

Consultation for the Forum on Patronage and Pluralism in the Primary Sector

Respondent's Details

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Date	07 th June 2011

Is this response a personal view or is it made on behalf of your organisation?

Personal [] On behalf of organisation [x]

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It is intended to place the submissions on the internet

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07th June, 2011

1.00. Introduction

1.01. The Catholic Primary School Management Association (CPSMA) is a recognized school management organisation. Boards of Management of Catholic primary schools are members of CPSMA. The aim of CPSMA is the advancement of education in Catholic primary schools.

1.02. CPSMA welcomes the establishment of the Forum. Over the last number of years new primary schools have been opened by a variety of Patrons. CPSMA welcomes this as a response to accommodating pluralism. Greater provision for diversity must continue to be made.

2.00. The vision of Catholic Schools

2.01. The Convention on the Rights of the Childⁱ provides that the education of the child shall *inter alia* be directed to the preparation of the child for responsible life in a free society in the spirit of understanding, peace, tolerance, equality of sexes and friendship among all peoples, ethnic, national and religious groups.

2.02. Catholic schools strive for excellence and transmit a passion for learning. They are rooted in parish communities with the family, the school community and the parish working together. Catholic schools offer hope not only to the pupils who attend them but to their families and the wider community particularly in the current economic climate.

3.00. Legal framework for all schools

3.01. Schools operate in a highly regulated environment. They are accountable to the Minister, Patron, Inspectorate, parents and studentsⁱⁱ. The Education Act 1998 provides *inter alia* that a recognised school shall promote equality of access and participation in education. It requires schools to have regard to the principles of a democratic society and have respect for the diversity of values, beliefs, traditions, languages and ways of life in society. Schools must comply with the requirements, regulations and circulars of the Department of Education & Skills. Legal requirements are not limited to the education sphere. The following are the main regulatory/legal components of relevance in the operation of the Irish primary education sector:

- The Irish Constitution
- Rules for National Schools and Circular letters
- Legislation consisting of *inter alia* the Education Act 1998, Education Welfare Act 2000 etc.ⁱⁱⁱ
- Curriculum 1999
- Constitution of Boards and Rules of Procedure updated November 2007 (currently under review).

4.00. Forum's Terms of Reference.

- 4.01.** In the themes for the written submissions reference is made to “multi-denominational” and ‘non-denominational schooling.’ *“Currently the Department of Education and Skills does not recognise the designation of non-denominational schooling. Consequently, there is a tendency to speak only of denominational and multi-denominational schools and to define the latter as more open and inclusive. Inevitably, this gives rise to negative representations of denominational schools as closed and sectarian. This is completely at odds with the experience in local communities throughout the country.”*^{iv} The Irish Human Rights Commission (IHRC) has stated^v *“Given the confusion arising in relation to what constitutes a denominational, multi denominational, inter denominational, non denominational or other school, it is recommended that these terms be defined in primary legislation.”*
- 4.02.** The terms of reference also refer to identifying “...demands for diversity...” so that same can be “*met on a widespread basis nationally.*” The evidential basis for such demand must be established. Indeed the Commission on School Accommodation^{vi} states^{vii} *“A system for establishing new schools must protect and optimise the resources of the State but should not make assumptions regarding the values and choices of parents without proper consultation.”*
- 4.03.** One of the key findings of “*Factors Determining School Choice,*”^{viii} regarding the type of school a parent would chose given availability of all school types, was that less than 10% of respondents would chose a school not under the management of a religious denomination.
- 4.04.** While it is agreed that diversity of provision in primary education is needed, the starting point should be to ascertain the level of demand. Thus the process involves three steps. 1. What is the demand? 2. Where is the demand? 3. How can the demand be accommodated? Until the first two questions have been addressed, it is not possible to move on to addressing the third question. To do so would result in decision making in an unnecessary and potentially misleading vacuum. Public engagement on the issue is vital.^{ix}
- 4.05.** Reference has been made to ‘*transfer/divesting of patronage.*’ There must be clarity regarding what these words mean precisely. The Forum’s terms of reference also refer to advising the Minister on the practicalities of how transferring/divesting of patronage should operate for individual primary schools in communities where it is appropriate and necessary. It is first necessary to engage in a process to determine the communities where it is appropriate and necessary. The critical issue is how to devise a mechanism which will allow this to be established.
- 4.06.** There is reference to ‘*the expressed willingness of the Catholic Church to consider divesting patronage of primary schools.*’ This statement could be taken to mean that no schools would remain under Catholic patronage. This is not what is intended. However it does emphasise the need for the careful and appropriate use of terminology.

5.00. Parental Choice

- 5.01.** International and domestic law recognises the right of parents to have their children educated in a school which conforms to their religious convictions. Such rights are also recognised in the teachings of the Catholic Church.
- 5.02.** In terms of respecting parental choice, it is important to seek a balance between the rights of those who want to “opt in” to denominational education *vis a vis* the rights of those who wish to “opt out.” The State’s obligation to “respect” the right denotes not only a negative undertaking not to interfere with the right but also incorporates a positive obligation to vindicate that right. Judge Power stated in *Lautsi v Italy*^x (the *Lautsi* case) “*Neutrality requires a pluralist approach on the part of the State, not a secularist one. It encourages respect for all world views rather than a preference for one...A preference for secularism over alternative world views—whether religious, philosophical or otherwise—is not a neutral option.*”
- 5.03.** In Ireland the issue of opting out does not simply relate to opting out of religious subjects. The Education Act 1998 provides^{xi} that the Minister “*shall not require any student to attend instruction in any subject which is contrary to the conscience of the parent of the student or in the case of a student who has reached the age of 18 years, the student.*” This could have very wide implications in terms of providing for diversity, once it is realised that issues regarding diversity are not limited to the arena of religion and that it applies equally in all types of schools. In relation to opting out—*The essence of the problem is the lack of real alternatives i.e. of effective pluralism. This restriction of parental choice has not been and is not a legally or constitutionally mandated state of affairs. Rather it is a problem in Ireland at the level of resources, administrative policy and ultimately, political will.*^{xii}
- 5.04.** When considering the issue of establishing parental choice, it is important not to limit the question to parents of children currently enrolled in schools. The potential requirements of future generations must also be considered. There must also be in depth information of the choices on offer so that all are fully informed.
- 5.05.** There are limits to what the state can accommodate in providing for diversity. Judge Rozakis in the *Lautsi* case stated^{xiii} “*...as a result of the changed composition of our societies, it is increasingly difficult for a State to cater for the individual needs of parents on educational issues. I would go as far as saying that its main concern... should be to offer children an education which will ensure their fullest integration into the society in which they live....*”
- 5.06.** It has been stated^{xiv} that “*The Constitutional or statutory right to send a child to a school of one’s choice does not mean that the school itself has to change its status to conform to the parents’ choice.*”^{xv}
- 5.07.** “*The ‘integrated curriculum’ allows the various elements of the curriculum to be taught harmoniously without creating rigid barriers between its various elements...and has been adopted to foster the best educational outcomes for children.*”^{xvi} The issue of religion as part of the integrated curriculum has been raised. It is noteworthy that the Forum itself should refer to “religion” rather than “ethos.” The issue of ethos permeating the school day arises for all school Patrons

not just for Catholic or denominational Patrons. Otherwise the implication is that non denominational schools do not have an ethos or alternatively that it is only a denominational ethos that is objectionable. With advances in technology, no child can be totally isolated from views or opinions not shared by his/her parents, no more than s/he can be protected from passive religious/other symbols in schools or elsewhere.^{xvii}

- 5.08.** The National Directory for Catechesis^{xviii} calls for a religious education based on a partnership of home, school and parish. Many believe that this is a time to strengthen the links between parish and school. The CSP position paper suggests that it would be helpful if a group of parishes or a diocese were to undertake a pilot programme over several years to experiment with a more parish-based religious education.

6.00. Pluralism

- 6.01.** There is diversity of schools and diversity within schools. The latter point is often overlooked. Indeed the fact that it is overlooked is emphasised by one of the questions posed in the themes for submissions i.e. *Where the existing scale of school provision is adequate, how can school(s) be identified to be transferred/divested/amalgamated so as to allow for diversity?* As stated at the outset, a mechanism must be devised to establish the level of demand for diversity. For example is it envisaged that there will be diversity on socio economic grounds? It is important that no one form of patronage is viewed as either elitist or ghettoised. *“One of the great strengths of our primary school system has been that in most parts of the country children from various social strata have attended the same school together. In any reconfiguration there is a danger of much more streamlined social stratification...the strength of our present system where most parents identify the local primary school as their school should not be underestimated.”*^{xix}

- 6.02.** *“Catholic education values tolerance and inclusiveness. In an increasingly multicultural society, it is open to generous dialogue with Christians of other traditions and those of other faiths and none, while remaining true to its own distinctive ethos. Catholic schools are open to children of all denominations. The presence of children from other denominations is seen as an enrichment of the educational experience offered by the school and as a practical expression of the commitment to inclusivity.”*^{xx}

- 6.03.** Catholic Schools are to the forefront in providing for social inclusion and are diverse. This relates not just to children from socio economically deprived backgrounds but also to children from migrant and travelling backgrounds. It is the view of CPSMA that the Department of Education’s audit which led to the invitation to the OECD to conduct its review on migrant education supports the finding that Catholic Schools are the most inclusive in providing for immigrant pupils.^{xxi} Catholic schools are indisputably to the forefront in providing education to members of the travelling community.^{xxii}

- 6.04.** The inclusion of children with special needs in mainstream Catholic schools is an exemplar of best practice of social inclusion in the truest sense of the word ‘inclusion.’ While much is made of the right of denominational schools to favour the admission of children of its own ethos, anecdotally this is not a cause of great

concern. A cause of much greater concern is where schools 'encourage' parents of children with special educational needs to seek a place elsewhere. It would appear that the willingness of Catholic schools to enrol children with special education needs is not matched with a concomitant political willingness, as large sections of the *Education for Persons with Special Educational Needs Act 2004* have not been commenced.

- 6.05.** In terms of the issue of diversity of provision, the Commission on School Accommodation states^{xxiii} *“Traditionally choice in primary school provision has been based around the choice of denominational education, formation and practice and choice in terms of language (English or Irish). Clearly in our society these are not the only elements of diversity. These elements include, but are not limited to, diversity related to socio-economic, ethnicity, gender, nationality and inclusion of children with special educational needs.”* The Commission also refers^{xxiv} to applications that were made to the New Schools Advisory Committee (NSAC) on grounds of diversity, which included single sex versus co-educational, inter-denominational and multi-denominational. The report also stated^{xxv} *“It could also be the case that demand in future could arise for other diverse types of schools.”*
- 6.06.** It is incorrect to equate pluralism with secularism. Those who expound secularism also impart a viewpoint and are not neutral. The Grand Chamber in the *Lautsi* case stated that the terms religious and philosophical convictions refer not only to religious convictions but also to the views of the supporters of secularism.^{xxvi} Judge Bonello stated^{xxvii} *“The Convention has given this Court the remit to enforce freedom of religion and of conscience, but has not empowered it to bully States into secularism or to coerce countries into schemes of religious neutrality. It is for each individual State to choose whether to be secular or not, and whether, and to what extent, to separate Church and governance. What is not for the State to do is to deny freedom of religion and of conscience to anyone.”*
- 6.07.** The value of religious education in itself in the building of a healthy society should be recognised. Central tenets of the religious education provided in Catholic schools are respect and inclusivity. In his 2011 Report to the Human Rights Council,^{xxviii} the UN Special Rapporteur on Freedom of Religion or Belief suggested that schools have a powerful role to play in promoting tolerance and understanding among children of different faiths. *“School education has a complex role to play in this endeavour. On the one hand, school education should provide fair information about different religions and beliefs. On the other hand, the school offers unique possibilities for face-to-face communication between members of different communities. The Toledo principles^{xxix} suggest – first that there is a positive value in teaching that emphasises respect for everyone’s right to freedom of religion and belief, and second, that teaching about religions and beliefs can reduce harmful misunderstanding and stereotypes.*
- 6.08.** It has been stated that^{xxx} *“Europe does not have a better narrative for the 21st century than unity in diversity. Both parts are important. One alone is not enough. There have been many attempts, quests for unity without respect to diversity, but also for diversity without unity, without cohesion-both positions do not work. Our challenge is to transcend the multicultural mode that has developed in our societies, where*

communities simply co-exist, next to each other in their own space and without interacting. What we need is a step towards an intercultural approach. 'Inter' means a relationship between two or more in dialogue, in communication, in interest, in respect and of course means also to share responsibility...Thus intercultural education, including developing ability to deal with the diversity of traditions and religions, has a fundamental role in promoting active European citizenship."

- 6.09.** In considering what model(s) to adopt it is important to ensure that the culture, heritage and traditions of this country are taken into account. The European Court of Human Rights in the *Lautsi* case reaffirmed that states have a 'wide margin of appreciation' and in that case, Italy was entitled to have regard to the Christian traditions of the state. The policy recommendations of REDCo^{xxxix} stated "*Throughout the world, people are increasingly coming to recognise the implications of the renewed importance religion holds for both individuals and societies in national and international politics and public discourse...we suggest a need for a degree of differentiation at the national level regarding the implementation of policies in the educational system. This is due, for example, to different national traditions, norms, legal systems and pedagogical approaches in dealing with religion in education. Each national context needs to be taken into account when policies are applied.*"

7.00. Wider considerations

- 7.01.** In addition to the issue of parental choice there is also the issue of the wishes of other members of the school community i.e. the Board of Management, the trustees, the employees of the school e.g. teachers, SNAs etc.
- 7.02.** Boards of Management consist of a voluntary group of people working for the good of the school and the wider community. As a result of this system, there is very heavy reliance on the support given by Patrons and management bodies which have developed an enormous level of expertise.^{xxxix}
- 7.03.** It is important to ensure that teachers have training which provides for education in ethos. "*Recently, St. Patrick's College, Dublin, at the request of the Department of Education & Skills, has started to offer an alternative curriculum Ethics and Education course for those who do not wish to take the Catholic curriculum course. This is stated to be a secular course based on human rights and civic society.*"^{xxxix} In terms of teachers currently in employment, a question which may arise if a change of patronage is proposed, is whether teachers will be prepared to work in a school of a different Patron.
- 7.04.** Seventy per cent of primary schools have less than 200 pupils and are located in rural areas. Solutions which might work in cities or large urban areas may not necessarily work in rural communities and *vice versa*.
- 7.05.** Catholic schools are parish schools. The needs of the wider community were acknowledged in the report of the Commission on School Accommodation, as it stated^{xxxix} "*Clearly, any implementation framework that is developed to facilitate the possible transfer of patronage would need to be planned and managed and it would be important in individual school cases for consultation to take place with all relevant*

stakeholders including parents, teachers and local communities. Any changes could only come about by agreement between the various stakeholders.”

- 7.06.** The reference to agreement is apposite. Thus it will be necessary to have distinctive mechanisms, one for transfers of patronage where agreement of all will be required and a separate mechanism in respect of the consultation required regarding the patronage of schools on green-field sites.
- 7.07.** The Commission on School Accommodation states^{xxxv} “*The Group further considers that the Department should take all reasonable measures to ensure that there is a choice of patronage of schools available where there is a critical mass of demand for such choice, having regard to the finances available.*” How to establish a critical mass is the essential question. “*The Group also considers that in concluding as to whether a demographic need might be met through extension projects in local schools, the Department should not seek to extend accommodation in existing schools of a certain patronage, where there is a **certain level** of demand for patronage of a different type in that area^{xxxvi}” (emphasis added). Perhaps what was implicitly accepted by the Commission was that a change of Patronage would require a ‘critical demand’ whereas the provision of a new school on a green field site would merely require a ‘certain level of demand.’ This would also lend credence to the concept that two separate mechanisms are necessary as referred to at clause 7.06 above.*
- 7.08.** There are also legal considerations regarding deeds of trust and Charity law obligations and the potential limitations which these might impose. The IHRC stated that one of the advantages of retaining the current patronage model is that it *inter alia* “*avoids some legal issues around property ownership of schools...*”^{xxxvii} The Board of Management is also an employer and there are a myriad of issues related to staff, especially if there is a divergence between what they and parents want. What is the position if for instance a Patron wishes to divest but the trustees are not in a position to facilitate this? Is there for example a difference between a potential transfer of patronage in circumstances where a school is closing down e.g. due to falling numbers and on the other hand a potential transfer where a school continues in existence? Is it necessary to seek consent from the Charity Commissioners? Are there any issues regarding the objects for which the property is held on trust? What are the implications from a charity law point of view if property is transferred without consideration and what is the position if some of the community object to the proposed transfer?
- 7.09.** It has been suggested that providing for diversity has to be done in a cost neutral way. Cost neutral for whom? Boards of Management are already delivering management for free. It is questionable whether the process can be cost neutral for all parties and this may have implications regarding the obligations of trustees of charities, who may not be legally entitled to engage in a process if this is in breach of the obligations of the trustees. The new Charities legislation will obviously be hugely relevant to these issues.
- 7.10.** Teaching resources for children with special needs and children who require support with English language provision are being cut despite an entitlement to same. This is

being done on the basis of the EU/IMF Programme of Support for Ireland and the cap on numbers in the public service. Thus in terms of potential resource implications it must be borne in mind that teachers may not agree to teach/go on the panel of schools under a different Patron. Schools are also suffering cuts to other supporting posts e.g. the removal of the visiting teachers for travellers posts and 10% reduction in resource posts for children with special educational needs. These cuts have wider implications regarding provision for inclusion^{xxxviii}.

- 7.11.** The cost of current school provision should be analysed. It is vital to know the precise cost of each form of patronage. Thus issues such as staffing, maintenance costs etc. need to be clearly identified. In addition there is also the issue of equality. In the OECD Reviews of Migrant Education^{xxxix} it was stated^{xl} *“If access to differentiated forms of education is not equitable, there is a problem.”*

8.00. Transparent system

- 8.01.** There is a need for a transparent system for establishing the patronage of new schools with the same qualifying criteria applying to all. It seems irrefutable that new schools on green-field sites will be required as the Commission on School Accommodation Report stated^{xli} *“...the total enrolment in primary schools may grow from 505,600 pupils in the 2009/10 year to 569,600 by the year 2018. This could lead to the need for an additional 2,285 classrooms over the period.”*

- 8.02.** It is likely that new Catholic schools will be required. According to the 2006 Census the Catholic population has increased by 218,840 persons since the census in 2002 i.e. from 3,462,606 to 3,681,446.^{xlii} This increase is greater than the total number of persons who considered themselves as belonging to no religion i.e. 186,318. The need for new Catholic schools is borne out in practice e.g. one Catholic school^{xliii} which opened in 2007 with 59 pupils and 4 teachers has a projected enrolment for this September of 370 pupils and 23 teachers. Another Catholic school^{xliiv} which opened in 2001 with 46 pupils now has an enrolment of 736 pupils with a staff of 36.

- 8.03.** The need for a transparent system was emphasized by the Commission on School Accommodation.^{xliv} *“The Group considers that there needs to be a process brought in to replace the NSAC system which should be open and transparent and should be robust in that it will be applicable in all demographic scenarios and will have flexibility to change with varying economic and social circumstances.”*

- 8.04.** All schools should be equally resourced regardless of patronage. If alternative Patrons are envisaged, these should be identified. Although there is no constitutional bar to such provision, currently the state does not provide education directly at the primary level (apart from a small number of model schools). Therefore the future role which the state wishes to play in terms of the provision of primary education must also be identified. The sustainability of any new type(s) of patronage must be considered. The follow through of any patronage type into post primary must also be factored in.

9.00. Experience in other countries.

9.01. There are very few countries which do not have a variety of patronage models e.g. in England one third of state schools are faith schools. (Refer to **Appendix A** for more detailed analysis of the experience in other countries).

10.00. Providing for diversity.

10.01. In terms of the provision of new schools on green-field sites the Commission on School Accommodation stated^{xlvi} “*Internationally the practice in regard to new school establishment is that the relevant central Government authority may decide to establish a new school based on need, and this decision is generally made following a public consultation process.*” It went on to say “*A new school is of central importance to a local community and therefore the establishment of a new school must be carried out with reference to the overall plan of the local authority for any given area*” and^{xlvii} “*Detailed demographic analysis is necessary in order to determine the requirement for school places.*”

10.02. In terms of providing for diversity in areas where existing provision may be adequate, it is important that all options are considered. It is also vital to ensure that options are reviewed at regular intervals.

10.03. It may not be necessary to have a transfer of patronage. Consideration could be given to existing schools granting a licence to other providers to use part of the school premises. Legal safeguards would have to be built in. In addition respect for ethos etc. would have to be copper-fastened.

10.04. A licence agreement could be put in place to allow two separate school communities operate on the same site. Consideration could also be given to shared campus arrangements. Significant legal and administrative issues arise which would need to be addressed in advance.

10.05. Catholic Schools could assign a certain number of places *pro rata* for non Catholics. Chaplains could be provided for those of different religious persuasion. For those who do not want same, a person with the appropriate qualifications could be provided to deliver an appropriate alternative programme. These positions would have to be state funded as occurs at second level.

10.06. In areas where there are a number of small schools under the same patronage in a limited geographical area, options that respect the rights of all concerned could be explored.

10.07. Co-trusteeship/co-patronage models could be explored. This would entail *inter alia* representation on the Board of Management with provision for the religious education and formation of the pupils in accordance with the rites, practice and teaching of the religious denomination to which the pupil belongs. This also creates a link between primary and post primary.

10.08. Another possibility arises where parents want their children to go to a Catholic school but want to opt out of the religious curriculum. In this situation it should be clearly agreed in advance between the parents and the Board of Management what the school can and cannot cater for. In addition, provision could possibly be made for the

attendance of a chaplain in the child's own faith or another appropriate programme. "Opt out" should not be interpreted or implemented as "left out". The Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools^{xlviii} provided that *recognising opt out rights may be a satisfactory solution for parents and pupils, provided the opt outs are structured in a sensitive and non discriminatory way. Consideration could also be given to making provision for the representation of minority interests in the management structure.*

10.09. In terms of the two official languages the emphasis should be on promoting the first official language in all schools i.e. making **all** Irish children fluent in the language. This relates to "how" rather than "where" the language is taught. *"It is important to note the importance of the Irish language, not just in Irish-medium schools, but also in English-medium schools and that it is a function of all schools to promote the Irish language. This is set out in the Education Act, 1998 (section 9)".*^{xlix} The suggestion^l in the Report on School Accommodation regarding the operation of separate streams without a change of patronage is worthy of serious consideration. *"The Group considers that there may also be potential in the use of existing vacant spaces in school buildings in areas where there may not be a demographic need for a new school...The Group also considers that there may be other potential for linguistic diversity to be realised without a change of patronage, for example an existing English-medium school may change to become an Irish-medium school or an Irish-medium element may be introduced in an English-medium school."* In providing for separate streams practical accommodations could be made e.g. having separate times for the start of the school day, lunch time and going home.

10.10. Any option which is under active consideration would have to be piloted in order to establish whether it can work in practice.

11.00. Conclusion

11.01. The constitutional right to denominational education is well established.

11.02. It is accepted that there is a demand for diversity. What must be established is the level of demand and depending on this, the extent to which it can be accommodated. An independent expert body with agreed terms of reference should be established to conduct the statistical analysis. Such research could only be conducted after a public information campaign has been undertaken.

11.03. An independent body with agreed terms of reference should also be established to decide on the patronage of new schools with the application of an open and transparent system.

11.04. The significant issues of balancing of rights, e.g. the rights of the child, of school staff, of the family, of the minority *vis a vis* the majority etc. need detailed consideration. While taking into account the rights of minorities any such consideration must take account of the traditions, values and culture of the Irish people together with recognition of a changing society and its needs going into the future. In addressing present and future needs Ireland needs to take care not to adopt solutions which may be counterproductive in the longer term. A mature and considered position needs to be adopted.

Appendix A: Experience in other countries

- 9.01.** There are very few countries that do not have a variety of school patronage models. *“A wide “margin of appreciation” is to be afforded States under human rights law in formulating the framework for education in relation to the questions of a) who educates children whether this is to occur through State schools or through private patrons (or a mixture of both) and b) the syllabus and curriculum in schools”^{li}* While it is instructive to look at the provision made in other EU countries it is important to ensure that the Irish education system represents the culture and traditions of this country. It has been stated^{lii} *“In Europe there is a wide variety of educational systems. Religious groups are involved in different ways and to different degrees in each of these systems. We have a mosaic of autonomous national education systems. Although we have some general aspirations at the European level, we do not attempt to make these into a uniform system. There is not one single European model. We respect the competence of member states for the content and organization of their educational system.”*
- 9.02.** Approximately one third of state schools in England are faith schools^{liii}. In the document entitled *“Faith in the System”^{liv}* the position of faith schools in the United Kingdom was firmly reinforced as being integral to the school system and society. The UK government *“remains committed to supporting the establishment of new schools by a range of providers-including faith organisations-where local consultation has shown that this is what parents and the community want, and where this greater diversity will help to raise standards^{lv}”* and *“This dual system of voluntary schools supported by faith organizations and schools without a religious character is therefore at the heart of the school system in England. The Government continues to support the benefits to society that this system brings for parental choice and diversity...^{lvi}”* This stance was firmly reinforced by the Government which was elected in 2010 as within a few weeks of coming to power the British Prime Minister indicated that he wanted to increase the number of faith schools.
- 9.03.** *When the state became formally involved in the establishment of elementary schools in England, it decided unlike France and the US, not to separate church and state. Rather, a decision was made to permit the existing church or denominational schools to continue to exist and to fund them at least partially. However, it was decided that a separate stream of state-funded, non denominational schools would run parallel to the denominational schools. Provided these schools have been designated by the Secretary of State as having a religious character, they may discriminate in favour of the relevant faith for appointment or promotion of teachers in the school.^{lvii} In addition, discrimination is also permitted in regard to remuneration. The government can contribute up to 90 per cent of the total capital costs of the school buildings and 100 per cent of administrative costs in state grants, including teachers’ salaries, to the faith schools. Although most of the denominational schools have voluntary-aided status and receive most of their funding from the state, the school authority retains the right to control admissions to the school.^{lviii}*

- 9.04.** *Unlike France, which maintains a strict separation of church and state, Germany has adopted a centralist approach which it enshrined in the relevant provisions of the Weimar Constitution and later transposed into the Basic Law. Accordingly, provision is made for a system of church-state cooperation applying to a wide sphere of life so as to meet the needs of the people. The majority of the Landers in West Germany introduced the Christian Communal School (“christliche Gemeinschaftsschule” CGS hereafter) as the norm for compulsory schooling. Although not bound by a specific creed, the CGS is grounded in Christian cultural traditions, as it is open to Christian religions while excluding, as far as possible, ideological or religious pressures. The right to establish private schools is also constitutionally guaranteed in Germany but this right requires state approval and is subject to the laws of the lander. While religious instruction forms part of the regular curriculum in state and in municipal schools, with the exception of non-denominational schools and those landers exempted under Article 141, the right to decide whether a child receives religious instruction or not vests in the persons entitled to bring up the child^{lix}.*
- 9.05.** *Since religious instruction is part of the German state school curriculum, it is the responsibility of the state and is subject to state supervision. Accordingly, the state defrays the cost of personnel and materials for religious instruction. Since religious instruction must be taught in accordance with the tenets of the religious community concerned, the churches generally decide the content of the religious instruction programme and the state pays for such instruction to be taught to students. This guarantees the churches the right to co-operate with the state in designing syllabuses, in choosing textbooks and in inspecting the quality and compatibility of the religious instruction taught. Most significantly, the churches retain the right to co-operate with the state in the selection and appointment of teachers for religious instruction. By contrast with Ireland, the German state generally provides a mandatory “replacement” class for those students whose parents decide that they are to be withdrawn from religion. While religious instruction (unlike the broad programme of religious education or ethics) is to be given in accordance with the tenets of the religious communities, this position is expressly stated to be “without prejudice to the state’s right of supervision” which embraces the entire curriculum. If teachers in Germany wish to teach religious instruction, they must acquire a specific mandate from the relevant church, which is termed a “vocation” for Protestant teachers and a “mission” for Catholic teachers. Although the German state may make its Ethics programme compulsory for all students in the public school who choose not to attend religious instruction, the Irish state may not mandate its secular comparative religious education programme in any publicly-funded schools. This distinction arises from the wide-ranging control the German Constitution has over “the entire curriculum” in the Basic Law, which contrasts with the restricted remit of the Irish State in Art. 42, of the Constitution of Ireland.^{lix}*
- 9.06.** *In France public service education co-exists alongside private institutions, all of which are under the control of the state. Private schools, the majority of which are Catholic, are within the remit of public service education, and are eligible for public funding, provided they have signed a contract with the state. Currently approximately 17 per cent of pupils in France attend private schools (94 per cent of which are Catholic), in which the teachers are remunerated by the state. There is no religious*

instruction in the public schools in France, but it is taught, however in public universities and in private schools.^{ixi}

ⁱ Article 29, referenced at pages 88 & 89 of Irish Human Rights Commission “Religion & Education: A Human Rights Perspective” May 2011.

ⁱⁱ S. 9 of the Education Act 1998 provides that a recognised school shall provide education to students which is appropriate to their abilities and needs and to ensure that the educational needs of all students are identified and provided for as well as ensuring that parents have access to records relating to the progress of the student. Under S.13 of the Act the Inspectorate evaluates the organisation and operation of schools and the quality and effectiveness of the education provided, it evaluates the education standards and assesses the implementation of regulations made by the Minister. Under S. 15 it is the duty of a Board of Management to manage the school on behalf of the Patron for the benefit of the students and their parents. Under sections 16 & 17 of the Act the Patron and/or the Minister may dissolve a Board of Management and under S.19 the Minister and/ or the Patron may obtain a report on the Board of Management. S.20 provides that a Board of Management shall establish procedures for informing parents of matters relating to the performance and operation of the school and S. 29 provides for appeals to the Secretary General of the Department in relation to refusals to enrol, suspensions and expulsions.

ⁱⁱⁱ Education for Persons with Special Educational Needs Act 2004, Education (Miscellaneous Provisions) Act 2007, Teaching Council Act 2001, Ombudsman for Children Act 2002, Organisation of Working Time Act 1997, Children’s Act 2001, Disability Act 2005, Employment (Information) Acts 1994 and 2001, Maternity Protection Acts 1994 and 2004, Employment Equality Acts 1998-2008, Equal Status Act 2000-2008, Equality Act 2004, Minimum Notice and Terms of Employment Act 1973-2001, Safety, Health and Welfare at Work Act 2005, Data Protection Acts 1988-2003, Protection of Employees (Part-Time Work) Act 2001, Protection of Employees (Fixed-Term Work) Act 2003 and the Charities Acts (1961, 1973 & 2009).

^{iv} Position paper of Catholic Schools Partnership (“CSP Position Paper”) entitled “Catholic Schools in the Republic of Ireland” published on 06/04/2011.

^v Page 99 Irish Human Rights Commission (IHRC) “Religion & Education: A Human Rights Perspective” May 2011.

^{vi} Report of the Commission on School Accommodation-Revised Criteria and Procedures for Establishment of New Primary Schools. Published February 2011.

^{vii} At page 23.

^{viii} An all Ireland Survey of Parents published in April 2008 by the Council for Research and Development of the Irish Bishop’s Conference.

^{ix} This is not currently evident as is borne out by the experience of the Commission on School Accommodation. Only 27 submissions were received by it in its public consultation process despite a nationwide advertising campaign.

^x Application No. 30814/06-Judgment of the Grand Chamber of the European Court of Human Rights delivered on 18/03/2011, pages 44 & 45 of the concurring opinion of Judge Power.

^{xi} S. 30 (2) (e).

^{xii} Page 54 of the submission of the Iona Institute in response to the IHRC discussion paper “Religion and Education: A Human Rights Perspective” 25 March 2011

^{xiii} Concurring opinion of Judge Rozakis joined by Judge Vajic page 35.

^{xiv} *In Uí Chróinín & ors V The Minister for Education & Skills & another*, a High Court Decision of Mr. Justice O’Neill dated 01/05/2009.

^{xv} This reiterates what was stated by Barrington J in the Supreme Court Decision in *Campaign to Separate Church and State Ltd. V The Minister for Education* [1998] 3 IR 321 “A religious denomination is not obliged to change the general atmosphere of its school merely to accommodate a child of a different religious persuasion who wishes to attend that school”

^{xvi} IHRC at page 24 “Religion & Education: A Human Rights Perspective” May 2011.

^{xvii} It was stated in the *Lautsi* case at paragraph 72 page 29 “*Furthermore, a crucifix on a wall is an essentially passive symbol...It cannot be deemed to have an influence on pupils comparable to that of didactic speech or participation in religious activities.*”

^{xviii} The National Directory for Catechesis in Ireland *Share the Good News* was launched by the Irish Catholic Bishops Conference, January 2011.

^{xix} CSP position paper.

^{xx} Vision 08 is a Pastoral Letter from the Irish Catholic Bishops’ Conference dated 12th May 2008

^{xxi} The Audit conducted by the Department of Education confirms that in 6 of the 9 Clusters of schools which had both Catholic and Multidenominational schools, the Catholic Schools had greater numbers of International children and in some cases significantly so.

In a cluster of 11 schools in the Greater Dublin area, Catholic Schools had 17.6 %, 11.25%, 7.94%, 7.21%, 4.71%, 4.45% and 0%. The Multi denominational school in that cluster had 2.95%.

In a cluster of 5 schools in the Greater Dublin area the Catholic Schools had 22.65%, 14.87% and 5.52, the multidenominational school had 2.11%,

In a cluster of 22 schools in the Greater Dublin area the Catholic Schools had 49.06%, 35.83%, 35.26%, 31.15%, 30.38%, 29.35%, 27.92%, 25.75%, 24.18%, 23.41%, 21.74%, 19.27%, 17.86%, 15.49%, 13.24%, 10.56%, 8.6% and 0%. The Multidenominational schools had 65.85% and 15.35%. It might be noted in this regard that the enrolment figure for the higher of the two multidenominational schools was 201-250 compared to 951-1000 for the Catholic School and in addition the other multi-denominational school which had an exactly comparable enrolment figure with a Catholic School had a slightly lower figure.

In a cluster of 9 schools in a provincial city the Catholic Schools had 29.82%, 14.98%, 14.55%, 11.11%, 5.61% and 0% whereas the Multidenominational school had 4.65%.

In a cluster of 10 schools in a provincial city the Catholic Schools had 17.59%, 11.62%, 3.81%, 2.75% and 0% whereas the Multidenominational school had 25.71%. However it is noteworthy in this regard that the enrolment figure for the school was 1-50 whereas the Catholic school with 17.59% has an enrolment of 201-250.

Of a cluster of 15 schools in the Greater Dublin Area the Catholic Schools had 24.12%, 15.38%, 14.85%, 13.99%, 11.78%, 9.62%, 8.90%, 8.67%, 5.14%, 5.11%, 4.57% and 0% whereas the Multidenominational school had 7.62%

Of a cluster of 13 schools in a Provincial Town in the North West Region the Catholic Schools had 15.64%, 13.68%, 11.93%, 9.15%, 5.8%, 5.26%, 1.08%, 0.88%, 0.71% and 0% whereas the Multidenominational school had 12.9%

In a cluster of 16 school in a Provincial City the Catholic schools had 22.38%, 20.26%, 17.88%, 16.57%, 14.84%, 9.46%, , 9.42%, 7.88%, 7.64%, 5.82%, 3.31%, 2.24%, 1.85% and 0.58% whereas the Multidenominational school had 21.01%, again on an enrolment of 101-150.

In a cluster of 6 schools in a provincial town in the Eastern Region the Catholic schools had 4.24%, 4.12%, 1.82% and 0% and the Multidenominational school had 11.90%. However the Multidenominational School had an enrolment of 101-150 whereas the highest Catholic School had an enrolment of 401-450

Of the 10 Multidenominational schools 1 had an enrolment of 1-50, 3 had an enrolment of 101-150, 5 had an enrolment of 201-250, 3 had an enrolment of 101-150 and 1 had an enrolment of 351-400.

^{xxii} The Audit conducted by the Department of Education confirms that of the 13 Multidenominational school referred to only 3 schools provide for children from the travelling background and of those the percentages are 4.07%, 8.87% and 0.48%. If one takes the higher enrolment numbers i.e. enrolment of 250 pupils in two of the schools and 150 in the other school and calculates the number of pupils using the percentage figures, this gives a total of 24.69 pupils as the absolute maximum number of children from a travelling background attending Multicultural schools. This is out of a possible total of 2,518. All of the remaining 2493.31 children from the travelling community attend Catholic Schools. This means that multidenominational schools do not provide for even 1% of the children from travelling backgrounds.

^{xxiii} In its report dated February 2011 at page 18.

^{xxiv} At pages 27 & 28 of its report.

^{xxv} At page 5.

^{xxvi} The Grand Chamber stated at paragraph 58 page 25 "...supporters of secularism are able to lay claim to views attaining the "level of cogency, seriousness, cohesion and importance" required for them to be considered "convictions" and that "...their views must be regarded as "philosophical convictions.""

^{xxvii} Paragraph 2.3 page 40 of the concurring opinion of Judge Bonello.

^{xxviii} Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, Human Rights Council, Sixteenth session, Agenda item 3, A/HRC/16/53, General Assembly Distr.: General 15 December 2010; at para 30 ; quoted in Religion & Education: A Human Rights Perspective May 2011 page 91.

^{xxix} OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief, Guidelines for review of legislation pertaining to religion or belief, referenced at paragraph 285, page 94 of IHRC "Religion & Education: A Human Rights Perspective" May 2011.

^{xxx} Jan Figel then Commissioner for Education, Training, Culture, and Youth of the European Commission in a presentation of REDCo (Religion in Education- A contribution to dialogue or a factor of conflict in transforming societies of European countries) in the European Parliament on 03/12/2008. His paper was entitled "Religion in education-a contribution to Dialogue or a factor of conflict"-pgs 8&9.

^{xxxi} Religion in Education: Contribution to Dialogue-Policy recommendations of the REDCo research project 19/03/2009-funded by the European Commission. Pages 1 & 3.

^{xxxii} The issue of expertise was recognised at page 98 IHRC's "Religion & Education: A Human Rights Perspective" May 2011 "*The advantages of retaining the patronage model are that it allows the excellence built up in so many schools to continue with continuity.*"

^{xxxiii} Ibid page 35.

^{xxxiv} At page 41.

^{xxxv} At page 5.

^{xxxvi} At page 8 of the report.

^{xxxvii} At page 98 of IHRC "Religion & Education: A Human Rights Perspective" May 2011.

^{xxxviii} This issue was also raised by the Ombudsman for Children Emily Logan in an interview with RTE "Morning Ireland" on 01/06/2011.

^{xxxix} published in December 2009.

^{xl} At page 56.

^{xli} At page 14.

^{xlii} <http://census.cso.ie/Census/Table Viewer.aspx>.

^{xliii} St. John the Evangelist, Adamstown, County Dublin.

^{xliiv} St Patricks NS Diswellstown, Co. Dublin.

^{xliiv} At page 48.

^{xlivi} At page 6.

^{xliivii} At page 7.

^{xliiii} The Organisation for Security and Co-operation in Europe (OSCE) /Office for Democratic Institutions and Human Rights (ODIHR) Advisory Panel of Experts on Freedom of Religion or Belief-Guidelines for Review of Legislation Pertaining to Religion or Belief referred to at pages 94 & 95 of IHRC-"Religion & Education: A Human Rights Perspective" May 2011.

^{xlix} At page 24.

^l At pages 8 & 9.

^{li} Page 97 IHRC-"Religion & Education: A Human Rights Perspective" May 2011.

^{lii} Jan Figel-religion in education-a contribution to Dialogue or a factor of conflict- at page 10.

^{liii} Dymna Glendenning "Religion, Education and the Law", published by Tottel page 156

^{liiv} Faith in the System a joint vision statement of the UK Government and providers of publicly funded schools with a religious character. Published in 2007.

^{liv} At page 4.

^{livi} At page 3.

^{liiii} In Ireland the Equal Status Act 2000-2008, s 7(3)(c) allows schools, including schools in receipt of public funding, to favour certain pupils on grounds of religion in relation to admission where the objective of the school is to provide education in an environment which promotes certain religious values. The right of schools to favour candidates on grounds of religion in employment is provided for by s. 37(1) of the Employment Equality Act 1998.

^{lviii} Dympna Glendenning "Religion, Education and the Law", published by Tottel pages 157, 159, 164 & 165.

^{lix} Ibid pages 183, 184, 186, 199 & 209.

^{lx} Ibid pages 200, 201 & 431.

^{lxi} Ibid pages 217, 218, 238 & 248.