



Northern Ireland
Assembly

Committee for Education

OFFICIAL REPORT (Hansard)

Education Bill: Informal Clause-by-clause
Scrutiny

12 March 2013

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Mervyn Storey (Chairperson)
Mr Danny Kinahan (Deputy Chairperson)
Mr Jonathan Craig
Mrs Jo-Anne Dobson
Mrs Brenda Hale
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: Today, we continue the informal clause-by-clause scrutiny of the Education Bill. In your pack, you will find the Committee Clerk's cover note, together with a revised clause-by-clause scrutiny table summarising all the written and oral evidence and setting out the proposed amendments.

At this point, I invite Chris and Peter to join the meeting.

If we can, we want to conclude the informal scrutiny today. Before I ask the officials from the Department of Education (DE) whether they wish to remind the Committee of their evidence on the clauses, schedules and amendments, I will ask members to indicate their views. If there is consensus on a clause, the Committee Clerk will update the table accordingly. The minutes of this meeting will indicate that there is informal agreement. If there is no consensus, I will ask members to set out the different viewpoints, and the Committee will informally determine its position or reserve its position. At that stage, no votes will be taken. The Committee will divide on the clause, as necessary, only during our formal clause-by-clause scrutiny.

If you recall, we informally agreed that we were content with some issues.

The Committee Clerk: At a previous meeting, members went through almost all the clauses; in fact, they got to the schedules. However, the Committee has not taken a position on clause 2. So, by way of tidying up, I suggest that we start with clause 2 and go to the schedules after that.

The Chairperson: On 27 February, we heard advice on clause 2. I propose to begin with that clause and then move to the schedules. After that, we will consider the other proposed amendments. Clause

2 places a duty on the Education and Skills Authority (ESA) to contribute towards the development of children and young people. To deliver that, it must co-ordinate the planning and delivery of schools, educational services and the Youth Service with a view to promoting the achievement of high standards of educational attainment. ESA must also encourage and facilitate the development of education in Irish-speaking schools. We previously obtained legal advice on clause 2(5), which refers to Irish-medium education (IME). We also got two pieces of advice on clause 2(3), which covers ESA's duty to treat schools on the same basis, regardless of whether their premises are vested in ESA.

The Community Relations Council wanted the clause to be amended so that shared education would have to be promoted by ESA. The Northern Ireland Council for Integrated Education (NICIE) wanted ESA to be required to promote integrated education, and it has again written to us on the subject. Comhairle na Gaelscolaíochta (CnaG) wanted amendments to require ESA to promote Irish-medium education, although the Governing Bodies Association (GBA) wanted an amendment to ensure that Irish would be promoted only in Irish-speaking schools. The National Association of Head Teachers wanted amendments to require ESA to promote all forms of education — faith-based, integrated and IME. The Northern Ireland Public Service Alliance (NIPSA) and the Transferor Representatives' Council (TRC) took very different views on the duty to contribute to spiritual development. NIPSA wanted that removed from the Bill, and TRC wanted a commitment in the Bill to provide the necessary curricular and other support. NICIE and the Northern Ireland Commissioner for Children and Young People (NICCY) argued that the clause be amended to require the principles of equality and inclusivity to be included in the Bill.

Chris, have you any comments on that?

Mr Chris Stewart (Department of Education): I have very little to add to what we have said previously, other than to indicate that the Minister is not minded to proceed with any of those amendments. However, he indicated that he is prepared to consider the request for a clause similar to clause 2(5) but referring to integrated schools. He has received correspondence from NICIE and the Integrated Education Fund in which they set out their arguments for that. The Minister is considering that but has not yet come to a view.

The Chairperson: Members have no other comments. Given that we raised issues around clause 2(5), are members content to park the clause?

Members indicated assent.

The Chairperson: That brings us to schedule 1. It sets out the composition of the ESA board. It also sets out ESA's procedures in respect of finance and reporting. Stakeholders commented on the schedule. NICCY sought clarity on how the community in Northern Ireland was to be represented. The Western Education and Library Board sought an answer as to why DE rather than ESA is to lay accounts; we will come back to that in a moment or two. A number of stakeholders set out suggestions for a different composition of the ESA board. Stakeholders sought representation from young people, the trade unions, voluntary grammar schools, IME schools and integrated schools. Some suggested enlarging the board, and some suggested maintaining the relative levels of representation for controlled and maintained schools. The Commission for Catholic Education sought a rewording of the schedule to remove references to "maintained schools" and replace that with "Catholic schools". The commission also suggested that certain appointments to the ESA board should be subject to consultation with the relevant sectoral body. NIPSA sought an amendment that would include specific references to the seconding of staff to the Northern Ireland Civil Service. In the GBA's initial submission, it suggested an amendment to the schedule to allow any grant-aided school, subject to certain criteria, to retain employment powers.

It is fair to say, Chris, that there was not a lot of consensus on schedule 1. We have gone from Dan to Beersheba.

Mr Stewart: A road that we are used to, Chair.

The Chairperson: NICCY asked for clarity on how the community in Northern Ireland was to be represented. Obviously, it all depends on whether you want an education community, a religious community, a geographical community or a professional community. What do we mean when we talk about representing the community?

Mr Stewart: It would be geographical; it would be persons living in Northern Ireland. With that section of the membership being as small as four, it will be a real challenge to make it representative. It is one of those requirements that is, perhaps, more easily observed in the breach than in the honouring. As I said to members previously, if, for example, the four members were all to be male, all to be female, all to be from one community background, all to be from west of the Bann or all to be from east of the Bann, the requirement of the provision would not be met. As far as it is possible to do so, and it is difficult to go very far with only four members, the four persons chosen should be representative, certainly not unrepresentative, of the geographical community in Northern Ireland.

Mr Lunn: Frankly, I am astonished by that. That is the last thing that I expected the Department to say about the four representatives, that they should be from north, south, east and west. It is constantly being hinted that there is scope within the community representatives to represent some of the bodies and the interests that are crying out for representation. Frankly, I am very surprised to hear that this is merely a means of bringing geography into the equation, when there are another 20 members who presumably will be from a wide geographical spread.

I am also intrigued by the Department's response to NICCY's comment:

"There is no requirement in the Heads of Agreement for the membership to represent 'the diverse needs of children'".

So what? The heads of agreement are on two pages of foolscap. A lot of things are not there. I appreciate that the Bill has to pay attention to the heads of agreements, but I do not think that it is fair to say that there is no requirement in the heads of agreement so it does not need to be done. I am surprised by all that.

Mr Stewart: If I may, I will clarify my opening answer. I apologise if I misleadingly gave Trevor the impression that the four persons would be chosen geographically — that is, one from the north, south, east and west. That is not what I meant. You had mentioned a list of definitions of community that may be given; I intended to convey in my answer that it is not a subset of the population of Northern Ireland. That is what I mean by geographical criteria. The community is the population of Northern Ireland, not any particular subset therein. Of course, within that, it is absolutely possible for persons who wish to, or feel that they, represent particular interests or sectors in education to apply for membership. I have no idea whether they have. The Minister would certainly have welcomed such submissions had they been brought forward.

Trevor is correct about the heads of agreement. It is a political document but one that Ministers and the Executive asked the Department to pay attention to when preparing the Bill, which is what we have done. The intended membership of ESA was set out in some detail in the heads of agreement, and that is reflected in the Bill. There was not a specific or even a general requirement anywhere in the heads of agreement to adopt the sort of language that the commission has suggested, and that is why it does not appear in the Bill. To capture in legislation that sort of language or its intention would also be a difficult technical exercise.

Mr Lunn: I just think that it is a dismissive comment. I mean no offence to Chris, who has been helpful throughout. However, to say that there is no requirement for the membership of ESA to represent the diverse needs of children and young people is completely the opposite of what it should represent. The Bill is about the diverse needs of children in Northern Ireland. I find that particular paragraph astonishing. Chris and I must have differing views on the meaning of "geography" because I am getting slightly lost here. You said something about a "subset", but geography, to me, is north, south, east and west.

Mr Stewart: I think that I would share that definition. I meant to say that if I gave you the impression that geography — where someone lived in Northern Ireland — was somehow going to be an explicit criterion for membership, that is not the case.

Mr Kinahan: Throughout, the Department comments:

"This is contrary to the Minister's policy, as agreed by the Executive".

Surely that should read:

"as agreed by the Executive, but subject to Committee amendments and the Floor of the Chamber"

in that I understand that it went through the Executive with exactly that. Is the Minister really saying that he has no intention of changing and does not want us to change the other groups of four?

Mr Stewart: You are quite right: the content of the Bill is ultimately a matter for the Assembly to decide, and the Committee will play a major role in advising and informing the Assembly as to how it might proceed. At this stage, however, our understanding is that the Committee wishes to know the Department's view, which is the Minister's, on the range of amendments that has been put forward. We indicated clearly where the Minister's view is that he is not minded to accept the suggestion. That, of course, does not preclude the Assembly and Committee from concluding that such an amendment should be made and taken to the House.

The Chairperson: I assume that Danny is referring to the position as it was when the Bill came to the Executive. As with the Welfare Reform Bill, parties in the Executive reserved their rights to raise issues and concerns and to change and modify the Bill as appropriate. So it was a quid pro quo; on the one hand, Sinn Féin said that it reserved the right over the Welfare Reform Bill, with which it has issues; and, equally, we reserved our right to raise issues with the Bill that creates ESA. That is my understanding. I am not party to what goes on at Executive meetings, but that was what the system reported about where we were at with these issues, so I think that reflects the position reasonably accurately. Are there any other comments?

Mr Stewart: Chairman, I cannot comment on the position of particular parties, but the legislative requirement is that a Minister needs Executive agreement to bring forward a Bill — that is, Executive agreement to the policy and to the content of the Bill, as introduced. That is why all the references are strictly accurate. It is not just the Minister's policy; it is the Minister's policy, as endorsed by the Executive. Of course, that does not preclude the Minister, the Executive or this Committee from suggesting amendments to the Bill. Ultimately, the Assembly will decide what is final.

The Chairperson: In the past, you mentioned that the Minister was minded to consider making an amendment to the definition of a Catholic school. That was put to him by the Catholic trustees and was in response to an issue in paragraph 2(c)(ii) of schedule 1, which states:

"4 shall be persons appearing to the Department to represent the interests of trustees of maintained schools".

Do you have any update on that?

Mr Stewart: Certainly, Chair. There are two separate issues that are linked. The Minister indicated that he is prepared to consider including a definition of a Catholic school and a revised definition of an Irish-speaking school in the Bill. Those will probably be proposed for inclusion in clause 63, which relates to sectoral bodies. The main reason why we need definitions of those schools is that the definition of a sectoral body is a body that represents schools of a particular description. We need to get the particular descriptions right, and the Minister is persuaded of the need for a definition of a Catholic school and a revised definition of an Irish-speaking school to give effect to that.

In paragraph 2 of schedule 1, we have reflected the wording of existing legislation for nomination rights, and the schedule refers to "maintained schools" rather than "Catholic schools". In giving effect to that, we need to follow the legal advice that we received. Members will know that, for a long time, we struggled to find a way through what appeared to be legal difficulties with preserving the rights of the transferors and the trustees. However, the legal advice is that we can do that by sticking closely to the existing formulation in legislation, recognising existing rights and carrying them forward in the Bill. That is why the reference is to "maintained schools", as it is in the 1986 order.

The Chairperson: The Western Education and Library Board sought an answer as to why the Department rather than ESA was to lay the accounts. Historically and practically, education and library boards (ELBs) laid their accounts.

Mr Stewart: There is nothing sinister in that, Chair. We simply understand that to be the requirements of the Department of Finance and Personnel (DFP).

The Chairperson: What will have changed with the green book? It will be ELBs today and ESA tomorrow. The green book still applies at the moment in relation to ELBs laying their accounts.

Mr Stewart: It is actually a different colour of book, Chair. In the past, it was a red book called 'Government Accounting Northern Ireland'. It is now a book called 'Managing Public Money Northern Ireland'. I am not sure what colour it is.

The education and library board requirements date from 1986. That is quite elderly legislation, and our understanding is that it is a DFP requirement for accounts to be laid by the Department. That reflects the line of accountability from the Department and the Minister to the Assembly.

The Chairperson: There are no other queries. Members, are we content with schedule 1, or do we want to reserve our position?

Mr Lunn: Reserve our position, Chair.

The Chairperson: Is the Committee content to reserve its position on all that relates to schedule 1, including the amendments?

Members indicated assent.

The Chairperson: Schedule 2 relates to employment, and we obviously have an issue with clause 3. I assume that our position will be the same.

Schedule 2 sets out those matters that must be included in schemes of employment, including the staff complement, discipline and suspension policies. The schedule allows ESA to determine certain aspects of employment schemes for controlled and maintained schools if they have had their delegation withdrawn. The Committee agreed to park its consideration of this schedule pending a response on the heads of agreement. Obviously, there is no further information in relation to that, Chris.

Mr Stewart: Not as yet, Chair. I understand that discussions are ongoing.

The Chairperson: Are there any comments on schedule 2? It covers the issues of employment and employment schemes. You will have seen the model schemes of employment that cover the issues of the appointment of staff, discipline, dismissal and suspension.

Mr Stewart: Chair, it might be useful to remind members why the schedule is there and what it is intended to achieve. That may inform your consideration of whether it is adequate.

A concern reported by many stakeholders was that ESA would have too much leeway to interfere in the content of employment schemes and might seek to include things that ought not to be there or rule out things that would quite legitimately be included. The purpose is to give some protection to submitting authorities and schools about the content of employment schemes.

The original proposal in the previous Assembly mandate was simply to do so by guidance, but that was felt to be much too weak. Subsequently, we proposed to do that in subordinate legislation through a set of regulations. However, that was thought to be too vulnerable to arbitrary change by the Department, and Committee members felt that the appropriate level of safeguard would be to include these provisions in the Bill. That is why they are in schedule 2.

The provisions follow fairly closely a set of draft regulations that some members may recall from the previous Assembly mandate. If you trawl through existing legislation, you will find some quite similar provisions in schedule 2 to the 1998 order, from where those are derived. They are supposed to set out, in some detail, the things that must be in a scheme of employment and how it will operate. They are also supposed to prohibit ESA from doing certain things that it would otherwise have had the freedom to do. We hope that members agree that that gives the comprehensive protection that submitting authority stakeholders were looking for in the schemes.

The Chairperson: Are there any comments?

Mr Lunn: Chairman, I cannot help but notice the GBA's comments. I know that we waiting for white smoke to appear from another place at the moment — I am not talking about Rome, but the discussion —

The Chairperson: Oh, right; I was getting worried. I thought that we had strayed way beyond the remit.

Mr Stewart: I am not sure which will come first.

The Chairperson: I thought that someone was going to have to get a flight and cast a vote.

Mr Lunn: Chris has rightly said that he is not sure which one will come first.

The Chairperson: I think that we can be reasonably sure which one will come first.

Mr Lunn: The GBA wants the schedule to be amended to preserve the integrity of paragraph 10 of the heads of agreement. There is not much doubt what interpretation it is putting on this. It wants paragraph 10, which indicates that, when it is the case, schools will continue to employ their own staff. I see from the Department's response that that is contrary to the Minister's policy. I am sorry to go on about this, but the Minister said in the House that there is no contradiction. However, it seems that more of a contradiction is building up. That is not a question, Chair.

The Chairperson: Chris, I will not ask you to comment on white smoke or any other colour of smoke. We will stick to yellow smoke, which I understand is the colour they use to test whether the chimney is working.

Mr Stewart: I merely want to remind members again — they will forgive me for repeating it — that we understand the GBA's view. It feels that the only proper interpretation of paragraph 10 of the heads of agreement is that voluntary grammar schools should continue to be employers in law. That is not the Minister's view. He feels that the provisions in the Bill give effect to paragraph 10 of the heads of agreement, which, in answer to Trevor's point, is why he feels that there is no contradiction. Clearly, the GBA takes a different view.

The Chairperson: I think that our decision is that we will reserve our position on schedule 2.

I will suspend our proceedings now to give members an opportunity to prepare for the House. The Minister is making a statement to the House at 10.30 am on the North/South Ministerial Council meeting in education sectoral format. We will resume at 11.15 am after the Minister's statement.

Committee suspended.

On resuming —

The Chairperson: We finished at schedule 2, which was parked. We move on to schedule 3: "Transfer to ESA of staff employed by boards of governors". Schedule 3 makes provision for the transfer of staff from boards of governors to ESA within the protections under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) regulations. This is in line with ESA becoming the sole employer of all staff in schools.

The GBA asked for an amendment that would ensure that staff transferring to ESA under the Bill would have terms and conditions consistent with those beginning contracts after the passage of the Bill. It also suggested amendments, as part of a sequence of amendments, that would make ESA the agent of the board of governors. NIPSA sought amendments that would ensure that transferring staff would enjoy the protections of TUPE on pay and pensions.

Have you any comments to make on that, Chris?

Mr Stewart: I have a couple of points. This is one of a number of related schedules to achieve the transfer of staff to the employment of ESA. In this case, it is the transfer of staff currently employed by boards of governors, so that involves voluntary grammar schools, grant-maintained integrated and Irish-medium schools. The protections in the schedule — the references to the TUPE regulations and

pension protection — are consistent with the principles set down by the Public Service Commission and agreed with trade unions centrally as being applicable throughout the RPA, and they are reflected in the Bill in a very similar way to the provisions that were in the health legislation some years ago.

As you say, there is a series of proposed GBA amendments here and at other places in the Bill that reflect its position on what it thinks that the outcome ought to be on employment matters, but, as the Minister indicated, that is not his view, and he does not support that.

I draw members' attention to the timing of the schedule's commencement. It needs to commence the day after Royal Assent, but that does not mean that the transfer takes place then. The schedule commences at that time simply to allow the Department to draw up the necessary transfer scheme, which comes into effect on a later date — on the appointed day when ESA becomes the employer of all staff.

The Chairperson: Chris, will you clarify the difference between this transfer scheme and the current process of a straight transfer under TUPE? Is there a distinction?

Mr Stewart: Yes. TUPE is very complex legislation, and there is a lot of case law on whether TUPE would apply broadly within the public sector. The starting point is that the lawyers would say that TUPE is not normally applicable, and certainly not meant to apply, in any situation thought of simply as a reorganisation within the public sector. If, for example, the number of Departments changed and civil servants were transferred from one Department to another, that would not attract the protection of TUPE. However, because it was agreed as a central plank of RPA policy that TUPE would apply, there are provisions in the schedule to put that matter beyond doubt. That is why the particular provision is somewhat wordy. What it says, in translation, is that whether or not TUPE would otherwise apply, the effect of the schedule is that it does apply and will be applied to the transfer.

In the absence of TUPE, certain requirements on the employers would not apply, but the effect of TUPE means, for example, that certain notifications have to be given to members of staff in a particular timescale before the transfer takes place so that they are aware of exactly what is happening, exactly what their rights are and exactly what their protections are under the legislation, and that will be done. At present, colleagues in the implementation team are engaging with the various schools that will be affected by the provision to start gathering the relevant information — the number of staff, their posts, their terms and conditions and their pension arrangements — that will need to come with them to ESA when the transfer takes place.

The Chairperson: Are there any other questions?

Mr Lunn: I presume that we will park this schedule because the basic premise for the transfer to ESA of staff employed by a board of governors is open to question under paragraph 10(c) of the heads of agreement.

The Chairperson: Yes. Are there any comments on amendments proposed by other organisations? NIPSA's proposed amendment is:

"Schedule 3 2(6)b (& 2(8)) to be amended to clarify that pension provisions will be protected and maintained following transfer".

The response from the Department was:

"The provision reflects the policy of the Minister and the Executive, which is to provide pension protection at the point of transfer".

Mr Stewart: Yes, and that is exactly what is there. That is a carefully worded response to what I assume was a carefully worded suggested amendment. One cannot offer protection in perpetuity. Pension protection, like protection for terms and conditions, applies at the point of transfer, but it is possible that, at some point in the future, an employer or, indeed, the Government, may make changes to the pension arrangements. Under a later schedule, for example, a number of departmental staff will transfer to ESA. They will retain their right of membership to the principal Civil Service pension scheme. That is how we will give effect to pension provision, but, as we know, the Government may make decisions in the future on, for example, the level of contribution or the level of benefit that will be available under that scheme. One cannot legislate for or against that in this Bill.

The Chairperson: OK, members, we reserve our position on schedule 3.

We move on to schedule 4, "Transfer of assets, liabilities and staff of dissolved bodies". Schedule 4 makes provision for the transfer of these assets, liabilities and staff of ELBs, the Staff Commission, the Youth Council and the Council for Catholic Maintained Schools (CCMS). There will be protection for staff under the TUPE regulations.

The Western Education and Library Board sought information on the ESA location strategy. NIPSA put forward a number of technical amendments designed to extend TUPE protection. CnaG suggested that the schedule be changed to require ESA to consult the trustees of IME schools prior to transfer.

Mr Stewart: A number of the amendments are similar to those proposed to schedule 3, and, where that is the case, the Minister's view is the same. On the Western Board's suggestion, we can well understand why staff throughout the education organisations would wish to know as early as possible where their jobs are likely to be located in the future. As I have said previously at Committee, unfortunately, no one is or could be in a position to give that information now. There will be a location strategy for ESA. It will be drawn up by ESA staff, but, of course, before it goes anywhere else, it will need to be approved by the members of ESA when they are appointed. Thereafter, it will go to the Department for the Minister's approval, so the timing of a location strategy is, unfortunately, still some way away. It will not happen until at least a number of months after ESA comes into existence.

The Chairperson: Have you yet received a list of which assets, liabilities and staff of the dissolved bodies are being transferred and which are not?

Mr Stewart: We are still some way from that, Chair. We have passed on the Committee's request for that information to colleagues working in that area. They understand the need to provide the Committee with that information as soon as it is available. It is likely to be some time. I do not think that we could give you any reassurance that it will be available before the end of Committee Stage.

The Chairperson: The same thing applies to schedule 4 as applies to schedule 3 because they are interrelated and both subject to clarification and confirmation of what will happen on employment. So we will reserve our position on schedule 4.

Schedule 5 makes provision for the transfer of certain assets and liabilities from CCMS before the appointed day. This allows for those assets not transferred to ESA to be transferred to the Church. Obviously, that follows on from what we asked previously because we will be interested to see what exactly is the case. At the previous meeting, Chris, when I mentioned the complicated and convoluted calculation process, you clarified that this was about clawback as opposed to assets. Have I understood that properly?

Mr Stewart: I hope that I explained it correctly, Chair. Mercifully, we are spared from having to delve into the arcane intricacies of clawback. As you rightly say, the arrangements are very challenging, but they apply to capital grants provided for schools. The clawback arrangements for when a premises ceases to be used as a school are complex and vary over time, depending on the date on which the grant was paid. Thankfully, with these assets, those arrangements do not need to be considered. Where a capital asset was provided using public money, it will transfer lock, stock and barrel to ESA. Where it was provided with funding from, for example, the Church, it seems right and proper that it should revert to the Church when CCMS no longer exists. Therefore, clawback really should not be an issue in relation to any of these assets.

The Chairperson: We need to keep in mind that schedule 5 relates specifically to CCMS.

Why is it necessary at paragraph 2(3) of schedule 5 to state:

"Before making an order under this paragraph, the Department shall consult —

(a) any person to whom or body to which assets or liabilities are to be transferred by the order;

(b) the Roman Catholic Archbishop of Armagh and the Roman Catholic Bishops of Clogher, Derry, Down and Connor, Dromore and Kilmore;".

Why was it necessary to name the bishops as opposed to naming the trustees?

Mr Stewart: The bishops are the Church authorities for the various Roman Catholic dioceses. CCMS's premises are scattered across the various dioceses, with CCMS offices in each see. Therefore, the appropriate consultee in each case would be the bishop. In effect, Chair, it is the same group of people: the bishops are the senior trustees in Catholic education.

The Chairperson: I just wonder why it was necessary to name them all as opposed to naming the trustees.

Mr Stewart: It was simply to be comprehensive in each case. The appropriate person to consult in the CCMS diocesan office in Down and Connor, for example, were there to be a transfer of an asset back to the Church, would be the Bishop of Down and Connor. It is simply to be comprehensive and precise. I must say that it is the only experience that I have ever had of having to name all the Roman Catholic bishops in legislation. It is not something we have to do very often.

The Chairperson: There is another issue. Are we satisfied that they, as the appropriate authority, will be able to resolve issues such as the orders? We know that, in some cases, the trustees do not have ownership of a school and it may be owned by, for example, a religious order. This is about the assets of CCMS, which are different from the assets of a school building. A school building may be owned by any one of a number of organisations. I can see what you are attempting to do here. You are being comprehensive to ensure that you have covered them all, but is there any likelihood that there will be one or two quirks, as there are in the controlled sector? I can think of one school in my constituency that has a very strange legal existence based on a document signed perhaps hundreds of years ago, and it will be very problematic to resolve that issue. In this instance, is there anything like that which is a potential difficulty?

Mr Stewart: We do not think so. We are not aware of anything like that. Where, for example, a particular building is funded by a religious order as opposed to the diocese, that is covered by paragraph 3(c) of schedule 5, which states:

"(c) any other person or body whose interests appear to the Department to be affected by the making of the order."

In all instances, the expectation is that we will consult the bishops, but if it is necessary to consult a religious order, we will do so. Indeed, in such an instance, it might be that the premises would be transferred back to the religious order rather than to the diocese.

Mr Lunn: Are there any situations in which the ownership is not clear?

Mr Stewart: The honest answer is that I do not know, Trevor. One would hope not, but there is an ongoing process of engagement with CCMS to identify any assets that it would be appropriate to transfer back to the Church. One would hope that there are not any instances in which there is a lack of clarity and certainly not any dispute. The way in which the legislation is structured means that transfers back to the Church need to take place before the appointed day. Anything not transferred to the Church before the appointed day automatically transfers to ESA. The default is that any assets not identified as transferable to the Church will go to ESA.

Mr Lunn: They could, however, subsequently be transferred if ownership was clarified?

Mr Stewart: Yes, if it subsequently transpired that a mistake had been made and a particular asset had gone in the wrong direction, that could be rectified.

The Chairperson: Paragraph 3(2) of schedule 5 states:

"In any statutory provision or document any reference to CCMS shall, in relation to any time after the transfer date, be construed as a reference to the transferee."

Is ESA the transferee?

Mr Stewart: No, not under this schedule. It will almost certainly be the Church.

The Chairperson: OK.

Mr Stewart: I am sure that you will see a similar reference in the other schedules, where the transferee is ESA.

The Chairperson: Is there, for other transferors, any similar provision to that in paragraph 3(4) of schedule 5, which reads:

"The transfer does not affect the validity of anything done by or in relation to CCMS before the transfer date."

Mr Stewart: That is a standard provision, and there will be a similar provision in the schedule dealing with assets from education and library boards.

The Chairperson: Members, we will reserve our position on schedule 5 and move on to schedule 6.

Mr Lunn: We could nearly agree schedule 5, Chairman, because no one has raised any issues, and that would mean that we had agreed two.

The Chairperson: It will be worthwhile to ensure that we satisfy ourselves, as a Committee, about what is being transferred and have that clarity.

Mr Stewart: At the risk of arguing against the Department's position, if the Committee is reserving its position on the clause that activates the schedule, it would perhaps be unusual for it to take a decision on the schedule but not on the activating clause.

The Committee Clerk: The Department has written to us, and my interpretation of the letter — maybe the Department will correct me — is that the Committee will not receive the list of staff and assets that are to be transferred. Unless I have misunderstood, members will not see that before formal clause-by-clause scrutiny. Chair, if the Committee is reserving its position now on that basis, when you come to formal clause-by-clause scrutiny, you will have to make up your minds and you will not have that information.

The Chairperson: OK. We will move to schedule 6, which is on the transfer of certain staff of the Department. This schedule makes provision for the transfer of staff from DE to ESA with the protections under the TUPE regulations. NIPSA proposes a number of technical amendments relating to TUPE. CnaG sought amendments to cover the transfer of CnaG and NICIE staff. To keep us right, Chris, did we say that it was somewhere in the region of 140 staff?

Mr Stewart: It is slightly higher than that, Chair, probably nearer 170. By far the greater number, about 130, will come from the teachers' pay and pensions team in Waterside House in Londonderry. Approximately 40 staff will transfer from departmental headquarters at Rathgael.

The Chairperson: CnaG commented:

"The Bill currently makes provision for the transfer of CCMS staff to ESA. No such provision is included for the transfer of CnaG and NICIE staff associated with the transfer of direct services from these bodies to ESA. The Schedule should be amended to make such provision in respect of salaries and pension rights."

Mr Stewart: The Minister is sympathetic to the view expressed by CnaG and a similar view expressed by NICIE. It is not clear at this point whether any staff will transfer from either organisation. As with the other affected bodies, an examination of their functions is going on, and if any functions are identified as being appropriate to transfer to ESA, one or two members of their staff may also transfer. The Minister has given a commitment that the same protection would apply should those transfers take place. So the staff involved would transfer on protected terms and conditions and with pension protection, but it would be difficult and challenging to try to legislate for those transfers given that NICIE and CnaG are not statutory organisations, and the Minister would prefer not to go down that

line. However, he has given assurances to both organisations that, if transfers do take place, their staff will have equality and parity of protection alongside other staff who are transferring.

The Chairperson: Any comments? Is the Committee happy to agree to schedule 6?

Members indicated assent.

The Chairperson: Schedule 7 is on minor and consequential amendments, and there are a number of comments. The Commission for Catholic Education sought an amendment to change the references. We have already referred to Catholic maintained and Catholic voluntary schools. CnaG sought an amendment that would allow for a new definition of an Irish-medium school or unit. CnaG also sought an amendment to require proposers of new Irish-medium schools to consult the relevant sectoral body. The GBA suggested an amendment that would allow the tribunal to adjudicate on all disputes between ESA and the board of governors, not just those relating to employment schemes and management schemes. On that final point, Chris, is that being considered?

Mr Stewart: No, Chair. The Minister would not see that as appropriate. One would hardly need the Department, if the tribunal was going to cover all those matters.

The Chairperson: What did we pick up last week about consideration being given to expand the role of the tribunal? What did that relate to?

Mr Stewart: A number of amendments put forward by trade union colleagues suggested a very significant expansion of the role of the tribunal, almost to the point of making it a general purpose industrial relations and health and safety tribunal. One can understand the argument being made, but it is not one that the Minister agrees with.

The Chairperson: Any comments? Are we to believe that a proposal or amendment will come from the Department on the change of definition?

Mr Stewart: Yes, for Catholic schools and Irish-speaking schools. The Minister is sympathetic to that, and we are working on proposed amendments. The Minister is persuaded of the need for the inclusion of a definition of Catholic school. If that can be agreed, we will not need a reference to Catholic-maintained school anymore: that could be removed. The Minister is also sympathetic to the suggestion that we need a revised definition of Irish-speaking school. There is a definition in the 2006 order, but it has not really kept pace with developing policy. It covers Irish-speaking schools and schools with Irish-speaking units, but it does not include schools that have Irish-speaking streams, which is where a number of pupils in the school take a number of subjects in Irish, but the remainder of the teaching is done in English. We are giving consideration at the moment — at a meeting this afternoon following this — to how best to do that in legislation.

Mr Lunn: I am curious about why the Bill refers to Catholic schools but to Roman Catholic bishops.

Mr Stewart: That is because there is more than one Catholic Church.

Mr Lunn: Yes, but there are Roman Catholic schools. I am not aware of any Church of Ireland schools. Possibly there are.

Mr Stewart: There are four, to my knowledge.

Mr Lunn: Are they Catholic schools?

Mr Stewart: They are Catholic schools if one is considering —

The Chairperson: The Apostles' Creed.

Mr Stewart: — the Apostles' Creed, but not when it comes to education legislation. Trevor, you are right: you have pointed out a difference in the use of "Catholic" in relation to schools as opposed to its more general and correct usage in matters religious. However, if we were to start calling them Roman Catholic schools at this stage, it might simply cause confusion. Certainly, when one is referring to the

Church, it is necessary to give it its full title as the Roman Catholic Church, which means any church in full communion with the Bishop of Rome.

The Chairperson: We do not, however, currently have one.

Mr Lunn: I am not suggesting a change, Chairman, I am just —

The Chairperson: I see signs that we will get pulled into that election one way or another, if we keep going on.

Mr Lunn: We will need more white smoke.

The Chairperson: We will be so confused that we will not be sure what colour the smoke is.

Mr Stewart: I am not certain that that is within the legislative competence.

The Chairperson: I do not think that it is. All facetious comments aside, Trevor has raised a valid point. It would be interesting to see the amendments on that definition. Chris, I know that we have asked you this ad infinitum, but is our having sight of those amendments nearer at hand today than it was seven years ago?

Mr Stewart: Many things have changed since seven years ago, Chair. I have conveyed to the Minister the Committee's desire to see the ministerial amendments as soon as possible. He is considering that.

The Chairperson: I am assured that we wrote to the Minister on those terms last week. We will have to reserve our position on schedule 7.

That takes us to schedule 8, which sets out the existing legislation that is being repealed. To save Chris repeating it, I remind members that they have previously received the list of what stays in existence and what is being repealed. This is a technical clause. Are there any comments from members? Under schedule 7, a considerable number of issues are relevant to the Department for Employment and Learning (DEL). Do we have any indication from DEL on where its amendments are?

Mr Stewart: Its amendments will mainly be to clause 47 and inspection powers. It has been in contact with the Office of Legislative Counsel, and I think that those amendments are at a fairly advanced stage. We hope to see them fairly soon.

The Committee Clerk: — *[Inaudible.]*

The Chairperson: OK. We have written to the Minister for Employment and Learning to request notes.

Mr Stewart: It may help members to know that those amendments are very much about bringing the DEL inspection powers much closer to those proposed for the Department of Education. Clause 47 will probably end up being very similar to clause 45, with the addition of the extension of the DEL inspection remit to cover private sector training providers. The powers themselves will be almost identical. In fact, I suspect that they will be identical to the powers proposed for the Department of Education. So any concerns and issues that members might have about clause 45 are likely to apply to clause 47.

The Chairperson: Chris, will you clarify for me who will carry out the function of the Commissioner for Complaints?

Mr Stewart: Schedule 1 will add ESA to the remit of the Commissioner for Complaints and, in so doing, will automatically bring ESA within the remit of section 75 of the Northern Ireland Act.

The Chairperson: It was previously the function of CCMS, was it not?

Mr Stewart: Yes, CCMS was within the commissioner's remit.

The Chairperson: In schedule 2, the entries relate to the Council for Catholic Maintained Schools. That is the extent of the repeal.

Mr Stewart: Yes.

The Chairperson: So was the remit of the Commissioner for Complaints only for schools under the jurisdiction of CCMS?

Mr Stewart: It was not to schools, just to CCMS as an organisation, and to the Staff Commission and the Youth Council as well. The commissioner does not currently have jurisdiction for schools, but, as some members will know, that is proposed in changes to that legislation. Under the various regulatory regimes, the Bill explicitly brings ESA within the remit of the Commissioner for Complaints and, in doing so, brings ESA within the remit of section 75. We have also specifically included provision to bring it within the Freedom of Information Act, and it becomes automatically subject to the Human Rights Act because of the nature of the functions that it performs.

The Chairperson: If it comes under the remit of section 75 as a result of that, how could it have —

Mr Stewart: The distinction to make is that ESA as an organisation will be subject to section 75, not individual schools.

The Chairperson: I was going to draw that distinction.

Mr Stewart: I feared that you were going to ask that.

The Chairperson: It is ESA as an organisation, not individual schools. There is surely a legal point that, if it is the employer of all staff in all schools, there is, de facto, an issue of whether it is then subject to section 75, even whether or not the regulations give them an exemption in certain regards.

Mr Stewart: The more general question of the extent to which equality legislation should apply to individual schools would be a matter for the Office of the First Minister and deputy First Minister (OFMDFM). We are satisfied that the effect of this particular provision is clear. It will make ESA, as an organisation, subject to section 75, and ESA will, therefore, have to produce an equality scheme to be submitted to the Equality Commission for approval. However, it will not give ESA, as it were, a role in equality matters in schools. That would require a different decision by OFMDFM.

The Chairperson: OK. I note that one of the repeals relates to the Safeguarding Board Act (Northern Ireland) 2011. Michelle raised this issue last week. Is it in the tabled items?

The Committee Clerk: Yes, it is. You talked about the Safeguarding Board's relationship to ESA and the relevant bit of the legislation — *[Inaudible.]*

The Chairperson: It says that ESA will replace the education and library boards as a member of the Safeguarding Board by virtue of the following amendment which can be found in schedule 7 to the Bill.

There is also a reference to clause 55 and a data-sharing protocol between those entrusted with a duty of care under the Bill for the safeguarding of children and young people. As with all members of the Safeguarding Board, ESA will be obliged to supply information requested by the board as soon as is reasonably practical after the request is made, as per section 11 of the Safeguarding Board Act (Northern Ireland) 2011.

Mr Stewart: There is nothing sinister in the repeal of section 12(1)(g) of the Safeguarding Board Act (Northern Ireland) 2011. It is a technical change to make sure that the two pieces of legislation fit well together.

There is one particular area in which the requirements of education law are more exacting than the requirements of the Safeguarding Board Act, so we are applying those rather than the provision in the 2011 Act.

The Chairperson: OK. Do members have any comments on schedule 8 repeals?

Are members content to agree schedule 8?

Members indicated assent.

The Chairperson: OK, members, that brings us to the end of the schedules. I want to draw your attention to a number of miscellaneous issues. We should take a moment or two to go through those before we conclude. They are listed in the clause-by-clause summary document.

Some of the more substantive issues were not covered in other clauses. We may have referred to them in the past, but it will be good to get them placed again. On page 132-3, for example, the TRC suggestion is that a role be guaranteed for sector support bodies in estate management. TRC also requests an amendment to allow for the nomination of controlled school post-primary governors from among the transferor nominating authorities of contributory schools.

Page 134 outlines suggestions made by the University of Ulster to amend the Bill to include a more explicit focus on improving education performance and tackling inequality. Also on this page is the Association for Quality Education proposal to withdraw or radically amend the Bill to devolve power from the current education and library boards and CCMS to boards of governors. Finally on this page is the proposal from the Ulster Farmers' Union to amend the Bill in line with the Schools (Consultation) (Scotland) Bill, which would change the procedures for the closure of rural schools.

Page 135 details David Stewart's proposal to amend the Bill to align the school year with the financial year. It also outlines a proposal by Parents Outloud to amend the Bill to allow parents to defer their child's entry to primary school in certain circumstances.

We have covered some of those issues in the past. Do members want to comment on any of them or shall Chris comment first?

Mr Stewart: I will just pick out and emphasise one to which the Minister has said yes, which is the request from the transferors for the change in arrangements in nominating governors to post-primary schools. The Minister accepts the argument that has been put to him and will bring an amendment to that effect.

The Chairperson: That is to be welcomed. Does the Committee agree? That is on page 133 in the miscellaneous section of our clause-by-clause table.

Mr Kinahan: Is he likely to extend that to other public groupings?

Mr Stewart: It does not have a read-across to other groupings; it is a particular requirement. Transferors have the right to nominate a certain proportion of the governors of controlled post-primary schools. However, there is an additional requirement that those governors must also be governors of the feeder primary schools. That creates a difficulty for the transferors. They are finding it increasingly difficult and a real challenge to persuade people to be governors of two schools. The Minister is persuaded that it would be right to remove that latter requirement. They will still have the same nomination rights but will not necessarily have to draw those nominated from the governors of feeder primary schools.

The Chairperson: It is a practical move and should have been done long ago because it has put undue stress on the requirements of the controlled sector and TRC. Does the Committee support the TRC proposition?

Members indicated assent.

Mrs Dobson: Chair; on the Ulster Farmers' Union suggestion that the Bill be amended in line with the Bill in Scotland, have we got that information yet?

The Chairperson: Yes. We received a report and a research paper last week on the Schools (Consultation) (Scotland) Bill. Have you any comment on that, Chris?

Mr Stewart: The Minister recognises the importance of the issues raised and the significance of planning decisions on rural schools. He thinks, though, that there is scope in the Bill to address any

policy decisions made on foot of that. There is extensive legislation on the area-planning process, and there is the opportunity for the Department to produce guidance and regulations, not only on the process but the content of plans. So, for example, were the Minister to adopt a particular policy position on how rural schools should be treated in the area-planning process, and that position needed legislation, we could include that in a set of regulations.

Mr Lunn: If you are finished with that one, Chairman, the final one in this section is a suggestion from NICIE about special schools. It suggests that the Bill be amended to allow for the repeal of article 90(2)b of the Education (NI) Order 1989, which precludes special schools from being designated as integrated schools. The departmental response is that that is "outside the scope of the Bill." Taken together, the various orders across the Bill designate what an integrated school is and what ESA and the Department's duties are to that movement.

Leaving aside what the Assembly may think about whether special schools should be capable of being designated as integrated schools, why would that be outside the scope of the Bill? We have just been discussing schedule 8, in which there are repeals galore. NICIE seeks a pretty minor adjustment to the 1989 order, so what is the problem?

Mr Stewart: It is a minor adjustment, and the amendment would not be a particularly difficult one to make. That long list of repeals and, indeed, the long list of amendments in schedule 7, are consequential. They are all needed to give effect to the scope of the policy agreed by the Executive. The Executive have not agreed or asked us to legislate on whether special schools can be integrated schools. Were they to do so, making the amendment would not be particularly difficult. It is entirely open to the Committee or the Assembly to amend the Bill in that way. The Minister has not set his face for or against it; he simply noted that this had not been agreed by the Executive, and we had not been asked to do it.

Mr Lunn: Does that mean that it could not be included in the Bill and would have to take a separate route?

Mr Stewart: I see no reason why it could not be included. Members will have seen a very recent example of an amendment to a Bill that was perhaps not envisaged when the Bill was introduced.

Mr Lunn: Never heard of it. *[Laughter.]* Well, that is fair enough. So, by the will of the Assembly, it could be brought under the Bill.

The Chairperson: The only thing that I personally would add is that we have been able to resist bringing special schools into a debate about whether they are controlled, maintained integrated, Irish-medium or whatever. They are special schools, regardless. The controlled sector is to be commended on the way it has managed. It basically comes under the remit of the education and library boards, with, as we clarified the last time, two exceptions.

Mr Stewart: We think that there are one or two exceptions.

The Chairperson: Yes. My only concern is that special schools are for pupils with particular needs. I do not think that we should go down the road of trying to put them into the particular category of maintained. We have seen what is happening with Woodlands, and I am not happy about what is happening there. I can understand, for practical reasons of service provision, the reason for the Western Education and Library Board proposing to do what it is doing, but it has created a situation in which children are being treated as some sort of commodity, with four maintained, six controlled and seven this. Almost a reverse argument is being used. If we want to show examples of shared provision, special needs is one of the best examples. That is the only reason why I am at a wee bit of a loss as to why this has been suggested.

Mr Lunn: I was doing my best not to open up that argument. NICIE does not want special schools to be redesignated as integrated; it wants individual schools to have the same ability to apply for transformation if they want to. It does not want to redesignate all special schools. That would be ridiculous.

The Chairperson: OK.

Mr Lunn: If 20% of the parents wanted to kick-start the process to see where it led, they would not be allowed to do so. That is all that the NICIE proposal is about.

The Chairperson: I am not aware of them not being allowed to do that. I thought that the transformation process was open to any school.

Mr Stewart: Except special schools.

The Chairperson: Are special schools the only ones that are exempt?

Mr Stewart: Yes.

Mr Lunn: That is the argument.

The Chairperson: Jo-Anne, did you want to come in on this?

Mrs Dobson: No, I am just agreeing with you.

Mr Lunn: Are you agreeing with him or me?

Mrs Dobson: I am agreeing with the Chair about special schools.

The Chairperson: Members, are there any other comments about the miscellaneous issues? I think that we talked previously about the suggestion from Parents Outloud to allow parents to defer, and the Department's response was that it was outside the scope of the Bill.

Mr Stewart: Indeed, Chair. That example, along with the one that Trevor raised and a whole raft of suggested changes on integrated or shared education and which one might think are very good or not very good, are not in the scope of the Bill that the Executive asked us to prepare.

The Chairperson: Does the Committee support any of the changes suggested to us?

Mr Kinahan: The Committee as a whole?

The Chairperson: Yes, or individual members.

Mr Kinahan: I rather like the GBA's suggestion.

The Chairperson: OK. As there are no other comments, we will leave it as it is and reserve our position on those miscellaneous issues.

Members, that concludes our discussion of the schedules and the miscellaneous issues. I propose that we suspend our proceedings until tomorrow at 9.30 am.

The Committee Clerk: Chair, before you suspend proceedings, we have now come to the end of the informal review of the clauses, and the Department has written to the Committee a number of times. It is up to the Committee whether it wants to ask the Department to come tomorrow to talk through some of those responses. I had provisionally scheduled a time for that. If, for example, I interpret the Department's letter on the shared education question correctly, it indicates that there will be no policy definition in the immediate future. Likewise, there will not be a list of assets and posted transfers. I am also not sure whether there will be a response on the heads of agreement or whether the Committee will see any of the departmental amendments.

Does the Committee want a further briefing from the Department on the letters that it has sent to us recently?

The Chairperson: Are members happy with the correspondence already received rather than having an additional briefing on the issues?

Members indicated assent.

The Chairperson: OK, members. We will suspend our proceedings and reconvene tomorrow morning.