Northern Ireland Assembly

Committee for Education

OFFICIAL REPORT (Hansard)

Education Bill: Informal Clause-by-clause Scrutiny

6 March 2013

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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 Pat Sheehan

Witnesses:

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

The Chairperson: OK, members, let us return to our favourite subject. We are delighted that we have our two favourite members of the Department of Education (DE) in front of us today.

Mr Chris Stewart (Department of Education): Is that on the record, Chairman?

The Chairperson: It is. This session is being recorded by Hansard. That is why I said that.

Peter and Chris, you are welcome. We will make a start and try to keep this moving. I would like to make some progress on the Committee's work on the Bill. That would be helpful.

In this session, we will consider each of the more straightforward clauses in turn and the proposals for amendment as set out in the table in members' packs. As necessary, I will ask the Department to remind the Committee of its evidence on the clauses and amendments and ask members to indicate their views. If there is consensus on a clause, the Committee Clerk will update the table accordingly, and the minutes of the meeting will indicate that there is informal agreement. If there is no consensus, we will ask members to set out their different views on the clauses and amendments, and the Committee will informally determine its position.

This is members' final opportunity to seek Committee support for their position on a clause or amendment. It is also the final opportunity to seek Committee support for any new amendment that members may wish to propose. No vote will be taken at this stage, and, if necessary, the Committee will divide during formal clause-by-clause scrutiny. We have agreed that that will commence on 19 March.

We will begin where we left off yesterday, at clause 33. Clause 33 is in Part 2 of the Bill, which deals with the management of grant-aided schools. The clause requires every grant-aided school to have a scheme of management in place. Schemes will set out the membership and procedures for boards of governors and must be consistent with legislation, including the Education Bill and any instrument of government of schools. Boards of governors must give effect to a scheme of management. Schemes of management for Irish-speaking schools or schools with an Irish-speaking unit must require boards of governors to use their best endeavours to maintain the viability of the school or unit.

Some of the trade unions suggested that the clause be amended to require schemes of management to be standard documents with little variation. Trade unions also sought an amendment to require that they be consulted on the content of schemes. The Northern Ireland Teachers' Council (NITC) requested an amendment that would alter schemes of management to prevent boards of governors from limiting staff mobility. The Association of Teachers and Lecturers suggested that all schemes of management should be public documents.

Chris, do you have any comments on clause 33?

Mr Stewart: Certainly, Chair. Members will notice that clause 33 and the clauses that follow are very similar in construction to clauses 3 to 8, which deal with employment schemes. Indeed, many of the suggested amendments are very similar to the ones suggested for those earlier clauses.

Clause 3 is the foundation of this part of the Bill, and, as you have neatly summarised, Chair, it sets out what schemes of management are and what provisions in the Bill will govern their content. It is worth reminding members that, unlike schemes of employment, schemes of management are not a new concept. There is a current requirement in education law for every school to have a scheme of management and to submit it to the Department for approval. There is also a provision in law for the Department to modify schemes if it sees fit.

The changes in this clause and the succeeding clause put that process on a very different footing. The schemes would be submitted to the Education and Skills Authority (ESA) rather than the Department, and, as with schemes of employment, ESA's discretion to decline to approve or modify a scheme will be very much less than that of the Department today. In essence, ESA would be unable to decline to approve a scheme unless it failed to meet the statutory requirements. If a scheme can be modified, and the modifications can be agreed with the submitting authority, ESA must do that. If not, a scheme that is not approved must go forward to the tribunal that will be established to deal with disputes.

Mr Lunn: What is the relationship between schemes of management and schemes of employment?

Mr Stewart: There would be a hierarchy involving the legislation, what are known as instruments of government of the school, schemes of management and schemes of employment. In essence, they would go in that order. Obviously, nothing trumps legislation, and all the other items that I mentioned must comply with legislation. An instrument of government — if there is one — is what caused a school to come into being and is next in the order of hierarchy, and a scheme of management must comply with the instrument of government of a school. As we go down the chain, the scheme of employment must comply with the scheme of management.

Mr Lunn: Are they all instruments of government?

Mr Stewart: In the broadest sense, yes. They would all be interrelated.

Mr Lunn: Clause 33(4) states:

> *"The scheme of management ... shall—*
>
> *(a) not contain any provision which is inconsistent with any provision of the Education Orders or ... statutory provision*
>
> *(b) ... be consistent with any instrument of government of the school".*

Sorry, I do not know how I to put this, but may we safely assume that our failure to receive advice about clause 3 might reflect on our ability to consider this clause? Both clause 33 and clause 3 deal

with instruments of government. Clause 3 deals with schemes of employment that are yet to be included.

Mr Stewart: In answering your question, I will scrupulously avoid making assumptions about what members are or are not concerned about. However, if members are concerned about potential amendments to clauses 3 to 8 that they have not yet seen, it would be reasonable to have similar concerns about these clauses because they are very similar in construction. The issues under consideration for a potential amendment would apply to both sets of clauses, particularly those concerning the role of the tribunal in disputes.

Mr Lunn: I will put it another way, Chairman: we should probably park these clauses on the same basis as we parked clauses 3 to 12.

The Chairperson: That would mean parking clauses 33 to 37. Are members agreed?

The Committee Clerk: It would be helpful for me to know the answer. Do members feel that they could set out their views on any of the proposed amendments, or do they want to reserve their position on the lot?

Mr Lunn: We want to reserve our positions.

The Chairperson: Yes, we will reserve our positions. Are members agreed that the Committee reserve its position on clauses 33 to 37?

Members indicated assent.

The Committee Clerk: Very good, Chair. Thank you.

The Chairperson: That makes my life a wee bit easier.

Mr Craig: I would have thought that the scheme of management would have been public and open to public scrutiny. I read a comment that it was not a public document.

Mr Stewart: Yes, I would have thought so. The Minister is open-minded about that proposed amendment. He would also feel that to whatever extent these documents are not already public, they ought to be.

Mr Craig: I just cannot understand why anybody would think that they would be secret.

Mr Peter Burns (Department of Education): The Department has the schemes of management and will release them to any member of the public who wants to see them.

The Committee Clerk: Just for members' information, the draft model of schemes of management, which we saw two weeks ago, indicated that the scheme of management would be available to any member of staff who wanted it. The position on the scheme of employment was not quite clear.

The Chairperson: Clause 38, "Duties of Board of Governors in relation to achievement of high standards of educational attainment." This clause requires boards of governors to promote the achievement of high standards of educational attainment. It requires boards of governors to co-operate with ESA on actions undertaken by ESA to promote high standards.

A number of respondents suggested that the clause be amended to better define "attainment" or to explicitly require boards of governors to add value rather than simply achieve high standards. I am referring to proposed amendments a, b and i. Others suggested that the requirement be changed or modified, which takes in proposed amendments f and g. These suggestions come mainly from the unions and the Northern Ireland Commissioner for Children and Young People (NICCY). Chris, do you have any comment?

Mr Stewart: This is a short but very important clause. It is at the core of the Minister's policy intention for the Bill overall and the establishing of ESA. We have often made the case that the thrust of the policy is about embedding the raising of standards throughout education and, of course, not just in

ESA but in schools. This clause purports to make explicit for the first time that it is the duty of boards of governors to act in pursuit of that.

We recognise that when some boards of governors read that, they will, understandably, have concerns and want to know more about what it means. The clause, for the first time, gives recognition in legislation to what the best boards of governors already do. Boards of governors are dedicated groups of people who see their role as promoting the achievement of high standards in schools, so we are finally giving recognition in law to what they already do.

I will move on to the second part of the clause, which is clause 38(2). A concern that members frequently hear about the Bill is that it introduces a system of command and control, whereby ESA will continually interfere in what schools do. The counterfactual case is made by this clause. Yes, there is a duty on boards of governors, but merely to co-operate with ESA. It does not give ESA the power to direct a board of governors to do anything in particular or to interfere or directly intervene in a school. It asks a board of governors to co-operate, to act reasonably and work alongside ESA in their shared objective of promoting the achievement of high standards.

The Chairperson: What in the Bill as currently drafted takes precedence? The Education and Training Inspectorate (ETI) has a remit to inspect schools. Should the board of governors pay more regard to ETI or, were this duty to be introduced, to ESA?

Mr Stewart: Our aim is that they would pay equal regard, and, indeed, all three should work together. Certainly, ETI will work very closely with ESA. The powers available to inspectors will be stronger than those in this provision for ESA. However, for this to work successfully, it must be on the basis of a partnership of boards of governors, the inspectorate, the rest of the Department and ESA. It would be the inspectorate's job and, to a lesser extent, ESA's to gather the evidence and information on good practice and on areas that need to improve. ESA must recognise where the practice is good and challenge schools where it is less good. It must work with schools as they determine the way forward and the strategies and plans that they will put in place to secure improvement. In that regard, there is no role for ESA in intervening, directing, commanding or controlling schools. In the very extreme situation of intervention being required, those powers would remain with the Department.

Mr Kinahan: I want to explore exactly what is meant, Chris, when you talk about "co-operate". If someone is directed to do something and does not, that is not co-operating, so that opens up a whole —

Mr Stewart: It does. It is perhaps best illustrated by providing an example. The main feature of the co-operation that ESA will seek is the provision of information by schools to it. Some of that information, such as examination results, will already be freely available. However, ESA will look for information from schools on how and what they are doing, and schools will be required to co-operate in providing that. It is in the clear interest of a school to co-operate with ESA, so we do not expect this to happen, but should a school refuse to co-operate for some reason — perhaps it genuinely thought that ESA was being unreasonable in its request — ESA would not be able to command or direct that school. Rather, it would have to raise a dispute with the Department, perhaps using the article 100 mechanism, and ask the Department to rule on it. Alternatively, in a very extreme circumstance, it might ask the Department to use its power of direction. Those powers are there as a backstop, and we do not envisage them being used. We know that some stakeholders and some people in schools have concerns, particularly about education, but we think that the importance of the raising standards policy in Every School a Good School is broadly recognised. Teachers and governors throughout education also recognise that we should be in the business of raising standards, not interfering in schools.

Mr Kinahan: I fully agree.

The Chairperson: There were other responses on this. The Children's Commissioner, for example, asked about providing additional support for governors; the Confederation of British Industry (CBI) suggested that boards of governors be required to promote connections with business; and the NITC wanted changes that would require trade union representation on boards of governors. Have members any other views or comments on the amendments that we have considered?

Mr Stewart: I think that the Minister would regard the CBI suggestion positively and share the view that co-operation with industry is very important. The education system produces what may be termed the human capital for our economy, and it is very important that it does so effectively. Although we

support the aspiration, we think that it would be very difficult to capture that in legislation. However, it is something that we would expect ESA and boards of governors to do.

The Chairperson: There is also correspondence from the Council for the Curriculum, Examinations and Assessment (CCEA). It sets out the work that it does on interaction with trade and industry, and so on. I think that that is an ongoing process, and it certainly needs to be encouraged.

Mr Kinahan: We might see something from the Department for Employment and Learning (DEL) when it comes through with its amendments.

The Chairperson: Yes, but their amendments are more to do with certain issues. Are members happy that we reserve our position? We are not considering any amendments to clause 38.

Mr Lunn: Are we reserving our position, Chairman? Are we not agreeing that we should not consider any amendments? If so, that means that we have actually reached agreement on a clause.

The Chairperson: Yes, you are right. Do members agree to clause 38 as drafted?

Members indicated assent.

The Chairperson: Clause 39 deals with the appointment by ESA of governors to controlled, maintained, grant-maintained integrated and certain voluntary grammar schools. Clause 39 transfers from the education and library boards (ELBs) to ESA the right to appoint governors to some schools. It requires ESA to ensure that the appointees are committed to the ethos of the school. In the case of an Irish-speaking school or a school with an Irish-speaking unit, ESA must ensure that the appointee is committed to the continuing viability of the school or unit.

As before, the trade unions suggested amendments that would give trade unions representation on boards of governors. The Northern Ireland Youth Forum suggested that the Bill be amended to require ESA to give young people places on the board of governors. That covers proposed amendments a, b and k. The issue of unions or young people having a right to representation on the board of governors was also raised. Chris, do you want to comment on that?

Mr Stewart: Clause 39 is a particularly challenging read. It is largely technical, and it achieves the transfer of a function from the Department and education and library boards to ESA, that function being choosing a certain proportion of the membership of boards of governors. However, other than that, the overall composition of boards of governors in the various types of schools is not changing. The effect of the clause is simply to take the share of appointments, which, today, would be made by the education and library boards, add that to the share that would be made by the Department, and pass that over to ESA. Other than that, the numbers do not change. Members will see the various calculations and sums in the clause. They are complex, but please be assured that we have checked them very, very carefully to ensure that we have not made any unintended changes.

The parts of the clause that are not technical — those that reflect our broader policy aims — are those on the requirement for ESA to choose persons who appear to be committed to the ethos of the school. There are also various references to Irish-speaking schools. The former was a substitute for a provision in the previous Bill, in which, members will recall, we had purported to introduce the concept of community governors. That did not find favour anywhere, and there was a lot of concern about it. The Minister decided not to pursue it. Instead, he decided to reflect what we had heard from many stakeholders, which was that it would make sense to appoint people who were committed to the school. Again, that recognises the very important role of boards of governors. It seemed appropriate to reflect that in the legislation.

The specific references to Irish-speaking schools are a carry-forward from the direction in which the Bill from the previous mandate was heading. A number of amendments along those lines had been suggested by MLAs, and the Minister decided to incorporate them into the Bill this time round.

Mr Lunn: Is there a comparable requirement somewhere of an onus on the Minister to ensure that governors appointed to integrated schools are committed to the ethos?

Mr Stewart: Yes. The clause's requirement for commitment to ethos would apply to all types of schools. On the other requirement for commitment to the continuing viability of the school, for once, I

will not give the answer that you are expecting. There is not an equivalent, in existing legislation, on the integrated side.

Mr Lunn: Give me a bit more detail. You caught me on the hop there.

Mr Stewart: You were probably expecting me to say that there is an equivalent provision in the 1989 order, but there is not. That provision was not even in the previous Bill as drafted. It was proposed by the former Deputy Chair of the Committee as an amendment. The previous Bill, as you recall, did not get to Consideration Stage. Therefore, there was no opportunity for the Assembly to decide whether to take the amendment. In preparing the Bill this time round, the Minister had sympathy with the provision and asked for it to be included in the Bill from the outset.

Mr Lunn: I think that I must be going slightly brain-dead. Are you saying that when the Minister is appointing governors to integrated schools, there will be a requirement for the appointees to be committed to the ethos and the viability of the school?

Mr Stewart: Just the ethos.

Mr Lunn: Just the ethos. If he is appointing governors to other types of grant-maintained schools, will there have to be a commitment to the viability?

Mr Stewart: No. The commitment to ethos applies to schools of all types. However, it is only for Irish-speaking schools that there is a requirement for a commitment to viability.

Mr Kinahan: My question relates to the amendment proposed by the Transferor Representatives' Council (TRC), to which part of the departmental response is:

"It is not the Minister's policy to establish a hierarchy of consultees".

Maybe I am muddling two things up, but I am sure that, yesterday, we heard of a series of concentric circles depicting how various groups and people were to be consulted. Surely, we have a hierarchy, in some form, of how people are consulted.

Mr Stewart: I have to accept, Danny, that you make a fair point. The description that I gave yesterday was, indeed, of a hierarchy that applied in those particular circumstances. However, TRC's proposed amendment is that ESA should consult two groups of people but predetermine the outcome and say that the views of one group will take precedence over the views of the other. The Minister does not think that that is the right way to go. In deciding on the views of consultees, we think that we should give weight to what is said rather than to who says it. It is the quality of the argument and views put forward that will determine, if you like, the hierarchy rather than it being predetermined from the outset.

It is very important to consult sectoral bodies. They have a very significant role in encouraging people to come forward for appointment as governors. Therefore, they should be consulted, and considerable regard should be paid to their views. Equally, we should consult boards of governors. They are the people who do this very, very difficult task. We feel that they should be asked, and listened to very carefully, about what additional skills they feel might be required on a board of governors.

The Chairperson: Is there a role for the Commissioner for Public Appointments in this? The Bill sets out the appointment by ESA. However, say, for example, there are two places on a board of governors, which had previously been appointed by the education and library board. ESA will now take over those appointments. Will ESA trawl for four people for two places? We have had the very contentious issue of the Department, in its appointments, saying that to appoint people to a particular board of governors, it needed four people to give the Minister a choice. The stand-off continues at Belfast City Council.

Mr Stewart: I must confess that I do not know whether, or to what extent, the Commissioner for Public Appointments regime applies to school governors. I should know, and I apologise to members. I will check that technical point and write to the Committee. I can say that no change is proposed. So whatever the arrangements are today for the appointment of school governors, those appointments will be made in the same way, even though ESA will appoint in the future.

The Chairperson: You know that we have major concerns about the delays that have been ongoing for some considerable time in the Department. I know, from questions that we have tabled in the House, that there are long delays in appointments, with schools waiting, sometimes for years, for the Department to appoint people to boards of governors. Some attempt was made recently to address that, but there is a huge deficit of members who have not been appointed.

Mr Stewart: The Department recognises that. It is very important that we do not leave vacancies for any length of time in boards of governors. They have an important job to do. I am not attempting to be facetious, but if the concerns are about the Department's efficiency, the sooner we get this moved across to ESA, the better.

The Chairperson: It might be a classic case of passing the buck.

Mr Lunn: I want to go back to viability versus ethos. Is it fair to ask what was in the Minister's mind when he felt the need to stipulate that a commitment to the viability of an Irish-speaking school was important but that, by implication, a commitment to the viability of any other type of school was not? Surely, it is pretty basic.

Mr Stewart: I have no doubt that the original proposal for this type of provision and the Minister's subsequent decision to include it in the Bill stem from consideration of something that we have talked about many times, which is our Department's duty to encourage and facilitate Irish-medium education. Straight away, I recognise that there is a corresponding duty in relation to integrated schools, so perhaps there is an argument to be made for a similar provision for integrated schools. However, there is no such statutory duty in relation to any other type of school.

Mr Lunn: For once, I was not making the case for integrated schools; it is more a case that it should apply to all schools. If it is suitable for one type of school in the spectrum, what is the difference? Why would you not place a duty on the Minister to consider an applicant's attitude to the viability and ethos of a school before he appoints them to any board?

Mr Stewart: There is no technical reason why not. This is purely an issue of policy. If the policy consensus was that there should be a similar duty in relation to all schools, there would be no technical reason for not doing it.

Mr Lunn: I feel an amendment coming on, Chairman.

Mr Kinahan: Chris, when it comes to appointing persons "appearing to ESA" to be committed, how do we define appearing?

Mr Stewart: That recognises that neither ESA nor anybody else is in a position to be absolutely certain of a person's commitment. One could and should seek evidence or information of that in the application process, even in the very simplest way. We do not want to make the application forms any more complicated than they need to be. However, it would not unreasonable to ask in the application form for the person to indicate what type of school or what particular school they are interested in serving on and then to mention the duty and ask for evidence of their knowledge, understanding and commitment to the ethos of the school. We would need to strike a balance between making that meaningful and not tokenistic, and not asking people to go through a written examination to become a school governor, which would be likely to put people off.

The Chairperson: Could we introduce a test?

Mr Stewart: As long as it is not computer based, Chairman.

The Chairperson: You could call it the 12-plus or the 13-plus — might as well introduce a bit of controversy.

Mr Stewart: If we put it that way, I am not sure that it would find favour with the Minister.

The Chairperson: I do not think that it would. It is a challenge for any organisation to determine from an application form whether a person is committed to the ethos of the school. I think that there needs to be an understanding of how the application is worded in the first place. It should be stated on the

application form that, to be considered, applicants need to be able to demonstrate that they are committed to the ethos of a particular school.

Mr Stewart: That is right, Chair. The other thing that we have to bear in mind is that this is a further challenge for ESA. It will not be ESA that determines the ethos of the school; it will be the school. We are asking ESA to make proxy judgements on behalf of schools. To make those assessments, ESA will have to consult the school, the existing board of governors and probably the relevant sectoral body.

Mr Kinahan: If someone is appointed to a board of governors but does not then appear to follow its ethos, do we then move to a different clause on the removal of governors?

Mr Stewart: That takes us back into the territory of the potential removal of governors. As we mentioned briefly last week, the Department is working on some subordinate legislation, and we can check on the progress of that. I do not think that it is the intention, Danny, and I think that it would be very difficult to use that as a criterion for removing a governor. As we have conceded, this is, to a degree, a subjective judgement. We need to tread very carefully in appointing people partially on the basis of a subjective judgement and even more carefully — very carefully indeed — before removing someone on the basis of a subjective judgement of their commitment to something as difficult to define as ethos.

Mr Craig: If you were a teacher or a head, why would you bother removing governors?

The Chairperson: OK. Obviously, there is no consensus, and there are issues with clause 39 that still need to be addressed.

Mr Lunn: Schools need to have a statement of their ethos.

Mr Stewart: It would help if they did, and we would expect to find that in their scheme of management and scheme of employment, particularly the former. Many stakeholders, particularly those from Catholic education, said that they have long sought an assurance that it would be lawful for submitting authorities and boards of governors to act in the discharge of their management and employment functions, lawfully, and according to the ethos of the school. They were looking for an opportunity to do just that — to capture in written form the ethos of the school. Given that it would be well-nigh impossible, I think, to legislate for ethos, we advised them that they could appropriately and usefully reflect that in the scheme of management.

Mr Lunn: We will come back to that one.

The Chairperson: Are members content that we reserve our position on clause 39?

Members indicated assent.

The Chairperson: Clause 40 provides for part-time teachers to be eligible for election as governors. There were no comments from any stakeholders. The clause simply provides for the omission of the words "or part-time".

Mr Stewart: It is just a technical clause that rectifies a long-standing anomaly. The current legislation does not allow part-time teachers to be elected to boards of governors, which is probably discriminatory and certainly unwise. So the Minister is keen to remove that anomaly.

The Chairperson: Is the Committee agreed on clause 40?

Members indicated assent.

The Chairperson: That is three out of 66. We are doing well. You might get your Easter holidays if you keep going at this rate.

Mr Stewart: Is that on the record, Chairman?

The Chairperson: Unfortunately, it is.

Clause 41 deals with the management of controlled schools. The clause makes the board of governors of a controlled school responsible for its control and management, and it also permits more than one controlled nursery school to be grouped under a single board of governors.

The Sharing Education Programme (SEP) in Queen's suggested an amendment that would allow two or more controlled primary schools to be managed by a single board of governors.

The TRC proposed an amendment that would allow transferors to retain their representation on a board of governors when a controlled school merges with a controlled grammar and keeps its grammar ethos. Chris, I note your point in response to the TRC:

> *"A provision to establish such rights may be regarded as discriminatory (and therefore unlawful) as, unlike primary and secondary schools, the provision would not be based on preserving existing rights."*

Mr Stewart: I will deal with that specific point first and then return to the generality of the clause.

The Minister absolutely understands the request from the TRC and is very sympathetic to it, but we have a very substantive legal obstacle that would prevent us from saying yes to this. Members will be very familiar with this territory. Throughout the passage of the previous Bill, and in preparation for this Bill, successive Ministers have very much wanted to preserve the rights of transferors to membership of boards of governors and education administration bodies. For a long time, we felt that the legal obstacle to that was insurmountable, but, thankfully, we eventually found a legal rationale for preserving the TRC membership rights, based on the argument that — I am oversimplifying this — it is not discriminatory to preserve the TRC's long-established right. Therefore, we are fine on the provisions for membership of boards of governors and the provisions for membership of ESA because there are rights that can be preserved. Unfortunately, transferors have never had a right of membership to controlled grammar schools. They were never transferred in any sense, so, unfortunately, we cannot rely on the legal argument that we are avoiding discrimination simply by preserving existing rights.

The Chairperson: Is the protection, in some regards, similar to what we discussed in relation to clause 39 on appointments — the duty would be placed on ESA to appoint to the board of governors of a school those who appear to be committed to the ethos of the school? That would be one way of —

Mr Stewart: I think that that would help and would not allow ESA, for example, to go to the extent of setting aside a certain proportion of the board of governors for, as it were, TRC appointments. The Minister wants the TRC to continue to do what it currently does, which is encouraging and nominating people to come forward to serve on the boards of governors of controlled schools, including controlled grammars. I think that the Minister would be delighted if he were in a position to underpin that in legislation and give them that as of right, but the legal position is that we do not feel able to do that. However, the Minister definitely wants that to happen and the TRC to continue putting forward good people to serve on controlled schools' boards of governors.

The Chairperson: Do members have any comments?

Mr Stewart: Chair, may I just go back to the generality of the clause? It is in two parts. Clause 41(1) is an example of a few words that have a profound and important effect. It is a very significant change for controlled schools. Today, controlled schools are managed by education and library boards. On foot of the Bill, they will be managed by their boards of governors. This is a very significant autonomy measure, putting controlled schools' boards of governors in the same position as other schools' boards of governors by making them responsible, giving them autonomy over the day-to-day running of the school and freeing them from any measure of control by an education and library board.

The second part of clause 41 touches on what we might loosely term a federation or grouping of schools. It is a very modest proposal, which would simply allow for a little more grouping than is currently the case at primary or nursery school level in the controlled sector. We would like, if we could, to go further than that and allow for more grouping of schools, possibly at post-primary level as well. The reason for not having done so is a rather prosaic one, I am afraid. It would require a great deal of legislative change, and there simply was not time in the preparation of the Bill to provide for that. We also want to see what the ministerial advisory group on shared education will recommend on

sharing or federations, which takes us into the even more difficult territory, perhaps, of federating across sectors or school types. That would require very significant legislative change indeed.

The Chairperson: The amendment suggested by the Sharing Education Programme would allow two or more controlled primary or post-primary schools, which are not integrated schools, to be managed by a single board of governors. That is more cross-sectoral.

Mr Stewart: A cross-sectoral federation would be extremely difficult, simply because the composition of boards of governors in different sectors or school types differs. If, for example, you wanted a federation between a controlled school and a maintained school — either primary or post-primary — that could not be achieved at present because the composition of the boards of governors is different. So, if we were to provide for that sort of federation in the future, we would have to make very significant changes to the composition of boards of governors. In effect, we would have to standardise them between controlled and maintained. That would take us beyond the scope of the heads of agreement. I do not think that the authors of the heads of agreement had in mind ruling out that sort of federation. Nevertheless, it is beyond the scope of the Bill that we were asked to prepare.

Mr Lunn: What is the reason for identifying controlled integrated primary schools as being outside this?

Mr Stewart: The particular composition of their boards of governors differs from that of other controlled schools.

Mr Lunn: Two controlled integrated schools will, presumably, have the same composition of boards of governors?

Mr Stewart: Yes.

Mr Lunn: That said, I do not think that it is very likely because, geographically, they are widely separated.

Mr Stewart: That is the more pragmatic point, yes. There would not be the same technical impediment to federation. However, yes, they are unlikely, particularly at primary level, to be close to each other.

Mr Lunn: So why exclude them? Is the Bill trying to avoid the possibility of a controlled primary amalgamating with a controlled integrated school?

Mr Stewart: There is no policy opposition to that sort of development. This is purely recognition of the technical differences in the composition of boards of governors between different types of schools. When the provision that the Bill replaces, which is in the 1986 order, was drafted, the issue of federation was not very high on any policy agenda. It is not that a conscious decision was taken to rule things out; there was just no impetus or desire to provide for them, and so it was not done. This time, we have, almost in passing, done a little bit of tidying up or made a little change at the margin, which will allow for a little more federation. However, we recognise that there is a much broader and more difficult question to be asked and answered, which is how we provide for more federation or different models of sharing between schools of different types. The Minister very much wants to see what the advisory group comes up with on that question.

Mr Lunn: Fair enough. That is another reserved position, Chairman. It seems to make it more difficult for a controlled primary and a controlled integrated primary to get together.

Mr Stewart: I could not claim that it makes it any easier, but I do not think that it makes it any more difficult.

Mr Lunn: It allows for a common board of governors in a particular sector but not across sectors.

Mr Stewart: You are right, but the existing provision in the 1986 order has the same exclusion for controlled integrated schools. That is why I said that this does not make it any easier, but it does not make it any harder either. It is already hard or impossible.

Mr Lunn: It maintains the block.

Mr Stewart: That is a fair summary.

Mr Burns: It does not stop those two schools merging; it only stops them having one board of governors. A controlled primary school and a controlled integrated primary school can merge, but the fact that they are merging means that they become either one or the other. They really become one controlled integrated primary school on two sites. Do you see what I mean? It does not stop them merging; it only stops them having one board of governors and being two separate schools.

Mr Kinahan: You said, Chris, that we would need to change legislation in a major way to get to shared management, but there is some mechanism that allows shared management to happen at the moment, is there not? Is it proportional?

Mr Stewart: To a very limited extent. Two maintained primary schools, two maintained nursery schools or two controlled primary schools, for example, could be grouped under a single board of governors.

Mr Kinahan: Can maintained and controlled not be grouped?

Mr Stewart: No. That is not possible, not for any policy reason but simply because the composition of the boards of governors differs, and, therefore, a single board of governors could not serve both purposes unless we were to disassemble and reassemble in a consistent way the composition of boards of governors of all types of schools.

Mr Kinahan: That is what I was leading to. Is there not a way of doing it proportionally?

Mr Stewart: It could be done. There is no technical impediment to doing that. If the Minister and the Assembly decide that that is the direction in which they want to go, for example, on foot of the sharing education report, we may well look at that. In the early days of RPA, a policy aspiration that was discussed, purely in relation to management, was to have a single type of school to get beyond the confusing spider diagram, which I gave members a few weeks ago, and resolve that into a single and simple approach to the administration of schools. We simply did not have time to do that in the early days. If we had known then that the passage of the Bill was going to take as long as it has, we may have looked at it differently. It would require major legislative change. We would have to strip back all the provisions relating to finance and governance in schools and start again. That may be a worthwhile thing to do, but is not on the current agenda.

Mr Kinahan: Is there no mechanism in this clause that opens the door?

Mr Stewart: There is not. We have gone as far as we can in that clause with just a quick marginal amendment. To go any further would require fundamental re-engineering.

The Chairperson: Are members agreed that we reserve our position on clause 41?

Members indicated assent.

The Chairperson: Clause 42 allows for more than one maintained nursery school to be grouped. That is similar to clause 41, although without the additional elements because there are no integrated primaries in the maintained sector, so obviously they did not require —

Mr Stewart: Clause 42 is just the maintained sector analogue of the relevant part of clause 41. The same considerations would apply.

The Chairperson: So are members content that we agree clause 42?

Members indicated assent.

The Chairperson: Clause 43 covers the definition of a controlled school.

Mr Stewart: It is a simple definition based on the ownership of controlled schools by ESA. What is significant about the clause is what is not in it. The current definition of a controlled school is a school owned and managed by an education and library board. As we said in relation to clause 41, that will become very different. Clause 41 will put controlled schools on a very different footing, and their relationship with ESA will be very different from their current relationship with education and library boards.

The Chairperson: Are members content that we reserve our position on clause 43?

Members indicated assent.

The Chairperson: We move to Part 3, inspections. Clause 44 allows for inspectors appointed by the Department to undertake inspection in school establishments funded by the Department of Education (DE) or ESA. The clause requires inspectors to promote in schools and establishments:

"the highest standards of education and of professional practice".

Inspectors may monitor, inspect and report on any aspect of the establishment, including teaching and learning, management, staffing, equipment, accommodation and other resources. Inspection will not include religious education except where the board of governors agrees, and the Department may give direction under the notorious article 101 for the purpose of remedying any matter identified in an inspection report. I should clarify that the word "notorious" was included by me, not the Committee Clerk, so I take the blame for that.

I will move on to stakeholders' comments on the clause. The Irish National Teachers' Organisation (INTO) suggested that the inspectorate should promote partnership with schools and that ETI could not promote high standards when it was also required to report on standards. INTO also suggested that there should be some limit on the aspects of an educational establishment on which inspectors report.

The Western Education and Library Board (WELB) suggested that ETI should be an independent body and have a multidisciplinary workforce.

Comhairle na Gaelscolaíochta (CnaG) wanted changes that would require inspectors to monitor compliance with the duty to facilitate Irish-medium schools.

The Sharing Education Programme suggested that inspectors be required to share best practice.

The Council for Catholic Maintained Schools suggested that governance and leadership be assessed in line with Every School a Good School.

The TRC suggested that the clause be amended to allow RE to be inspected at the request of a board of governors. I thought that a board of governors could request that RE be inspected currently. Is that the case?

Mr Stewart: Yes. We are absolutely sympathetic to the views expressed by the TRC, but we do not think that an amendment to the Bill is needed to give effect to that. Unlike other parts of the curriculum, RE can be inspected only with the permission, or at the request, of the board of governors, but to ensure that that happens, it is not necessary to change the legislation. It is simply necessary for a school to signal that it would like, on every occasion that there is an inspection, for it to include RE. The Department will be more than happy to accommodate that.

The Chairperson: Inspections, and so on, are covered in clauses 44, 45, 46, 47 and 48. I suspect that the Committee wishes to reserve its position because members still have concerns.

Mr Stewart: I happened to be speaking yesterday to colleagues in the inspectorate, and I know that they are very keen to come to the Committee, if the Committee would find it helpful, to explain current and proposed developments on inspection, particularly some of the issues that stakeholders raised on, for example, the importance of, and the correct approach to, the inspection of leadership and governance. If the members would find it helpful, colleagues in the inspectorate are happy to give a presentation.

The Chairperson: I am looking at our work programme, and I do not know when we could hear their presentation. The inspectorate has provided us with additional information on what it currently inspects vis-à-vis DEL, and so on. If members wish to hear an additional briefing, I am more than happy to facilitate the opportunity. In the interim, it would be worthwhile for the Committee to be given the information in writing.

The Committee Clerk: I think that we have already asked for that, Chair. The request is probably with the Department now. We asked for further written information from the ETI, so it is in the pipeline.

Mr Stewart: That is being provided, Chair, and we will expedite that. We are, of course, at the disposal of members. I suggested it merely because one could not fail to notice that it was an area of considerable concern on the part of a number of members. Rather than my giving the information to you second-hand, members might find it very useful to hear directly from senior colleagues in the inspectorate about the role of inspection, its centrality to raising standards and the outcome of inspections. It would be very useful for members to hear from the inspectorate on, for example, how inspection has shaped schools that had to enter the formal intervention programme but then exited it and were turned around from being failing schools to being schools on the road to success and recovery. That is, perhaps, best explained by the senior professionals in charge of that process.

The Chairperson: The difficulty that we have, members, is that, if we look at the forward work programme for next week, we see that we have a ministerial statement on Tuesday, and we will probably have to be in the House. So we have a difficulty with next Tuesday. The statement is on —

Mr Hazzard: The North/South Ministerial Council (NSMC).

The Chairperson: We do not have a time for that.

The Committee Clerk: It is the first item of business, so it will be at 10.30 am.

The Chairperson: Perhaps we could meet after that, at 11.30 am.

Miss M McIlveen: Could we not meet before it and then break for the ministerial statement?

The Chairperson: We could do that.

Mr Kinahan: We normally get briefed just before a ministerial statement.

Miss M McIlveen: It is on an NSMC meeting.

The Chairperson: Would it not be better to meet after the statement? If the statement is at 10.30 am, we will get a briefing at 10.00 am. There is no point in our meeting at 9.30 am and taking a break at 10.00 am to go to the House. It would be better to meet at 11.30 am after the statement has been made.

Miss M McIlveen: If that is the case, we will be able to meet for only an hour, until 12.30 pm.

The Committee Clerk: It is a short statement that is scheduled to finish at 11.00 am, but the member is right that it may well be longer than that.

The Chairperson: I am quite happy to take a show of hands and do whatever members want to do.

Mr Stewart: If it would be more helpful for members to have oral evidence from the inspectorate at the time when you are doing the formal clause-by-clause examination of the inspection clauses, it would be easier to accommodate.

The Chairperson: I think that we should have written correspondence, in the interim. Then, if members feel that they need clarity through oral evidence, we would do it. It is the practicality of trying to fit it in around a number of other things that are ongoing.

What do we want to do about Tuesday? The statement will be at 10·30 am.

Miss M McIlveen: Could we meet at 9·30 am? That would give us an hour to get into it.

Mr Kinahan: Let us try that.

The Chairperson: We will go for 9·30 am. The Chair and Deputy Chair will maybe step out at some time to get a briefing before the statement. To be honest, though, it is not that important that we have it before. We could just go to the House and listen to it.

Miss M McIlveen: It is an NSMC briefing; it is not as if it is a statement of huge importance.

The Chairperson: Let us keep it 9·30 am.

Mr Hazzard: Would the Tuesday that we are here all day be too late?

The Committee Clerk: When you do formal clause-by-clause scrutiny, that is what you do. You have taken all of your evidence, and you have made up your mind. I would not hear evidence on the same day. You need time to think about it and take a view.

The Chairperson: OK.

The Committee Clerk: Are you reserving your position?

The Chairperson: Yes. That means that it is Part 4 and all of those clauses.

The Committee Clerk: It is Part 3 that you are reserving your position on, and we are moving to Part 4.

The Chairperson: Yes. Clause 49 deals with the interpretation, and it covers the functions of the Northern Ireland Council for the Curriculum, Examinations and Assessment. Clause 49 defines certain terms used in this Part of the Bill. Chris, do you want to comment?

Mr Stewart: I have little to say on that. It is very much a technical clause. Indeed, the whole of Part 4 is a re-enactment and colossal tidying-up exercise. Members will recall that the decision was taken not to transfer the functions of CCEA to ESA. It is to remain a separate body, for the time being, although the Minister may revisit that in due course. The current provisions on the CCEA functions were long overdue. It required a whole raft of technical and tidying-up amendments, which we had not done, because it had been the intention that it would have transferred into ESA. Now that that is not the case, we need to get the tidying up done. This is one of those instances where, as I said to Trevor yesterday, it passes the tipping point at which the degree of change required is such that the Office of the Legislative Counsel advised that it is easiest to repeal the existing provisions, start again and tidy them up. There are no major policy changes in any of the clauses.

The Chairperson: Are we aware of any amendments that may, or could, come from DEL? Obviously, the functions apply to DEL as much as they do to DE.

Mr Stewart: We worked very closely with DEL on this Part of the Bill, and I am confident that the provisions would meet with the approval of the Minister for Employment and Learning. At this stage, we are not aware of any amendments coming forward.

The Chairperson: Agreed?

Members indicated assent.

The Committee Clerk: Are members agreeing to clause 49?

The Chairperson: Yes.

Clause 50 allows CCEA to conduct designated examinations, specify exam papers and charge fees. The Western Education and Library Board suggested the clause be amended such that CCEA would

no longer retain responsibility for assessing itself on pupil attainment. The Catholic Commission suggested changes that would require CCEA to ensure that qualifications were portable to other jurisdictions. The Catholic Heads Association suggested in oral evidence that CCEA should be non-profit-making.

Have you any comments on the issues that were made by those organisations?

Mr Stewart: I am not certain that we entirely understand the suggestion that CCEA is responsible for assessing its own performance. We do not think that it is. As a non-departmental public body, it is accountable to the Minister, who assesses its performance. If he is not satisfied, he will soon let it know.

The Chairperson: Yes. And this Committee.

Mr Stewart: Absolutely.

The portability of qualifications is extremely important, but it is provided for in the Bill at clause 54(1)(c).

You mentioned non-profit-making. There is always scope for debate as to whether any public body, in offering a service, should charge for it. It takes you to a very practical consideration. If CCEA were not to charge, or were to charge less for what it provides, the cost of provision would have to be met from somewhere else within the education budget. Members are aware that the largest part of the education budget is known as the aggregated schools budget, so it could mean taking money from schools and giving it to CCEA. Schools might argue that that is already the case, and that they have to pay for the examinations, but we do not think that the changes proposed would bring any benefit.

The Chairperson: This goes back to a number of discussions that were held some time ago with regard to CCEA taking a decision, for example, to withdraw from certain jurisdictions. It withdrew from England. Some would argue that it took that decision purely on a commercial basis, as opposed to an educational basis. It is about balance and whether, first and foremost, its decisions are driven by an educational concern. The young people of Northern Ireland should be its primary responsibility. Any other educational provision in any other jurisdiction — I am not being disrespectful — should not be treated with the same degree of priority as the needs of pupils in Northern Ireland. That is the worry associated with the balance between CCEA's commercial and educational provision. That is the issue that some people are worried about.

Mr Stewart: I take your point, Chair, and I do not think that CCEA colleagues would disagree with what you said. Without wishing to speak for them, I think that they would say that the decision to pull out of England, as it were, was a commercial decision but one that reflected the educational reality on the ground there, given all the changes that are taking place in England. England is a market that is likely to be less open to CCEA than it has been in the past, at least until things settle down. CCEA made the commercial decision that, rather than invest time and expertise in attempting to market qualifications and examinations that are less likely to be taken up in England than they currently are, it would do exactly as you suggest and concentrate on the home market and on the needs of children and young people in Northern Ireland. Yes, it was a commercial decision but one that is grounded in educational reality and ought to lead to educational benefit here.

The Chairperson: Part 4 has clauses 49 to 54. Other than 49, which are new? Are they all new?

Mr Stewart: They are all new, but they are all a re-enactment of an existing block of clauses in the 1998 Order. The degree of tidying up is quite significant. The Office of the Legislative Counsel will have grouped some of the provisions slightly differently in the current legislation. It would be quite difficult for members to sit down with the existing order and the provisions of the Bill to try to read across from one to the other. Let me assure you, Chair, there are no hidden significant policy changes in there. It is a technical re-enactment of existing clauses.

Mr Lunn: Does CCEA in Northern Ireland undertake any activities that could be regarded as commercial, outside of its responsibility to —

Where is it? What clause are we on? Is it 50?

The Chairperson: We are on clauses 49 through to 54.

Mr Lunn: Does it do anything outside of its functions, as described in the Bill, that could be regarded as profit-making?

Mr Stewart: Not that I am aware of, Trevor, but I would have to say that I am not particularly familiar with the full range of what CCEA does. Rather than give you an inaccurate answer, I will perhaps check that with CCEA colleagues and give the Committee a written answer on the range of things that it does.

Mr Lunn: I cannot see any harm in it. Somebody, by implication, referred to it as a profit-making organisation. I imagine that it sets its charges at a level that covers the cost, and, if there is a small surplus, it is ploughed back in. If it has activities beyond —

Mr Stewart: That is exactly the case. The term profit-making is slightly misleading when it comes to the public sector. You are absolutely right: in most, if not all, instances, it is ploughed back in. It is not that we have any choice. The Department of Finance and Personnel (DFP) does that for us. I think that the technical term that DFP uses for any profit that is made on a trading account is appropriation-in-aid. In other words, it just nets that off our budget.

Mr Lunn: If it were able to find commercial or private activities that produced a profit and ploughed that back in, that would be a benefit; it would not be a downside.

Mr Stewart: It would be a benefit. It would absolutely be ploughed back in. I assure members that there is no prospect whatsoever of CCEA or anyone in CCEA making a personal profit out of any of the activities.

The Chairperson: I do not think that we were making that assertion, although we have concerns about accountability. We need to remind members about a private jet that, on one occasion, was acquired by CCEA. Where I was coming from —

Mr Stewart: For the benefit of the record, Chair, it was chartered by CCEA; it was not acquired by CCEA. *[Laughter.]*

The Chairperson: Yes, to be accurate. Thanks, Chris.

Mr Stewart: The crime was the lesser one.

The Chairperson: Remember that CCEA was the organisation that handed back a considerable amount of money in the previous two Budget rounds. There is an issue about how much money it is getting and how it is being spent. I appreciate that Chris clarified the point around the profit. When we talk about the profit element, it is not about individuals profiting; it is about how the organisation is collecting and using money.

Mr Craig: I find the profit-making thing intriguing. I take it that the whole aspect of this is that, if it is not making a profit, it is breaking even. Does it break even with every sector in education? If that is the case, are there different costs to every sector in the organisation?

Mr Stewart: I do not know, Jonathan. I would have to research that and come back to you. I confess that it is not an area in which I have any particular expertise. Generally, in the public sector, profit-making is a misnomer. A number of public sector organisations have what are known as trading accounts. In other words, they operate on a commercial basis, but it is not to make profit. They must, of course, cover their costs. Any income in excess of that is treated as an appropriation-in-aid by DFP. It will thank us for our efforts and regard that as a slight relief on any pressure in the Northern Ireland block, but I am afraid that it does not allow us to squirrel the money away to use it as we see fit. It would be treated as an appropriation-in-aid, and it would probably be netted off the Department's budget.

Mr Craig: I would appreciate you getting back to us with some information on that. I note that, in all these clauses, you are putting a legal requirement on it to cover one specific aspect of our education. Will that be treated differently from the rest?

Mr Stewart: Again, I am afraid that I do not have sufficient knowledge of how CCEA operates to be able to answer that. However, if members would find it helpful, we could bring forward a paper to you that sets out the basis on which it operates.

The Chairperson: There is another issue that comes out of all this. I was interested to see that we did not get more of a response about the whole issue of CCEA being the regulator, the assessor and the provider. Some have always argued that there is a correlation of functions that should be separated because you cannot, in a very crude sense, be poacher and gamekeeper at the same time. However, those functions are all contained in clauses 49 to 54. It might be useful if CCEA clarified the whole issue of being a regulatory body, being an examination body, being in the commercial world of providing exams and being an assessor. Sometimes, the picture gets very confused.

Mr Stewart: If the Committee would find it helpful, we will bring to you a policy paper on that. To ensure that CCEA cannot in any way be the poacher and the gamekeeper, the Department would prepare that paper rather than CCEA. We can certainly address the issue of the perception of any conflict of interest between its role as an examinations body and an accreditor of awards.

Mr Lunn: Can I just get clarification on what Jonathan said? I assume that you were talking about the Irish-medium sector, but it is not the only one mentioned. It only seems to come in under the heading "Discharge by the Council of its functions". It says the council has to "have regard to" and mentions the requirements of industry, commerce and the professions, the requirements of persons with special learning needs, then the requirements of the Irish-medium sector.

Mr Craig: I said some. I did not —

Mr Lunn: No, you said one. You also said that it was all through the clauses, but that is the only place that I can find it.

Mr Stewart: Forgive me, Jonathan, I think that I misunderstood your question. In relation to those particular requirements, a bit like clause 2(5), they are needs based. They are not rights based. It is recognising that people studying in Irish and taking examinations in Irish and people in special education have particular needs that require CCEA to discharge its functions in particular ways. Those stem from the needs of the children and young people rather than the position of any particular sector or type of school.

Mr Craig: I accept that, Chris. I have no argument about that. I am just intrigued. Obviously, there is a cost involved in that. Is that reflected in what CCEA charges that sector?

Mr Stewart: I do not know. I would have to check that.

The Chairperson: OK, members. Chris will provide a paper for us. Do we want to reserve judgement on clauses 50 to 54?

Members indicated assent.

The Chairperson: Part 5 brings us to clause 55, which relates to the protection of children and young people. The clause places a duty on ESA to ensure that its functions are exercised with a view to safeguarding and promoting the welfare of children. The Western Education and Library Board asked if additional resources were to be made available to ESA to carry out that duty, which, obviously, is a pertinent question to ask, given the onerous task involved with going into the area of child protection, which is a very important and sensitive area.

Mr Stewart: It is an understandable question, but I am very surprised at the Western Board asking it. I would have thought that it would know the answer. The administrative budget for ESA will be set by the Department. It will be for ESA to determine within that how it uses those funds. The Western Board will be well aware that there will be no additional resource provided for that.

Miss M McIlveen: What is the relationship between the Department and the Safeguarding Board?

Mr Stewart: I will check, Michelle, to be absolutely certain. There is certainly a reference in the relevant clauses to the Safeguarding Board. Peter might correct me if I get this wrong, but I think that ESA will be a member.

Mr Burns: Yes, I think it will be a member.

Mr Stewart: ESA will be a member. There are direct links between the relevant provisions and the Safeguarding Board Act.

Miss M McIlveen: Can you bring us back those references?

Mr Stewart: Yes.

The Chairperson: I apologise, Chris, if this is an area that you cannot give us a definitive answer on. In the whole MARAC process, that is, the multiagency approach to ensuring that there is sharing of information, there has been an ongoing issue between the Department of Justice, the PSNI and some other agencies around the sharing of information, particularly around the issue of domestic violence. Sadly, that impinges on children and families. Where would this sit with the power that there will be for ESA to be part of that overall process? I know that there is an ongoing issue about the Department of Justice signing off in regard to a protocol on sharing information.

Mr Stewart: I confess, Chair, that takes me well beyond an area in which I have any expertise and knowledge. What I can say is that buried within schedule 7 will be amendments to the two pieces of legislation that deal with the Safeguarding Board and related matters. It will obviously transfer any references to education and library boards to references to ESA. It will also ensure that ESA is named at the appropriate points in the Safeguarding Board legislation. It is, therefore, subject, for example, to the need to have regard to guidance that will be produced on these matters. Beyond that, I am afraid that I will have to check with colleagues and come back to you.

The Chairperson: Members, are we happy to agree, or do we want to wait until we get information back to clarify the issues around the Safeguarding Board and the protocol?

Mr Kinahan: I am happy to agree.

Miss M McIlveen: I am happy enough to agree, but the information would be helpful.

The Chairperson: OK. Do we agree to clause 55?

Members indicated assent.

The Chairperson: Clause 56 relates to the duty on providers of funded preschool education to safeguard and promote the welfare of children. Members, we generally welcomed these duties given the nature of the issue being addressed. However, this clause places a duty on providers of preschool education to safeguard the welfare of children and produce a written statement of protection measures. DE or ESA will issue guidance, and the provider must follow direction from ESA or the Department in this regard. Does that include all providers, whether they be voluntary, community or statutory?

Mr Stewart: Yes, Chair. What we have tried to do —

The Chairperson: That is a change.

Mr Stewart: It is. Throughout these clauses, we have tried to cover every organisation that has a part in the delivery of education, including youth services and early years services. It is relatively straightforward to do that when they are statutory organisations. We simply place a duty on those organisations and make them amenable to ESA's power of direction on child protection matters. It is a little bit more difficult when they are non-statutory bodies. We have to do it by, for example, placing a duty on ESA to make it a condition of grants for non-statutory bodies that they have appropriate child protection arrangements in place. We have to acknowledge that that is a lower degree of safeguard, but it is the best that we can achieve in legislation, given that these are non-statutory bodies.

The Chairperson: Does this have implications for the Health Department with regard to, for example, Sure Start provision and so on? It says:

"It is the duty of a person providing funded pre-school education for any children to safeguard and promote the welfare of those children at all times when those children are -

(a) on relevant premises; or

(b) in the lawful control or charge of that person or relevant staff."

That should cover all situations where children are in a formal setting.

Mr Stewart: Yes, it will cover everything within, as it were, the education family. Our DHSSPS colleagues are very cognisant of the need for similar requirements on any organisations that they are responsible for, not least under the auspices of the Safeguarding Board. The two Departments will continue to liaise very closely. We will expect ESA to liaise very closely with organisations in the health service field to ensure that we do not leave any gap in the system or any organisation that slips between the slats without this sort of requirement being placed on it.

The Chairperson: It is right to place on record that the NSPCC also welcomed these particular clauses.

Mr Kinahan: Does it have a link to the justice side as regards making sure that there is enough resource for everyone to be assessed or checked?

The Chairperson: Does that cover the issue about the protocol? Is that —

Mr Stewart: Sorry, I missed Danny's question.

Mr Kinahan: I am concerned that, by quite rightly creating that duty, a whole lot more people will have to be assessed through the police system or another system. Does it have a link that we should be thinking about to the justice system?

The Chairperson: It probably does.

Mr Stewart: It might, and it might not. There would be a significant resource implication only if there were people in specified posts today who were not subject to the appropriate criminal record checks. We would hope that that is not the case. To whatever extent that it is the case, the provisions in the Bill should reveal any shortcomings in the child protection arrangements that are in place. I suppose that that could lead to more criminal record checks being requested. If that is the case, the challenge for us is to make sure that that is resourced. I do not think that we could, in all conscience, not proceed in this way, because that would be to leave children vulnerable.

Miss M McIlveen: How different are the provisions from what you currently practice in the Department?

Mr Stewart: They are really very different, Michelle. The reason why we have such a range of provisions here is that, in preparing the previous Bill, we thought that there were very significant gaps in the responsibilities and duties across education. Those were fairly clear and very well defined in relation to schools. However, once you got beyond schools, the position was much more patchy. We were really quite concerned that there were gaps there. I am afraid that we know from experience what happens when you are dealing with the very worst issues in child protection. Determined paedophiles who are looking for opportunities to exploit children will look for weaknesses and loopholes in the system. If there is a part of the system that is highly regulated, they will look for a part that is less highly regulated. So, we thought it very important that we have all the gaps filled, comprehensive coverage, clarity of responsibility and clarity of responsibility for ensuring that duties are complied with. We think that we will achieve that through this set of provisions.

Miss M McIlveen: I welcome how seriously the Department is taking that issue.

The Chairperson: That covers clause 56. We have agreed clauses 55 and 56. OK?

Mr Kinahan: Yes.

The Chairperson: Clause 57 would place a duty on the ESA and the Department, where a grant is made for educational youth services, to ensure that the conditions ensure that children's welfare is safeguarded. Again, that is ensuring that that is delivered. Agreed?

Members indicated assent.

The Chairperson: Clause 58 amends the 2003 Order to allow the ESA to give direction to the boards of governors in relation to a duty to safeguard or promote the welfare of children. Again, no stakeholders commented, other than the NSPCC, which welcomed the clause in this part of the Bill.

Mr Stewart: Members will forgive me for repeating that this is the only area of the Bill where we propose to give the ESA the power to direct a school.

The Chairperson: I think that that should be noted by members. Sometimes, concerns are raised about what the ESA will or will not be able to do. That is the only place in the Bill where ESA has the power of direction. Other than, that is, going back to the Department and asking the Department to use —

So, it is not really true that it is the only place. It is the only place that it is given the power of direction —

Mr Stewart: It is the only example of that particular power being placed directly in the hands of ESA. You are quite right, Chair. In every other instance where ESA has an insoluble problem, it will have to come to the Department. In this case, we felt that, as the issue is one of child welfare or child protection, if a problem is detected, it should be corrected expeditiously without ESA having to go anywhere else.

The Chairperson: Thanks, Chris. Agreed?

Mr Lunn: What about the power to do anything that appears to it to be conducive or incidental to the discharge of the functions?

Mr Stewart: Clause 22?

Mr Lunn: Yes.

Mr Stewart: I do not see clause 22 as having a particular bearing on this.

The Chairperson: Do we agree to clause 58?

Members indicated assent.

The Chairperson: Clause 59 required the boards of governors and providers of preschool education or providers of education and youth services to co-operate with ESA in the safeguarding and promotion of the welfare of children. Again, there were no comments from stakeholders, but the clause was welcomed by the NSPCC. Following on from Michelle's point, how different is that from the current practice of that duty? Boards of governors have a duty to ensure that they have a child protection policy.

Mr Stewart: There are very clear duties on boards of governors today in, I think, articles 17 and 18 of the 2003 Order. It is the requirement to co-operate that is the new thing. Again, we have seen in the past that it is not even enough to ensure that every organisation that plays a part has duties. I am taking up your point, Chair, and Michelle's. In the past, things have gone wrong because organisations have had a little part of the picture but have not shared that information with other organisations. Because of that, somebody has been able to exploit the asymmetry of information, and that is why we think that the duty to co-operate is very important.

The Chairperson: Are members agreed?

Members indicated assent.

The Chairperson: That brings us to Part 6, Miscellaneous and Supplementary. Clause 60 amends the 1989 Order to set out the Department's general duties, which includes the promotion of education for children and young people. The clause also sets out the duty of DEL to promote further and higher education. Stakeholders commented as follows: CnaG wanted a duty on the Department to promote Irish medium schools; CRC wanted a duty to promote shared education; and NICIE wanted a duty to promote integrated education.

Mr Lunn: I note that the Department's response appears to be that the duty to encourage and facilitate is already there. That is a different word, and I think that that is what they are getting at. The Assembly passed a private Member's motion a couple of years ago to request that the Minister consider including "promote" in the duty towards integrated education — to promote, encourage and facilitate. I am just making that comment. I think that that is what they are all getting at. They want "promotion" included in there as well as "encourage and facilitate".

The Chairperson: Clause 60 says, "DEL" —

Mr Lunn: It is both. It says, "the Department and DEL".

The Chairperson: Sorry, yes. It is:

> *"the duty of DEL to promote further and higher education in Northern Ireland".*

Mr Lunn: I thought at first that it was a duplication of general duties —

The Chairperson: Of clause 2 —

Mr Lunn: — but it goes beyond that.

Mr Stewart: It is very similar to clause 2. We have deliberately tried to align the two things. You will see that the general duty of education and library boards in current legislation is similar in many ways to clause 2, and we have expanded on it a little bit in clause 2 for ESA. However, the current general duty of the Department is a very modest thing indeed. It is similar to the wording proposed there for DEL. The Minister thought that it was appropriate that we should line up the general duty of the Department and the general duty of ESA. We are in the same business. The outcomes that we are trying to secure are similar, and that should be reflected in the fundamental duties. That is why what is proposed there is really very different indeed compared with what we have now. It is a great deal longer and more detailed.

Mr Kinahan: Should it not be and/or? I am trying to think of something legal that happened a few years ago, which was that if you put the Department and DEL, you are putting it jointly.

Mr Stewart: No, they are two separate duties. They happen to be grouped in the same clause, because they are grouped in one provision today in the 1989 Order, but they are two quite separate duties. Our Minister has determined the duty that should apply to our Department. The DEL Minister has indicated what he wishes to see as the duty on DEL.

The Chairperson: Clause 60(3)(f) states:

> *"to secure the effective and efficient execution of their functions by ESA and other bodies on which or persons on whom powers are conferred or duties imposed under the Education Orders."*

Can you translate that into Queen's English please, Chris?

Mr Stewart: In English, Chairman, it means that we have to manage ESA and CCEA.

Mr Lunn: If there was a mind to include "promotion" in relation to, let us take as an example, integrated education —

Mr Stewart: Purely at random.

Mr Lunn: — would this be the appropriate place for it, or would the appropriate place be somewhere else in the Bill?

Mr Stewart: It could be the appropriate place, Trevor. You would have two choices. If the policy decision were made, first of all, to use the word "promote", you could simply amend the duty in article 64 of the 1989 Order to add "promote" or to replace "encourage and facilitate" with "promote". You could do it that way, or you could repeal the duty in article 64 and add a new duty to the general duty under this clause. You could do it either way.

Mr Lunn: This is the clause that it would be in.

Mr Stewart: Yes.

The Chairperson: So, will we reserve a position on this one?

Mr Lunn: Very much so.

Members indicated assent.

The Chairperson: Clause 61 amends the 1986 Order to allow DE, DEL and DCAL to pay grants to persons for various services or relevant research. CnaG wanted the clause to allow grants to be paid specifically to bodies that promote Irish-medium education. NICIE wanted the same for bodies that promote integrated education. Is that an additional clause?

Mr Stewart: It is, Chair. In relation to the amendments, the world is forever asking us for things that they already have. This is a re-enactment of an existing provision, again, for technical, tidying-up reasons. Article 115 of the 1986 Order is the general provision that we have to pay grants to various bodies. It stems from a time when there was a single Department of Education, which is now split into DE, DCAL and DEL. Over the years, the clause has needed some tidying up. Again, it is beyond the tipping point where legislative counsel felt that it was best to repeal it and re-enact it. In doing so, he has actually been able to split it into three. Although it is one clause, it sets out grant-making powers for us in DE and for DCAL and DEL.

The significance of this particular power for DE is that it is the one we will use to grant aid two of the sectoral bodies. So, it is the power that will allow us to grant aid the sectoral bodies for the controlled sector and Catholic education. We do not need a new, specific power to grant aid CnaG or NICIE, because we already have specific powers in the 1989 and 1998 Orders to do that. If, for some reason, we did not and those powers did not exist, we could actually fund CnaG and NICIE using the existing article 115 or the re-enacted power that is proposed here. However, the converse is not the case: we could not use the article 89 power to fund the controlled sector body. The article 89 power is specifically for organisations that exist to promote Irish-medium education. The corresponding power for integrated education is to fund organisations to promote that form of education.

So, the combination of the two existing powers and the re-enactment of this one will give us all the tools that we need in the box to fund sectoral bodies.

The Chairperson: Are there any comments? Are we agreed?

Members indicated assent.

The Chairperson: I am conscious that we have visitors in the visitors' gallery, as we call it. You are very welcome, students. Do you wonder what we are doing? We are going through the Education Bill, which is a Bill to introduce an organisation called ESA. It has 66 clauses. We have to go through them all, clause by clause, page by page. Officials from the Department are here to answer queries, keep us right and give us opinions. Members can then decide whether they have to amend clauses. You are very welcome. We trust that you will enjoy your time in Stormont today.

Mr Stewart: Chairman, you have me very worried: there are 69 clauses in the Bill.

The Chairperson: I am sorry. How many did I say that there were, Chris?

Mr Stewart: Perhaps you have taken three out when I was not looking.

The Chairperson: Well, we have not got to that stage yet. Maybe that will happen.

That takes us to clause 62. This clause places a duty on OFMDFM to make regulations to establish a tribunal, which will be appointed by the Department. The tribunal will consider the schemes of employment and management that are to be referred to it. The Committee Clerk has advised that there is an error on the clause-by-clause table. The Committee had, in fact, previously agreed that it was content to review clause 62. Can the Department clarify whether the Minister is to bring forward an amendment to the clause?

Mr Stewart: The Minister intends to do so. He has written to the First Minister and the deputy First Minister, indicating that he will propose an amendment to give OFMDFM complete responsibility for the tribunal. OFMDFM will appoint the members; will bring forward the subordinate legislation that will govern the tribunal; and will be the sponsoring Department for the tribunal. So, it will be completely independent of the Department of Education, which will have no role in the tribunal whatsoever.

The Chairperson: Clause 62 will be amended, then, so we will have to park it. The Committee will reserve judgement on it. Is that OK?

Members indicated assent.

The Chairperson: Clause 63 is about sectoral bodies. The clause defines a "sectoral body" as a body recognised by the Department as representing the interests of schools of a particular description. The "relevant sectoral body" is the body representing the interests of schools of that description.

Some of the unions wanted sectoral bodies to be abolished; others wanted sectoral bodies to represent particular interests, such as Irish medium, voluntary grammar or young people. Some stakeholders wanted amendments that would clarify the role of sectoral bodies and the relationship between them. The Catholic commission wanted amendments to clearly set out how the relevant sectoral bodies should be identified. The TRC wanted a requirement for sectoral bodies to work together and to promote shared education. The Catholic commission proposed an amendment to the Bill so as to include a definition of a Catholic school. CnaG appeared to be seeking a separate legal entity for Irish-medium schools, as distinct from Catholic maintained or controlled schools. So, we have a raft of opinions and views in relation to clause 63.

Mr Stewart: I cannot think why, Chairman.

The Chairperson: Do you want to comment, Chris?

Mr Stewart: I will make a couple of points, and then I would be happy to deal with any of the individual suggested amendments, if members would find that helpful.

First, I make a general point. A number of the amendments suggest, or are motivated by the suggestion, that we should regard sectoral bodies as though they were statutory bodies, defined in legislation with statutory functions, set out in legislation and with membership and duties in legislation. That is really very different from the policy concept that is set out in the Bill and, indeed, reflected in the previous Bill. These are non-statutory organisations. They do not have any statutory functions, and it is not the Minister's policy to specify or name any of them in legislation. So, our relationship with them will be similar to the relationship that we have with non-statutory bodies. We will grant aid them to do certain things. We will consult them, regularly, about the discharge of the Department's functions, as will ESA. From time to time, it is appropriate to refer to that consultation in the Bill, and members will have seen that in various clauses. However, they are not intended to be statutory bodies, and, therefore, the Minister does not propose to legislate in relation to the sectoral bodies as though they were statutory.

The Chairperson: In the previous clause, reference is made to article 115 of the 1986 Order. Article 115 of the 1986 Order would remain, but, to substitute for "the Department", it is broken down into the Department, DEL and DCAL. Is that right?

Mr Stewart: It will still be article 115, but it will be a new one. The effect of the previous clause is to take out the existing article 115 and replace it with a new one.

The Chairperson: Then, we come to clause 63, and a sectoral body means a body:

> *"to which grants are paid under Article 115 of the 1986 Order, Article 64 of the 1989 Order or Article 89 of the 1998 Order".*

Where do we bring in the change that we are proposing with regard to this Bill? Is it not mentioned?

Mr Stewart: I am sorry, Chair; I do not fully understand your question.

The Chairperson: I may be getting lost. If clause 61 is to change article 115 of the 1986 Order, does that not technically mean that it has to be "as amended", and that should be reflected in clause 63(b)?

Mr Stewart: No. It does not need that.

The Chairperson: It does not? So, we are changing it, but we are still saying, at clause 63, that we refer back to article 115 of the 1986 Order?

Mr Stewart: When you read "article 115", you can read in your mind the words "as amended". You can take it that any reference, anywhere else in legislation, to article 115 is a reference to it as it sits at any given time in the statute book.

Amending provisions can be tricky things. However, what I generally say to people is that it is best to regard them as something that does its work and moves on. Its work is done. The clause that will replace article 115 will do its work. It will introduce a new article 115, and then we can forget about it, because its work is done.

The Chairperson: OK. Are there any comments? Are we agreed on clause 63?

Mr Lunn: For clarity, is it just three organisations under clause 63(b): one under article 115 of the 1986 Order, one under article 64 of the 1989 Order, and one under article 89 of the 1998 Order? That would be integrated education, CnaG and —

Mr Stewart: The four bodies that are proposed at present are a sectoral body for the controlled sector and a sectoral body for Catholic education, with CnaG continuing its role as the sectoral body for Irish-medium education and NICIE continuing its role as the sectoral body for integrated education. There are no plans at present for any other sectoral bodies, but the legislation does not rule that in or out. It is an enabling provision, so there could be as many sectoral bodies as the Minister of the day decides.

Mr Lunn: In response to the GBA's suggested amendment, the Minister was quite firm that he has no plans to establish a sectoral body for voluntary grammar schools. That is the main contentious one.

Mr Stewart: That is the Minister's view, as I understand it.

Mr Kinahan: I think that we may want to reserve judgement on this clause.

Mr Lunn: However, the Minister could do that under clause 63(a).

Mr Stewart: He could change his mind if he was persuaded of the case for a sectoral body for any particular group of schools.

Mr Lunn: Grant-aided schools have a particular and very specific description.

Mr Stewart: Yes.

On a related point, Chair, I neglected to answer your earlier reference to two of the suggested amendments from Catholic education and Irish-medium education. Those are really around

definitions of "Catholic school" and "Irish-speaking school". The Minister is minded to bring forward amendments on both of those. So, we would include a definition of Catholic school and a revised definition of Irish-speaking school in the Bill. That is precisely to answer Trevor's point. Sectoral bodies are for schools of a particular description, so it is important that we get the particular descriptions right. We will include those in the Bill.

The Chairperson: OK. Are there any other comments?

Mr Kinahan: I think that we should reserve judgement on this clause.

The Chairperson: OK. We will reserve on clause 63. We are almost like auctioneers. If that is the case, you really should be in the chair, Danny.

Mr Kinahan: The value involved — *[Inaudible.]*

The Chairperson: That is way above my league.

Clause 64 allows DE to make any supplementary, incidental, consequential, transitory or transitional provisions as it considers appropriate to give full effect to the legislation. This is sometimes described as a Henry VIII clause. Is that correct?

Mr Stewart: It could be an example of a Henry VIII clause, Chair. Just to remind members, the history of that stems from the Proclamation by the Crown Act 1539, which was slightly before my time in education. In that Act, the aforementioned King Henry decided that the business of making legislation by Parliament passing Bills to him was all very well but that it would be much more expeditious if he could simply make legislation by royal proclamation. The term has been adopted by parliamentarians as a form of slang. Any piece of subordinate legislation that can amend primary legislation is referred to as a Henry VIII power, because it risks a Department taking on to itself powers similar to those that King Henry thought he ought to have.

Leaving aside that slight digression, this is a fairly standard provision that you would see in any Bill.

The Chairperson: It was in the Libraries Bill.

Mr Stewart: Yes; it was. Counsel adds such clauses almost automatically to any Bill. It recognises that, when you move to the point of implementing primary legislation, sometimes you need to do things on a temporary or interim basis, simply because the world is so different on day one, as a result of legislation, than it was on the day previous to that. That is why it has been included. It absolutely does not give the Department licence to run off and make vast swaths of legislation that the Assembly has not allowed for.

The Chairperson: Agreed?

Members indicated assent.

Mr Lunn: What is the difference between transitory and transitional?

Mr Stewart: Trevor, I confess that I would have to ask the Office of the Legislative Counsel for an explanation of that.

Mr Lunn: Do not bother. I just noticed it there.

The Chairperson: Clause 65 provides that all regulations made under the legislation shall be subject to negative resolution procedure; with the exception of supplementary, incidental, consequential, transitory or transitional provisions set out in clause 64 and regulations under clause 62 to appoint a tribunal, which require affirmative resolutions.

Mr Stewart: And it is precisely because, otherwise, they would be Henry VIII powers. So, the Assembly would no doubt feel that it ought to exercise the affirmative method of control over those —

The Chairperson: Yes.

Mr Stewart: — to stop us running off and doing mad things.

The Chairperson: Agreed?

Members indicated assent.

The Chairperson: Clause 66 defines the terms used in the legislation. The GBA suggested an amendment that would include the heads of agreement as a schedule to the Bill. Any comments, Chris? I think that its was the only response.

Mr Stewart: It is unusual, Chair, for anyone to suggest amendments to an interpretation section. This is the most technical of all the Bill's clauses. We understand the GBA's intention. It is not the Minister's policy to do that. From a technical standpoint, I would advise that, as I have said before, the heads of agreement is a political document. It was not written to have the direct force of law, which would become the case were it to be incorporated into the Bill. That would cause quite significant difficulties around its interpretation and application.

Mr Kinahan: Given that it is being or may be amended, do we not have to park this?

The Chairperson: OK. We can reserve our position.

Mr Lunn: Yes; for sure.

The Chairperson: Yes; is that OK?

Members indicated assent.

The Chairperson: Clause 67 contains provisions for minor and consequential amendments and repeals. It revokes various references to education and library boards and education orders. It cleans and tidies things up. Is clause 67 agreed?

Members indicated assent.

The Chairperson: Clause 68 contains provisions for the commencement of the legislation. Some provisions, such as the tribunal being set up and the transfer of staff to ESA, happen after Royal Assent. Other provisions come into effect only when the Department decides. I think that that will move rapidly if the Bill is agreed.

Mr Stewart: That is the intention. In this instance, as members would probably recognise, a greater proportion of the Bill would be commenced by commencement order, rather than automatically as would usually be the case. That reflects the fact that there is a considerable job of work to be done in preparation for the move to ESA. Gavin and his team are working very hard on that. However, we need to ensure that the preparations for ESA are sufficiently advanced before we trigger commencement of the Bill. The provisions that will start the day after Royal Assent are those that facilitate that preparatory work; for example, the clause that allows the Department to make the transfer schemes. That does not mean that the transfers take place then; it means that we can make the schemes, do the necessary consultation with staff and boards of governors, and have that ready to go on the day that ESA is established.

The Chairperson: OK. Agreed?

Members indicated assent.

The Chairperson: Clause 69 is the short title of the legislation, which may be cited as the Education Act (Northern Ireland) 2012. That will be changed —

Mr Stewart: Of course, we will have to propose an amendment to that.

The Chairperson: There will have to be an amendment, but we will agree that. At least we know that that is one amendment that we can all agree on.

Mr Stewart: And I am extremely hopeful, Chair, that —

The Chairperson: Or maybe not; it could be 2014. *[Laughter.]*

Mr Stewart: I was going to say that I am extremely hopeful that it will be 2013.

The Chairperson: Will we reserve our position?

Mr Stewart: We will be at the Assembly's disposal on that.

The Chairperson: Agreed?

Members indicated assent.

The Chairperson: I propose that, rather than start into the schedules, we now go through Committee correspondence and come back to the seven schedules on Tuesday, which will give members an opportunity —

The Committee Clerk: There are eight schedules.

The Chairperson: How many are there? The eight schedules, and I will soon get all this right. You would not think that I had been at this for years.

Mr Stewart: You are quite right, Chair. Too much excitement for members on one day might be dangerous.

The Chairperson: Chris and Peter, as always, thank you, and we look forward to meeting you again next week.

Mr Stewart: Thank you, Chair.