



Northern Ireland  
Assembly

Committee for Education

# OFFICIAL REPORT (Hansard)

Education Bill:  
Informal Clause-by-clause Scrutiny

27 February 2013

# NORTHERN IRELAND ASSEMBLY

## Committee for Education

Education Bill: Informal Clause-by-clause Scrutiny

27 February 2013

**Members present for all or part of the proceedings:**

Mr Danny Kinahan (Deputy Chairperson)  
Ms Michaela Boyle  
Mrs Jo-Anne Dobson  
Mr Chris Hazzard  
Mr Trevor Lunn  
Mr Sean Rogers

**Witnesses:**

Mr Peter Burns	Department of Education
Mr Chris Stewart	Department of Education

**The Deputy Chairperson:** We are continuing our informal clause-by-clause scrutiny of the Education Bill. Members have the Committee Clerk's cover note and a clause-by-clause scrutiny table, which summarises all the written and oral evidence and sets out the proposed amendments.

In this meeting, we will consider each of the more straightforward clauses in turn and the proposals for amendment, as set out in the table. As necessary, I will ask the Department to remind the Committee of its evidence on the clauses and the amendments. I will then ask members to indicate their views. If there is consensus on a clause, the Committee Clerk will update the table accordingly. The minutes of the meeting will indicate that there is informal agreement. If there is no consensus, I will ask members to set out their different viewpoints. The Committee will then informally determine its position. At this stage, no votes will be taken. The Committee will divide on a clause, as necessary, only during the formal clause-by-clause scrutiny.

We previously agreed informally that we were content with clause 1. We have just listened to advice on clause 2. I propose that we leave further consideration on clause 2 until later.

We also previously agreed to park clauses 3 to 9 and schedule 2, pending a response on the heads of agreement question.

Members also agreed to park clause 13, pending further information on the delegated nature of employment responsibility in schools.

That leaves us to scrutinise informally clauses 10 to 12 and clauses 14 to 69, schedule 1 and schedules 3 to 8. I propose that we begin with clause 10 and continue until 1.10 pm today and resume next Tuesday, if necessary. Are we all agreed?

*Members indicated assent.*

**The Deputy Chairperson:** Clause 10, "Transfer to ESA of staff employed by Boards of Governors", applies schedule 3, which allows for the transfer of staff employed by boards of governors of voluntary schools other than Catholic maintained schools and grant-maintained integrated schools to the education and skills authority (ESA). Schedule 3 indicates that transferring staff will be afforded protections from the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). I propose to deal with schedule 3 later. For now, let us deal with clause 10.

The Department has helpfully provided a diagram, which is included in members' tabled items. That paper shows the legal definition of schools in Northern Ireland.

**The Committee Clerk:** On a point of information: clause 10 is dealt with on page 21 of the table. Some members have the red folder with them, so well done. If you do not have the folder, I have included in the tabled items a submission that applies here from Comhairle na Gaelscolaíochta (CnaG). If you are a little bit at sea, we also have some updated folders with all the submissions. If you need them, staff will bring them.

As the Department indicates, clause 10 applies schedule 3, which deals with the TUPE arrangements for staff transferring to ESA. The amendments are proposed by CnaG and appear to be linked to a number of other similar amendments that are designed to give Irish-medium education a separate legal status. CnaG's submission explains what it is after. Members may therefore wish to take a view on the position put forward by CnaG that Irish-medium schools should have a separate legal status.

**Mr Chris Stewart (Department of Education):** I will make a couple of points that relate to clause 10. We absolutely understand CnaG's central point about the identity of Irish-medium schools. Indeed, elsewhere in the Bill, the Minister has indicated that he is prepared to consider amending the definition of "Irish-speaking school" in line with what CnaG is looking for. However, in this instance, CnaG's concerns are misdirected. This is not the right clause by which to achieve what CnaG is looking for. Indeed, the amendment would damage the clause quite significantly and prevent it from working as intended.

The clause is relatively straightforward: it is intended to transfer staff currently employed by boards of governors to the employment of ESA. So the requirement is to identify all schools that are currently employers in their own right, and that is what we have done in clauses 10(2)(a) and 10(2)(b). The schools involved are voluntary, which includes all Irish-medium schools and voluntary schools other than Catholic maintained schools. You may ask why Catholic maintained schools are excluded there: it is because they are dealt with in another clause. Employees of Catholic maintained schools are employed by either the Council for Catholic Maintained School (CCMS), in the case of teaching staff, or by education and library boards, in the case of non-teaching staff, and other provisions will transfer them. So we have included voluntary schools other than Catholic maintained schools, and all grant-maintained integrated schools. The net effect of the clause is to transfer all those staff who are currently employed by boards of governors to the employment of ESA — no more and no less. We urge the Committee to reject the CnaG amendment, which would simply interfere with the proper outworking of the clause.

I will mention an issue about timing. If members look at the commencement arrangements for the Bill, they will see that that particular clause and the associated schedule will commence the day after Royal Assent. That does not mean that the transfer takes place on that date. Those provisions have to be commenced early so that we can make the transfer schemes, but the transfer schemes will come into effect only when ESA is established, which will be at a later date. It is not that the staff are transferred the day after Royal Assent; it is that the power to make the schemes to do the transfer commences then.

**Mr Lunn:** I can understand what CnaG is after. Chris, you rightly said that this is not the right clause in which to bring it up. What is the right clause?

**Mr Stewart:** It is probably clause 63. One of the main drivers for suggesting a different definition for an Irish-speaking school, and, indeed, the inclusion of a definition of a Catholic school, is to make sure that we have clarity around the sectoral bodies. A sectoral body is a body that represents schools of a particular description, so we need to make sure that the particular descriptions are right in education law. I suspect that would be introduced towards the back of the Bill.

**The Deputy Chairperson:** I am just checking whether we reach clause 63 today.

**Mr Lunn:** We will get there eventually.

**The Deputy Chairperson:** We might eventually.

**Mr Stewart:** I will try to make my answers shorter. *[Laughter.]*

**Mr Lunn:** I think that people are disappearing here, Chairman.

**The Deputy Chairperson:** Are we content to allow for staff to transfer from the voluntary grammar and grant-maintained integrated schools to ESA?

*Members indicated assent.*

**The Deputy Chairperson:** Do we agree that Irish-medium schools require a separate legal identity from other types of school?

*Members indicated assent.*

**The Committee Clerk:** To be clear: are members therefore agreeing that they want to amend the clause in line with what CnaG has suggested by way of a separate identity for Irish-medium schools?

**Mr Lunn:** Which clause are we talking about? Are we still on clause 10?

**The Committee Clerk:** Yes.

**Mr Lunn:** No, we are not. We have taken the advice of the Department that clause 10 is not the correct clause to do that.

**Ms Boyle:** We are taking the advice of the Department.

**Mr Rogers:** When we come to clause 63 or whatever —

**The Committee Clerk:** Could members say that aloud because it is being recorded for the Hansard report, and nods are not recorded? We are at our quorum now, so if anybody leaves, we will have to stop. So that seems to be clear. Members are content with clause 10, informally, as drafted, but you want to pick that issue up again at the appropriate clause?

**Mr Lunn:** That is correct.

**The Deputy Chairperson:** We will move on to clause 11, "ESA to employ peripatetic teachers". The clause defines a peripatetic teacher as a teacher teaching subjects in a number of schools or providing special education provision. The clause requires ESA to devise and revise a scheme for the appointment of such teachers. The scheme will set out the number of peripatetic teachers employed by ESA and will ensure that such teachers will not teach in a grant-aided school unless the board of governors approves. Again, I ask the Department to explain the clause and comment on CnaG's remarks.

**Mr Stewart:** Again, clause 11 is relatively straightforward. There is a need for peripatetic teachers in education. It seems logical that ESA should have the function of employing those teachers, but there are two important caveats. ESA needs to do that in the same way that a board of governors would, subject to the same requirements as a board of governors. So there is a requirement on ESA to have, as it were, its own employment scheme and to follow the same legal requirements as a board of governors in doing so.

It is also important that this scheme does not cut across the general policy commitment that it is only a board of governors that will decide who works and who does not work in a particular school. That is why the requirement is there that a peripatetic teacher cannot be appointed to any school without the agreement of a board of governors.

We understand where CnaG is coming from, but what is proposed is unnecessary. The clause is permissive. It allows ESA to employ peripatetic teachers, but it does not give it a monopoly on that. If a group of Irish-medium schools, or any other group of schools, wish to come together to appoint a shared teacher, if I may use that phrase, they are entitled to do that under the Bill's clauses. It is not necessary to amend clause 11 to provide for that.

**Mr Lunn:** Sorry about this, Chairman. Under the CnaG proposed amendment, there are two categories in which there is a particular special need. One of them is special education, and the other is the ability to speak and teach in Irish. I think that they are both quite individual, when there is a separate requirement. I have some sympathy with CnaG's position. You may say that it is not necessary and that the clause already permits the employment of peripatetic teachers to teach in Irish, but I am trying to think it through. If it is not necessary for Irish to be specifically referenced in that clause, why is it necessary to reference special education?

**Mr Stewart:** You have answered the question for me, Trevor. We do not think that it is necessary. Specifying the ability to teach in Irish belongs in a job description and personal specification for a post rather than in primary legislation. If you were to follow through on the lack of logic of the CnaG amendment, we would have to list the ability to teach science, languages and all the skills and qualifications that peripatetic teachers might have. That clause absolutely permits ESA to employ peripatetic teachers and to specify in doing so that they should have the ability to teach in Irish.

**Mr Lunn:** No. The proposed amendment states that a peripatetic teacher is:

*"a teacher employed —*

*(a) to teach a particular subject or group of subjects in a number of schools or otherwise than in a school".*

I think that you could make an assumption that that includes general curricular subjects and the English language. The particular special requirement is peculiar to those two groups: special education; and when there is a real need. An English-speaking teacher cannot teach in an Irish-medium school, so perhaps it needs to be clearly defined. Alternatively, if you go about it the other way, neither needs to be defined.

**Mr Stewart:** We do not think that it is necessary to define either of those things in this clause. I do not claim to be an expert in special education provision, but it is manifestly different from other forms of education and would be specified elsewhere. Peter will keep me right because he used to work in that area. I think that special education provision is defined elsewhere in educational law.

**Mr Peter Burns (Department of Education):** It is in the 1996 order.

**Mr Stewart:** It is in the 1996 order, as Peter has helpfully reminded me. This is a broad enabling clause. It places on ESA no restriction on the type of peripatetic teachers who would be employed, on the subject that they would teach or on the qualifications that would be required. It would certainly be possible to specify any or all of those things, but we simply do not think that it is necessary to do so.

**Mr Lunn:** However, it seems to be necessary to specify special education.

**Mr Stewart:** I think that that is because special education provision has a particular definition, and the requirements for special education provision are unique.

**Mr Lunn:** So is the requirement for Irish-medium education. It is unique because it is in Irish. I do not know why I am sitting here making the case for the Irish-medium sector when nobody else is speaking. I will leave it at that.

**The Deputy Chairperson:** Thank you.