ESA will represent the controlled sector, while four of the 12 will represent the maintained sector. Paragraph 2(c)(iii) states that the four remaining members shall be “representative of the community in Northern Ireland”. Clarification is required as to what constitutes the “community” in Northern Ireland, and as to how the ‘interests of the community’ relate and/or differ to the interests of “controlled” schools and “maintained” schools. In addition, how will the membership as a whole represent the diverse needs of children and young people in Northern Ireland?

NICCY also believes that ESA should demonstrate how the voice of children and young people will be represented in decision-making. The Committee may wish to consider how the proposed ESA membership can ensure that children and young people have a voice in strategic decision-making in respect of educational provision.

### **Additional comments**

#### **Integrated schools**

NICCY has been surprised by the lack of reference to the integrated schools sector within the draft legislation.

We note that a number of provisions within the Bill cover specific duties and requirements which would aid or promote the development of Irish speaking schools/units within schools, and specifically, to protect their viability. This includes, for example, Section 2(5) (duty on ESA to discharge its functions relating to grant-aided schools with a view to encouraging education provided in an Irish speaking school); Sections 33(5) and 33(6) (Boards of Governors of Irish speaking schools/schools of which a part is Irish speaking shall use its best endeavours to ensure that the school management, control and ethos are likely to ensure the continuing viability of the school as an Irish speaking school); and Article 39(7)(b) (Persons appointed to the Board of Governors of an Irish speaking schools/school of which a part is Irish speaking should be committed to the continuing viability of the school).

In light of the emphasis on the viability of Irish speaking schools and units, it is all the more surprising that the interests of the integrated schools sector appear to be absent from the Bill. The Committee may wish to consider how the Bill may be improved upon in order to show inclusivity and in recognition of those children and young people and parents who opt for integrated provision.

## **Final comments**

NICCY would like to thank the Education Committee for the opportunity to comment on the draft Education Bill. We hope the issues we have raised are useful to the Committee in their considerations.

The establishment of ESA is of fundamental importance. In reviewing the draft legislation, we have also highlighted a number of additional interrelated aspects of education provision in Northern Ireland which we believe are in pressing need of attention. The needs of children and young people and their families should be the major concern of the Executive in agreeing the ESA legislation. Children and young people should not be required to fit to the services available, rather, the key aim of education provision should be to ensure a flexibility of services for the benefit of pupils' needs and requirements, with a particular emphasis on those children and young people who are most vulnerable and disadvantaged.

Should the Committee require any further information, please do not hesitate to contact us.