Committee for Education

OFFICIAL REPORT
(Hansard)

Education Bill: DE Briefing

16 January 2013

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)
Ms Michaela Boyle
Mr Jonathan Craig
Mrs Jo-Anne Dobson
Mr Chris Hazzard
Mr Trevor Lunn
Miss Michelle McIlveen
Mr Sean Rogers
Mr Pat Sheehan

Witnesses:
Mr Chris Stewart Department of Education

The Chairperson: I ask Chris to come before the Committee. There are a number of things that emanate from that. One of the first things, which was a very telling point that was made by Dermot, is: where are the skills in the Education and Skills Authority (ESA) in relation to the Bill? Perhaps there is a concept, but how does it work out in the legislation?

Mr Chris Stewart (Department of Education): Chair, forgive me for delving back a little bit into the history of this. The original proposal under the review of public administration (RPA) for an education and skills authority envisaged it taking a greater range of functions from the Department for Employment and Learning (DEL) than is now the case. The Minister for Employment and Learning at the time and the Executive changed the view and decided not to transfer formally those functions or responsibilities to the ESA. The question then arose: should the ESA still be called the ESA? The view of the present Minister and his predecessor was that "skills" ought to remain in the title to reflect the fact that the skills agenda, which is extremely important, is not the sole preserve of DEL. Post-primary schools, in particular, play a very important role in the delivery of the skills agenda and in equipping young people and providing for them the educational paths that lead them to a skills-based role in our community. Therefore, it was felt very important that the ESA should recognise its responsibility in relation to the skills agenda and not leave it solely to DEL.

The point that was made is right: there are not specific provisions in the Bill that deal with skills.

The Chairperson: Therefore that is the case.

The other two issues were in relation to Transfer of Undertakings (Protection of Employment) Regulations (TUPE) and the comments that are made in the submission, and the suggestion that clause 33 could be amended to address the anomalies between 3 and 10 of the heads of agreement.

Mr Stewart: I am not certain that the suggestion around clause 33 would affect that situation in any way. The proposal around the inclusion of a reference to "agreement" was an attempt to deal with the potential for any disagreement between a board of governors and the trustees, as the submitting authority. The issue is one of policy. What is proposed through the inclusion of the word "agreement" is a form of joint authority. There is no intrinsic reason why you cannot have joint authority between trustees and a board of governors over any matter. The question that I, and the Office of the Legislative Counsel, if it were trying to draft that, would ask is: what happens if there is not agreement? Where you have joint authority, you need to deal in law with a situation that arises in which you do not have agreement or where joint authority cannot be exercised. At the end of the day, somebody has to be the submitting authority and make the final decision as to what is entered on behalf of a school. That is why I do not think that the suggestion goes far enough in answering how that would work in practice.

To go back to the other matter around TUPE, a number of phantoms are being seen that do not actually exist. TUPE preserves the terms and conditions of staff who will transfer from the employment of a board of governors to the employment of the ESA. If they are highly paid bursars today, they will continue to be highly paid when they become employees of the ESA, because TUPE protects that. We have, at least for teaching staff, although less so for non-teaching staff, regional agreements on terms and conditions that are negotiated between management side and trade union side. As colleagues from the Catholic Heads Association rightly said, the management side includes representatives of voluntary grammars. Indeed, for many years, it was chaired by a representative from the voluntary grammar sector. As is the case today, it is for boards of governors, as the managers of schools, to decide how those agreements are implemented in their particular schools. That will continue to be the case. It will be the board of governors, not ESA, that will decide what the salary of the bursar will be in the future. If the board of governors feels that the content of the bursar's job requires a particular salary, that will be its decision to make, not ESA's.

The Chairperson: Is there not a bit of an issue in that TUPE applies on the day of transfer and that thereafter any decisions will be subject to review? For any new scheme of management, any new employment scheme or whatever that you have dealt with, TUPE will be applicable on the day of transfer, but what happens on days two, three and four?

Mr Stewart: On days two, three and four, if the intention of the board of governors is to change the terms and conditions of any member of staff, it will have to go through the normal processes for doing so.

The Chairperson: You may have mentioned it, but does amended clause 33(b) deal with the contradictions about the selection, retention and dismissal of staff?

Mr Stewart: I do not think that it deals with that issue. I was interested to hear the description of the scheme of management of one of the schools; I forget which one. The description was that the scheme of management at present sets out the employment arrangements for that particular school and sets out how those decisions were made on the selection and appointment of staff.

Of course, one of the requirements in the Bill is that any scheme of employment must conform with the scheme of management. So, if the scheme of management for that school says that these are matters for the board of governors, the scheme of employment must also say that these are matters for the board of governors. Indeed, if it did not say that, ESA could not approve it. The responsibility for those decisions is, quite simply, not going to change for that school. If decisions are made today by the board of governors, they will be made after the Bill becomes law by the board of governors. If that board of governors is capable of filling a post in six days now, it will be capable of filling a post in six days after the Bill becomes law, because it will still be the board of governors that does that.

Mr Lunn: Is there a direct relation to the scheme of employment?

Mr Stewart: Yes, the scheme of employment must match the scheme of management. The two things cannot be contradictory. In any case, some of that protection is built into the Bill, where there is a requirement that schemes of employment place certain responsibilities with boards of governors,

and only in relation to what are termed specified posts where the board of governors or the school decided that ESA would make the appointments would the functions be in any way delivered by ESA.

This is an area where I absolutely understand the concerns that stakeholders have and the sincerity with which they argue those concerns, but a careful reading of the Bill, I think, reveals that what they fear is simply not in the provisions.

Mr Lunn: Where does it say that?

Mr Stewart: I am sorry, Trevor, I cannot quote it off the top of my head; I will need to check it and come back to you. There certainly is a requirement that the scheme of employment and the scheme of management should match. There is, indeed, a further requirement that the scheme of management has to match any instrument of governance of the school. For example, if a school was founded by a charter many years ago, and that charter is still part of the governance arrangements of the school, its scheme of management has to reflect that.

Sometimes, the accusation is that we are undoing the history of these schools. Far from it; we are actually protecting it.

Mr Kinahan: Chris, you will have noted all though this that they were talking about the speed, the delays and how they can do things quickly. The one thing that still bothers me is when it comes to tribunals. To settle a dispute, if it does not get to a tribunal — we mentioned article 100 — is there something that we can put into the Bill to make sure that things are dealt with quickly rather than being stuck with a dispute that goes on for ages? What is the normal length of time for an article 100 dispute being resolved?

Mr Stewart: I do not think that we have had a sufficient number of article 100 disputes to give you an average figure for that. I hesitate to say that it depends on the administrative efficiency of the Department. Perhaps that is something that the Committee has confidence or perhaps not. I can say with certainty that an article 100 procedure is likely to be shorter and quicker than a formal tribunal procedure. It is the case, and I think we would have to acknowledge it, that tribunals are not quick mechanisms. In the first place, it would be much better if we could avoid disputes completely. However, if there are disputes, they need to be resolved by the quickest possible route, which is likely to be the article 100 procedure.

Mr Kinahan: Are you happy with that? You do not think that we should put something else in the Bill such as an arbitration system?

Mr Stewart: I think that the difficulty with building in more and more layers of protection and more and more — again, if I may use this phrase — courts of appeal or mechanisms of appeal is that they all take time. The simplest and straightest route for all this is for a board of governors, a submitting authority, to draw up a good scheme, have that scheme approved and then operate according to that scheme. If that is done, there will not be any disputes.

Mr Kinahan: Thanks.

The Chairperson: There are no other questions. Chris, thank you very much.

Mr Stewart: Thank you, Chair.