Northern Ireland Assembly

Committee for Education

OFFICIAL REPORT (Hansard)

Education Bill: Departmental Response to Stakeholder Evidence

28 November 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Mervyn Storey (Chairperson)
Mr Danny Kinahan (Deputy Chairperson)
Mrs Brenda Hale
Mr Chris Hazzard
Mr Trevor Lunn
Miss Michelle McIlveen

Witnesses:
Mr Chris Stewart Department of Education

The Chairperson: I invite Chris Stewart to come to the table. We appreciate the time that the Department and officials have given us.

As the issue is fresh in our minds, I ask Chris to address the issue of specified posts in schedule 2 and to clarify a few points. The Association of School and College Leaders (ASCL) said that the Bill gives the Education and Skills Authority (ESA) the power to interfere in the appointment and dismissal of staff and said that "specified" had not been defined, which appears to be a reference to schedule 2(3)(1)(a), which allows for an employment scheme that shall provide for the selection of a person for appointment to a post on the staff of the school to be carried out in the case of a specified post by ESA.

Mr Chris Stewart (Department of Education): Good afternoon, members. I am happy to address that point first because I could see that it was of concern for ASCL colleagues. I was wondering where the concern came from, and then, following the remarks of one of our colleagues, I suddenly realised why. It is because of the previous use of the word "specified", where it had a very different meaning. The key point here is that a post is specified only if it is specified by the school in its scheme of employment. The reason for that is that it is a measure of autonomy or a measure to allow the school to decide on the level of autonomy that it wants. Therefore, if a school wishes to make all the appointments, it will specify no posts in its scheme of employment; if it wishes ESA to make some of the appointments, it will specify those appointments that it wishes ESA to make. Therefore, the default position is that if a school does nothing, it makes all appointments and ESA has no role in making those appointments and there is no teaching appointments committee anywhere in those arrangements.

The Chairperson: So, the teaching appointments committee is removed?

Mr Stewart: Absolutely. I do understand. That was the concern that colleagues had before; that specified posts were those that would have been dealt with by a teaching appointments committee, which was an anachronistic mechanism — and that is being kind to it.

The Chairperson: It may be unfair to ask you, Chris, but do you think that, to reflect that, it could be tidied up better or presented better, to give clarity and certainty in light of those particular concerns that have been raised with us?

Mr Stewart: To be fair to legislative counsel, I think that if he were here, he would say that the meaning and effect of the clauses are absolutely clear and beyond doubt. I absolutely accept that there is a job of work for me and colleagues in the Department to do, perhaps, to better explain the effect of the provisions.

The Chairperson: And you will do that.

Mr Stewart: I am happy to do that.

The Chairperson: We can then share that with the organisations that raised that matter with us.

Mr Stewart: Absolutely, Chairperson. A number of stakeholders who have given evidence to the Committee today have already asked for meetings with me to explain some of the provisions. That offer is open to ASCL colleagues and anyone else. The usual caveat is, of course, that I have no mandate to negotiate policy. That is a matter for the Minister. However, I am more than happy to explain the effect or the content of any of the provisions of the Bill.

The Chairperson: Obviously, the Minister could give an assurance during Consideration Stage to clarify, which would be very helpful, too.

Mr Stewart: Absolutely.

Mr Lunn: I am really glad that we got that clarification, Chris. Thank you very much. I want to follow on from that. I am not querying what you said in any way — just to complete it, if you like. I cannot imagine why, in light of what you said, any school would specify posts, but let us say that they did. Paragraph 3(4)(a) of schedule 2 says that the board of governors has to approve the selection of a person for appointment. What is the tiebreaker, then? If, in the future, in the unlikely event that ESA has to appoint a headmaster but the board of governors is not prepared to accept the appointment, who is the final arbiter?

Mr Stewart: It would be the board of governors. The reason for that particular provision is to give absolute effect to a statement that the Minister made a number of times and which members will have heard me repeat a number of times. It is that, throughout these arrangements, no member of staff will be appointed to any grant-aided school without the say-so of the board of governors. Even if a school decides to specify some posts and to ask ESA to do the heavy lifting of the appointment process, the board of governors will still have the final say — the final veto, if you like — on whether an appointment is made. That applies right throughout the appointment arrangements, even to peripatetic teachers, who would be appointed by ESA but to work in a number of schools. However, no peripatetic teacher could work in any particular school without the approval of the board of governors. So, there is an absolute commitment, which runs throughout the Bill, that boards of governors have the final say — the only say — on who gets to work in a school.

Mr Kinahan: When you look at the corporate plan and you talk about the power to remove governors and put them in — we know that, in certain cases, governors have been put into boards — that gives us a level above, which means that you may give the power to the governors but you are keeping the power to remove governors who do not fit or to put in other governors in future. In a way, the safety mechanism that you are saying is there is not there because you can change the governance.

Mr Stewart: Let me assure you, Danny, that there is absolutely no policy intention behind that for the Department to take a power to remove governors if we felt that we disagreed with their employment decisions. The particular provisions to which you refer, which are regulations that were made under, I think, article 23 of the Education and Libraries (Northern Ireland) Order 2003, are a backstop.

Following on from some of the comments that were made earlier, I should say that the Department absolutely recognises the pivotal role that school governors play in the education system. There are about 10,000 of them overall, all serving in a voluntary capacity and all giving up a great deal of their time, energy, skill and experience outside their normal occupations and working hours. They have a vital role; they are responsible for leading organisations that educate about 330,000 of our children and they spend whatever the agreed proportion of the education budget might be at the front line. They do all that in a voluntary capacity. The role of ESA and the role of the Department is, first and foremost, to support and enable governors to do that, and that is why a statutory duty is proposed in the Bill for ESA to provide a dedicated support service to governors to train, assist and advise them as they go through the discharge of their very difficult functions. Only in extremis would the Department go further than that and interfere. The next step would not be to remove governors but to add governors. If a board of governors was struggling with its responsibilities and needed additional help, skills and expertise, the first thing we would do is put additional governors in. You would only contemplate removing governors if you were at the point where the school is failing because the board of governors is unable to discharge its statutory functions. That really is the very last resort. However, given the importance of that role and the importance of education as a public service, it was felt, in 2003, that it was appropriate to have that power there to be used should the occasion demand it. I do not know that the Department is contemplating, at this stage, the removal of governors in any school.

The Chairperson: Can we stay on the issue of employment and the specified posts and follow on from Danny's line? You have clarified the situation with the board of governors, but what about the dismissal of staff? If a school decides to dispense with an individual, the Bill says:

> *"an officer of ESA shall be entitled to attend, for the purpose of giving advice, all proceedings of the Board of Governors relating to any determination mentioned in sub-paragraph (1)".*

That subparagraph provides for the dismissal of a member of staff. At the end of the day, does the final say on the dismissal of staff rest with the board of governors? We will have to work our way through this when we come to the clause-by-clause scrutiny. Paragraph 6(8) of schedule 2 says:

> *"The scheme shall provide that ESA shall not dismiss a person employed by it to work solely at the school except".*

It then lists subparagraphs (1) to (7), article 35 of the 1998 order and any regulations made under article 70. You become suspicious when you see the subset of regulations in there that it is just as simple as the power still rests with the board of governors.

Mr Stewart: Actually, Chair, when you decode all that, it is as simple as the power rests with the board of governors. There are, if you like, two backstop provisions for ESA, and they will only come into play if, for some reason, the board of governors decides not to dismiss. That would be if someone was statutorily debarred from a teaching post; say they lost their registration with the General Teaching Council or were convicted of some very serious offence that meant that they were no longer legally entitled to be a teacher. If, in those circumstances — I really cannot imagine this happening — a board of governors declines to dismiss that individual and there is a real threat to the safety and well-being of children, ESA, as the employer, could dismiss. Other than those circumstances, as I hope the schedule will make clear — we could perhaps explain it a bit more thoroughly — the power to dismiss rests with the board of governors along with the power to appoint.

The Chairperson: I think that the Committee Clerk gave you a list of other concerns and issues that were raised. Do you want to work your way through clause 13 or do you want to do it numerically and go to clause 4?

Mr Stewart: We could start with clause 4, Chair. That clause seems to have aroused a degree of suspicion. Why would the Department have a power to modify schedule 2 and in what circumstances might we use that? Is it really the Trojan Horse by which we will get in later and take away or undo all the commitments that we have given to boards of governors? No. It was the first question that Trevor asked me in Omagh. Why is it there? It is because policy evolves over time, and sometimes there is a need to change what is in legislation. Taking a power to do so by order simply makes that slightly easier to do. If it were not for that, the Minister of the day would have to go back to the Assembly with primary legislation to amend the Act that will be passed on foot of this Bill. However, because of the significance of those powers, and the long-standing concern about employment arrangements in the Bill, that power is subject to the affirmative resolution procedure. That is an awful piece of jargon:

what does it mean? It means that the Department cannot exercise that power without the approval of the Assembly. So, we cannot change schedule 2 without the approval of the Assembly.

The Chairperson: Any questions? Trevor?

Mr Lunn: That stopped the show, all right. *[Laughter.]* No, I am fine.

Mr Stewart: I very much doubt it, Trevor.

The Chairperson: Clause 13, then.

Mr Stewart: Yes, Chair, if I can demystify clause 13; it does seem to raise a number of concerns. Perhaps the first thing to say is that that particular power is not new. The Department has the power today to modify employment law. We have not done so for some time. I think 1991 was the last occasion.

If you read the clause carefully, you can see that it is tightly circumscribed in the purposes for which that power can be used. We will not have the power to simply come along and change employment law if we feel like it or to change any of the fundamentals of employment law. That would be for our colleagues in the Department for Employment and Learning (DEL). The only purpose for which we can modify employment law is to make the employment arrangements in this Bill work. There is a particular reason why we would need to do that, and this allows me to clarify another point raised by a number of stakeholders: who is the employer? Is it the board of governors or ESA? If you read the heading of clause 3, you will see that the Bill is very clear on this. ESA is the employer in law, full stop. There is no qualification on that. However, it is a delegated model in which boards of governors will exercise the full range of employment functions on behalf of and in the name of ESA as the employer. We do recognise that particular colleagues in the voluntary grammar sector have concerns about that, but that is how it is intended to work.

In order for that sort of arrangement to work, it is necessary to modify employment law to make sure that education law and employment law do not get out of kilter. Where that really kicks in is around dismissal. Employment law requires the employer to take certain steps before an employee is dismissed. If those steps are not taken by the employer, a tribunal would automatically deem such a dismissal unfair, if it were referred to a tribunal. As things stand, if we were to make no change to employment law, the board of governors might take those very necessary steps and do all the right things. However, the board of governors in law is not the employer, and a tribunal would, therefore, find on a technicality that the dismissal was unfair. So, the modifications that we will make to employment law will, in effect, be to say that those certain steps that have to be taken still have to be taken but will be taken in this instance by the board of governors and not by ESA. In doing so, we will make sure that boards of governors are able to exercise that autonomy around decisions to dismiss and are not dependent on ESA taking certain steps on their behalf.

Mr Lunn: Does that mean that the normal procedure under employment law for dismissal of somebody for minor or major misconduct is not being bypassed?

Mr Stewart: That is not being changed. Nothing in the Bill gives the Department the power to alter the fundamental responsibilities of an employer or, perhaps more importantly, the fundamental rights of an employee in terms of their protection. It would be more accurate to say that we are not so much modifying employment law as modifying how it operates or the assignment of some of the roles under employment law. The fundamental principles are not changing.

As I said, we have that power today, and there is a reason for that. The employment arrangements were, I think, referred to earlier as "CCMS-lite". I do not know whether I would use that particular phrase, but, if you wanted a comparator within existing legislation, the closest model is the one that operates in the Catholic maintained sector through the Council for Catholic Maintained Schools. So, in order to allow boards of governors of Catholic maintained schools to take decisions on dismissal, it was necessary to modify employment law, and we did that in 1991.

The Chairperson: We will move on to clause 16 and the by-laws. I am just wondering what powers the chief executive of ESA wanted to have.

Mr Stewart: This is not a major plank of the legislation. If they were still here, I would want to reassure colleagues from this morning that we are not proposing to give school principals powers of arrest or detention. *[Laughter.]*

The Chairperson: Unless it was for use on officials from the Department. *[Laughter.]*

Mr Stewart: I think that they might be shot on sight rather than arrested.

There are no proposals there; that is simply a carry-over. In putting the Bill together, one of the things that we did was to transport across all the existing functions of the existing organisations. There is a power in the 1986 order for education and library boards to make by-laws. There is not really a focus on schools in that power. In the 1986 order, it would have been thought necessary in order to regulate conduct around libraries and perhaps even more so around youth services. You will see that that power is tucked in underneath a clause heading about educational and youth services.

As I said, that was simply a carry-over of an existing power. From speaking to colleagues in education and library bards, I do not think that anyone can recall the last occasion on which that power was used. The Committee might want to consider whether it is needed. As I said, I do not think that it is a major plank of the legislation. It is certainly not the phantom that colleagues might have seen this morning, and it is not going to have any effect on schools whatsoever.

The Chairperson: OK. Issues about the ethos of governors were raised in relation to clause 39.

Mr Stewart: Yes. You have heard a contrasting range of views on ethos today. You heard from trade union colleagues, who see it as an unnecessary encumbrance and something that should be standardised throughout education, and from other colleagues, who said that it is exactly the opposite. Ethos is a difficult quality to define but, nevertheless, it is a very valuable and necessary quality. It has real value and adds real value in schools and sectors. The Minister's policy position is actually much closer to the latter view.

This is an evidence-based provision, and that was touched on earlier this morning. We know what good schools look like, and there is very clear evidence about what works. Many would say, rightly, that it is about the leadership that is given by boards of governors and the senior management team, the standard of teaching and learning in the classroom, and having an ethos that is supported by the school community: the board of governors, the staff, the parents, the pupils and the community that the school serves. The objective evidence is there. Where there is a strong ethos in a school, whatever it may be, and it enjoys the support of the school community, those schemes tend to be successful.

Where we would agree, in part, with trade union colleagues is around the fact that if you look at the ethos of many different types of successful schools, you can see that they have a lot in common. There are many common elements in the ethos of successful schools. Ethos is important, and that is why the Minister thought it worthwhile, again recognising the important leadership role of boards of governors, to look for boards of governors who are committed to the ethos of the particular school they want to serve. We have been asked a number of times whether that is a qualification and how we will measure or judge that. Quite simply, we will ask applicants what sort of schools they are interested in serving or leading, and we will ask them to confirm that they are committed to and support the ethos of those schools. Is it the case that the mighty, overbearing Department or ESA will continually be looking over its shoulder for evidence that governors do not support the ethos of a school and use that to somehow remove them from the school? No, absolutely not. That is simply nowhere in the Minister's policy intention.

The Chairperson: Why was it necessary to have subparagraph (7)(b)? Would subparagraph (7)(a) not have been adequate? It states:

"to choose for appointment persons appearing to ESA to be committed to the ethos of the school".

To clarify, I am not asking this because subparagraph (7)(b) deals with the Irish-medium sector. I would have asked that question if it had been any other sector. It seems like one sector is being given something different. Either you would not include that subparagraph or you would amend it to say "every school". Subparagraph (7)(b) gives an added layer, particularly when it refers to:

"the continuing viability of the Irish speaking part of the school."

That read-over is not given to any other sector in relation to those appointments.

Mr Stewart: The starting point for drafting the Bill was to take the provisions in the previous Bills that were considered during the last Assembly mandate and include in the new Bill those provisions that the then Minister indicated she was minded to take forward, including some amendments that were tabled at the time.

If I recall correctly, that clause was proposed by the then Deputy Chair of the Committee, Dominic Bradley, and the Minister at the time was supportive of it. Hence, it has been drafted in the current Bill. I suppose that the short answer is that, as with any provision, these are matters of policy and politics. It will be for the Minister and Committee members to decide whether their inclusion in the Bill is correct or incorrect.

Mr Lunn: Why does the clause not also refer to integrated schools? I know that encouragement and facilitation are not mentioned because they are in the previous order. However, as far as I know, the requirement to choose people who are committed to the ethos of a school is not in the previous order.

Mr Stewart: Could I go back to the reference to clause 2(5)? That provision is analogous to an existing provision in the Education Reform (Northern Ireland) Order 1989 relating to integrated schools. That does not refer to the viability of integrated schools, but, essentially, to their integrated nature. There is a duty on the boards of governors of those schools to keep them integrated.

Mr Lunn: Yes, but their integrated nature is a major component of their viability.

Mr Stewart: Yes; it is.

Mr Lunn: If they were to move outside the rules laid down for them as integrated schools, they would no longer be viable as integrated schools.

Mr Stewart: That is right. I think that, in framing the amendment, the Deputy Chair was looking for an analogue to the integrated nature of schools, and the way he chose to frame the proposal was to use the word "viability". This provision is directly analogous to an existing provision that refers to integrated schools, and, therefore, there was no need to repeat that.

We cannot point to an absolute analogous provision to that which is contained in clause 2(5). However, it nevertheless stems from the two statutory duties the Department is subject to, which are to encourage and facilitate Irish-medium and integrated education. It was on foot of one of those statutory duties that that was proposed by a Committee member, who thought it was appropriate to place a similar duty on ESA. However, it would not be correct to say that a similar duty is proposed for ESA to encourage and facilitate integrated education. That is not currently there.

Mr Lunn: I was getting a Sir Humphrey moment there. I still think —

Mr Stewart: I am not sure whether that is a compliment, Trevor.

Mr Lunn: You can work it out afterwards.

Controlled and maintained schools do not have viability problems, except with certain criteria that have nothing to do with ethos, but enrolment. Irish-medium schools and, particularly, integrated schools do have a problem with the control of their viability in the balance of their pupils.

Let me put it this way: I can feel an amendment coming on. There should also be a reference in that clause to integrated schools.

Mr Stewart: That is very easy for me to answer. It would be a policy question for the Minister to address.

Mr Lunn: Chair, you skipped over the issues with clause 38 regarding attainment and achievement.

The Chairperson: Yes; OK.

Mr Stewart: I must confess that, until I heard it this morning, I was not aware of the debate over the relative merits of "attainment" versus "achievement". However, as someone else pointed out, I note that both words feature in the clause. What I would also say is that if teachers are pedantic, I can tell you that the legislative counsel goes several orders of magnitude further and that he would not place any word in the Bill without very careful thought. I am happy to engage with him again to put the point to him that was raised by colleagues this morning. However, I can assure you, Chair, that legislative counsel will have given very careful thought to the right way to construct that clause.

The Chairperson: Or the Minister could give that assurance at a later stage of the Bill. We will want to satisfy ourselves on whether there is a distinction or difference and whether it is something that we need to clarify in our minds so as to take out any degree of uncertainty or concern.

Mr Stewart: It could certainly be looked at. If we have inadvertently given rise to the wrong effect, we can look at that. Perhaps we could offer some reassurance by posing the rhetorical question: who makes the judgement as to whether the criterion, the duty in the clause, has been met? First and foremost, it would be up to the board of governors. Of course, it does not stop there; there is also the process of inspection, and ESA and the Department's consideration of how a school is performing. However, first and foremost, the board of governors will consider whether the duty has been met. In doing so, the board of governors will take into account all the contextual factors mentioned this morning.

The Chairperson: Would not having it clarified in a meaningful way have a knock-on implication for area planning because of ESA's power to decide on that based on the criterion of whether a school had met that benchmark?

Mr Stewart: I would not envisage the clause being used in that particular way. I do not think that it is a pass or fail test for a board of governors that will feature in area planning in that way. Look at the genesis of the clause. I forget who said it in a previous session, but I was struck by an answer to the question of whether placing this duty on a board of governors was a good or bad thing. I think that Aidan Dolan actually asked, in reply: what else would a board of governors do if it were not interested in raising standards?

We do not see this as some sort of new imposition or new pass or fail test that we will apply to boards of governors. It is recognition of what the vast majority of very good boards of governors already do. They see it as their business to ensure that their schools are successful. This is finally, if you like, recognising in legislation what boards of governors already do.

The Chairperson: Clause 45, or is it clause 44, extends the powers of the Education and Training Inspectorate?

Mr Stewart: It is in that region of the Bill.

The Chairperson: Obviously, there is a concern about why it is necessary to extend these powers. From what you heard this morning, Chris, have you any comment on that?

Mr Stewart: I will offer a couple of points on this. First, and unfortunately, I am afraid that I do not have the detail of the comparative legislative provisions in Scotland, but we can obtain them and come back to the Committee at a later stage.

Why are these powers necessary? The answer is that it was on the advice on successive Chief Inspectors who felt that the inspection regime in Northern Ireland was lagging some way behind those in other jurisdictions in the British Isles. I am conscious that a number of the points raised this morning were about the professional practice of inspection, on which I defer to my colleague Noelle Buick, who has been to the Committee already and would be more than happy to return and talk about those aspects.

However, I will offer a number of observations in response to some of the points made this morning and more generally around the debate on inspection. First, it is worth bearing in mind that, at the risk of stating the obvious, all inspectors are highly experienced professionals. They are all teachers. They have all been senior teachers. I have interviewed and appointed inspectors. They occupy

senior positions in the Department for which experienced vice-principals and principals tend to come forward.

Secondly, in addition to their teaching and school-leadership experience, they have considerable experience in inspection, and inspection is not intended to be a punitive process; it is one to inform improvement that is led by schools. It is a self-improvement, self-development process. So, inspectors have gathered experience, which a couple of people this morning referred to in describing the role of the district inspector. Inspectors visit a number of schools. They are able to see, at first hand, best practice as it is developing in schools, and they assist in the spread of that best practice by subsequently going into other schools. That is an important point about the value of inspection that should not be overlooked.

Most importantly of all, perhaps, are the outcomes of inspection. A number of schools have entered and then exited the formal improvement process in recent years. It was not the inspectorate or the Department that brought about the improvement in those schools; it was the school leaders in those schools who did so. However, they did so on foot of a process that was triggered by inspection. It is not punitive; it has helped those schools to get where they wanted to be, which was to become successful schools. In doing so, it has secured the educational experience and future of a number of cohorts of children who would otherwise have been in unsuccessful schools. Sometimes, in the broader debate on all of this, we lose sight of the core purpose of inspection, which is to assist school leaders in the job they have to do. Whether we do it right or do it wrong, or whether we could do it better is, of course, a whole different debate.

The Chairperson: Will you clarify one point? The heads of agreement document states:

> *"There should be further consideration of the future of the Council Curriculum, Examinations and Assessment (CCEA) and the inspectorate including the option of some or all of its functions remaining in a separate body."*

Does that piece of work relate to the inspectorate and CCEA, because a number of clauses look after both and make recommendations? If the heads of agreement says that further consideration should be given, would we not be advised to take those two elements — CCEA and the inspectorate — keep everything as it is and take all of that and do it in a separate piece of work at some stage? I have always had the view that we could have had ESA seven years ago by a simple amendment to the 1986 order without all of this. However, others had different views; hence, we have a Bill with 67 clauses and seven schedules.

Mr Stewart: Sixty-nine, Chair, unless you have removed a couple when I was not looking. *[Laughter.]*

The Chairperson: It probably will be 67 when we have finished.

I will probably anticipate your answer, which is that that was a policy decision. However, we have an issue in the heads of agreement document. My view is this: why not take those elements out, set them to the side and let whatever decisions are to be made about CCEA and the inspectorate be allowed to continue until a resolution is found?

Mr Stewart: You are absolutely right, Chair. You have answered your own question. It is a policy decision.

You have correctly described what was said in the heads of agreement. The Minister's view, which the Executive accepted, was that the priority for now should be the establishment of ESA and that, therefore, we should do the minimum around inspection and CCEA. He has not ruled out future change, and that may be something that he wishes to return to in the future. However, for now, it is very much to do the minimum.

On foot of that, it is our view that the changes to inspection are relatively modest. As we said at previous meetings, there is no change for DEL, and there is a scaling back of the inspection provision in relation to the Department of Culture, Arts and Leisure. With regard to the schools and the Department of Education, there is a modest and limited proposed extension of the powers. With regard to CCEA, it really is care and maintenance in the provisions, and there are no significant policy changes there.

However, a good tidying up of the CCEA provisions is long overdue. We did not do so on previous occasions because it was thought that CCEA would become part of ESA. When the decision was taken that it would not be, it was thought that the time was right to do a little bit of that tidying up. The tidying up is so extensive that legislative counsel's professional advice was that we would be better starting off with fresh provisions, and that is why there is a block of provisions in the Bill relating to CCEA. However, it does not bring any significant policy change.

The Chairperson: In relation to CCEA, a written submission from a union representation for today's meeting regarding clause 51 stated:

> *"Education reform Order (1989) limited cooperation to within UK. Is there any hidden agenda behind this extension?"*

That is coming from a union.

Mr Stewart: There is no hidden agenda, Chair, just recognition of the limits on the Assembly's legislative competence. We cannot legislate to give effect outside Northern Ireland.

Mr Lunn: The Ulster Teachers' Union's specific objective was:

> *"There should be no need for them [inspectors] to have the power to 'inspect, copy and take away documents' or obtain access to computers".*

Is this an extension of the powers they already have?

Mr Stewart: Yes, it is. There is no explicit power in the legislation today to do those things, although, as your questioning earlier elicited, I have no doubt that inspectors do take copies and seek access to documents during inspection at present, but they do not have the formal power to do so today. This provision would give them one. It mirrors a very similar provision in the Ofsted legislation.

Mr Lunn: The unions seem to be saying that, in some circumstances, they have been forced towards industrial action to stop inspectors doing certain things. If the Bill goes through, will it remove the possibility of them being able to do that?

Mr Stewart: No, it would not. If the powers were there and if union members, in pursuit of industrial action, decided not to co-operate with them, that would be, as it is today, a matter for their employers or the boards of governors, acting in an employment capacity, to decide whether to take any action. I was interested by the reference to industrial action this morning. Trade union colleagues can correct me if I do not describe their position correctly now, but I do not think that the industrial action was against the inspectorate. It was against inspection because that was one of the areas where they could take action. It was industrial action against the employers.

Mr Lunn: Yes, necessarily so, but it was probably provoked by the inspectorate.

Mr Stewart: I will leave trade union colleagues to answer that one.

Mr Lunn: Assuming the Bill goes through unaltered in that respect, if a teacher or school refuses to allow the copying, inspection or taking away of documents, they will actually be in breach of the law whereas previously they would not.

Mr Stewart: I do not think that is the correct way to describe it. The position would be much clearer if we were in England and it were an Ofsted inspection, because, in England, it is a criminal offence to obstruct an inspection and legal action could be taken by the inspectorate. That will not be the case here. The provisions in the Bill will give the inspectorate the right of access to those documents, but if someone decides not to comply with that, in pursuit of industrial action, that does not mean that the individual will be guilty of any sort of criminal offence or lawbreaking.

Mr Lunn: If it were done outside of industrial action, and they just said that the inspectorate were not getting the papers; what sort of an offence is that? It is hardly a criminal offence.

Mr Stewart: It would not be a criminal offence. It would be a disciplinary matter for the employer to consider.

Mr Lunn: If the headmaster and the board of governors agreed with them, where would ESA come in? There must be some draconian power here somewhere.

Mr Stewart: Many fear that we have included those in the Bill, but a search for them has yet to find one. It would not be the case that that sort of action would be a criminal offence, and there are no proposals in the Bill to make it so.

Mr Lunn: I am not suggesting there should be. I am just curious about where it ends if you get a stand-off between a school and the inspectorate because the latter is not getting access to look at a computer or copy the papers, and the headmaster and board of governors, for whatever reasons, agree with that decision. What would the inspectorate do?

Mr Stewart: It is difficult for me to answer that. It is a situation that we hope will never arise because we hope that enlightened leadership in schools would recognise, as it does today, the value of inspection. It is part of the process, and only part of the process, that produces the evidence and the data that school leaders need to take forward the process of self development and improvement of schools.

Mr Lunn: I hope that good sense will prevail.

Miss M McIlveen: Where does this sit in relation to freedom of information?

Mr Stewart: Do you mean whether the inspectorate could submit a freedom of information request to the school if it was being denied the information? In theory, yes. Again, one would hesitate to go down that route. I do not think that that would be indicative of the right sort of relationship between the inspectorate and schools.

The Chairperson: OK, I think that covers all the issues. Thank you, Chris. I appreciate your time and help in this regard. We may write to you in relation to the Jordanstown agreement.

Mr Stewart: A colleague was fortuitously able to confirm my earlier view that there is nothing in the Bill that would change the Jordanstown agreement. If it were to change in the future, it would be through negotiation between the trade union and management sides.

The Chairperson: Thank you. Members, that concludes our first session in relation to the scrutiny of the Bill. Obviously there is still a long way to go, but thank you for your indulgence.