



**Association of  
Trustees of Catholic  
Schools**

**Submission to Advisory Group**

**7 June 2011**

# ATCS Response

## Introduction

Catholic Schools are an expression of a long and varied tradition of involvement in education by local communities or congregation of religious, inspired by their faith in Jesus Christ, established and sustained by a partnership between home, school and parish and/or religious congregation. Catholic Schools emphasize the dignity of the human person as a child of God, called to work with others in creating an inclusive community in service of the common good, where knowledge is sought and respected while faith is nurtured and challenged.

The Association of Trustees of Catholic Schools (ATCS) is a relatively new body (it was established in September 2009), and its members represent a long tradition in Catholic Education in Ireland, a tradition that predates the establishment of the National Board by the Stanley Letter of 1831. In fact, for several decades before the National Board was established, various Catholic bodies were already seriously involved in providing basic primary education for the poor and underprivileged throughout the country. The Royal Commission on Education in Ireland of 1825 reported positively on this contribution in its findings on educational provision in Ireland at that time.

ATCS is a representative body for the “Catholic Trustee Voice” in Irish education. Its membership includes trustees such as members of the hierarchy, representatives of various religious congregations, representatives of the recently established lay trusts, as well as the trustees of a number of other Catholic schools.

ATCS welcomes the initiative by Minister Ruairi Quinn to set up the Forum on Patronage and Pluralism in Ireland, and especially welcomes the opportunity to make a submission to the Advisory Board on a number of aspects of the divesting process.

## Some General Observations

Before dealing with the specific areas identified in the “Briefing Document” provided on the day of the launch of the Forum, ATCS would like to make a few remarks of a general nature.

1. There is general acceptance within the Catholic sector that, as far as patronage of primary schools is concerned, current provision does not reflect the diversity that currently exists.
2. In this context, it is clear that, with 89.6% of primary schools under Catholic patronage, and with a growing number of the population not affiliated to the Catholic tradition, and an increasing number affiliated to other religious traditions and none, some restructuring of patronage is desirable.

3. While ATCS supports the initiative to ensure diversity of patronage in the provision of primary education in Ireland, this organisation would also like to put on record the fact that Catholic schools have invested huge energy and resources in welcoming pupils of all religious traditions and none into their schools. Thousands of new pupils, coming from a diversity of cultural and religious backgrounds have been accommodated within the Catholic School system. Some Catholic primary schools have as many as forty different nationalities represented in their current enrolment. This successful integration of immigrant pupils with pupils from the local community has been one of the great, but unheralded, achievements of Catholic education in Ireland over the past twenty years. At its root, the word catholic comes from the Greek word *katholikos* meaning universal. This universal dimension of the Catholic approach to education has been truly reflected in the manner in which immigrant pupils have been integrated into the existing Catholic Primary School system.
4. It is clear that under any patronage restructuring scheme, new bodies will be seeking recognition as patrons. The Education Act of 1998, section 8, 1(b), empowers DES to recognise particular individuals and groups as patronage bodies and to draw up a register of all such individuals and bodies. What is not clear, however, is the set of criteria that bodies need to meet in order to be recognised as patrons. It will be important in the emerging situation that DES has in place a set of criteria for recognising new patronage bodies. This process needs to be open and transparent. The standard procedure will also have to ensure that all patronage bodies are treated equally in the exercise of their patronage responsibilities.
5. What is being considered in the current situation is a change in the patronage of some Catholic schools in order to provide within the system models of patronage that reflect parental wishes more accurately. A question arises at this point in relation to the reversibility of such a decision. It is conceivable that a new generation of parents, some years hence, may wish to change the patronage once more. Will it be possible for such a group of parents, invoking the parental rights now being accorded to current parents, to request a change back to the original patronage, or a change to some other form of patronage more to their liking? In short, is the change of patronage now under consideration a once off realignment, or can the issue be revisited at some future date? If the decision is going to be irreversible, or of long term duration, then people ought to be aware of this fact in advance of making their recommendation.
6. While the first term of reference in the briefing document talks about providing for all religions and none, it is clear that there will have to be some expressed need within a local area before a decision to change the status quo is embarked upon. The policy to be pursued should be one driven by a locally established demand, rather

than by an ideology sourced outside the local community. The findings of the 2011 Census, yet to be published, will provide relevant information in this context. The projected increase in population will provide opportunities for diversity.

7. It is clear that, over the past few decades, Ireland has experienced a significant change in the context of religious affiliation and practice. There are complex internal and external influences at work here. What we cannot predict at the moment is what the situation will look like ten or twenty years from now. In brief, we are living through a period of on-going social change. Do we plan for the situation as it is now, or do we set a process in train that can be adjusted and fine-tuned as the situation unfolds? If the latter is the wiser course of action, then, what is required of this Forum is a strategy to set a process in train, and not a strategy to force change in places and situations where the circumstance that warrant change have not yet evolved. It would be wiser to facilitate an incremental rate of change that reflects the pace of social change within society rather than introduce a widespread programme of change that is not warranted by the circumstances that currently prevail in many situations.

In practical terms, it may be wiser to address this issue by embarking on a number of pilot projects in a variety of areas and learning from these experiences how to proceed elsewhere. This is an approach that is strongly recommended by ATCS.

## **Section 1. Establishing the Parental and Community Demand for Diversity**

### **Introduction**

Primary schools in Ireland are central to the life of a local community. At the same time, they are inextricably linked to a national education system. This national system seeks to ensure that all pupils have access to at least a basic minimum education which is designed to meet the needs of the individual and society. This system values holistic education, which means developing values that will contribute to a just, compassionate and tolerant society into the future. It also means facilitating each pupil in reaching their full potential as a human person. Changes to any aspect of educational provision must ensure that these principles continue to be upheld. In ascertaining the wishes of parents it is necessary to consider the nature and quality of education. For some parents, this may be a more significant issue than patronage itself.

### **Involvement in the change process**

It is widely acknowledged that change is more effective when those affected take ownership of it. The changes under consideration in this Forum will potentially have very significant implications for thousands of families across the country. At present, there is limited understanding in the public domain of the role and function of school patrons. To do justice to such an important issue, discussion and dialogue at local level, i.e. individual school level, is required so that, if and when changes are proposed, all parties affected by it will have a clear understanding of the proposed change and its implications. Planning and implementation of proposed changes should come from the bottom up, rather than the top down.

### **Establishing the need for diversity**

What will be required is a standard process for assessing the level of parental desire for change in any given situation. In order to have an accurate measure of this desire a consultation process will have to be conducted. Such a process:

- needs to be independent, transparent and robust
- needs to be conducted by an independent body established by DES in consultation with patrons (old and new)
- will allow for consultation with groups other than parents who have a right to be consulted.
- will be flexible enough to cope with a variety of school contexts.

Throughout the State, local communities have a great sense of ownership of their parish school, and great attachment to it. This sense of ownership and deep attachment are relevant factors in any consultation process about divesting.

It is worth noting that the briefing document issued by the Forum Committee uses the phrase *“parental and community demand for diversity”*. In other words, the author of the briefing document is recognising the right of the local community to make a demand for diversity. It seems reasonable, then, to ask that a representative group of the local community be consulted when the divesting issue is being considered.

#### **Q.1 What should be considered in establishing the demand for diversity, taking account of parental wishes, in areas where the existing scale of school provision/infrastructure is adequate?**

This question emphasises the absolute importance of establishing a standard process, and a set of criteria to guide it. Rushing headlong into a widespread divesting campaign without a well-thought out strategy and plan of implementation will be unlikely to yield a satisfactory outcome. It is far more important to complete this task successfully than to complete it

quickly. The current system is nearly two hundred years in the making. Any restructuring of it will need to be carefully planned, and patiently negotiated and implemented.

Some of the factors that need to be considered include:-

- The possibility of diversity **within** a school
- Significant opportunities for parents, Boards of Management and staff to discuss and consider the current provision and the implications of proposed change
- Transport provision to and from the school and the options open to parents to send their children to a school which caters for their needs
- Demographics – current and projected population statistics
- Socio-economic factors in the area
- Applications from recognised Patron Bodies
- A set of principles to guide decision-making

**Q. 2 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?**

Based on results of the consultation process previously outlined, the amalgamating of some primary schools, coupled with a divesting of schools freed up by this process, should be considered as a preliminary first step.

This step may result in a number of single-sex Catholic schools becoming co-educational schools with financial consequences for school trustees. Consideration might also be given to joining junior and senior schools together to become one school. A further consideration will be the existing condition of school buildings and facilities and their suitability

**Q. 3 How might competing demands for diversity be considered and accommodated**

This is the kind of issue that needs to be covered by the standard procedure and criteria referred to above. The phrase “competing demands for diversity requires some kind of context. If 1% of a community is looking for a diversity option does that 1% constitute a “competing demand”? What is required here is a shared agreement about what constitutes a reasonable case for changing the status quo in any particular situation.

It is abundantly clear that small minorities of whatever kind within a largely mono-cultural environment cannot be provided with a school that caters exclusively for their particular religious/cultural tradition. Of necessity, they will have to be catered for within the available school provision. This is precisely the set of circumstances that will require the articulation of the kind of diversity policy referred to in the response to Q.1 above.

In the past, the DES supported the principle of parental choice at second level by providing school transport and the “block grant” to enable students of minority religions to attend an appropriate school. Is this an option at primary level into the future?

Alternatively and looking at such a situation in positive terms, it will be a challenge and a wonderful opportunity for the traditional school to embrace this situation, and see in it an opportunity to develop understanding, acceptance and appreciation of other religious and cultural traditions. What better way to educate children to live in the emerging Ireland, with its growing number of ethnic minorities with their diverse religious traditions? Educating children to appreciate cultural and religious difference, while valuing their own cultural and religious tradition, seems to be a very worthy goal for any educational endeavour.

- Consideration might be given, in some situations, to the establishment of joint patronage bodies along the model currently in operation for Community and Comprehensive schools at second level. Such a model has worked well at the second level, and may be a less threatening development than the outright abandonment of one patronage in favour of another.
- Provision for diversity within existing schools as distinct from diversity of patronage, is something Catholic schools have been involved with for many years. It may be a recent enough phenomenon in Ireland, but it has been a regular feature of Catholic education world-wide. The Catholic tradition in education has embraced diversity within the school by providing a values-based education for all pupils, and by respecting the religious beliefs and practices of adherents to other religions

**Q. 4 In addressing “demand for diversity”, how can it be ensured that schools are socially and culturally inclusive?**

If the history of the last twenty years of education in Ireland has illustrated anything, it is the willingness of Catholic schools to accommodate diversity of cultures and religions in their provision of education. This fact can be verified by examining the heterogeneous character of primary school enrolment in any city or large town in the country.

On the evidence thus far, there is no guarantee that diversity of patronage will ensure a greater measure of social and cultural inclusion in the schools. The rationale for diversity is to provide models of patronage that reflect the cultural and religious diversity that now exists within the State. We need to be aware of the possibility that diversity of school types may lead to consolidation of particular social groups within particular types of schools. Steps need to be taken to avoid ending up with a situation where there is greater diversity of

school patronage, but less cultural, social and religious diversity within the schools themselves.

In implementing a strategy for divesting of schools, attention must be paid to the socio-economic status of the school being served under the present arrangement. Ferrying pupils from outside the local catchment area to justify a demand for divesting could end up with pupils from the local area being deprived of the provision that is convenient for them and that has served them well in the past.

Experiences has shown in other jurisdictions that a reform of the system can lead to an outcome where high-achieving, middle class pupils are concentrated in one type of school, and the socio-economically challenged pupils are concentrated in another type of school. Positive steps need to be taken to avoid this kind of outcome.

## **Section 2. Managing the Transfer/Divesting of Patronage**

### **Overall Management of the Divesting Process**

The success or failure of the divesting undertaking will depend, in large measure, on the management of the divesting process following on the report of the Advisory Body. In order for any project to be managed successfully a certain infrastructure and a set of guidelines will need to be in place.

The following proposals are offered to assist in developing a robust and transparent implementation strategy.

1. Under new patronage models, it will be important to require of patron bodies the articulation and adherence to a policy that caters for the cultural and religious diversity within the school. Such policies should, like enrolment policies, be subject to monitoring by DES
2. The process of implementing the recommendation of the Advisory Group will be managed by an independent Divesting Group which will be set up for this purpose by DES.
3. The main task of this body will be to devise a fully transparent process to implement the recommendations of the Advisory Group, having consulted with the appropriate stakeholders.
4. This process will be a standardised process that will be used in all situations where the divesting issue arises.



5. The Divesting Board makes recommendations for a change in patronage on the basis of the consultation process, and the evidence gathered that the situation warrants a change in patronage.
6. There will be need for an independent appeals board to adjudicate in situations where the recommendation of the Divesting Board is contested.
7. Given the complexity of the issues involved, it would seem reasonable, in the first instance, to focus on those areas where there is a compelling argument for providing a diversity of provision in the current situation.
8. This process will take time. It will not be facilitated by any attempt to force the pace of change.

### **Suggested criteria for prioritising the work of the Divesting Board**

The manner in which the Divesting Board conducts its business will need to be transparent, consistent and fair. It will be called upon to make recommendations in situations of conflicting hopes and expectations. In order to be seen to be transparent, consistent and fair, the Board will need to work to an agreed set of criteria.

### **Criteria to guide the Divesting Board**

- The consultative process has shown that an alternative patronage provision is desirable.
- The proposed patronage change meets with strong parental and community support locally.
- The proposed patron is legally recognised and has demonstrated their willingness and ability to meet the requirements of the DES educational policy, including curriculum and assessment
- The proposed change will not have a detrimental effect other schools in the area.
- The issues of trusteeship/ownership of property are legally dealt with.
- Relevant financial matters are taken care of.
- The rights and concerns of teachers are taken into consideration. They are an important part of the process.

### **Sensitive issues in relation to the implementation of decision to divest.**

- The patronage divesting process is respectful of those whose wishes have not prevailed in the consultation process.
- The divesting process will need to have due regard for those parents who, as a consequences of divesting, find themselves compelled to search for an alternative school for their children, or are compelled by circumstances to accept a changed patronage situation about which they may have strong reservations.
- A similar case can be made for members of the teaching staff.

- The handing over process itself will need to be effected with sensitivity and respect.
- The length of the transition period will require careful consideration. This is difficult area that needs planning and forethought. “One size” may not fit all in this instance, depending on local circumstances.
- Does the divesting process amount to the closure of one school and the opening up of another? If so, the implications of such a closure need to be fully addressed.

### **The Consultation Process**

The document entitled Public Submission, and the papers read at the Forum Launch by Minister Ruairi Quinn and Professor John Coolahan place great stress on parental rights in determining school patronage. This emphasis on parental rights is not a recent innovation. Back in 1965, the Second Vatican Council, in its document *Gravissimus Educationis* section 3, emphasised the importance of parental rights in education. In the context of divesting of Catholic schools, the crunch issue, however, is how parental wishes will be ascertained. It is imperative that that this matter be given serious consideration. If the consulting process is not seen to be fair and robust, it will lead to great dissatisfaction. This must be avoided at all costs. The following suggestions are offered to avoid any discontent in relation to the consultation process.

#### The consultation process will need to be:

- standardised so that it does not vary from school to school or from location to location
- transparent so that the process is clear to all and understood by all
- inclusive so that all those who are entitled to have a say get an opportunity to express their views.
- Independent to avoid criticism and allegations of favouritism.
- reliable so that the findings are consistent and accurate.

### **What, if any, are the implications for existing and future pupils of the school?**

- It is inevitable if a Catholic school is divested, and parents wish to continue their children’s education in a Catholic school, that situations will arise where the parents and children will be inconvenienced by the fact the nearest school is no longer a Catholic school.
- Change of patronage is bound to introduce discontinuities for pupils, parents and teachers who find that in the divesting process, they are forced to move

elsewhere. The elsewhere is bound to be less convenient for at least some of those involved, and inconveniences associated with the discontinuity are abundantly obvious.

**What, if any, are the implications for maintaining a student population that is inclusive and reflective of the school's community?**

It could be argued that what the divesting process will do is to create less diversity within schools and greater diversity between schools. There are lessons to be drawn from the trends that developed in local communities when the travelling community and pupils with disadvantage were catered for within the normal primary school provision. Schools that opened their doors to children from the travelling community, in particular, witnessed an exodus of pupils to rural schools situated on the edges of towns. Parental choice can at times be framed by social class distinctions.

### **Section 3. Diversity Within a School or a Small Number of Schools**

**If there are only one or two schools in an area, how can diversity be accommodated where there is not sufficient demand to justify a separate school?**

This question raises the issue of school ethos and how diversity of religious belief can be accommodated within a school that has a dominant ethos rooted in a particular religious tradition. In short, has the Catholic ethos of a particular school to be sacrificed in order to accommodate pupils from other religious traditions and none.

Article 7 (4, (iv)) of the Education Act acknowledges the right of schools to manage their own affairs in "accordance with this Act and any charters, deeds, articles of management or other such instruments relating to their establishment or operation." Section 30 (b) of the same Act advises that the Minister "shall have regard to the characteristic spirit of a school or class of school in exercising his or her function under this section." The Act, therefore, recognises that Patrons have to run their schools according to their founding documents and characteristic spirit. If the school has been set up to provide Catholic education then the Patron of that school has an obligation to ensure that a Catholic ethos prevails, and the Act recognises this entitlement and responsibility. The challenge for the Catholic school faced with a religiously diverse school population is how to do this in a way that respects all religious traditions reflected in the school population while being faithful to its own ethos. This is not an impossible task. As mentioned earlier, Catholic schools have been doing this across the globe for generations, especially in areas where the Catholic faith itself is a

minority religion. It is a matter of record that, in countries like India, and in many parts of Africa, Catholic schools enjoy a measure of acceptance and educational esteem that transcends significant cultural and religious boundaries. What is the appeal of Catholic schools in this situation? The secret of success is not found in the dilution of the Catholic ethos, but in the nurturance within that ethos of a spirit of tolerance and respect for all religious traditions as a matter of policy. This process is enhanced greatly by celebrating appropriately and respectfully the uniqueness and richness of each tradition.

It is important to recognise here that school ethos is not something that arises from any single aspect of school life. Every school has an ethos. The nature of this ethos depends on the constellation of values and influences that are nurtured by the totality of the educational engagement. Within the Catholic school tradition, the Christian story greatly influences the spectrum of values, influences and traditions that shape a particular Catholic school ethos, and nurture its characteristic spirit.

Under the co-patronage model outlined in Section 1 Q3 above, the feasibility of providing for the spiritual and religious formation of pupils of various faiths in the same school could be considered, without removing religion from of the school. Such work could be supplemented by the local parish and the services of a school chaplain.

Schools under the co-patronage model could negotiate a common characteristic spirit statement which would form the basis for the school ethos, similar to current practice in new Community Schools.

### **What are the particular implications for enrolment policies?**

The Department of Education and Skills has already seen the need to have protocols in place to cover situations where changes in the enrolment policy of one school may threaten the viability of neighbouring schools. A decision to go co-ed is a case in point. A similar kind of monitoring will be required in the case of a change in school patronage. A decision to change patronage should not be used as a strategy for boosting school numbers.

To cater for diversity in some areas, small Catholic schools will need to review their enrolment policies. Policies should be available to parents as they consider their options, in advance of enrolment.

### **Religious education and religious practice in a school**

Under the present legislation, all primary schools are required to provide for the spiritual development of the pupils. For schools in the Catholic tradition this involves religious education and faith formation. This requirement does not mean that pupils of different religious traditions, and none, have to be part of this dimension of school life. The rights of pupils in this regard are protected by article 30 (2 e) of the Act. Sensitive to the growing

religious diversity among the school populations, various strategies have been developed in recent times to accommodate the wishes of parents who do not want their children to be part of the religious education programme. However, a programme of religious education that enhances understanding of different faiths and helps children to understand the concept of religious belief has a rightful place as part of an overall holistic curriculum

The integrated curriculum approach to primary school provision was a teaching methodology introduced in 1971 by the Department of Education. The Department promoted this innovation on pedagogical grounds as being more beneficial for primary school pupils. It was never envisaged that this initiative would result in children being forced to participate in religious instruction classes against the wishes of their parents. This possibility can be avoided by time-tabling the religious instruction lesson for a particular period in the day that is convenient for parents and pupils.

**What, if any, are the implications for existing (and future) pupils?**

The question as posed appears to suggest that the patronage issue is not a matter of great consequence. The Catholic position is that education is a holistic process, and should cater for the whole person – body, mind and spirit. From the Catholic perspective, the philosophical and religious principles underpinning the educational engagement are important, and how they flavour and influence the educational process is significant. The function of the Patron, in this context, is to be the guarantor of the religious and philosophical underpinnings of the education process. It is because the Catholic tradition values highly these educational principles, and believes that they are beneficial for the education of young Catholics that it has invested so strongly in the provision of education over the centuries.

**What, if any, are the implications for parental choice?**

The rationale for divesting of patronage of some Catholic schools as presented in the documentation provided by DES is supported by two major arguments:

- a) The increase in cultural and religious diversity in Ireland
- b) The right of parents to have a choice in the models of school patronage that are available to them

The patronage reform initiated by Minister Quinn is founded on these two facts. If the divesting process goes according to plan, many parents whose patronage wishes are not being catered for by the present provision will have their wishes realised under the proposed reform of the system. This has to be acknowledged as a desirable outcome.

Satisfying the wishes of one group of parents, in some cases at least, will come at the expense of the wishes of other parents. This is the inevitable outcome of situations where there are conflicting interests

If parents choose schools on the basis of the quality of education and care for their children then it is essential that all schools are supported in providing an education that will promote the kind of values that will contribute to a society that will work towards eliminating injustice and intolerance.

## Section 4 Additional Topics

### 1. Secular Education

At the moment, it would appear that there is no scope under present Irish legislation for the provision of a completely secular model of primary schooling. Section (9d) of the Act states that the school should “promote the moral, **spiritual**, social and personal development of students...” This requirement to cater for the spiritual development of pupils seems to rule out the provision of a completely secular curriculum. Perhaps there is some fuzziness here in relation to the meaning of the word spiritual.

The briefing document supplied by the Forum talks about providing “schools catering for all religions and none”. The current practice is that DES does not recognise non-denominational schools, and hence no such primary schools exist within the State system. This lacuna in the provision in primary schools should be addressed when the new patronage models are being recognised.

### 2. Financial Considerations

While it is desirable in the present economic climate that the divesting process should be cost neutral, it is clear that certain tasks associated with the divesting process will have to be funded. The following are some of the areas where expenses will be incurred:

- Consultation at the local level with parents and other interested parties will have to be conducted in a professional manner, and the results analysed and made available to the public. Some qualified group will have to be paid to conduct this consultation process. Otherwise, the process will be hi-jacked by vested interest groups, and private resources will be used to influence the outcome.

- The process of divesting will have to be managed. Some group will have to take responsibility for this complex operation. Elsewhere in this submission it is recommended that, in the interests of transparency and fairness, the management body to oversee this project should be independent. Inevitably, there will be significant costs involved whether the management body is independent, or is an arm of the Department of Education and Skills.
- In some cases, school buildings appropriate for single sex education will have to be modified to accommodate a coeducational enterprise. At the very least, the toilet facilities will have to be upgraded. Where will the money required come from?
- In the nature of things, divesting means that particular Catholic schools will cease to exist and other types of schools will emerge under new patronage and new management. What will happen to the debts that may be lurking in the account books of the schools that have effectively gone out of existence? The new patronage body will want to inherit a clean financial bill of health. Will the Catholic patronage body have to forfeit the school, but retain the legacy of debt?

### **3. Boards of Management Issues**

It could very well happen that the decision by a patron to divest a particular school will be contested by the Board of Management. Section 15 (2) of the Education Act states that the board is responsible for upholding the

*“characteristic spirit of the school as determined by the cultural, educational moral, religious, social, linguistic and spiritual values and traditions which inform and are characteristic of the objectives and conduct of the school.”*

A patron’s decision to divest a Catholic school could be challenged by a Board of Management on the grounds that such a move would be contrary to characteristic spirit of the school as defined above.

### **4. Trusts and Charity Commissioners.**

There is a very serious legal issue to be addressed in relation to property held in trust for specific charitable purposes. Catholic primary schools are generally owned either by Diocesan or Parish trusts by way of a trust company or by trustees on behalf of religious orders/congregations. Catholic schools may also be owned by lay trusts that are established as limited companies with charitable status. In all of these cases, the property is held in trust for a specific purpose.

The legal situation that currently prevails makes it impossible for the trustees of a trust to alienate property in a manner which undermines the purposes for which the trust was established in the first place. In all cases where charitable trust property is disposed of, the consent of the Commissioners of Charitable Donations and Bequests is usually required. The Commissioners need to be satisfied that the proposed disposal of the property is for the benefit of the trust. Typically, the trust would benefit by the conversion of property into monetary consideration which is then applied for the benefit of the trust. There is a very real difficulty in law with the voluntary alienation of trust property. It may not be possible to obtain the consent of the Commissioners for Charitable Donations and Bequests to transfer the property where no benefit accrues to the trust. This is a very real issue that needs to be addressed. The fact that the whole operation of divesting has to be cost neutral has legal implications for the trustees of Catholic primary schools.

A further difficulty arises for trustees of charitable trusts in that they are not entitled to lease trust property even with the consent of the Charity Commissioners. On the face of it, this would prevent any lease of school buildings to the Minister for Education & Skills for the purpose of subleasing the premises to another patron.

## **5. Teachers Issues**

Under section 24 of the Education Act, the Board of Management of a recognised school is the employer of the teachers and other staff in the school. The divesting of Catholic patronage coupled with the dissolution of the Board of Management and the establishment of a new Patron and Board of Management would, in effect, constitute a transfer of the undertaking and would bring into play the TUPE regulations (Transfer of Undertaking Protection of Employment), which are essentially EU Directives with the object of protecting the employees of a particular undertaking on the transfer of that undertaking. Under TUPE, the existing terms and conditions of employments of employees must be respected on any such transfer. A particular issue that might arise following the divesting of patronage concerns the re-deployment of teachers in the event of redundancy. In the case of Catholic schools, teachers are potentially redeployed on panels within the Diocese. It is foreseeable that the teachers in a Catholic school which is to be divested could maintain their existing panel rights.

Another issue to be considered in the context of transfer of patronage is whether a new Patron would want to take over the entire staff recruited to work in a school with a radically different characteristic spirit to that proposed by the new Patron. It may be more feasible from the perspective of both the outgoing and the incoming Patron to close the old school and to reopen the school as a new school. The issues involved in such an eventuality need to be seriously considered.



**Conclusion**

Our final recommendation at this point is to reiterate the argument already made that what is being contemplated now in the divesting process is a revolutionary change in the provision of primary education in Ireland. The consequences of decisions taken at this time will have an impact on primary education within the State for generations to come. We owe it to these future generations of parents and pupils to effect this transition with justice, prudence and sensitivity. At the end of the day, what is being sought is a system of primary school provision that best suits the Ireland of to-day and to-morrow.

We are justifiably proud of what has been achieved in primary education in Ireland since the Stanley letter of 1831. Out of respect for this achievement, let us plan for the future with the same prudence and commitment that was demonstrated by our predecessors when, over many decades, they built up the system that we have inherited, and whose destiny is now in our hands.