

Teachers' Union of Ireland

Education and Training Boards Bill, 2012

Submission to the

Joint Oireachtas Committee on

Education and Social Protection

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Introduction

The Teachers' Union of Ireland (TUI) has long supported the concept of democratic regional structures for the provision of post-primary and further education. The TUI position in this regard was set out in our submissions to the 1992 Green Paper on Education and to the National Education Convention, 1993. The TUI submission to the 'Round Table' discussions in 1994 set out arguments for local democratic education structures, based on the following principles:

- Political – genuine democratic structures are necessary in order to ensure a balance between local and national concerns and to move towards decentralisation and devolution
- Economic – education structures should be accountable to communities and should allow for the appropriate targeting of resources
- Social – education structures must take account of rural and urban needs and of the diversity of Irish society as it develops and changes over time
- Equity – equality of access to and participation in education can only be assured in the context of a co-ordinating mechanism to regulate school policies and practice
- Effectiveness and Efficiency – the elimination of destructive competition between schools and of wasteful duplication of resources is essential for efficient provision of an equitable service.

In our submission to the National Education Convention, TUI stated as follows:

"We see the provision of a free, co-educational, non-selective, multid denominational service as a duty of the state. We believe that this can best be done through a network of Local Educational Authorities which (would) subsume the role of VECs".

Subsequently, TUI supported the rationalisation of Vocational Education Committees (VECs) recommended by the Commission on School Accommodation Needs which led to the Order for the amalgamation of the town VECs with their counties in January 1997. In that process, teachers had to adapt and accommodate to change. Similar flexibility and change will be required of teachers in the current process of establishment of Education and Training Boards (ETBs) and the extension of their further education and training role, consequent on the establishment of the envisaged new Further Education and Training authority (SOLAS).

Proposal to withdraw current statutory rights of teachers

No group of teachers has experienced more change than vocational teachers. It is important that this is recognised and managed appropriately, having regard to the concerns and perspectives of the teachers and the Teachers' Union of Ireland, the recognised trade union representing the vast majority of staff employed by VECs.

With regard to the treatment in the Education and Training Boards Bill 2012 of staff of Vocational Education Committees transferring to Education and Training Boards, TUI is gravely concerned with the diminution and/or elimination of existing contractual and statutory rights and entitlements and considers that the approach of government in this regard is unwarranted, excessive and unjustified.

TUI notes that in relation to contracts other than contracts of employment, the Education and Training Board steps into the position of the dissolved VEC and is liable for the performance of any existing contracts (**Section 56**). No such protection is afforded to contracts of employment, however. With the limited exception provided in **Section 63** for the staff of Institutes of Technology and Dublin Institute of Technology, Part 1 of the Bill (**Section 4**) provides for the repeal of all VEC Acts and statutory instruments (commencing in 1930 and up to 2005). Repeal of the full suite of Acts in this manner would result in the removal of important rights conferred on staff by statute, most specifically rights in respect of suspension, dismissal/removal from office and continuation of payment of wages during a period of suspension.

The support of the TUI for the rationalisation of VECs is not unconditional. In the 1990s, the union's support was enabled by appropriate safeguards set down for staff at the time. It is interesting to examine the guarantees made available to serving staff at that time vis-à-vis those now being made available under the current Bill. The 1997 Order in respect of the amalgamation of the Borough of Wexford Vocational Education Area and County Wexford Vocational Education Area (to cite a case in point), states as follows:

8 (1) "Every person who, immediately before the operative date, is an officer or servant of the Town of Wexford Vocational Education Committee shall, as and from the operative date, become and be an officer or servant, as the case may be, of County Wexford Vocational Education Committee, subject to such conditions as shall be determined by the Minister following consultation with trade unions and staff associations concerned.

(2) Until such time as the remuneration and the terms and conditions of service of a person to whom subparagraph (1) applies are varied by County Wexford Vocational Education Committee following consultation with any recognised trade unions and staff association concerned, the remuneration to which the person was entitled and the terms and conditions of service, restrictions, requirements and obligations to which the person was subject immediately before such transfer shall continue to apply and may be applied or imposed by County Wexford Vocational Education Committee while that person is in the service of County Wexford Vocational Education Committee and no such variation shall operate to worsen the remuneration or the terms and conditions of service aforesaid applicable to the person immediately before he or she was accepted into the employment of County Wexford Vocational Education Committee, save in accordance with a collective agreement negotiated with any recognised trade unions and staff associations concerned".

The structure described in **Section 55** of the current Bill represents a radical departure from the Order mentioned above and from previous legislation, where a teacher was moved from one legal entity to another. Section 55 appears to ignore entirely the purpose and intent of the European Union directives dealing with transfer of undertakings. In the preamble to Directive 98/50/EC, referring to the Social Chapter adopted on 9 December, 1989, it is stated that the completion of the internal market must lead to an improvement in the living and working conditions of workers in the European Community. The Council Directive makes it clear that it is necessary to provide for the protection of employees 'rights in the event of a change of employer. The purpose of the Directive is to make sure that the employees retain their jobs, their seniority, their continuity of service and their conditions of service. The terms of Section 55 of the Bill have scant regard to the intent and spirit of the EU directives dealing with transfer of undertakings and require to be amended.

By contrast with the reasonable protections afforded to staff in the amalgamation of town and county VECs, the protection set down in Section 55 (4) of the current Bill is limited to '*conditions of remuneration*' only. TUI seeks assurances that the definition of '*remuneration*' as referred to in this clause, includes the right to increments and incremental payments. Furthermore, TUI regards as unacceptable the exclusion of conditions in relation to superannuation in sub-section (5) from this already-inadequate protection. Amendment is also required in this respect.

With regard to sub-section (2), TUI will need assurance that serving VEC teachers are subject only to redeployment within the terms of the current redeployment schemes negotiated under the Towards 2012 and Public Service Agreements, and in accordance with Section 6 of the Education (Amendment) Act, 2012. In regard to transfer within the employment (as opposed to redeployment, which involves moving from one employer to another), TUI requires that serving teachers be liable to transfer only within the boundaries of their current VEC administrative areas. This was the case when amalgamation of town and county VECs occurred.

TUI finds the diminution of explicit protection unacceptable and requires the same level of protection of conditions of service in sub-section (4) as was provided in the case of previous amalgamations. TUI looks to the legislature to accommodate this reasonable position.

Suspension, Dismissal and Ministerial Sanction

The Bill provides for repeal of the exclusion of certain categories of employees from the provisions of the Unfair Dismissals Act, 1977. The Bill also provides that a teacher or other member of staff of an ETB could be dismissed directly by the CEO of an ETB (or by another member of staff of the board if such power is delegated by the CEO under the authority conferred in **Section 16**). Having been dismissed, a teacher/member of staff would be in the position of seeking redress from the Employment Appeals Tribunal. So rare are the instances of re-instatement of staff by the EAT, however, that TUI considers that removal of the current protections could result in serious injustice being visited upon a teacher/member of staff who was unfairly dismissed.

TUI notes that the intention set out in the explanatory memorandum on the General Scheme of an Education and Training Boards Bill, 2011, - *“to ensure that an employee’s rights are not detrimentally affected as a result of the bill”* - has been dispensed with in the Bill itself. If the Bill is enacted as it stands it is very clear that employees’ existing contractual rights will be significantly and detrimentally affected by the removal of both layers of protection currently enjoyed by teachers in the vocational sector:

- (a) consideration by the Vocational Education Committee and
- (b) consideration by the Minister for Education and Skills.

TUI notes that, by contrast, the ETB retains the power to suspend the CEO of an ETB and the sanction of the Minister for Education & Skills will continue to be required for the removal from office of the CEO. The TUI believes that the arrangements in **Section 17** of the Bill in respect of CEOs should apply also to teachers and other staff. In this regard, TUI seeks that the power to suspend staff is designated as a reserved function under **Section 12** of the Bill.

Other matters of concern

With regard to the general functions of ETBs, set out in **Section 10** of the Bill, TUI believes that sub-section (1) (h) is excessively permissive insofar as it could, potentially, require ETBs to provide education and training support to private, for-profit providers. A similar concern in this regard arises from **Section 19 (d)** of the Bill. The TUI considers education and training to be a public good that should not be commoditised for private profit.

TUI advocates that recognised trade unions representing staff of an ETB should be included in the range of persons/bodies set down in **Section 10 (2)** with whom ETBs would confer in respect of the performance of their functions. TUI believes that this Section would also be strengthened were periodic consultation with the listed persons/bodies required of ETBs rather than permitted for them, (at their own discretion, when they might consider consultation appropriate).

Accountability of the CEO to the ETB

With regard to the functions of a Chief Executive Officer of an ETB, TUI seeks that the provision of information by a CEO to a board should explicitly include, in **Section 15 (2)**, information in relation to the conduct of industrial relations on behalf of the board. This arises because, in many instances, such information has not been made available to VECs since the enactment of the Vocational Education (Amendment) Act of 2001, arising from interpretations that the executive decision-making authority of CEOs permits the withholding from VECs of information and decisions taken on behalf of Committees on personnel, staffing and other human resource and industrial relations matters. TUI believes that a requirement to report to ETBs on such matters does not detract from the authority conferred on CEOs under the executive functions/reserved functions divide introduced in the 2001 Act and would serve the interests of transparency and accountability at local level. This moderate and sensible amendment is sought from the legislature. TUI also seeks the insertion of *‘executive’* before *‘functions’* in **Section 15 (4)** and seeks that the CEO be required to report to the board on the exercise of these functions on a biannual basis and as otherwise determined by the board.

Means of determining terms and conditions

Section 14 (3) of the Bill provides that a chief executive officer shall hold office upon and be subject to such terms and conditions, including terms and conditions relating to remuneration and allowances, as may be determined by the Minister for Public Expenditure and Reform or by the Minister for Education and Skills, with the former's consent. TUI is concerned about the possible implications of this provision for the conduct of industrial relations and the negotiation of collective agreements. It is our view that matters relating to terms and conditions should remain within the remit of the Minister for Education and Skills.

TUI believes that **Section 18** of the Bill should provide that the appointment and terms and conditions of staff of ETBs should require the consent only of the Minister for Education and Skills. The migration of function to the Minister for Public Expenditure and Reform, provided for in sub-section (2), is considered a retrograde step. TUI seeks that arrangements continue to be determined solely by the Minister for Education and Skills. TUI is concerned to receive explanation for the apparent exclusion, under sub-section (4), of teachers and principal teachers from the authority conferred on ETBs, under sub-section (3), to pay remuneration, allowances and expenses to its staff, subject to the caveats cited in the sub-section.

Part 3 – Membership of Education and Training Boards

With regard to the composition of Education and Training Boards under Part 3 of the Bill, TUI considers that the provision, under **Section 28** of the Bill, that 55% of the membership of boards would comprise local authority members is disproportionate and runs counter, in real terms, to the parity of esteem with which, in our view, each of the main stakeholder groups should be recognised and treated. TUI considers that this unbalanced composition of boards detracts significantly from participative, democratic decision-making, involving all key partners, and cannot be regarded as reflective of a true partnership approach to the provision of education and training and statutory democratic decision-making at local level. The Bill, in our view, provides for statutory representation of political representatives *at the expense of* other partners whose role in education is no less vital or valuable.

TUI notes that, under the present terms of the Bill, staff and parent representation comprises less than 20%, in the aggregate, of the membership of ETBs and adult student representation is not provided for explicitly. TUI believes that an opportunity has, to date, been lost to accord equal status in the composition of ETBs to the main partners involved in education and training at local level: local authority members, staff and other constituent groups, including parents/adult students.

In addition, TUI considers that the lack of provision for dedicated teacher representation deprives ETBs of core professional and practitioner expertise which, we believe, is essential both to the functioning of ETBs and the provision to students and learners of public education of the highest standard. TUI looks to the legislature to rectify this undemocratic imbalance. TUI believes that the composition of boards should provide for 3 elected members of staff, at least one of whom should be a teacher, on a board which does not result from the amalgamation of existing VECs and for 4 elected members of staff, at least two of whom should be teachers, on a board that results from the amalgamation of two or more existing VECs. Whilst each board member will bring particular expertise and knowledge

to the board and a range of perspectives will be necessary to inform, guide and underpin decision making, TUI sees the inclusion of practising teachers on each board as absolutely critical. The significance of their involvement rests in their expert knowledge with special reference to pedagogical and professional practice, together with their capacity to represent the perspectives of the practising professional. Quality decisions about service provision, service delivery and teaching and learning must take cognisance of the day to day contextual factors and practice issues which the practitioner in the classroom can best articulate.

TUI welcomes the fact that the Bill provides for the election of members of staff to boards rather than the election by staff of persons (who are not, necessarily, members of staff) to boards, as currently provided for under the 2001 Amendment Act. TUI takes it as a given that the electorate for the purposes of the filling of staff representative positions on ETBs is confined to the staff of ETBs.

TUI welcomes the new provisions in the Bill (**Section 35**) in respect of the establishment of procedures under **Section 28 (4)** for the filling of casual staff representative vacancies on ETBs.

TUI notes that **Section 30** of the Bill provides that the Minister for Education and Skills may specify a class, description or grade of employment the members of which shall be ineligible to be members of the boards of ETBs. TUI advocates that any potential restriction in this regard should be confined to the grade of chief executive Officer, Education Officer and Principal Officer of a board.

TUI welcomes the disqualification, under **Section 31**, from on-going membership of a board of a person who ceases to be a member of staff of the Education and Training Board of which he or she is a member.

TUI believes that the waiver of the requirement for parents' representatives on an ETB to be parents of children attending a particular school/centre under the aegis of the ETB is a retrograde step insofar as it attenuates the local democratic process. TUI notes that the Bill provides that authority is reserved by the Minister for Education and Skills, under **Section 42 (12)** to specify a requirement that members of sub-committees established by ETBs, including boards of management of schools and centres, reside within a specified distance of the particular school/centre/facility concerned. Whilst TUI considers this appropriate, we believe that it is incongruous that parent members of ETBs themselves are not required under the Bill to be parents of children attending schools or other centres under the aegis of ETBs. TUI believes that the current requirement that a person must be a parent of a child currently attending one of the schools/centres under the aegis of an ETB in order to be a member of the board as a parents' representative, should be maintained.

TUI notes that the sole constituent group which guarantees gender balanced representation is the parents' representative group. TUI notes that the regulation-making power in relation to staff elections facilitates the establishment of male and female panels for elections of staff representatives. TUI believes that the principle of gender balance should apply to each constituent group of an education and training board.

Sub-section (8) provides for nominations by bodies specified by the Minister for Education and Skills of one man and one woman to fill the four positions provided for under sub-section (d). As per the 2001 VEC (Amendment) Act, TUI believes that the bodies considered by the Minister to have a special interest in, or knowledge of, education and training should be set down in the legislation, should include recognised trade unions and should provide for them to nominate persons for consideration for the four positions available under **Section 28 (1) (d)**.

Part 5 – Committees of Education and Training Boards

TUI can see no sustainable basis for, and opposes, the new exclusion of members of staff of an ETB from membership of a finance or audit committee established under **Section 43 (4)** of the Bill.

Part 6 – Finance

TUI requests that the provision in **Section 48 (1)** be revised to clarify that fees should not apply to the provision of post-primary education.

Freedom of Information

In addition to the observations above, TUI wishes again to place on record its strong view - and demand - that the provisions of Freedom of Information legislation should be applied to Education and Training Boards.

SOLAS

TUI is mindful that legislation to underpin the establishment of SOLAS, the future funding, policy and co-ordination body for further education and training is forthcoming. The establishment of SOLAS is a welcome development. However, decisions taken by SOLAS and the systems it puts in place will have a direct impact on how ETBs will function with regard to certain aspects of their work. Therefore, TUI urges that the appropriate legislation is brought forward without delay and that the consultative process with relevant stakeholders and education partners commences immediately.

Education Act 1998

Finally, TUI welcomes the omission from the bill of the amendment of Section 13 of the Education Act, 1998. Such an amendment had been included under the General Scheme of an Education and Training Boards Bill, 2011. Our welcome in this regard is tempered by the recent confirmation in the Second Stage Speech on 16 October 2012 of the intention to bring forward an amendment to the section at Committee Stage. As stated previously, the Teachers' Union of Ireland rejects - and regards as wholly and utterly inappropriate - reliance on the criminal justice system to underpin the work of the inspectorate of the Department of Education and Skills in its relationship with teachers. The Teachers' Union of Ireland seeks support in resisting any criminalisation of teachers in respect of their relationship with inspectors.