



**AN BILLE UM BOIRD OIDEACHAIS AGUS OILIÚNA, 2012  
EDUCATION AND TRAINING BOARDS BILL 2012**

**EXPLANATORY MEMORANDUM**

*Purpose of Bill*

The purpose of the Bill is to give effect to Government decisions by providing for the establishment of newly configured bodies as education and training boards to replace vocational education committees (VECs), reforming and modernising the governance provisions, removing outdated terminology and articulating the functions of the boards to better reflect the actual evolution over time of the role of VECs. The Bill will replace the 9 existing Vocational Education Acts with one piece of primary legislation. It is intended that the Bill will be both an enabling and reforming legal instrument. It will address issues of scale and better position the sector for its current and likely future requirements.

*Provisions of Bill*

The Bill has 64 sections divided into 8 Parts as well as 5 Schedules.

**Part 1**

**Preliminary and General**

*Section 1* sets out the short title by which the Bill will be known and allows for a phased implementation by empowering the Minister to commence different provisions of the Bill at different times.

*Section 2* defines certain commonly used terms in the Bill. A number of definitions are borrowed from the Education Act 1998.

*Section 3* confers on the Minister power to make regulations and orders. This will allow the Minister to spell out the effect of certain principles and policies in greater detail through the use of secondary legislation.

*Section 4* provides for the primary and secondary legislation which will be repealed and revoked by this Bill.

*Section 5* provides that the cost in administering the Bill's provisions will be subject to sanction from the Minister for Public Expenditure and Reform and will be met from public funds.

*Section 6* provides a mechanism for service of formal notices under the Bill.

*Section 7* sets out the maximum penalties applicable for offences under the Bill. Offences relate to acting when disqualified (*section 33(1)*), knowingly making a false expenses claim (*section 36(7)*) and breaching confidentiality in relation to a board's work (*paragraph 13(2) of Schedule 3*).

## **Part 2**

### **Education and Training Boards**

*Section 8* requires the Minister to specify a day as the establishment day for the purposes of the Bill. This will be the day on which the new education and training board areas and the bodies themselves will take effect.

*Section 9* provides for the formal establishment of the new boards. Coupled with *Schedule 2*, it also provides for the geographic area in which each board will carry out its functions under the revised configuration. The replacement of "vocational education committees" with the title "education and training boards" is intended to better reflect the role of the new bodies in the future.

*Subsection (5)* provides that every person who is a member of a VEC will become a member of an education and training board and will continue in office until the next local elections.

This section also applies *Schedule 3* to the boards. This provides for certain election and internal governance matters.

*Section 10* sets out the functions of education and training boards. The functions include providing for the establishment and maintenance of education and training board schools, centres for education and education or training facilities in its functional area; establishing and maintaining such institutions at the direction of the Minister; planning, providing, coordinating and reviewing the provision of education and training in those bodies as well as in children detention schools, prisons and facilities maintained by other public service bodies; establishing scholarships; adopting strategy statements and annual service plans; delivering training for bodies who provide funding for this (*e.g. SOLAS*); supporting the provision, coordination, administration and assessment of youth work services; and assessing the economy, efficiency and effectiveness of its functions.

*Subsection (2)* makes provision for boards to consult with relevant people and bodies while *subsection (3)* provides for boards to have the necessary powers to exercise their functions. *Subsection (4)* makes clear that the functions must be performed having regard to Government policy and in accordance with any Ministerial directions. Finally, *subsection (5)* clarifies the meaning of "youth work" for the purpose of the section.

*Section 11* gives the Minister power to confer additional functions on education and training boards by way of Ministerial order.

*Section 12* sets out which provisions of the Bill are reserved functions to be exercised by the members of an education and training board members, as opposed to executive functions which are the responsibility of the CEO. Reserved functions include requesting a change of name of an education and training board; appointment or suspension of the CEO; establishment of a scholarship; adoption of a strategy statement, annual service plan and annual report; acceptance of gifts or becoming a trustee; authorisation of members' attendance at certain events; establishment and dissolution of committees and related matters; receipt of reports prepared by the finance or audit committee and the determination of what action, if any, should be taken as a result of the finding of such a report; power to borrow money; keeping of accounts; and acquisition, development or disposal of land.

Under *subsection (3)*, the Minister may declare that any additional function conferred on an education and training board by him or her is a reserved function while *subsection (4)* states that if a dispute arises as to whether or not a function is a reserved one, the Minister makes the ultimate decision.

Notwithstanding the fact that a function is a reserved function, the CEO can assist the education and training board in exercising such a function (*subsection (5)*) but the membership of an education and training board cannot exercise an executive function (*subsection (6)*).

*Section 13* sets out that executive functions are exercisable by the CEO. Every function that is not declared to be a reserved function is considered an executive one. The CEO must exercise these functions in accordance with the board's policies (*subsection (3)*).

*Section 14* provides for the office of chief executive of an education and training board. The appointment of a chief executive must be in accordance with any procedures determined by the Minister for Public Expenditure and Reform or the Minister for Education and Skills with the consent of the Minister for Public Expenditure and Reform. *Subsection (3)* provides that a chief executive's terms and conditions of employment will be determined by the Minister for Public Expenditure and Reform or by the Minister with the consent of the Minister for Public Expenditure and Reform.

*Subsection (4)* allows the Minister to designate a person to be appointed the first chief executive of an education and training board before the establishment day. *Subsection (5)* provides that the person designated immediately before establishment day will be the first chief executive of the education and training board. If the designated person ceases to hold office at any time between establishment day and the next local elections, *subsection (6)* permits the Minister to appoint another chief executive.

*Subsection (7)* prohibits a chief executive from holding any other office or employment without the consent of the board while *subsection (8)* allows a chief executive to hold an additional office or employment in a public service body for a specified period at the request of the Minister and requires him or her to do so if directed by the Minister.

*Section 15* provides for the functions of the chief executive. *Subsection (1)* requires the chief executive to perform the executive functions of the board. *Subsections (2)* and *(3)* require the chief executive to provide any necessary information to the board and the Minister respectively on the exercise of these functions. The chief

executive is also accountable to the board for the performance of these functions (*subsection (4)*).

*Section 16* confers on the chief executive officer power to delegate a function of his or hers to a member of education and training board staff.

*Section 17* provides for the suspension and removal of the chief executive. An education and training board may suspend a chief executive for stated misbehaviour or where it appears necessary for the board for the effective performance by the board of its functions (*subsection (1)*). A resolution to suspend must be passed by two thirds of the members of the board (*subsection (5)*). If the education and training board suspends the chief executive this must be notified to the Minister (*subsection ((7))*). The Minister must then establish an advisory panel who report to him or her on the matter (*subsection (10)*). When the advisory panel has reported, the Minister then makes a decision to lift the suspension, confirm the suspension or remove the chief executive (*subsection (11)*).

*Section 18* provides for the appointment of education and training board staff (*subsection (1)*). The terms and conditions of staff will be determined by the Minister with the consent of the Minister for Public Expenditure and Reform (*subsection (2)*). *Subsection (3)* permits an education and training board to pay staff remuneration, allowances and expenses as the board, with the consent of the Minister and the Minister for Public Expenditure and Reform, determines. *Subsection (4)* precludes the application of this section to members of staff of a recognised school. School staff are not included because their terms and conditions are already governed by section 24 of the Education Act 1998 (as amended by section 6 of the Education (Amendment) Act 2012).

*Section 19* confers on the Minister power to direct an education and training board to establish or maintain a recognised school or centre for education, or to establish, maintain or resource an education and training facility in its functional area.

*Section 20* facilitates education and training boards cooperating with each other in the performance of their functions. *Subsection (3)* allows the Minister to direct education and training boards to perform a function jointly. *Subsections (4), (5) and (6)* provide for the Minister to notify an education and training board to whom he proposes to give such a direction and for his taking into account representations received on foot of such a notice. *Subsection (7)* allows the Minister to request the Irish Vocational Education Association (IVEA) to assist boards in the joint exercise of functions which are the subject of Ministerial direction. *Subsection (8)* requires compliance by education and training boards with any such direction.

*Section 21* confers on the Minister power to direct an education and training board to carry out a function in the functional areas of another education and training board (*subsection (1)*). *Subsections (2), (3), (4) and (5)* provide for the Minister to notify an education and training board to whom he or she proposes to give such a direction and the board whose functions are the subject of such a proposed direction and for his or her taking into account representations received from either board on foot of such a notice. *Subsection (6)* requires compliance by an education and training board with any such direction while *subsection (7)* requires the cooperation of the board whose functions are the subject of such a direction.

*Section 22* allows the chief executive to submit a proposal to the board for the establishment of a scholarship (*subsection (1)*). *Subsections (2)* and *(3)* set out what such a proposal may specify. *Subsection (4)* allows education and training boards, having considered a proposal, to establish or assist in establishing a scholarship, with the approval of the Minister, or to refuse to establish or assist in establishing a scholarship.

*Section 23* provides for the accountability of the chief executive of each education and training board to the Public Accounts Committee.

*Section 24* provides for the chief executive's accountability to Oireachtas committees other than the Public Accounts Committee.

*Section 25* provides for the making of a 5 year statements of strategy in each education and training board. The section provides for consultation with relevant stakeholders (*subsection (4)*), considerations of policy and financial resources to be had regard to in preparing such statements (*subsection (5)*) and dissemination of the statement (*subsection (7)*). The giving of an opinion as to identifying relevant stakeholders affected by the statement of strategy and the adoption of the plan are declared by *section 12* to be reserved functions.

*Section 26* requires education and training boards to submit an annual report to the Minister, which the Minister must lay before the Houses of the Oireachtas (*subsection (1)*). The report must include a statement of the services provided by the board in that year, details of any gifts received and any other particulars which the board considers necessary or are directed by the Minister (*subsection (2)*). *Subsection (3)* requires the education and training board to publish the report on the internet.

*Section 27* provides for the acceptance of gifts and becoming a trustee. The board's reserved function here is to either accept a recommendation of the chief executive to accept a gift or become a trustee, which is also subject to the consent of the Minister and the Minister for Public Expenditure and Reform, or reject that recommendation. Details of gifts must be included in the annual report of the board (*subsection (3)*).

### **Part 3**

#### **Membership of Education and Training Boards**

*Section 28* sets out the composition of the new education and training boards. *Subsection (1)* provides that there will be 10 local authority representatives, 2 staff representatives, 2 parents' representatives and 4 community representatives. *Subsection (2)* confers on the Minister power to determine the proportion of members to be drawn from each local authority by way of order and the Minister will have regard to relative populations in making that order (*subsection (3)*). *Subsections (4)*, *(5)* and *(6)* relate to elections for staff representatives and allows for establishment of panels from which casual vacancies may be filled.

*Subsection (7)* provides that each national association of parents must nominate one man and one woman. Where more than one national association of parents is permitted to nominate parent representatives, the local authority members and staff representatives must pick the 2 parent representatives from the 4

nominees (*subsection (7)(c)*). *Subsection (8)* allows the Minister to draw up a list of bodies that can make nominations for membership (e.g. business interests, community groups, other patrons or education/service providers, etc). The core board (local authority members, and staff and parent representatives) will co-opt 4 people from the nominees of the bodies specified by the Minister.

*Section 29* provides for the election, appointment and term of office of members of education and training boards. This provides for the sequencing and timeframes in which people become members of the boards.

*Section 30* sets out the eligibility requirements for being a member of an education and training board. Subject to certain strictures under the Bill, a person must be an Irish citizen or ordinarily resident in the country, and be over 18 years of age. *Subsection (2)* permits the Minister to render ineligible for election people in certain posts. This is intended to ensure, for governance reasons, that the chief executive, any person performing chief executive functions and other members of senior management could not stand for election and, thereby, cloud the reserved/executive distinction in functions or create the potential for conflicts of interest to arise. *Subsection (3)* prohibits a person being a member of more than one education and training board at the same time.

*Section 31* defines the circumstances in which a person ceases to be a member of an education and training board. Where a person ceases to be a local authority member, a member of staff of the education and training board or to have children in an education and training board institution, then he or she will cease to be a member if elected or appointed as a local authority, staff or parent representative respectively (*subsection (1)*). *Subsection (2)* allows a parents' representative, whose child has been excluded from a school to remain a member of the board pending the outcome of any appeal under section 29 of the Education Act 1998.

*Subsection (3)* provides that where a person is no longer a member of an education and training board, he or she will also cease membership of any body which he or she was a member of by virtue of his or her education and training board membership. Finally, *subsection (4)* clarifies that if a person ceases to be a member this does not, of itself, affect the validity of any decisions made by the board while he or she was a member.

*Section 32* specifies the headings under which a person will be disqualified from membership. A person will be disqualified if he or she is or becomes a member of the Oireachtas or European Parliament; is an EU officeholder (e.g. judge, European Commission, Court of Auditors); is appointed as a judge or the Comptroller and Auditor General; does not have a current tax clearance certificate; is bankrupt; is imprisoned for a term of more than 6 months; is in breach of a court order; or is convicted of an offence of knowingly making a false expenses claim, breaching confidentiality in relation to an education and training board, perpetrating a fraud against an education and training board, corrupt practice, or acting when disqualified.

*Section 33* makes it a criminal offence to act as a member of an education and training board while disqualified from membership.

*Section 34* provides for the circumstances and mechanics of resigning from membership of an education and training board.



*Section 35* provides for the circumstances in which a casual vacancy in education and training board membership may occur and how one may be filled.

*Section 36* provides for expenses of members. Expenses will be governed by regulations (*subsection (2)*) and an education and training board will be prohibited from authorising the attendance at a meeting or event unless it is satisfied that the attendance is justified having regard to the benefits likely to accrue, the interests of the local community and the cost involved (*subsections (3) and (5)*). In considering the cost factor, the chief executive will first be required to provide written confirmation to the board that it has sufficient resources to fund the attendance proposed and that the attendance would be consistent with any regulations made by the Minister under this section (*subsection (4)*). The annual report must include particulars in respect of the cost of attendance at different types of meetings or events (*subsection (8)*).

## **Part 4**

### **Regulation of Education and Training Boards**

*Section 37* empowers the Minister to issue legally binding directions on an education and training board.

*Section 38* confers on the Minister power to appoint a person to carry out an investigation into the performance of an education and training board (*subsection (1)*). Prior to the appointment of an investigator, the Minister must give the education and training board notice in writing and afford the education and training board the opportunity to make representations (*subsections (2) and (3)*). *Subsections (4), (5), (6), (7) and (8)* deal with the process of the investigation and the report of the investigator. *Subsection (9)* requires the education and training board to supply information to the Minister and to the investigator.

*Section 39* confers on the Minister, after consideration of the investigator's report, power to notify an education and training board of his or her intention to give a direction in relation to the performance of its functions (*subsection (1)*). *Subsection (2)* allows the education and training board to make representations and *subsection (3)* confers on the Minister power to give a direction to the education and training board after consideration of any representations made by the board. An education and training board which is the subject of such a direction is required to comply with the direction (*subsection (4)*). A direction may require an education and training board to enter into an arrangement with another board to provide education and training in that board's functional area (*subsection (5)*) and, where this happens, both education and training boards are required to give effect to the direction (*subsection (6)*).

*Section 40* permits the Minister, where he or she believes that an education and training board has failed to comply with a direction or there are serious deficiencies in the board carrying out its functions, to transfer those functions to the chief executive of that board or to another person for a period of up to 2 years. The board has the right to make representations where the Minister proposes to do this (*subsection (2)*). Where a function of an education and training board has been transferred that board is prohibited from performing that function during that period (*subsection (4)*).

*Section 41* provides for the circumstances in which the Minister may remove all members of an education and training board. The Minister must be satisfied that a board has failed to comply with a direction which follows a report on the operation of the board, fails to comply with a court order, or has refused to submit its accounts to the Comptroller and Auditor General for audit (*subsection (1)*). A right to make representations is provided for (*subsection (2)*). A draft Order removing the members must receive a positive resolution from the Houses of the Oireachtas before it takes effect (*subsection (4)*). A person must be appointed to take over the operation of the board on an interim basis (*subsection (5)*) and new members must be appointed in accordance with the regulations made by the Minister (*subsection (6)*).

## **Part 5**

### **Committees of Education and Training Boards**

*Section 42* provides for the establishment of committees of education and training boards. The establishment and dissolution of a committee, the determination of its terms or reference, regulation of committee procedures, appointment and removal from office of committee members and confirmation of an act of a committee are all declared by *section 12* to be reserved functions.

The chief executive and other members of staff, with the exception of the staff representatives on the education and training board, are prohibited from being a member of a committee.

By convention, VECs establish subcommittees to act as boards of management in respect of each of their schools. *Subsection (11)* confers on the Minister power, in relation to committees which act as boards of management of recognised schools, centres for education, other education or training facilities and children detention schools, prisons or other public education and training facilities, to make directions including rules around their composition and that such committee members must live in the locality.

*Section 43* requires each education and training board to establish a finance committee and an audit committee. The Minister is given power to make directions in relation to the number, appointment and removal of these committee members; the holding of meetings; and the preparation of reports (*subsection (2)*). The chief executive and staff are prohibited from being members of these committees (*subsection (4)*) but in normal circumstances must attend such committees when requested to do so (*subsections (5) and (6)*).

## **Part 6**

### **Finance**

*Section 44* imposes a duty on the Minister to set a provisional expenditure limit as early as practicable in the financial year and to confirm the final limit as soon as possible thereafter (*subsection (1)*). Education and training boards are prohibited from exceeding that limit (*subsection (2)*) and the Minister is empowered to vary the limit (*subsection (3)*). Where the Minister considers that an education and training board may exceed its financial limit he or she may direct the board to modify its annual service plan to ensure it does not contravene the limit or he or she may permit them to exceed their limit (*subsection (5)*). In the event of an excess or saving on



expenditure, the Minister may determine how such excess or saving will be dealt with, including the existing provision of deducting from, or adding to, the following year's allocation, as appropriate (*subsections (6) and (7)*).

*Section 45* requires education and training boards to prepare annual service plans. It allows an education and training board to adopt an annual service plan in advance of knowing its finalised budget for the year, based on a provisional expenditure limit. The plan may be modified when the final limit becomes known (*subsection (4)*). The Minister can require an education and training board to modify a plan that does not meet the policies and objectives of the Government (*subsection (8)*). *Subsections (13) and (14)* allow the Minister, in certain circumstances, to direct an education and training board to submit an annual service plan or an amended annual service plan within a specified period. The adoption of a service plan is declared by *section 12* to be a reserved function.

*Section 46* provides that the deposit of monies by an education and training board are subject to the agreement of the Minister for Finance or the National Treasury Management Agency.

*Section 47* provides for a general power to borrow money. It is contingent upon a proposal being made to the board by the chief executive. *Subsection (3)* allows education and training boards, having considered a proposal, to borrow money subject to the approval of the Minister for Public Expenditure and Reform and the Minister for Finance or the Minister acting in accordance with any requirements or directions of the Minister for Public Expenditure and Reform or the Minister for Finance. *Section 12* declares the power to borrow to be a reserved function.

*Section 48* confers on education and training boards the power to charge for services they provide, subject to the consent of the Minister. Education and training boards will be permitted to provide for the payment of reduced fees having regard to the method of payment (*subsection (4)*) and may amend its fees in line with inflation without having to secure Ministerial consent (*subsections (7) and (8)*).

*Section 49* sets down the financial accounting requirements on education and training boards. Education and training boards will be required to submit their accounts for the previous year to the Comptroller and Auditor General not later than 1 April, or whatever earlier date the Minister determines and requires the Minister to lay a copy of the Comptroller and Auditor General's report before the Houses of the Oireachtas (*subsection (2)*).

*Section 50* requires education and training boards to act in accordance with Ministerial guidelines and directions in respect of internal audit matters.

## **Part 7**

### **Dissolution of bodies**

*Section 51* sets out the meaning of a "relevant education and training board" for the purpose of this part of the Bill.

*Section 52* dissolves the VECs which are being replaced by education and training boards established under this legislation.

*Section 53* provides for the transfer of liabilities from the former VECs to the new entities.

*Section 54* provides for the transfer of property rights from the existing VECs to the new entities.

*Section 55* provides for the transfer of staff to education and training boards or to other public service bodies. In the latter instance, this must be done in accordance with procedures determined by the Minister with the consent of the Minister for Public Expenditure and Reform following consultation with recognised trade unions and staff associations representing the people concerned.

*Section 56* provides for the transfer of rights and liabilities and continuation of certain property matters from the existing VECs to education and training boards.

*Section 57* deals with matters flowing out of transfer of assets and liabilities between the old and the new bodies.

*Section 58* provides for the transfer of records from existing VECs to education and training boards.

*Section 59* provides that the education and training boards will, on the dissolution of the old VECs, prepare final accounts and reports of the old VECs. These must be prepared no later than the first set of accounts and reports for the new bodies.

## **Part 8**

### **Miscellaneous**

*Section 60* repeals the exclusion of certain categories of employees from the provisions of the Unfair Dismissals Act 1977.

*Section 61* repeals section 24(13) of the Education Act 1998 (as amended by section 6 of the Education (Amendment) Act 2012) which requires disciplinary action involving VEC school staff to take cognisance of the VEC Acts' provisions in relation to suspension and dismissal of staff.

*Section 62* provides for the continuation of the system of suspension, inquiries and removal from office provided for under the VEC Acts which are underway at the time of establishment of the education and training boards.

*Section 63* provides for the continuation of the suspension, inquiry and removal from office provisions as they currently apply to certain institute of technology staff.

*Section 64* provides for the continuation of scholarships established by VECs.

*Section 65* confirms the continuation of student support awards made by VECs.

## **Schedules**

*Schedule 1* provides for the repeal of the Vocational Education Acts 1930 to 2001 and the revocation of relevant statutory instruments made under them.

*Schedule 2* provides the establishment of the new education and training boards and the geographical areas to which they relate.

*Schedule 3* provides for meetings and procedure of education and training boards. It includes provisions in relation to land, the seal, the holding and frequency of meetings, attendance by the chief executive at meetings, keeping of minutes and records, declaration of interests and confidentiality.

*Schedule 4* provides for the local authorities that will elect members to each education and training board.

*Schedule 5* provides for the dissolution of each VEC and its replacement by an education and training board.

*Department of Education and Skills,  
October, 2012.*