Submission by the General Synod Board of Education (RI) in relation to the Draft General Scheme of an Education (Admissions to Schools) Bill 2013.

1.0 Introduction

1.1 Primary level: The Church of Ireland ranks second in the State in terms of the provision of primary schools with 174 schools under its Patronage. There are over 500 teachers and over 13,500 pupils in Church of Ireland Primary schools. These schools are managed and served by voluntary boards of management, with each board comprising eight members, giving a total of nearly 1,400 people voluntarily serving the provision of primary schools in the Church of Ireland tradition across the Irish State. There are a further 24 primary schools under the Patronage of the Presbyterian Church, one under the Society of Friends and one under Patronage of the Methodist Church. We believe that the presence of all of these schools facilitates parental choice in Irish education and supports religious diversity within Irish society.

1.2 Second-level: There are twenty post-primary schools in the State which are either affiliated with the Church of Ireland at diocesan level or self-identify themselves as Church of Ireland. The General Synod Board of Education has no role in relation to the management or patronage of these schools. The Committee on Management for Protestant second level school is making a separate submission and will comment on the Draft Scheme from the perspective of the Protestant second level sector.

2.0 Preliminary Remarks:

2.1 The Governing Body of the Church of Ireland is the General Synod which meets annually. The General Synod has a Board of Education and, as an all-island Church, covers both jurisdictions. However, there are two further secular jurisdictional Boards: the Board of Education (RI) and the Board of Education (NI). This submission is therefore made on behalf of the Church of Ireland Board of Education (RI) (hereinafter: COIBOE).

In considering admissions to schools under the patronage of the Church of Ireland, the COIBOE wishes to highlight that in relation to primary level schools, patronage is normally vested in the local bishop and the COIBOE wishes to affirm that patrons of COI schools closely monitor the enrolment/admissions policies in their schools, and that current regulations and good practice is adhered to in this regard. The COIBOE is of the view that admissions policies must reflect two key realities: that the school serves a specific faith community but not limited to just that specific faith community (by virtue of the mission nature of the Gospels) and the expectations and desires of parents for their children to live out their primary and secondary level schooling experience within the particular ethos which
is offered in Church of Ireland schools. The COIBOE considers the right of religious (minority) groups to prioritise entry to schools on religious grounds as essential to the maintenance of the ethos of schools under religious patronage.

In reflecting upon the general issue of the regulation of school admissions, the COIBOE has returned to “first principles” to frame its own considerations on school admissions. Church of Ireland schools seek to be inclusive to all but serve Church of Ireland and Protestant Reformed communities as a priority. The rationale for this prioritisation policy is to ensure that the school continues to primarily serve the religious group or community it exists to serve. The continued existence of any school is based on a level of demand from parents seeking the best possible teaching and learning experience for their child. All our schools seek to serve this expectation. Parents who seek access to Church of Ireland schools have a further and deeper expectation of a school ethos based on Christian principles of justice, honesty, goodwill and respectfulness. All Church of Ireland schools are clear that they offer a school ethos environment which is predicated on Christian religious principles in the Anglican tradition. Such an ethos is viewed to be an enabler of inclusivity and facilitator of the personal growth of the child and/or young person in the school. The ethos of the school and the Christian faith in the Anglican tradition on which the ethos is driven by is not “outside” the school or imposed upon the school, but rather, is an organic expression of the interaction of the life of faith and witness with the everyday life of learning, family and human living. Anglican ecclesiology strongly emphasises the circular nature of living the Christian life in a church of community – rather than any idea of a demarcated hierarchical clerical structure.

2.2 In addressing the issue of schools admissions, the COIBOE recognises that the Minister is seeking to achieve a number of objectives which, it would seem, are either not currently being met or are proving to be no longer achieving an equitable and transparent practice around the issue of school enrolment. In that regard, we support such key objectives of giving as much information as possible to parents on issues such as timelines for enrolment practices, (voluntary) inter-school co-operation, a clearer role for the patron regarding schools admissions and the need for newcomer children to have the same level of choice as children who currently live in a locality. The COIBOE also recognises that the issue of a student not being offered a place in a school might relate to a number of factors but, as stated above, the right of religious ethos schools (and we argue specifically for minority religious schools) to prioritise entry on religious groups is essential. The COIBOE are aware that this Draft Scheme does not seek to alter this position. However, we are also aware that the Equality Authority are also currently seeking submissions and engaging in consultation on Section 37 of the Employment Equality Act. We would be concerned that the basis for schools rights to prioritise entry would be eroded in other forums concurrently with discussions on school admissions.

2.3 The COIBOE regards the right of the schools BOM to determine the content of admissions policies as essential to its role of managing the school on behalf of the Patron, since this is vital to maintaining the life of the school as a living and reflexive community. The COIBOE is greatly concerned therefore, that various aspects of the proposed Bill are seeking to undermine the role of the school BOM as a Corporate Entity (Section 14, (2), Education Act
The current situation is that it is for the BOM alone to decide the content of the schools admissions policy. The rationale for this is as alluded to above but also based on the principle of subsidiarity in that each BOM is best placed to determine what is best for their school. We reject as wholly inappropriate the proposal that the Minister would remove from the control of both the BOM and the patron, and appoint a third party to the school to operate the schools admissions policy. We would question the legitimacy of such a proposal considering Article 44 of the Constitution gives religious bodies the right to manage their own affairs and such schools are not under the patronage of the State.

2.4 The COIBOE recognises that the Minister is seeking to bring both clarity and transparency to the administrational aspects of the school admissions process and is doing so from a national perspective. In this regard, we welcome and support this general policy objective. We have some difficulty however with the approach taken to achieve those objectives and have difficulty with a number of specific proposals contained in the Draft Scheme.

In this regard, the COIBOE views the following proposals with concern and anxiety:

3.0 Re: Head 4 and proposals to amend Section 33 of the Education Act 1998.

3.1 Requirement that a school “set out the position of the school in relation to its arrangement for upholding the constitutional right of any students who do not wish to attend religious instruction”. This COIBOE is of the view that this proposal requires much further consideration and raises a number of questions regarding the perceived duties of the school by the Minister for the upholding of a Constitutional right. Put simply: it is the State which gives the parent the right to withdraw their child from religious instruction in the school: the parent withdraws the child from the class. The COIBOE believes that the proposed wording is confused in its allocation of responsibilities for upholding this State granted right. While schools currently seek to make every effort to facilitate such parental requests, this is done on the basis of practicality within the limits of available resources. Should this now become an obligation on schools it will obviously have to be resourced sufficiently. The COIBOE would therefore be seeking a review of teacher allocations and the pupil teacher ratio for such schools where there is a parental request for the withdrawal of their child from class to be catered for by the school during the school day. The COIBOE also note the use of the term “religious instruction”. Church of Ireland schools provide a religious education curriculum called “Follow Me”. The Follow Me RE curriculum differs greatly in content and approach from religious instruction.

3.2 Under an newly inserted Section 33 (m)(iii) it is proposed that seeks to allow for the Minister to determine the content of every school admissions policy. If enacted, these proposals would significantly alter the current practice on admissions which has developed through experience, custom and practice over many years. A number of issues of serious concern are raised:

3.3 Consultation: wide ranging consultation is of course welcome and encouraged. However, the wording, as set out in the draft document, seems to alter the necessity to have the agreement of patron as to the publication of the admissions policy. This is to be determined by the Minister, under 33 (m) (iii) of the proposed Bill. The BOM is to be required to consult
widely with all school stakeholders (although there is no mention of student councils as exist at second level). There is also an extra provision: that the Minister can require further consultation beyond school stakeholders. The COIBOE is interested to learn who the Minister has in mind for this round of extra consultation.

3.4 The COIBOE is of the view that such a level of required consultation (rather than voluntary) undermines the independence of the BOM to determine for themselves as to who they do and do not consult with in formulating the admissions policy for their school. The COIBOE requests that focused consideration be given to the provisions on consultation and consideration be given to the question of who is appropriate and useful for the BOM to consult with regarding the schools admissions policy and the format such consultations would take.

3.5 Timeframes: It is noted that the Minister is also seeking to take unto himself the powers to proscribe timeframes for the publication of the admissions policy, the format, content, process or timeframe in relation to, inter alia: the acceptance of applications; notification of decisions; acceptance of offers; appeals; appeals decisions, any advisory information, interviews, who is to be consulted with.

3.6 It is also noted that before a BOM approves its own policy, it will be required to consult with various parties as determined by the Minister.

3.7 This COIBOE is of the view that the scope of the proposals in Head 4 are so prescriptive and “micro” focused that the Minister is seeking not only to undermine the status of the Board of Management as a corporate body charged – by law – with the management of the school, but is intending to dilute the role of BOM’s in determining the content of the admissions policies for their own schools.

3.8 Rights and Duties: The COIBOE is of the view therefore that the proposals, as currently drafted, interfere with the rights and duties of school BOM in two ways:

- The duty and obligation of the BOM to manage the school on behalf of the Patron (not the Minister or the State).
- The BOM’s corporate body status with responsibility for managing the school – it is not the duty of the Minister to determine the contents of school policies or to determine and direct in an overly prescriptive way, how BOM’s should do their business.

3.9 Voluntary nature of BOM’s: It should not be forgotten that BOM’s are comprised of volunteers who give freely of their time for the good of the community and that schools, and the BOM’s which manage them, are a community enterprise.

3.10 The rights of citizens to manage their own affairs in regard to the education of their children must be respected by the Minister and the State. The COIBOM does not regard the overly prescriptive proposals in Head 4 of this Bill as a reflection of such respect for the independence of BOM’s and school communities generally.

4.0 Re: Head 5, Head 6 and Head 7.
4.1 Proposed abolition of “Section 29” appeals: The COIBOM is greatly concerned also at the proposal to abolish “section 29” appeals and to substitute in its place an arrangement whereby the BOM sets its policy, is directed by the Minister to give the carrying out of that policy to the school principal and that the appeal on the policy comes back – in finality – to the BOM itself. This seems in clear contradiction of the legal principle of “Nemo iudex in causa sua”. While we are not suggesting that there would be any perception of bias in a Boards deliberation on a matter, it is perfectly understandable that the parent of a child who was refused a place by a parent and had that refusal upheld by the Board would not view the Boards decision as unbiased. Such a parent may seek recourse to the High Court by way of judicial review.

4.2 New function for BOM re: enrolment: A further issue of concern is the proposal to confer upon Boards of Management a “juridical” function in that the BOM must make, not a determination, but a judgement as to whether or not a particular child meets the criteria as set out by the BOM and which will be, to a large degree, determined by the Minister. BOM have never before had such a juridical function. The COIBOE would question as to whether BOM’s have the right to make such judgements, considering that such judgements are judicially reviewable by the High Court.

4.3 Exposure to Litigation: Should this proposal be enacted, BOM’s will be exposed to defending costly legal actions. School insurers will be unlikely to cover these costs.

4.4 Consequences of litigation: Schools would not be in a position to defend such actions. The consequence would be to utterly undermine, if not remove, admissions policies in schools.

4.5 Achieving policy objectives: In our view, it would make the enforcement of an admissions policy impossible and render the whole focus of the proposed Bill and the “first principle” of how admissions to schools are determined, unworkable.

4.6 Necessity of retaining an ultra-board appeal: While we recognise the benefits of the abolition of appeals on admission under “section 29” as a cost saving and resource saving measures for the Department of Education and Skills, it seems obvious to us that the alternative, as outlined, will be detrimental to Boards of Management and the operations of schools. The COIBOE therefore seeks a layer of appeal to be retained above that of the BOM of the School to be retained.

4.7 Utilisation of existing powers: As the Minister will be aware, the Minister is already empowered under Section 33, (g) of the Education Act 1998 to “make regulations” in relation to the administration of schools. The COIBOE is not convinced that the scope of the veracity of this option has been fully explored. It would seem to the COIBOE that the policy objectives in regards to school admissions which the Minister is seeking to achieve could be achieved by making specific regulations under Section 33 (g) of the Education Act 1998. However, it is also recognised that to achieve the removal of “section 29 appeals” an amendment would obviously have to be made to the Education Act 1998. As we will elaborate on below, the COIBOE rejects the premise for the total abolition of an appeal for parents beyond that of the school BOM.
4.8 Discussion on ultra-board appeals: However, the COIBOE would welcome the opportunity to discuss further other alternative remedies in regards to appeals on decisions on enrolment, notwithstanding our view that a “section 29” type appeals mechanism should remain available to parents. The COIBOE is also be interested to learn if consideration has been given to putting in place a set of criteria that would have to be met before an appeal on a refusal to enrol could proceed to the next stage.

4.9 Enhanced role of the principal: while this issue is one of common interest to both school management bodies and teacher representative bodies, (and specifically IPPN and NAPD), from the perspective of the Church of Ireland, we would have a concern in relation to the increased workload this will put on school principals and are concerned at how such a proposal will work in practice in our smaller rural primary schools. A consequence of this Draft Scheme may well be that it will be increasingly difficult to recruit teaching principals.

5.0 Re: Head 11: Co-operation between schools

5.1 The COIBOE is also greatly concerned at the proposal to give power to the Minister to require co-operation between schools on school admissions. It is acknowledged that it has been common practice for schools at primary level to co-operate with each other and put in place local arrangements around general issues on enrolment and admissions. The Board greatly encourages these practices and its secretariat has consistently advises our schools to engage in dialogue with neighbouring schools to ensure cohesive and efficient arrangements are in place to assist parents. However, the proposal that such would be a requirement by the State is unacceptable interference in the rights and duties of a BOM. This would appear to undermine each BOMs right to freely determine how it operates its own admissions policy and takes no cognisance of the rights of both the patron and parents and their expectation that their school will have an admissions policy that seeks to provide places according the perspective of their school and its ethos.

5.2 The COIBOE wishes to highlight the provisions of Article 42.3 of the Bunreacht na hEireann in this regard and reiterate the concern raised in our earlier submission on the discussion document regarding school enrolment on the issue of a place being offered to a child with no cognisance being given to either the religious denomination of the child or the religious ethos of the school concerned. We note that there has been no recognition of this issue highlight again that this is an issue of major concern for the Church of Ireland and other religious minority groups. The COIBOE cannot accept a scenario whereby the State offers a child a place in one of our schools and does so with no regard to the wishes or characteristic spirit of the school concerned. This may well not be what the intended consequence of what is proposed, but such a scenario can be envisaged as arising under the proposals, as currently drafted.

6.0 Appointment of independent persons Re Head 12 and 13:

6.1 The COIBOE welcomes the proposal to allow the patron to appoint an independent person to operate a schools admissions policy. However, we are concerned that there is an inherent
contradiction in the patron appointing a person to act in a manner that undermines the authority of the BOM as a corporate body assigned the duty of managing the school on behalf of the patron. We would be concerned that this option would place a patron in conflict with his/her own BOM.

6.2 The COIBOE is of the view that the appointment of an independent person to a school by the Minister to manage a schools admissions policy is a new departure in terms of the interaction between the school and the State. The COIBOE believe that what is proposed under Head 12 is an inappropriate role for the State to seek. Schools are subject inspection by the Department of Education and Skills and we suggest that if this option is to be pursued that a further role for the Inspectorate might be explored in this regard (this might be achieved by amending Section 13 (3)(a)(i) of the Education Act 1998). Indeed we understand that School Admissions policies are currently within the scope of WSE-MLL inspections.

7.0 Concluding Summary

The COIBOE, while welcoming the intention of the Minister to consider what is best for the common good regarding school admissions and bring a measure of regulation to the area, has some serious concerns regarding a number of the proposals presented in the Draft Scheme.

In that regard, the COIBOE is concerned that the Minister is seeking to over-regulate this area to the extent that the rights of individual schools to determine their own admissions policies will be undermined. The proposal to abolish “section 29” appeals is of specific concern as it may well expose a BOM to litigation.

The COIBOE looks forward to discussing these matters further with the Joint Committee and would welcome the opportunity make an oral submission regarding same.

Submitted to the Joint Oireachtas Committee on Education and Social Protection by the General Synod Board of Education (RI), 31st October 2013.

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