COMMITTEE FOR EDUCATION

OFFICIAL REPORT
(Hansard)

Education Bill

16 September 2009

NORTHERN IRELAND ASSEMBLY

COMMITTEE
FOR EDUCATION

Education Bill

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Members present for all or part of the proceedings:
Mr Mervyn Storey (Chairperson)
Mr Dominic Bradley (Deputy Chairperson)
Mrs Mary Bradley
Mr Jonathan Craig
Mr Trevor Lunn
Mr John McCallister
Mr Basil McCrea
Miss Michelle McIlveen
Mr John O'Dowd
Mrs Michelle O'Neill
Mr Alastair Ross

Witnesses:

Mr Chris Stewart	)	Department of Education
Ms Eve Stewart	)	

The Chairperson (Mr Storey):

I welcome Chris Stewart and the departmental officials to this morning's Committee meeting on the Education Bill. I remind you that the meeting is being reported by Hansard. I want to ensure that we work through the Bill as simply as possible this week, because members raised concerns last week about having to use a couple of folders. We will stay with the white folder, as best we can. We are awaiting more copies of the second version of the draft report, but there is one copy to share among members. You can set the black folders to the side.

Mr B McCrea:

Before we proceed, I would like to deal with a couple of matters arising. The amended clause 3(2)(a) will deal with employment schemes, and clause 31 with schemes of management. They relate to school governance and trustees, but they contradict the Minister's letter of 17 June, in which she said:

"I have also made it clear that ownership will not convey any advantage or disadvantage to any school or sector in terms of the planning, governance, or funding of education."

The amendments confirm the link between the ownership of schools and their governance, and it leads to a questioning of the Minister's statement. We would like a response to that.

There is also an issue with the nascent controlled sector body. We understand that it has been meeting, but we have no indication of who is on it, how they were appointed and whether the sector is satisfactorily served by it.

The Chairperson:

There is a report from Eve Stewart at B3 in the yellow folder. It provides a list of the people who attended the meetings of the controlled sector and the number of meetings that there has been. A controlled sector support meeting was held on 30 June in the Island Civic Centre, and an additional meeting was held in the same venue on 18 August. Some detail has also been provided in the letter to John Simmons.

Mr B McCrea:

I am happy to deal with that when it arises.

The Chairperson:

Would it not be preferable to deal with those points when we look at the amendments?

Mr B McCrea:

I am merely highlighting a concern and giving the Department a chance to respond. We will, of course, deal with them when we reach that stage. To make it easier, I will drop you a note on the issues with which we have concerns.

The Chairperson:

We will come to those items anyway, but you are at liberty to drop me a note.

Mr B McCrea:

It is a matter of getting through the papers. I wanted to highlight an issue; I do not want to detain people.

The Chairperson:

I become concerned when we have too many pieces of paper in front of us.

I want to explain the items. At tab 4, item 1 of the black folder is the Department's paper of 10 September on the employment schemes with the draft education employment scheme regulations attached. Those are the regulations with regard to the employment schemes. Tab 4, item 2, contains the Department of Education's and the Department for Employment and Learning's amendments, which were received on 10 September, with two new clauses to be inserted after clause 28 and amendments to clause 28 and schedule 7. Tab 4, item 3, contains the proposed amendments that the Committee received from the Department on 4 September. The Department has provided that in two formats: the first is a table format with a brief explanation of the amendment; the second format is the considered amendment format, which provides a full text of the proposed amendments, in particular for schedules 7 and 8. At tab 4, item 4, there is a briefing paper from Assembly research on the comparable issues from the Libraries Bill, the Health and Social Care (Reform) Bill and the Education Bill. Members will remember that they made inquiries on how those issues were dealt with in other Committees when Bills such as the Libraries Bill were being discussed. The briefing paper will be useful for providing context.

Having identified those papers, I propose that we move to the scrutiny of clause 49. We will continue through to the end of the schedules considering the departmental amendments as we come to them, and then work through the remainder of the departmental amendments on clauses 1 to 23 and clause 28.

I want to clarify that all new members have received the grey lever-arch file from last week's meeting from the Committee Clerk. The appendices will be updated after today's meeting. We need the Committee's approval for those appendices to be brought up to date.

Members indicated assent.

The Chairperson:

It just gives members more papers to read.

Clause 49 —

Mr B McCrea:

Will you give me a chance to raise item B3 in the yellow folder?

The Chairperson:

Yes.

Mr B McCrea:

Will that be now, before we move on?

The Chairperson:

If you do not mind, we will move on. As a result of that item, certain issues will be raised during the clauses, and you can raise the issue then.

Mr B McCrea:

Judging from the list in annex A, I am concerned that there are not enough representatives from the controlled schools on the controlled schools sectoral body.

It is important that we ensure that the controlled sector has effective representation. I am sorry, but the list is not effective representation. How were those people appointed? How should they be appointed? How we can ensure that a controlled-sector body develops? The controlled sector must have equal standing and representation with all the other sectoral bodies; that is fundamental. I am sure that you will agree, Chairman, that there are not many controlled schools on that list and that some names are missing.

The Chairperson:

The other concern is that there were five representatives of the South Eastern Education and Library Board (SEELB) at the first meeting but only one at the second meeting. I have grave concerns, and I echo the comments that have been made. We have to ensure that there is equality across all sectors, including the controlled sector. We have not seen any work emerging, and we

have not seen any of the papers that have been provided for the working group.

Mr Chris Stewart (Department of Education):
I am happy to pass all those points on to the working group, but I draw the Committee's attention to the fact that it is a controlled sector working group over which the Department has no control. We are there to assist and support the group in its work, but it is not for us to dictate what members the group should have or what papers it should consider.

The Chairperson:
You say that the group is representative of the controlled sector, but how does Dr Peter Shirlow from Queen's University have an association with the controlled sector?

Mr C Stewart:
Dr Shirlow is a well-known researcher, particularly on the effects of conflict in urban communities. He will have a perspective on the role that education can play in community cohesion.

Mr B McCrea:
How would Michael Wardlow of the Northern Ireland Council for Integrated Education (NICIE) have a relevant view?

Mr C Stewart:
That is a matter for Mr Wardlow. He decided to go to the meeting, but I was not present. Michael would be best placed to describe the contribution that he will make.

Mr B McCrea:
Michael Wardlow is a good man, and I have no problem with his being at the meeting. However, in this case, we are trying to set up a body to look after the controlled sector rather than the integrated sector. We need to address the fact that the Bill disadvantages schools that are not part of a strong sectoral body. I raised that issue with you when we were considering other clauses.

Mr C Stewart:
I understand the member's point, but I must clarify that the Department drew up the list of people who were invited to the first meeting having canvassed suggestions from various sources,

including members. We made it clear that, thereafter, it is up to the group to decide who from the controlled sector takes part.

The Chairperson:
The difficulty is that the Department initiated its first meeting with regards the controlled sector in the first week of July 2009, two years after the review of public administration (RPA). Every other sector has a business case and has been able to get ahead. Indeed, one sector placed a newspaper advertisement seeking the chairperson of the sectoral body that will represent it.

Mr C Stewart:
The advertisement was for a chief executive, and that appointment has, indeed, been made.

The Chairperson:
The controlled sector body has had only two meetings and is being given little direction or substantial resource. The Committee agreed the principle that the controlled sector needs to ensure that it has all the necessary financial and structural elements to make the right decisions on the best body to serve its needs. That concern will have to be adequately addressed.

Mr C Stewart:
I understand that, and I reassure members that the Department will continue to support the group in its work and will move with the group at the pace at which it is capable of moving. There has been a third meeting. The group has asked us to provide it with assistance in the development of a business case to be submitted to the Department, and we have agreed to do that. We will commission the business case with either external or internal consultancy from DFP colleagues who have expertise in that area. We will underwrite the capacity that we provide, and we will work with the group to assist it in producing a business case for our consideration. The Department will not hold things back, but we must work with the sector at the pace at which the sector is capable of working.

The Chairperson:
The other problem is that working at the sector’s pace does not mean that that timetable can be reflected in our work on the Bill. The Bill has to be approved by 31 December for the establishment of the ESA on 1 January. If the sector is allowed to work at a snail’s pace, the Bill will go nowhere.

Mr C Stewart:

I am conscious of that concern. However, those are not matters for the Bill; they are not specific legislative requirements to provide sectoral support beyond the grant powers that already exist in legislation.

Mr B McCrea:

Schools that are part of sectoral bodies appear to have a different set of arrangements from schools that are not. We want to sort out the question of equality and fairness; it is not good enough for you to say that the Department is there to help if the sector wants to move forward. For some years, the problem has been that it has not been able to move forward. We must do something to help that body to come up with a representative stance. I want that point recorded in the minutes.

Can we have a list of the attendees at the third meeting? That way we can see if there is continuity. It will be interesting to see if anybody has been to all three meetings.

Mr C Stewart:

A small group of perhaps half a dozen people is beginning to take a leadership role in the group. That group is beginning to adopt an informal committee structure to split the work among the larger group. It appears that Hugh McCarthy, the principal of Killicomaine Junior High School, is chairing the meetings at this stage.

The Chairperson:

We move to clause 49, "Catholic maintained schools". I refer members to paragraph 251 of the draft report and ask that they take a minute to remind themselves of the provisions of clause 49, which defines a Catholic maintained school.

The Department now wishes to remove that clause from the Bill. Included in the Minister's letter to the Committee of 17 June was the Department's explanation that:

> "The main purpose of the definition was the delineation of the group of schools for which the Council for Catholic Maintained Schools (CCMS) was responsible. With the demise of CCMS, the provision will no longer be required for that purpose, and there is no other policy reason for retaining the separation between these schools and other voluntary schools."

On 4 September, the Committee received formal notice from the Department that when the

question is put to the Assembly that clause 49 stand part of the Bill, the Minister will oppose it, as a separate approach to Catholic maintained schools is no longer required. Chris, do you have any comment on that?

Mr C Stewart:
In the beginning, as you rightly said, the reason for having a definition of Catholic maintained schools was that there were quite separate administrative arrangements for those schools. With the RPA coming on stream that will no longer be the case: a separate definition is not required. Members will see in the paperwork that there will, nevertheless, be a small number of references in legislation to Catholic schools. That is necessary; for example, to point consultation requirements to the right place so that we can identify who needs to be consulted on matters concerning those schools.

In legislation there will be, if you like, a more local definition of Catholic schools. Quite simply, a Catholic school will be a school whose trustees are appointed by or on behalf of the Roman Catholic Church. Members may ask what the difference is, or think that we are simply swapping one definition for another. However, the definition in legislation is associated with quite separate administrative arrangements and a separate education system for Catholic maintained schools. The change is that we are now moving towards a single system that can support a diversity of school types. However, from time to time it will still be necessary to refer to those different school types.

Mr D Bradley:
Comhairle na Gaelscolaíochta (C na G) asked for an amendment to define Irish-medium education. Has any progress been made on that?

Mr C Stewart:
The Minister is not convinced of the need for a different definition for Irish-medium education. One already exists in legislation in the Education (Northern Ireland) Order 2006, which we think is sufficient for the purposes required.

Mr B McCrea:
Other schools are designated as grammar schools, integrated schools, and so on. C na G's argument is that there is no designation for an Irish-medium school.

Mr C Stewart:

There is and there is not. It is perfectly possible for there to be an Irish-medium grammar school or an Irish-medium controlled school; in fact, I believe that there is one. The terminology is not mutually exclusive; there is potential overlap. In the early days of the RPA, there was an intention, wherever possible, to reduce the number of separate definitions and references and try to establish the holy grail of one school type. That has proved to be a much more ambitious task than we thought at the beginning.

Although this Bill and the second Bill will make some progress towards that end, we are a long way from saying that there is one type of school. To reach that point, we would need to make many more changes to the detailed arrangements for governance and finance in the various types of school. Members will be aware that one problem with governance is that, in order to retain the role of the Transferor Representatives' Council (TRC) and appoint governors to controlled schools, we need to leave the current governance provisions as they are. It is not possible to harmonise them at this point.

Mr B McCrea:

My understanding is that the issue is not only about governance — although that is important — but about area-based planning. If we accept that one size does not fit all, should we not designate schools in such a way that, when the Department is planning, it can determine whether there is sufficient availability of the various school types that we need? I suspect that that is why C na G is keen on designation. That has fundamental implications for other sectors that I am interested in, such as schools that were formerly voluntary grammars. Designation is critical.

Mr C Stewart:

I understand why many stakeholders might share that view, specifically in relation to Irish-medium schools. There is no particular difficulty, irrespective of the definition, in identifying whether a school is Irish-speaking or not. I know that C na G may have some concerns about the difference between an Irish-speaking school and an Irish-speaking unit in a school. Nevertheless, against a background of a sound existing definition and a clear recognition of what an Irish-speaking school is, we do not foresee any great difficulty in ensuring that the needs and preferences of young people and parents for an Irish-medium education are easily identifiable and properly addressed in area-based planning.

Mr B McCrea:

I am sure that they have no problem with the issue of units in schools. However, it is important, for equality reasons, that that is available to all other schools, such as schools that wish to designate as grammar schools or integrated schools. The interesting bit — perhaps this is not the appropriate clause to deal with it, but Dominic led on the issue — is that if area-based planning takes that direction, it is appropriate to stipulate the reason for including designations. If I understand correctly, you are saying that, largely, it is no longer necessary to designate maintained schools because all schools are now equal. A trajectory of travel away from the RPA suggests that we need an arrangement from one size fitting all to designated sectoral schools.

Mr C Stewart:

I understand your point. You might then say that an unintended benefit of our not removing all the other designations and definitions is that they remain in statute: "grammar school" and "integrated school" will continue to be defined formally. Indeed, all the types and sectors whose needs and views need to be considered, and which need to be able to take part in area planning, will, I think, be able to rely on clear designations and definitions in the legislation.

Mr D Bradley:

Comhairle na Gaelscolaíochta told the Committee that it is unhappy with the present definition of Irish-medium education, because it defines it by curriculum only. It sees it as important for the development of Irish-medium education, especially in collaboration with existing English-medium, that it be clearly defined.

Comhairle na Gaelscolaíochta says that the current definition in the Education Reform (Northern Ireland) Order 1989 does not acknowledge that Irish is used as the everyday language of the school, nor does it acknowledge any other aspect of Irish-medium provision. It also says that there is no current definition except as directed by Department of Education policy as to what exactly constitutes an Irish-medium unit for the purpose of education Orders. Nor is there any legislative direction on how a unit should be established. Comhairle na Gaelscolaíochta says that that is in contrast to the 1989 Reform Order for integrated education.

All other types of schools are defined in part 1 of the revised Education and Libraries (Northern Ireland) Order 1986. Therefore although the Department is inclined to dismiss

Comhairle na Gaelscolaíochta's request for clear definition, Comhairle has a very strong argument for having a clear definition where co-operation with English-medium schools by way of units and so on is pursued. There is a danger that conflicts can arise between the English-medium section and the Irish-medium section. In such circumstances, for example, it is important to have a clear definition of Irish-medium education, over and above the curriculum element.

Mr C Stewart:

First, I assure you that the Department would not dismiss any point put to it by any stakeholder; we may disagree with it, but we certainly would not dismiss it. We have considered C na G's. arguments, but I disagree with it that it is a curricular definition; that is slightly misleading. The definition turns on the proportion of the curriculum that is taught in Irish. Therefore it is based on the form of education that is delivered in the school. We think that that is clear, and we would struggle to find an alternative definition that would meet the needs.

Mr B McCrea:

Why can you not simply designate people as they wish to be designated? When it comes to an issue about area-based planning, people get concerned about one sector taking resources away from another sector. If the Department was trying to remove ambiguity, it could simply define schools; other bodies have suggested that schools be designated Irish-medium or grammar, for example. Once a school has been designated, the Department can carry out the appropriate area-based planning.

Mr C Stewart:

That is one possible approach. However, it might attract the very danger that concerns C na G: a school might be officially designated as an Irish-medium or an Irish-speaking school without any guarantee that the form of education delivered in it is in the Irish language. That seems to be C na G's main concern. It feels very strongly that the immersion model of Irish-medium education is the correct one. That conclusion was supported by its view of Irish-medium policy, and it would want to ensure that an Irish-medium school is a school in which children and young people are taught in Irish. The mere designation in a scheme would not offer C na G that guarantee or reassurance.

Mr B McCrea:

Dominic is better at arguing for C na G than I, but it seems to me that there is a direction of travel here. Where a school is designated as Irish-medium, there would be certain expectations about the type of education that that school offered.

Equally, if a school is designated as an academic school, there would be certain expectations about the way that things were done. When trying to progress issues, what is sauce for the goose is sauce for the gander, and getting it right will reassure people that their views are being respected.

I cannot sign up to the one-size-fits-all approach because I believe in parental choice. It may not be my choice, but parents should have that choice, and we must ensure that there is a certain level of provision across the Province through area-based planning. Perhaps, as you have said, the law of unintended consequences brings a happy happenstance; nevertheless, it may be better to have equivalence across the board to allow for the development of other issues.

Mr C Stewart:

I can see where you are coming from on that, but I think that equivalence or a one-size-fits-all-approach, albeit flexible, might be difficult to achieve. Definitions arise for a variety of reasons. There is, for example, some commonality between the Irish-medium sector and the grammar sector in that the definitions of both need to turn on the nature of the education that is provided. For the integrated sector the situation is different, because the definition turns on the composition of the school population and is not really linked to the curriculum or the form of education. As has been said, it is possible to have an integrated grammar school or an integrated Irish-medium grammar school — I do not think that one of those exists yet, but it is certainly permissible under the law.

Mr B McCrea:

It is the task of the Department, or whatever designated body, to work that out. It must get a level of provision across the various parts of Northern Ireland that adequately meets the needs of the population. That is at the very core of area-based planning.

It would be impossible to remove some of the variables, because, as you have just amply illustrated, there are so many. Would it not be better for the Department to define the broadly

recognised sectoral interests and the type of education that they provide? That would give a tighter list of parameters on which to base area-based planning, and it would go a long way towards reassuring all the disparate sectoral bodies, including C na G .

Mr C Stewart:

That is exactly the balance that we are seeking to strike. Left to our own devices, the solution that the bureaucrats might come up with would be much simpler, with one type of school and a very simple set of administrative arrangements.

Mr B McCrea:

Just one school, in fact.

Mr C Stewart:

Indeed, perhaps just one school, and it would be very easy to work out the administrative arrangements.

Mr B McCrea:

Perhaps in Templepatrick, to go along with the one police station that is left.

Mr C Stewart:

I will not comment on that matter.

The Department has listened very carefully to what those in education have told us, and their view was that it was neither practical nor desirable to go as far in that direction as we might otherwise have done. A range of issues comes to the fore, not least of which is the need for the Department to recognise the ethos of the various types of schools, how they want and expect to see that reflected in their identity, the way that they deliver education on a daily basis and the way that they are referred to in legislation.

Therefore, we have had to reach a compromise or balanced position. The matter is not as neat, simple or straightforward as we would have liked. We may not always have been able to accommodate all the concerns or desires of stakeholders, but we feel that a balance has been struck that gives us a better and deliverable system.

Mr Lunn:

Not for the first time, I am listening to the discussion and not fully understanding it. Could you explain to me in nice, simple terms what the danger is in allowing C na G to have its own designation? What is the problem? It is a bit like the issue of school enrolment that the Committee talked about last week, whereby 198 pupils were satisfied and two were disappointed.

Mr C Stewart:

There is no danger from the Department's perspective. The suggestion that Basil made would mean the Department adopting a definition similar to that of Catholic maintained schools, which is quite simply a school that is on the list of Catholic maintained schools. We could also adopt the same approach for Irish-medium schools, and it would be administratively very simple for the Department and the ESA. However, I suspect that C na G would object to that approach, because its fear is that a school could become Irish-medium in name only. It might appear on that list, but it would be open to the board of governors to depart from the purity of the immersion education model while retaining the designation of Irish-medium school.

Mr Lunn:

I am really glad that I asked that question. *[Laughter.]*

Mr C Stewart:

If my explanation was oversimplified, I would be glad to elaborate.

The Chairperson:

As regards the issue that Basil raised, individual Members and their parties will have the opportunity to agree or disagree on whether that particular amendment stands or is removed. That decision will be made no later than next week. If an amendment is required, it can be tabled in the Assembly. However, obviously, there is concern. There is no consensus on the merits of removing clause 49. Correct?

Mr D Bradley:

The Chairperson forwarded a letter that he received from Comhairle na Gaelscolaíochta to you in June, which outlined a number of issues that it wants the Department to address. Is that process ongoing?

Mr C Stewart:

Yes. It is ongoing on one particular issue. The other issues are reflected in amendments that have been brought forward. The Minister is still considering that issue, which is a request by C na G for a statutory duty on the boards of governors of Irish-medium schools to maintain their Irish-medium status or designation, as it were, which relates to the very point that we have just discussed.

It arises from a concern on C na G's part that some schools in the Irish-medium sector would depart from what is recognised as the effective approach to Irish-medium education. Therefore, it wants a duty that parallels that which is placed on governors of integrated schools, who are required to use their best endeavours to ensure that those schools remain integrated. C na G wants there to be a similar, corresponding requirement on Irish-medium schools. The Minister is considering it.

Mr D Bradley:

The other issues have been addressed?

Mr C Stewart:

Yes. We have not said yes to them all. The Minister has indicated those with which she agrees, and those with which she does not agree.

Mr B McCrea:

The point that has just been raised clarifies the position about which, as you said earlier, C na G might be worried. If the two matters are brought together, and there is a designation and "best endeavours" clause — or you define what it is — I expect that C na G's concerns will be met.

Mr C Stewart:

Yes. That is a fair point.

Mr B McCrea:

It is possible that such an approach could also be used for other sectors, such as the integrated and voluntary grammar sectors. The point that I am making is that most schools fear the diminution of their ethos. I am simply saying that if there is a way to give reassurance on that, I believe that it would be easier to move forward.

Mr C Stewart:

Again, I concur with the point that you make. However, I will tread carefully as I reflect on what its implications might be for other sectors. Such an approach is relatively straightforward for an integrated school where the definition is relatively straightforward. It is certainly feasible for Irish-medium education. Where is becomes slightly more difficult is in the realm of faith-based education, such as Catholic education. Where it becomes difficult and, perhaps, even controversial is when it comes to grammar schools. The duty to ensure that a grammar school maintains its status as such might take us into territory around post-primary transfer that is occasionally controversial, and to which I will hesitate to go today.

Mr B McCrea:

I appreciate that, but you understand the argument.

Mr C Stewart:

I do.

Mr B McCrea:

It is an argument that is as good for Irish-medium schools as it is for those of other sectors. Anyway, the point of the session is to raise such an issue, so that you can consider it. It will certainly have an impact.

The Chairperson:

I want to raise an issue that comes up continually. It is now critical. At what stage, Chris, will we get a definitive response from the Minister on some of those matters? In the past, accusations of delay have been made. We have been accused of unduly delaying progress because we asked for an extension of Committee Stage. Had the Committee not been granted that extension of its scrutiny of the Bill, I doubt if some of those issues would be resolved by now anyway, because we are still waiting on responses. You have highlighted one such issue: we are still waiting on the DEL amendments. We are also waiting on the amendments from the National Society for the Prevention of Cruelty to Children (NSPCC). We do not have a lot of time, because the Committee has to report to the House by 30 September. In fact, the report has to be printed by 30 September.

Mr C Stewart:

I appreciate that. The DEL and NSPCC suggested amendments arose relatively late in the day and at the tail end of the Committee's considerations of these matters. Issues around definitions of schools and school types have been debated at length in Committee meetings and with stakeholders; they are not particularly new issues. The Minister's position on them is clear. In the papers that she has sent to the Committee, she has indicated what she proposes to do at this stage in relation to the definition of schools.

Mr D Bradley:

You may correct me if I am wrong, but only one of the amendments requested by Comhairle na Gaelscolaíochta — the amendment to clause 2(4), placing a duty on the ESA to encourage and facilitate Irish-medium education — has been included in the grid that you gave us.

Mr C Stewart:

There is a further amendment to clause 26.

Mr D Bradley:

That relates only to the curriculum and examinations.

Mr C Stewart:

Yes, but they are the two major issues that C na G asked us to consider.

The Chairperson:

We will come back to them later.

Mr D Bradley:

I would not consider them to be the two major issues. One of them might be major, but there were a few other requests. Are we to assume that they have been denied?

Mr C Stewart:

Yes. I understood that we had copied to the Committee the Minister's reply to C na G. That would have been some months ago.

The Chairperson:

Yes, because I think that you made reference to it last week. The Hansard report of last week's meeting mentions the Minister's letter of 17 June.

Mr C Stewart:

There was a specific reply on the C na G issue. Dominic had kindly forwarded the letter to us, and I understood that the reply was copied to Committee members at the time.

The Committee Clerk:

Is there a date to that?

Mr C Stewart:

I will check that, John, and come back to you.

The Committee Clerk:

Please provide an extra copy as well.

The Chairperson:

Will you clarify the status of the proposed departmental amendments that have been agreed by the Minister with regard to Executive endorsement? Have they been copied to the Executive members by the Minister? They stand as proposed amendments until their fate is decided in the Assembly.

Mr C Stewart:

At this time, any amendment stands only as a proposed amendment until the Minister or a Member tables it. The amendments have not yet been sent to the Executive for consideration. The guidance on legislative procedures suggests that that is done after Committee Stage. That, of course, would raise a difficulty, because there is a comparatively short time between Committee Stage and Consideration Stage. Therefore I believe that it is the Minister's intention to take her proposed amendments to the Executive at the earliest possible date and probably before the end of Committee Stage. However, the Minister would, of course, make the Executive aware of the Committee's views, wherever possible, on the proposed amendments, as the Executive would expect.

We have a delicate path to tread with regard to timing, but it is the Minister's intention to present the amendments for Executive consideration, as set out in the Office of the First Minister and deputy First Minister's guidance.

The Chairperson:
It is an Executive Bill, so it would be an issue if one Minister did not feel that it was appropriate to send the amendments to the Executive.

Mr C Stewart:
It is the Minister's intention to send the amendments to the Executive. The Executive will want to consider amendments that have been put forward by other Ministers. The Minister for Employment and Learning has requested a series of amendments to the Bill.

The Chairperson:
Again, we are tied for time.

Mr C Stewart:
It is difficult. If one looks at the orthodoxy of the guidance on legislation, one might argue that it is impossible to seek Executive endorsement between the end of Committee Stage and Consideration Stage. That is why the Minister wants to go early. Our advice from the legislative secretariat is that the Executive are not asked to consider amendments to the majority of Bills until after Committee Stage.

The Chairperson:
We move on now to the supplementary clauses, which are clauses 50 to 55. Clause 50 deals with supplementary, incidental, consequential and transitional provisions. Clause 51 deals with regulations and Orders.

Clause 50 allows the Department to make, by Order, such supplementary, incidental, consequential and transitional or saving provisions — that was a mouthful — as it considers appropriate to give full effect to the legislation. On 18 February 2009, officials advised the Committee that that provision is included to enable the Department in case it is discovered that a mistake was made in the drafting of the Bill. The provision allows that mistake to be corrected quickly. In response to clause 50, the South Eastern Education and Library Board (SEELB)

commented:

"The board would contend that the point to 'amend, repeal, revoke or otherwise modify any statutory provision (including this order)' should require prior and full consultation with the stakeholders who may be affected by any such change."

I refer members to the Department's response in paragraph 254 of the draft report that:

"The Minister would welcome the views of the Committee on the suggested duty to consult."

At last week's meeting, the Committee noted that clause 12(2) of the Bill specifies certain consultation requirements. It states:

"Before making any order under this section the Department shall consult—

(a) ESA; and

(b) such organisations representing—

(i) the interests of Boards of Governors of grant-aided schools; and

(ii) staff in such schools,

as appear to the Department to be appropriate."

At last week's meeting, members considered whether the same consultation requirement should apply where the Department proposes to exercise the power to make Orders pursuant to clause 50(1), bearing in mind that such an Order would have to be laid before, and positively affirmed by, a resolution of the Assembly. Chris, have you any comments on that?

Mr C Stewart:

As we said, the Minister would welcome the Committee's views on that. I do not think that she has a particularly strong or absolutely fixed view on that. However, the Department is not convinced by the arguments put forward for the need for a legislative requirement for consultation. Of course, such consultation will take place when it is practicable and necessary to do so. However, the example that we gave last week of where such powers are used illustrates that consultation may not be as much of an issue as some consider it to be. In the Special Educational Needs and Disability (Northern Ireland) Order 2005, a similar provision was used to correct a spelling mistake. I doubt that the Committee would expect us to consult stakeholders on making such a correction.

The Chairperson:

Do members have any comments?

Mr Lunn:

The only point that I note is that the South Eastern Education and Library Board is the only body to raise a concern. The Southern Education and Library Board simply noted the fact, and no one else commented. What is the big deal? If it were a serious issue, we would have had a stronger reaction. The explanation given by the Department is that the provision is intended simply to provide grace should we discover that we have made a mistake, which will probably be the case.

Mr C Stewart:

I know that it is a terrifying prospect that the Department might get something wrong, but the theoretical possibility exists.

Mr Lunn:

Clause 51(3) states that no Order can be made unless it is laid before and approved by a resolution of the Assembly. I would have thought that that was a fair guarantee, and I see no reason that, should a moderately serious issue arise, the Department would not wish to consult on it.

Mr C Stewart:

That is correct, and it is important also to bear in mind that the purpose of the provision, as set out in the clause, is not simply to allow the Department to tinker with the law because it feels like it, rather it is to give effect to the substantive provisions in the Bill. It is, therefore, an Order to correct a mistake where a failure to do so would not be giving effect to the will of the Assembly in passing the legislation. It is not simply because we may come up with nice ideas of how to change the law.

Mr B McCrea:

Your example was one of tidying up the legislation by correcting a spelling mistake, and no one would have an issue with that. The grey area is when any change is slightly more serious. The legal profession determines that the law is as it was written. The problem arises when one uses such provisions to do slightly more than fix spelling mistakes.

Mr C Stewart:

That is where the Assembly control mechanism comes into play. Although I have stated that the circumstances in which we might use such a power are strictly limited to giving effect to the Bill,

it is, nevertheless, a serious matter to change primary legislation, and that should not be done without the consent of the Assembly.

Mr B McCrea:

We have talked about clause 51 and about the regulations that it provides for being subject to negative resolution procedure. Although we understand that it is a more efficient way of dealing with matters, negative resolution procedure, if combined with the need for cross-community support, does have an implication as to whether one can or cannot do something. Are we on clause 51? Although not everything has to be subject to affirmative resolution procedure, we will be looking at certain key areas that we feel should be — unless we can be convinced otherwise.

Mr C Stewart:

That is a fair point, but it is not one on which it would be appropriate for me to take any stance. The draftsman has drafted the legislation in the normal way. If the Committee or the Assembly feel that a different approach is appropriate for particular provisions, then that is a matter for the Committee and the Assembly to decide on.

Mr B McCrea:

In the past, you said that although there are comparisons with the health RPA legislation and so on, education is — if I can use the pun — a law unto itself. However, there are different implications because of the nature of the Education Bill. I know that you can get advice that says that, under normal legislative conditions, negative resolution procedure might be the way to do things. However, I want to put on record my belief that because many of those issues are contentious, they must be dealt through the affirmative resolution procedure, if we are planning to change.

Mr Lunn:

When clauses 50 and 51 are read together, you can almost see a contradiction. Having said that, I did not see a problem with clause 50. However, clause 51(1) states:

> "Regulations under this Act shall be subject to negative resolution."

Clause 51(3) states:

> "No order shall be made under section 50(1) unless a draft of the order has been laid before, and approved by resolution of, the Assembly."

Are regulations and Orders different?

Mr C Stewart:

Yes, they are, and they are for different purposes.

Mr Lunn:

Can you explain that to me in simple terms?

Mr C Stewart:

I could attempt to explain it to you in simple terms, but I would undoubtedly fail. However, I refer the Committee to two papers that were prepared some time ago — one that I produced and one that the Committee Clerk produced — and which explain the different forms of subordinate legislation and the different forms of Assembly control. Rather than weary the Committee with a further explanation of it now, would it be helpful if we were to resurrect those papers?

The Committee Clerk:

Those papers were provided on 19 February, when there was a Committee session and discussion on the merits of negative and affirmative resolution.

Mr C Stewart:

There is scope for a PhD in explaining the differences between Orders and regulations.

The Chairperson:

Another issue is involved, because this is all linked to clause 12. We cannot read clauses 50 and 51 without referring to clause 12. At some stage, members discussed whether the Orders mentioned in clause 12 should be subject to the same control as those mentioned in clause 50. The affirmative resolution procedure will apply to clause 50, whereas the negative resolution procedure will apply to clause 51.

Mr C Stewart:

The Minister will welcome the Committee's view on that matter. At this point, she does not have a fixed or immovable view. As I said last week, I was slightly surprised to find that clause 12 would not be subject to that form of Assembly control. Nevertheless, counsel has drafted it in that way because that is the accepted and normal way to do things. It is not a new type of provision or a new provision in education law. A similar power to modify employment legislation exists in schedule 2 of the Education Reform (Northern Ireland) Order 1989.

The Chairperson:

In members' folders, there is a letter from Eve Stewart about the Minister's outstanding responses to the Committee. It states:

"The Minister does not believe there is a need to insert a consultation requirement in clause 50. Clause 51(3) requires a draft of the Order under clause 50(1) to be laid and approved by resolution of the Assembly. This is in our opinion a higher standard to meet than a consultation requirement."

Her response on clause 12(1) states:

"The rationale for the different levels of Assembly control is that clause 50 can be used to amend the Act itself, whereas clause 12 is a power to modify employment law to reflect the provisions of the Act. Therefore the Minister does not intend to move such an amendment."

The Committee should consider whether there is any merit in amending clause 50(1) by adding a reference to clause 12. For example, it could state that no Order shall be made under clause 12(1) or 50(1) unless a draft of the Order has been laid before and approved by resolution of the Assembly. That would give the Assembly the power and control, and there would be no way that one element of the legislation could be used to do something else that is not clearly defined in one clause of the Bill. What you cannot get in clause 50 or 51, you could get by using clause 12.

Mr C Stewart:

Only in relation to employment law.

The Chairperson:

Yes, but we need to settle that question in our minds. Does the Committee think that such an amendment would be useful? What would be the implications of such an amendment in light of the Minister's response?

Mr C Stewart:

I am not convinced that the implications would be particularly profound. The letter indicates that the Minister is not convinced, at this point, of the need for such amendments. However, if the Committee has a strong view that those amendments are required, the Minister will, of course, want to consider that.

I do not think that the amendment would make a huge difference. This is not — if members fear that it is — an opportunity for the Department to exercise some sort of untrammelled power over primary legislation. Controls and checks and balances are in place. The point of the provisions is not to thwart or subvert the settled will of the Assembly; rather it is to ensure that we are in a position to give effect to the settled will of the Assembly. It is in case we overlook something, get something wrong or find that we need to do something else to give effect to what has been endorsed by the Assembly. These are standard mechanisms to allow us to do that. However, if members have a particular concern, I am sure that the Minister will want to give careful consideration to that.

The Chairperson:
The officials were asked to consider an amendment on this issue after last week's meeting.

Mr C Stewart:
If I may put it bluntly; you have not yet convinced the Minister.

The Chairperson:
Her response in the letter indicates that. Bearing in mind the deadline, and given the concerns and last week's discussion, does the Committee think that we should ask the Clerk and his staff to draft an amendment to this clause?

Mr B McCrea:
I would be happy to propose that.

Mr O'Dowd:
Is it a proposed amendment?

The Chairperson:
No. I asked whether the Committee should ask the Clerk to draw up an amendment for us to consider, and then it would be up to the Committee to decide whether to adopt it.

The Committee Clerk:
Just to clarify, that is in relation to an affirmative resolution for clause 12(1). Are we also saying that clause 51 should have some consultation requirements? That was the other proposal that the

Committee put to officials last week. This response from yesterday evening says no to that.

The Chairperson:

In the Committee's opinion, that is a higher standard to meet than a consultation requirement. Therefore, is consultation necessary?

The Committee Clerk:

Draft affirmative resolution involves the House; it imposes no obligation to consult stakeholders. The obligation to consult stakeholders in the education field is when the Department speaks to stakeholders. If I am correct, all that the Department would have to do is bring the regulation to the House; it does not need to speak to stakeholders on a draft affirmative resolution.

Mr C Stewart:

That is correct; however, we are pointing out the incongruity of having to consult stakeholders about a proposal to give effect to the will of the Assembly. You would be asking stakeholders whether they agree with the Assembly.

Mr B McCrea:

I agree. If we opt for a draft affirmative resolution, we do not need to consult. We need to consult only on clause 12.

The Chairperson:

Are we clear on that? As clear, I suppose, as we can ever be. Before we move on to clause 52, I would like clarity on what is meant by "stakeholders" when speaking about consultation on employment regulations.

Mr C Stewart:

Consultations have taken place with the Catholic trustees specifically on the employment regulations. Consultations have taken place with other stakeholders on a more general level about the approach that the Department might take to regulating schemes of employment.

The Chairperson:

What is the difference between a more general level and having consultations with the Catholic trustees? Did you consult with the stakeholders who raised issues about employment regulations?

Mr C Stewart:

There has not been a general consultation with all stakeholders on the issue. The concerns were raised by two sets of stakeholders: the Catholic trustees; and the Governing Bodies Association (GBA). The GBA, as you know, has declined to meet us.

The Chairperson:

On that issue?

Mr C Stewart:

On any issue.

The Chairperson:

Did the Department write to the GBA to ask for its concerns about the employment regulations?

Mr C Stewart:

No, we have not specifically done that. The GBA, as you might recall, was asked in the Committee whether it would be prepared to discuss those matters with officials, and it declined to do so. Our door, of course, remains open to it at any stage.

The Chairperson:

OK, let us move to clause 52, "Interpretation", which contains definitions of terms that are used in the Bill. I refer members to paragraph 233 of the draft report, which relates to clause 52 and where the comment of the Western Education and Library Board is noted:

> "It is very unfortunate that the Department has not taken this opportunity to introduce a new consolidated Education Bill embracing all of the legislation which has been introduced since 1986 in a systematic format."

That, I assume, refers to the 11 pieces of subordinate legislation.

Mr C Stewart:

That is a comment that could be made only by someone who has never had any involvement in drafting legislation.

The Chairperson:

The Department's written response is sympathetic to the Western Board's concerns:

"consolidation exercises are major undertakings, and are normally carried out after, rather than during, major legislative reform".

Mr C Stewart:

Precisely; one does not try to hit a moving target.

The Chairperson:

As the draft report notes, that issue was already raised by a member of the Committee on 18 February 2009.

The response from the departmental officials is also set out in the draft report. It describes the task as "mammoth and extremely technical." Members will note a sequence of events that precede consolidation:

"'When the two Bills on RPA are finalised — and, perhaps, one Bill to reform the legislation generally — we might be able ask counsel to create one consolidated piece of legislation.'"

Mr C Stewart:

It may be possible at that point, Chairman. I agree with the sentiments that may have prompted the Western Board's comment: there is far too much legislation in education. It is difficult for those involved in education to deal with 11 primary Orders and Acts, and soon, one hopes, 12 or 13. Frankly, it is difficult even for the Department to keep track of it all. We share the desire to have a much smaller body of legislation. However, we are often asked to do that as if it were a simple and straightforward task; it is not. It would take several years and the work of many staff.

The Chairperson:

When we started our scrutiny of the Bill, we saw that there were 11 pieces of legislation. It is sometimes difficult for the Committee to comprehend matters relating to the Bill; a simple example of that this morning was when we keep referring to clauses 50 and 51 and then back to clause 12. That is in one piece of legislation, but there are references to other Orders throughout the Bill. Would it take that length of time to consolidate the legislative framework?

Mr C Stewart:

The process leading to consolidation would certainly take that length of time. The financing

provisions that we referred to earlier, for example, are Byzantine in their complexity. Everyone would welcome a simplification of those provisions, and a move to a much simpler and more straightforward legislation on schools finance would have to be made first. We would need to adopt a new model of schools financing, repeal all existing provisions and introduce new ones that encapsulate the new model.

Similarly, if circumstances permit, we may want to simplify and clarify the arrangements on school governance; we may also want to deal with other provisions of the legislation. Having completed the remodelling or re-engineering of the legislation, we would undertake the consolidation task. It would be extremely difficult, challenging and resource- and time-intensive.

The Chairperson:
Do members have a view on whether the Department should consider consolidation at some stage?

Mr Lunn:
In February, I might have mentioned the task of dealing with all the previous Orders. It is not something that the Department can look at now; it is one for the future. The word “Byzantine” hardly begins to cover it; it would be a massive task. However, it might not be such a massive task if it were done gradually. It seems to be suggested here that, at some stage, the Department will be asked to accommodate all the Orders in one exercise. It would be a massive task, but it may be possible to look at it in an orderly way. The Orders could be considered gradually, starting with the oldest and moving on to what we are discussing now.

Mr C Stewart:
You are right; we would have to do it in that way. In this legislation, we are taking significant parts out of the oldest piece of legislation, the Education and Libraries (Northern Ireland) Order 1986. The second RPA Bill will continue that process and will also affect the Education Reform (Northern Ireland) Order 1989. Those would be the first targets in attempting a radical overhaul of the legislation.

It is perhaps fair to say that the task is difficult because the Department has allowed it to become difficult. We put more and more legislation into the cupboard, but we should have cleared out the cupboard much earlier. It is very difficult to bring 11 Orders together now.

Nineteen eighty-nine or 1990 might have been the opportune time, although I am sure that there are reasons why the Department did not, or was unable, to consolidate at that point. However, the longer the matter is left, the harder it becomes.

Mr Lunn:

We seem to be moving house now rather than just emptying the cupboards.

Mr C Stewart:

That is true.

The Chairperson:

The problem is that people are always worried that there is another cupboard somewhere that they are not aware of, but which the Department is aware of. *[Laughter.]*

Mr C Stewart:

Indeed, that proved to be the case when the Committee secretariat uncovered a small cupboard that had passed beyond our recollection.

The Chairperson:

And of course we have article 101, which is always with us and lurking in the background.

Mr C Stewart:

The other issue is one of resource. I would not expect the Committee to have too much sympathy with the hard-pressed Civil Service, but most of the legislative resource that the Department has available is before the Committee today.

The Chairperson:

With respect to resources, does the Department have a tracked version of the changes to the Education Bill with the amendments annotated on it? That would be useful, as it would provide a tracked change of what has taken place with the Bill, and would mean that the Committee has the Bill as presented to it as well as the list of amendments.

Mr C Stewart:

It does not. It could attempt to provide one, but it would be risky. Transposing the changes into

the Bill would have to be done very carefully, as errors could easily creep in.

The Chairperson:

Would it be impossible to produce it?

Mr C Stewart:

It would not be impossible, and if the Committee would find it helpful, the Department would certainly endeavour to compile such a document.

The Chairperson:

Would members find that helpful?

Mr O'Dowd:

I suppose that it would be helpful. However, the amount of work that such a document would involve might interfere with the Committee's timescales.

Mr C Stewart:

I am glad that a member raised that, but that was what I was alluding to.

Mr B McCrea:

That suggestion came from the teacher's pet over there.

The Chairperson:

Given the fact that the Department is working through a piece of legislation, would it not be procedure to have such a document?

Mr C Stewart:

Not that I am aware of, not least because the Committee or individual members may wish to propose their own amendments or amendments to amendments. The Executive consideration could produce further changes, and the Department could end up producing umpteen different versions for the Committee to keep track of.

Mr Lunn:

I am sure that Chris must leave here sometimes and go home and kick the cat. *[Laughter.]*

Mr C Stewart:

I am not allowed to have a cat for that very reason. *[Laughter.]*

Mr Lunn:

The Committee seems to be piling more and more work on him.

What the Chairperson suggests sounds terrific in theory, but in practice I am sure that it is something that Chris could do without.

Mr C Stewart:

It is perhaps best if I do not respond to that.

Mr Lunn:

I said it for you.

The Chairperson:

The Committee has already received documents indicating that changes will take place. However, let us move on.

Clause 53, "Minor and consequential amendments and repeals and revocations" applies to schedules 7 and 8. The Committee has received no stakeholder submissions on clause 53, and those that it has received for schedules 7 and 8 will be covered when we examine those schedules. Are there any comments on clause 53?

Mr Lunn:

None. Agreed. Move on.

The Chairperson:

At least we have some agreement on minor and consequential amendments. Chris, do you have any comment?

Mr C Stewart:

No. It is the most straightforward of straightforward provisions. You will not see a Bill without a

similar provision.

The Chairperson:
Clause 54 contains provision for the commencement of the Bill. I refer members to paragraph 239 of the draft report, which relates to that clause. I also refer members to the extract from the departmental officials' briefing to the Committee on 18 February 2009. It sets out the two methods of commencing the provisions of the Bill, either by Royal Assent or by commencement orders made by the Department under clause 54. The extract goes on to note that the commencement arrangements are unusual in that all the substantive provisions of the Bill will be initiated by means of commencement orders so that the commencement of the first Act can be adjusted if necessary to ensure that it remains synchronised with the second Act. That will enable the single legislative programme approved by the Minister and the Executive to be reflected.

Do you have any comment to make on that, Chris?

Mr C Stewart:
That is a very accurate description of the approach behind the commencement of the Bill.

Mr B McCrea:
Clause 54(2) states that:

> "the Department may by order".

Is that Order subject to affirmative or negative resolution?

Mr C Stewart:
Commencement Orders are not normally subject to any form of Assembly control; they are administrative arrangements. When the Assembly passes a piece of legislation, it is not merely giving us permission to implement it; it is telling us to get on with it. When the Assembly makes its decision, it expects the Department to respond with alacrity and get the commencement Orders made.

Mr B McCrea:
You said "not normally", but the Department would get on with it as and when it sees fit.

Mr C Stewart:

As and when the Assembly sees fit.

Mr B McCrea:

As I understand it, the synchronisation of the second Bill and whatnot is for you, so it will be the Department that sees fit when the commencement Order is ready to go.

Mr C Stewart:

It is the Department that makes the decision as to when to make a commencement Order, but that is not a matter in which we have complete discretion. We have to be mindful of the fact that if the Assembly passes a piece of legislation, there is an expectation that we will implement it at the earliest possible date. I cannot remember the exact circumstances of such cases, but there is a body of case law on instances in which, for no good reason, as the courts thought, a Department sought to delay the commencement of a piece of legislation, but such a delay was found to be improper.

Mr B McCrea:

I am checking the procedural possibilities. As it stands, it is automatic that the Department decides when to go. If the Assembly wanted to take a view on it, it would have to propose an amendment.

Mr C Stewart:

That is correct.

The Chairperson:

The Department is proposing an amendment to clause 54, which relates to clause 29 and schedule 6 in relation to the General Teaching Council.

Mr C Stewart:

Those are the additional powers for the General Teaching Council. The original proposal was that those would be introduced by commencement Order, but the advice from the General Teaching Council, which the Minister has accepted, is that there is an urgent need to bring those provisions into effect as quickly as possible — the earliest possible date being the date on which Royal Assent is received.

The Chairperson:

That explains why the Department wishes to amend clause 54.

Mr C Stewart:

That is correct.

The Chairperson:

Are members content with clause 55, “Short title”, or do they want something more complicated?

Mr Lunn:

Why does it say that this Act “may” be cited instead of “shall” be? Is there a legal reason?

Mr C Stewart:

It is the way he normally does these things. The Interpretation Act (Northern Ireland) 1954 contains an explanation of the different uses of “may” and “shall”.

Mr Lunn:

Can we have a 50-page report on that?

Mr C Stewart:

If you insist. I would struggle to keep it down to 50 pages, but we will do our best.

Mr B McCrea:

When were those uses defined?

Mr C Stewart:

It was defined in the Interpretation Act (Northern Ireland) 1954.

The Chairperson:

Earlier, you referred to the legislation governing the funding arrangements for schools, which will be revisited when the Department reviews the common funding formula. Surely that would be an element of the legislation that governs how the Department pays education and library boards — as they were then — which, subsequently, pass the money on to schools.

Mr C Stewart:

Yes and no is the unhelpful reply. I am over-simplifying, but the common funding formula defines how much money schools get and what they get it for. However, in legislation there are Byzantine arrangements for the mechanisms by which schools receive their money under the common funding formula. At its simplest, controlled maintained schools receive delegated budgets, and others receive maintenance grants. They get comparable amounts of money to do comparable things, but they get them through different legislative routes, to which differing degrees of control and administration are applied.

In pursuit of the policy of maximising the autonomy of schools, the Minister may, at some point, decide to try to move all schools to grants rather than delegated budgets.

The Chairperson:

We will move on to the schedules. We plan to conclude our clause-by-clause scrutiny so that we can consider the Department's amendments. The plan is that we will break for lunch at 12.30 pm, and reconvene at 1.00 pm.

The Committee considered all the provisions of schedule 1, "The education and skills authority", along with clause 1. The Committee's consideration to date is recorded in paragraph 26 onward of the draft report. Schedule 2 is the transfer to the education and skills authority of staff employed by boards of governors. At its meeting on 4 March 2009, the Committee received a written and oral briefing from officials on schedules 1 to 5. If members wish to remind themselves of that briefing, copies are available from the Committee staff. We are at paragraph 273 of the draft report, which notes the comments of the South Eastern Education and Library Board and the Department's subsequent response. Are there any comments on schedule 1 or schedule 2?

Mr B McCrea:

We have already discussed schedule 2.

The Chairperson:

The briefing paper is available if members want to remind themselves of what was said.

Schedule 3 is the “Transfer of assets, liability and staff of dissolved bodies”. Remember, the draft report is exactly that: a draft report of what will be approved by the Committee to go to debate in the Assembly. Schedule 3 is covered from paragraph 276 onwards. Members will see that paragraphs 277 and 278 of the draft report set out some of the issues that the Committee raised with officials, particularly the costs involved and the tax positions arising from those transfers.

Chris, is there any update on stamp duty, VAT and land registry fees?

Mr C Stewart:
There is, Chairman. I look to my colleague to keep me correct on the detail because she has been pursuing it. In essence, there is not a problem. We explored it with our colleagues in the Department of Finance and Personnel and the Treasury and found that no issue of tax liability arises. I think that one area where we still need absolute confirmation is corporation tax.

Ms E Stewart (Department of Education):
We have been advised by one area of HM Revenue and Customs that the ESA should not be subject to corporation tax. However, HMRC wants to check that out with its policy and legal people, and we are waiting for them to come back to us on that.

Mr C Stewart:
At this stage, we are satisfied that there are no difficulties in the pipeline.

The Chairperson:
In February, Chris, I think, assured the Committee that he was talking to colleagues in the Department of Finance and Personnel and the Treasury to minimise the effect that the transfer of assets has on the Department’s budget and on the public purse.

Mr C Stewart:
That remains the case.

The Chairperson:
Have we any ideas when we will have clarification from HMRC?

Ms E Stewart:

We are awaiting a response. Informally, one side of HMRC told us that it does not think that there is a problem. However, HMRC wants to get confirmation of that from its policy side and its legal people.

Mr B McCrea:

Given the expenses scandal, it would be very embarrassing if we got caught in capital gains avoidance.

Mr C Stewart:

We will endeavour to avoid that.

Mr B McCrea:

I am just trying to look after my colleagues.

Mr C Stewart:

Colleagues in Departments and agencies were sympathetic to our desire to ensure that we do not adversely affect the education budget by what would amount to no more than circular transitions of public money between one public authority and another, and they reassured us that that is not the effect of the legislation.

The Chairperson:

Could we have something from the Department on that? Given that that was a major concern of the Committee's, we want to be satisfied that if an embarrassment or difficulty arose, it could be included in our report.

Mr C Stewart:

We will give you a short note in the next day or two on VAT, stamp duty and stamp duty land tax. As soon as we get the final confirmation on corporation tax we will give that to the Committee as well.

The Chairperson:

Paragraph 280 of the draft report deals with the proposed departmental amendments to schedule 3, which the Committee received on 4 September. At paragraph 281 the Department proposes

that paragraph 2(3)(b) of schedule 3 be omitted since it is no longer necessary as:

"these assets and/or liabilities have already transferred to the new Libraries Authority"

Mr C Stewart:

It is simply a bit of tidying up at the suggestion of the Office of the Legislative Counsel, who advised that the provision is no longer required.

The Chairperson:

Paragraph 5 of schedule 3 is to be replaced in order to make an amendment to arrangements for the education and skills authority's procedure with regard to reporting on the first set accounts following advice from DFP.

Mr C Stewart:

That is correct, Chairman. It is a very technical part of the Bill. In essence, the provisions that we originally asked to be drafted were more onerous than they needed to be with regard to complying with the normal rules set by DFP for those matters. DFP drew that to our attention and the Office of the Legislative Counsel has drafted an amendment, which will place slightly less onerous requirements on the ESA, but ones that still comply fully with what DFP expects on reporting requirements.

The Chairperson:

There is the issue of the Comptroller and Auditor General.

Mr C Stewart:

That, if I recall correctly, is the crux of the change. We had asked for the particular involvement of the Comptroller and Auditor General, which is not required under the rules on Government accounting. We had gone too far.

The Chairperson:

Members are content with schedule 3, subject to its being amended as the Department proposes. We will go through the amendments later; at this stage, however, we want to go through the schedule.

Schedule 4 is the "Transfer of certain assets and liabilities of CCMS before appointed day".

Paragraph 284 of the draft report relates to the commencement arrangements for the provision and the reasons for them. Paragraph 285 of the draft report notes that on 4 September the Department provided the Committee with a proposed amendment to paragraph 2(3)(b) of schedule 4, which refers to clause 49, in which the relevant Church authorities are listed. However, clause 49 is being removed. Paragraph 2(3)(b) of schedule 4 refers to:

> "the relevant church authorities (as defined in section 49(5))"

Clause 49(5) defines the "relevant church authorities" as the Roman Catholic Archbishop of Armagh, the Roman Catholic Bishop of Clougher, and so on. Is that a legal or technical point that is required?

Mr C Stewart:
The definition of relevant Church authorities?

The Chairperson:
Yes.

Mr C Stewart:
Yes, it is. It is simply to identify the Roman Catholic Church. I will remind members of the rationale for the schedule. Unlike the other dissolved bodies, some of the assets of CCMS were not publicly funded. They were provided by the Church, and, on the dissolution of the body, ought to return to the Church.

The schedule provides a mechanism by which to do so. It has been constructed in such a way that assets that ought to be returned to the Church will be identified and returned before the appointed day. Anything that is not returned to the Church goes automatically to the ESA.

The Chairperson:
Has an audit of those assets been carried out?

Mr C Stewart:
At present, that work is ongoing.

The Chairperson:

I have always made the point — which has also been raised by other members — that every sector receives public money. The bottom line is that regardless of whether schools are maintained, controlled, voluntary grammar, or whatever, they have received a substantial amount of public money. In fact, none of them would exist if public money had not been poured into them.

There is the issue of the capital grants that were awarded. Some time ago, we discussed how, after a particular point in time — 1972 — that money became, basically, unrecoverable. Therefore, if a school received money, which it paid into a particular asset, that asset, despite its being paid for by public money, is now owned by a private body. In this case, it belongs to the trustees. I have never been satisfied that that was good practice, irrespective of who has been the recipient.

Mr C Stewart:

Let me offer some reassurance. The focus of those particular provisions is not schools or capital grants to schools: it is the office accommodation of CCMS. The net effect of all those proposals is as follows: CCMS assets that were publicly funded will transfer to the ESA; CCMS assets that were funded by the Church will return to the Church.

The Chairperson:

At some stage, will we see a list of those assets and how that has been broken down?

Mr C Stewart:

Yes. I am sure that we could prevail upon colleagues to provide that for the Committee.

The Chairperson:

Are there any further comments on schedule 4, members? Are members content with schedule 4, subject to the amendment that is proposed by the Department? As there are no comments, we shall move on.

Schedule 5 deals with the transfer of certain staff of the Department. Paragraph 287 onwards of the draft report deals with that clause, which makes provision for the transfer of staff from the Department to the ESA. Staff will be afforded protection of their terms and conditions of

employment under the Transfer of Undertakings (Protection of Employment) Regulations 2006.

In that context, C na G raised a concern about the protection of its staff who will transfer to the ESA. The Department's response is set out at paragraph 288. Of course, that relates to the issue of the hybrid Bill, Chris.

Mr C Stewart:
The position remains as advised in that correspondence, Chairman. C na G has a perfectly reasonable expectation that its staff who transfer will receive the same level of protection as staff from other any other organisation. The Minister has given an absolute assurance that that will be the case.

However, for the reasons that have been given to the Committee previously, it is not possible to include provisions to that effect in the Bill. That would have the effect of turning the Bill into a hybrid Bill — a mixture of public and private law. As yet, the Assembly does not have the agreed procedures to take forward a hybrid Bill. Therefore, if we attempted to do what C na G wants, in the way that it has asked, the net result would be a significant delay in the legislation.

However, we can give effect to the request administratively. It is the case that a C na G member of staff who transfers will do so with exactly the same protection as regards his or her pay and conditions and pension entitlement as any other member of staff.

The Chairperson:
Have members any further comments? If not, are they content with schedule 5 as it appears in the Bill? As there are no comments, we shall move on.

Schedule 6 is entitled:

"Schedule 1A to the Education (Northern Ireland) Order 1998, as inserted"

It is dealt with at paragraph 289 of the draft Committee report. Clause 29 and schedule 6 insert a new schedule 1A into the 1998 Order, which makes provision for investigation, hearing and determination of disciplinary cases by the General Teaching Council. The Committee considered clause 29 at its meeting on 10 September. At that stage, it indicated that it is content with the clause. If members have no further comments, we shall move on.

Paragraph 290 of the draft report relates to schedule 7 and is entitled 'Minor and consequential amendments'. It quotes from a letter from the Minister to the Committee dated 17 June 2009:

> "An amendment is proposed to Article 29(6) of the 2006 Education Order. This amendment will enable the Department to put in place the appropriate arrangements to facilitate a new exceptional circumstances procedure in relation to post-primary school admissions."

On 4 September 2009, the Committee received detailed and specific wording of the Department's proposed amendment to schedule 7 in the table of amendments. The accompanying explanation states:

> "The most significant amendments relate to an amendment to the Education Order 1997 to place a duty on the ESA to appoint Exceptional Circumstances Tribunals to consider appeals from parents regarding admission to secondary school for their children."

There is a consultation paper in members' information packs entitled 'The School Admissions (Exceptional Circumstances) Regulations (NI) 2010'. Could you take a minute or two, Chris, to expand on that particular amendment? It causes some concern.

Mr C Stewart:
I am conscious that it takes us into the area of post-primary transfer, which, from time to time, can be controversial, but there is no change in policy behind this. It is not proposed to change how the procedures that are allowed for in the provisions of the 2006 Order operate. The effect of the amendment proposed here is simply to place the function on the ESA. The 2006 Order set out the functions that were to be carried out, and envisaged that a body, without specifying what that body would be, would be established to take those functions forward. In keeping with the RPA policy, the Minister's view is that the ESA ought to be the body that carries out those functions, and that would be the effect of the amendment. However, the procedures, and the policy behind them, would not change as a result of that.

The Chairperson:
Any comments, members? The document, 'The School Admissions (Exceptional Circumstances) Regulations (NI) 2010' is in members' yellow pack. There used to be yellow packs in a particular supermarket, if I remember rightly. Will that document go out for consultation?

Ms E Stewart:

Yes, I understand that it is going out for consultation.

The Chairperson:

How, therefore, do we end up in a situation whereby we have a Bill going through the House, an amendment is tabled by the Department, and we end up going out to public consultation on an element of that Bill? How can that be? Who is in control of what goes on here?

Mr C Stewart:

I can answer that: it is the Minister.

The Chairperson:

Well, that is what would cause the concern about the way in which this is being done. I have never seen that done before.

Mr C Stewart:

Just to put your mind at rest, the consultation will not be on the Bill but on the regulations that will be made under the new power to be introduced by an amendment to the Bill.

The Chairperson:

But if the new power is not brought into place — that is, if the Bill is not endorsed — how can you go out to public consultation on regulations?

Mr C Stewart:

If, for whatever reason, the Assembly rejected the amendment, then we would certainly have wasted time and effort in consulting on regulations that we would not be in a position to make. However, in order to get to the point where we have effective arrangements in place at the earliest possible date, we have sought to give the Committee the earliest possible sight of the approach that it is intended to take in the regulations. Yes, it could be argued that we are getting things somewhat out of sequence in showing you the wording of regulations when there is not currently a power to make those regulations, but, of course, that is the very approach that the Committee encouraged us to take in relation to employment matters under the Bill.

The Chairperson:

With the greatest respect, it is the earliest possible sight and it is as close as the iceberg was to the Titanic — and we know what happened with that one. Members have just now had sight of the document, and that is the difficulty. The first that I saw of the draft report was when I got the folder this morning. We had no idea about it. Obviously, we are going to have to go through that. Do we know when the regulations will be put out to consultation?

Mr C Stewart:

I will have to check on that and come back to you.

The Committee Clerk:

The documents say that the consultation ends at the end of October. Earlier, the Committee agreed that it would analyse the outcome of the consultation vis-à-vis the Minister. At that stage, if it so desires, the Committee can receive a presentation.

The Chairperson:

Do members have any comments?

Mr B McCrea:

Only to say that I share your discomfort, Chairperson.

Mr C Stewart:

If members feel that the Department is somehow trying to run away with the game, let me reassure the Committee that it is being given early sight of the draft regulations and that the regulations will not be made until or unless the Assembly approves the power to make them.

The Chairperson:

I accept that.

The Committee Clerk:

In the bundle of papers, it says that the regulations will be made the day after the Bill becomes law. That is the vision.

Mr C Stewart:

They will certainly not be made the day before.

Mr B McCrea:

What is the implication if the regulations are not made at that time?

Mr C Stewart:

If the regulations are not made at that time there will be no proper procedures in place to deal with exceptional circumstances and appeals. It could be that young people with exceptional circumstances may suffer as a consequence.

Mr B McCrea:

I understand that the Minister lectured what she calls the breakaway grammar schools on their transfer arrangements, stating that it was absolutely imperative that exceptional circumstances provisions were put in place.

Mr C Stewart:

Members may have a range of views on what they think constitutes appropriate post-primary transfer arrangements. However, I hope that all members will agree that, whatever those arrangements are, where there are exceptional circumstances and appeals there needs to be a robust and effective mechanism for dealing with them. That is what the regulations propose.

Mr B McCrea:

Yes, but my point was that schools seem to be being chastised. Perhaps I have got it wrong, but the timing of the regulations seems rather unusual.

Mr C Stewart:

It is difficult for me to comment on that. There is a perceived need to put arrangements in place, and this constitutes the earliest possible opportunity to do that.

Mr B McCrea:

I will not labour the point. Chris, you know the point that is being made.

The Chairperson:

Chris, can you clarify the current position?

Mr C Stewart:

I need to check that and come back to you. It is not an area in which I or my team are deeply involved on a day-to-day basis. However, we can provide the Committee with further information.

The Chairperson:

Is it simply a case of the current provisions for education and library boards being transferred to the ESA, or is this something different?

Mr C Stewart:

I do not think that the provisions that we are talking about have been commenced yet.

Ms E Stewart:

No, they have not been commenced yet. The regulations are to do with exceptional circumstances in which a child has, perhaps, a health problem.

The Chairperson:

Currently, how is that dealt with? What is the difference between the current arrangements and those proposed in schedule 7?

Ms E Stewart:

We would need to check that and come back to you.

Mr B McCrea:

Why would you need to bring the regulations forward if there are existing provisions? There must be existing provisions.

Mr C Stewart:

There must be existing provisions. However, at the time of the 2006 Order, a need was clearly identified for a different and, one hopes, better approach. For a variety of reasons those provisions have not yet been introduced. One of the reasons for that was that the RPA came along and there was a need to pause, take stock and see what the role of the ESA might be. The conclusion arrived at was that the ESA was the appropriate body to be given those functions. Now, there is a need to get on with that.

Mr B McCrea:

The draft regulations state that cases that involve a child's educational ability shall not be considered exceptional circumstances. Is that the substantial point? Are we redefining what exceptional circumstances are?

Mr C Stewart:

It is difficult for me to comment in detail because I do not deal with the policy behind that. However, if it would assist the Committee, I will ask colleagues to provide a fuller briefing paper on it.

Mr B McCrea:

I want to understand the need for change. I understand, in the first instance, that the Department will have to nominate a body to deal with the matter; that is fine, it will be the ESA. However, the regulations, which are fairly short and simplistic in their outline, say that three things are OK and three things are not. Anyway, you will come back to us on that matter.

The Chairperson:

That is why we agreed earlier to ask for a briefing from the Department.

Mr C Stewart:

We will arrange that. It is likely to be Dorothy Angus and Paul Price who will provide the substantive information on that. They deal with policy in that area.

The Chairperson:

Paragraph 293 of the draft report shows that C na G had raised concerns about schedule 7, and, if members want to refresh their memory, the Department's response is included at paragraph 294. Moreover, the concerns of the North Eastern Education and Library Board (NEELB) are outlined in paragraph 295, and the response is included in the following paragraph, in which the Minister indicated that she saw value in adding non-teaching staff and pupils to the list of those persons whom the ESA must consult about a development proposal.

Mr D Bradley:

Chris, will you explain how the Department addressed the point made by Comhairle na Gaelscolaíochta in relation to trustees of Irish-medium schools?

Mr C Stewart:

Will you remind me what that point was, please?

Mr D Bradley:

It suggested the need for a provision that gives the trustees of Irish-medium schools a statutory right to be consulted about development proposals that is similar to the right enjoyed by Catholic trustees.

Mr C Stewart:

I believe — and colleagues will correct me if I misquote it — that our advice was that that change was not required because the Minister felt that sufficient consultation requirements were already in place. However, at the risk of giving a misleading answer, I will check that and come back to you.

The Chairperson:

The NEELB said:

"In relation to Schedule 7 and proposals relating to controlled primary and secondary education, the Board would wish to reserve its position until the outcome of the consultation on RPA Policy Paper 20 is known. Although the general approach as outlined appears sound there may need to be an accommodation depending on the structures that eventually emerge for the management of the controlled estate and the role of the Transferors. The Board notes that in relation to the future of a school, the legislation does not include consultation with non-teaching staff and pupils. Is this not a serious omission?"

Mr C Stewart:

I do not know whether we are convinced that it is a serious omission. Consultation with those two parties could, and should — and I am sure that it does — take place. I am not certain that we will be convinced of the need to go one stage further and create a formal requirement in legislation. Although the Minister may not yet be convinced, if the Committee feels strongly about that matter, she will want to consider it.

The Chairperson:

From what we gather, the Minister indicated that she saw value in adding non-teaching staff.

Mr C Stewart:

I see the value in consultation. Whether or not we need yet more legislation and more

requirements on consultation is, perhaps, another matter.

Mr D Bradley:

The notes state:

"Paragraph 9(4) of Schedule 7 to the Bill will insert a new article (14) into the 1986 Order, dealing with development proposals. Under that article, the trustees of any school must be consulted about a development proposal that would affect the school."

Mr C Stewart:

That rings a bell.

Mr D Bradley:

Has the Committee seen the wording of that?

Mr C Stewart:

It is contained in new article 14, which appears on page 49 of the Bill. The particular wording is at line 4 of page 50.

The Chairperson:

The Committee will note the concerns that have been raised about the regulations, and we will move on to consider schedule 8, the final schedule of the Bill, which deals with repeals.

Paragraphs 297 to 301 of the Committee's draft report deal with schedule 8, and I refer members to paragraph 298, which deals with CCMS's concerns about the repeal of schedule 2 of the Education (Northern Ireland) Order 1998. The Department's initial response was that:

"respective roles of boards of governors and the ESA will be set out in schemes of employment."

However, members will note that the provisions on the role of boards of governors in employment matters are now to be included in the draft regulations being proposed by the Minister. The Department's paper on employment regulations states that those regulations are based very closely on schedule 2 of the 1998 Order. Chris, that was what you told the Committee last week, and that is now the case in what you have presented to us.

Mr C Stewart:

That is exactly the case. Many Committee members were concerned about our original proposal that we would regulate the respective roles of the ESA and boards of governors merely by means

of guidance. Many members and stakeholders felt that that was not robust enough, and that it did not provide the clarity and certainty that they were seeking. The Minister has listened to those concerns and agrees that there is a need for subordinate legislation, which has now been proposed.

The Chairperson:

The caveat that I would add is around partial consultation with stakeholders. That is a major concern for some Committee members.

Mr C Stewart:

I understand that, but I assure the Committee that the Department remains willing to consult any stakeholder who is prepared to engage with it on the matter.

Mr D Bradley:

Paragraph 17 of the Department's submission entitled 'Review of Public Administration (RPA): Employment Arrangements in the First Education Bill' states that:

"There may be occasions when the law is unclear, and where it is in the interests of all parties to clarify matters through legal proceedings. Where this is the case, the Department would expect the ESA to support the actions of a board of governors in seeking to clarify the legal position."

Is the phrase "would expect the ESA" not a little weak? It does not really oblige it to do anything.

Mr C Stewart:

If the ESA does not meet the Department's expectations, then the Department will oblige it.

The Chairperson:

Under article 101.

Mr C Stewart:

You said it for me.

Mr D Bradley:

Is it not possible to make it clear to the ESA in the Bill, without reverting to room 101, sorry article 101?

Mr C Stewart:

We could do, but perhaps the key point is that the decision on what to do about the matter is with the boards of governors and not with the ESA. The Department has made clear that it expects the ESA to play a supporting and advisory role in that. If, for whatever reason, the ESA was less than enthusiastic in its support, the right of a board of governors to make the decision that it thought was correct would not be curtailed in any way.

The Chairperson:

That concludes this part of our consideration of the Bill. I thank Chris and Eve, who will rejoin us later this afternoon.

On resuming —

The Chairperson:

I want to consider the two letters that we received yesterday evening from the Minister and the Department, which have been tabled at B3 in the yellow folder. The letter from the Department responds to many of the outstanding issues raised by the Committee. The letter from the Minister advises the Committee that she will respond shortly on three amendments suggested by Sir Reg Empey, the National Society for the Prevention of Cruelty to Children and C na G, and responds to the Committee's letter of 9 September, following on from last week's meeting regarding the local structures of the ESA and also on schemes of employment.

We will deal with the letter from the Minister first and then with the letter from Eve Stewart. Do members have any comments about the letter from the Minister?

Mr C Stewart:

May I offer a point of information that is relevant to one aspect of the Minister's letter? Unfortunately, just before lunch, I inadvertently misled the Deputy Chairperson in response to one of his questions; I was inaccurate, and I apologise. There were two letters from C na G, and I had forgotten about one of them; their content overlaps to a degree. The Minister replied to one of those letters, but has not yet replied to the other. I apologise for that omission. One issue in that letter remains outstanding, and that is mentioned in the Committee's paperwork. It is the suggestion about the duty on the boards of governors of Irish-medium schools. I apologise to the Deputy Chairperson for having given him an inaccurate answer.

The Chairperson:

Thank you. I appreciate that clarification.

Mr Lunn:

Since I have asked for it every week for about 18 months, I should welcome the Minister's increase in the number of members of the ESA board and her commitment to stick to the maximum number, which is 14. That was the limit of my expectations, so I am very pleased about that.

The Chairperson:

I am concerned about what the Minister says in today's letter to the Committee; at the end of the paragraph entitled "Membership of the ESA" she says:

> "I am not convinced of the need for the possible amendment as discussed by the committee for a further duty, and I am not minded to support it."

I am concerned, because although the membership of the ESA board has been increased to a maximum of 14, education is not the same as education and library boards or health: it is more complex and diverse. If the ESA board is to have the confidence of the education community that it exists to serve, it is essential that it be reflective of that community, whether geographical, sectoral or religious. The worst scenario would be a board that, from day one, is perceived or accused of not being reflective of the community that it exists to serve. I speak as a member of the Committee when I say that the DUP has a severe concern that the Minister is not prepared to view that as a real issue that needs to be addressed if we are to have confidence in the ESA.

I am not convinced either that 14 as a maximum is the best option. Last week, we got into a debate about whether 11 or 14 was the best option. Does anyone have a comment?

Mr B McCrea:

The Minister's letter states:

> "I remain of the view that the role of the ESA is the management and delivery of services according to the policies of the Minister of the day."

Usually, there is a caveat about the Assembly having some sort of influence on such issues, but that has been dropped. That confirms my view that the ESA is a Trojan horse being used by the Minister to put through policies that are not agreed by significant proportions of the people of Northern Ireland

or by education stakeholders. There is a difficulty in that. People should realise that education is an important issue for many people, and a one-size-fits-all approach will not work.

There might have been an opportunity to get broad-based consensus if we had brought more people into the decision-making process, but that is not going to happen. I am concerned about the way in which the Minister intends to appoint people to the ESA board. They will be hand-picked by the Minister of the day and be given terms of reference forbidding independent thought; appointees will be allowed to implement only what the Minister decides. Although the Ulster Unionist Party has attempted to engage responsibly through the scrutiny of the Bill, the Minister's letter does not in any way allay my fears about where the Bill is heading. I do not think that it will be sustainable. I urge departmental officials and the Minister to understand that if we are to make progress, we need to understand the points of views of others.

Mr O'Dowd:

I am disappointed and surprised that Basil has based that latest statement, which he has repeated many times in the Committee, on the fact that a line or a sentence has been deleted from a letter. I would not read any intentions into "policies of the Minister of the day." That wording comes from various factors, including scrutiny by the Committee and implementation by the Assembly. The Minister will appoint people to the board in the same way that the Minister of Health appointed people to the various agencies, trusts and boards for which he has responsibility. Such appointment procedures are open to legal challenge by individuals who do not make it through the appointment process and by anybody else who believes that the appointment process has been unfair and does not reflect all the principles of open and fair employment.

It is the same way in which the Minister of Culture, Arts and Leisure appointed nine councillors to the Library Authority. It is not as though the Minister of Education has pulled an appointment process out of thin air; the appointments process has been approved by the Commissioner for Public Appointments, who will monitor and regulate it. That process is open to judicial review if it does not work. How many safeguards do you require?

You should be open and honest if you are opposing the Bill for political reasons. You say that you are open to persuasion and wish to enter dialogue; however, I am the Sinn Féin spokesperson for education, and you have never once rapped on my door and asked to talk about the Education Bill. You have never approached me to suggest that we sit down and talk about the ESA, party to

party.

Mr B McCrea:

I have, however, spoken to the Minister of Education and her adviser about several issues. I think that she said that that would not lead anywhere because her mind was made up.

Mr O'Dowd:

Is that a direct quotation?

Mr B McCrea:

It would not be right to give a direct quotation, but that is the essence of her words. I am open to correction if that is not the case.

It is not sustainable for people to say that there is one view, and only one view, on education. There are fundamental differences of opinion, and I am not saying that one is right and another wrong; I am just saying that the different ways of educating our children should be reflected. My party happens to believe in the primacy of parental choice. I accept that there are other models that can be taken on board. As you say, I have stated it before, but I do not like procedural methods being used to get around policy differences. The scrutiny of the Committee and the oversight of the Assembly amounts to nothing, because there is no possibility of changing things after the event.

You said that I was making this a political issue as though that makes it a dirty issue, but I am here as a political representative; everything that we do here is about politics and trying to find a way forward. If the Bill is used as a way of getting round all the objections, there will be further objections from the community. Phones work both ways, John. I am not aware of you, as Sinn Féin's spokesperson for education and a representative of the Minister, ever coming to me to talk about the matter and attempt to come up with a solution. I am willing to engage if you want to engage.

Mr O'Dowd:

I will take you up on that offer, but I will do so as a representative of the party rather than of the Minister.

The member opposite seems to be confused about the role of the ESA. The ESA will not exist to carry out the role of the Committee or the Assembly; it will exist to implement and manage day-to-day educational practices. The implementation of that and the policies and procedures that flow from the ESA will be directed by the Department or the Minister and by the policies and statements that have to be agreed by the Assembly and the Committee.

Perhaps Mr McCrea wants to live in quangoland for the rest of his life. I want to move away from quangos; that is why the Assembly is in place. People are elected to this place to debate politics and to thrash out solutions, and I have no difficulty with what you said in that regard. When I say that you are approaching the Bill from a political point of view, I do not mean left, right, unionist or republican; rather, I mean a tactical position of stopping the Bill because of the Minister who sponsored it. If that is the case, I think that you are making —

Mr B McCrea:

That is not what I said. My party is concerned about the Bill because, if I read the letter correctly, it will be used to implement the policies of the Minister of the day.

The problem is that I have no influence on the policies of the Minister of the day; yet many people who talk to me and other Committee members disagree with the policies of the Minister of the day. We will be creating a large bureaucracy, not dissimilar to the Department of Education, to which people can come with good ideas, yet those ideas will be turned down because of what is stated in the regulations.

The Chairperson:

I do not want the Committee to become embroiled in difficulties that have arisen in correspondence between the Ulster Unionist Party and Sinn Féin; that is an issue for those parties. I have raised a concern from my party's perspective about the Minister's response. It behoves the parties in the Committee to regard that letter as outlining the Minister's definitive position and vote accordingly on the amendments.

If John's analysis is correct, why did the Catholic bishops intervene on employment issues? They raised genuine concerns that will now be reflected in changes to the Bill. Basil and others are raising genuine concerns about how the Minister's intentions will affect a particular sector or sectors. John, you say that there is nothing wrong and that there is no cause for concern. You

advocate that we all sign up because the ESA will deal only with how to organise chairs, cut grass, and so forth.

If that were the case, amendments would have not been proposed by the Minister to deal with the genuine concerns of the Catholic bishops. Therefore, we must take seriously the concerns of members and other organisations who feel that some provisions of the Bill do not reflect their needs as education providers.

Mr O'Dowd:

Let me clarify. Basil objects to the Minister's letter because several words are missing from it that had been included in a previous letter. I would not read too much into that. The process, although painstaking, repetitive and sometimes monotonous, has been useful. Perhaps we could have done it differently or more efficiently, but it has been useful.

The Catholic bishops or trustees raised concerns before the process even started, and any genuine concerns should be listened to and, if possible, resolved. Many concerns were resolved as the Bill was being drafted. The ESA is an important body and represents a major change to the education system. Some members' concern is that the ESA will carry out the policies of the Minister of the day: they should remember that the education boards, each with 35 or 40 members, were not policy-making forums; their role was to carry out the policies of the Minister of the day.

The Chairperson:

Other elements in the letter include the local structures about which the Minister says:

> "The regulations, far from providing certainty and clarity, may merely impose a solution with no guarantee that it will be fit for purpose, or that it will meet evolving local need."

The Minister does not, therefore, accept what the Committee said about putting in place regulations to provide clarity. We sought clarity not so much on the form but on the function of local committees; it was the function that we considered important and we made that distinction. The maximum number of the ESA board members has now increased to 14. Remember, the Minister said that if 11 committees are set up, the chairperson will be one of the members of the ESA. That would mean someone having to be chairperson of two bodies.

Mr Lunn:

There will be 15 members.

The Chairperson:

That is correct; there will be 15 altogether, including the chairperson.

Mr O'Dowd:

It is important that the record reflect accurately what the Committee has done thus far. The Committee did not agree on an amendment; it suggested an amendment to the Minister.

The Chairperson:

Yes, and that amendment has been rejected. Therefore, it is up to the Committee to decide whether it should propose its own amendment, and we will come to that.

Mr B McCrea:

What is the position on that? Since the Committee is unlikely to get consensus on those issues, can it propose an amendment by majority vote?

The Committee Clerk:

Yes; a paper has been circulated to members dealing with that issue. The Committee must examine each of the 55 clauses and 8 schedules and decide on three possible options: first, the Committee must decide whether the clause as drafted stands — in other words with no amendments; secondly, the Committee can decide on the Minister's amendments; thirdly, the Committee can propose its own amendments. Consensus is neither here nor there; any vote will be taken on a majority basis, as Mr McCrea suggested.

Those are the three possible decisions on each clause. The paper that has been circulated spells that process out and it is a process that must be completed by 24 September 2009, or by 25 September 2009 at the latest if the Committee decides to hold another meeting. However, that is for the Chairperson to discuss with members.

Mr B McCrea:

Would any vote that we take be recorded?

The Chairperson:
Yes.

I want to raise concerns about the employment arrangements in the Bill. In the final paragraph of the Minister's letter of 16 September 2009, she states:

"I welcome the Committee's support for the amended employment arrangements".

That support, I feel, must be with the caveat that concern was expressed at the Committee meeting earlier today. From our discussion with Chris Stewart, the Committee learned that it seems that only one sector engaged in consultation with the Department, and in saying yea or nay to the Minister's proposed amendments. That is gravely concerning, and raises a further concern regarding what the Bill proposes.

I wish to consider members' views on the letter from Eve Stewart, which is a summary of some of the concerns and issues that were raised on clauses and schedules. One of the core elements of the letter, which provides new information, concerns the controlled schools ownership body that Basil raised earlier. There is concern about the timing of the establishment of that body and how it can be focused, given the very short timescale for establishing the ESA.

If members do not wish to raise issues, given that some of those issues were referred to earlier in the Committee's examination of clause 12 and 50, I suggest that we continue our clause-by-clause scrutiny.

That done, the Committee will next week go through clauses 1 to 55 and schedules 1 to 8, clause by clause, following the procedure that the Committee Clerk outlined earlier. I am aware that the process is laborious and repetitive, but we had to go through the Bill clause by clause. All we have to do now is go through the departmental amendments, and that will conclude the process.

The Committee Clerk:
That is correct. Basil McCrea raised the business of the Committee's formal clause-by-clause decision making on the Bill; that process will be recorded in the Committee's report that will go before the Assembly for Consideration Stage.

The secretariat needs direction from the Committee. We are hearing individual members' concerns about what amendments might be drafted. If the Committee is considering an amendment, members need to know all the possible options.

I will put any amendments that have been discussed by the Committee against the relevant clauses. For example, suggestions have been made to the Minister, and the question is whether or not the Committee considers those amendments next week when it deliberates on the clauses. I will put all the options before members, and the Committee can decide which option to go for.

The Chairperson:
That is not to say that the Committee agrees to the amendments. It is a scoping exercise in light of the letter from the Minister and the Committee's deliberations to date. Any possible Committee amendments will be in addition to the Department amendments that we will consider.

The Committee Clerk:
Yes.

The Chairperson:
If members are content with that, they will have the amendments before next Wednesday.

Mr B McCrea:
Let me make sure that I have got it right: you are suggesting that we give a scoping exercise amendment to the Clerk before next Wednesday. Do those amendments have to be technically competent?

The Chairperson:
No; I do not mean that members should submit amendments. For example, the Minister said that she is not minded to establish committees; therefore the Committee must decide, having regard to its deliberations on the matter, whether we still want to propose an amendment.

Mr B McCrea:
There are some proposed amendments to which we have tentatively agreed.

The Chairperson:
In our letter, we set out our concerns about local committees, the schemes of employment and the

membership of the ESA, to which the Minister said no. However, the Committee needs to make a decision. Therefore we are asking the Committee staff to draw up amendments that reflect our concerns and on which we can vote. It can be confusing. However, we are trying to simplify the process so that no one can accuse the Committee of not doing what it proposed to do.

We are at the final stage of our consideration of the Bill, and time is not on our side. I suspect that we will have to go through this next Wednesday, and again on Thursday morning. The Committee could meet for two hours on Thursday morning to go through clauses 1 to 55 and schedules 1 to 8. That would allow the Committee to come to a definitive position on the Bill.

Mr B McCrea:
I agree with that. However, next Thursday is difficult for me as there is a meeting of the full Policing Board.

The Chairperson:
OK. We will have to meet on Wednesday afternoon.

Mr D Bradley:
Will the Policing Board meeting last all day?

Mr B McCrea:
It will last until 3.30 pm or 4.00 pm.

The Chairperson:
What time does it start?

Mr B McCrea:
It will start at 9.30 am. I might be able to do an afternoon. I would accommodate people.

The Chairperson:
The Committee needs to decide whether it will meet on Wednesday afternoon as well as on Wednesday morning. We could have a break for lunch and meet for two hours after lunch.

Mr B McCrea:

I have advance notice, and I am happy.

The Chairperson:

I appreciate that. It is an important issue for you.

Mr B McCrea:

Yes, it is. The Committee Clerk will do his level best to give us sight of our tentative amendments well before Wednesday.

The Committee Clerk:

I shall attempt to put before the Committee all that has been considered during these deliberations, particularly with regard to communications with the Department. For example, there have been various discussions on the number of ESA members, and there may be different views within the Committee on the Minister's proposal to change the range of membership to 11 to 14.

Mr B McCrea:

Given that we may have to talk with other colleagues who are not here, it would be better to get that information before 5.00 pm on Tuesday. However, I know that that puts a bit of pressure on you.

The Committee Clerk:

The intention is to put the information in the black folders for Wednesday's meeting. Members will get that folder first thing on Monday morning, perhaps. That is an extra task that I am putting on my colleagues.

Mr B McCrea:

Alyn, the Assistant Assembly Clerk, looks as though he is up for it. *[Laughter.]*

Mr Lunn:

To get some advance notice, are we talking about meeting on Wednesday afternoon or Thursday morning?

The Chairperson:

We had better make that decision now. I appreciate the difficulties, and I try to be as helpful as possible. Is it better to say that we will meet on Wednesday morning, break for lunch, and come back at 1.00 pm or 1.30 pm, with the purpose of going through the amendments?

Mr Lunn:

It seems to work reasonably well. We are all here except the DUP, so it is working great. *[Laughter.]*

The Chairperson:

But I am still here, Trevor, so you will not get past me. I am not as liberal as you think. *[Laughter.]* OK, so we will meet on Wednesday afternoon.

Mr B McCrea:

Wednesday afternoon suits me better.

The Chairperson:

That is fair. Unless someone says that they have a real problem with that, we will try to work along those lines.

The Committee Clerk:

So the Committee will start at 10.00 am on Wednesday and move through into the afternoon, as we did this morning.

Mr B McCrea:

I do not mind what time the Committee starts, if that is of any help.

Mrs M Bradley:

We can start at 9.00 am, if you like.

Mr Lunn:

Do not start that: 10.00 am is fine.

Mr B McCrea:

We will leave it that we will start at 10.00 am.

The Chairperson:

OK, we will start at 10.00 am.

Let us move swiftly to the departmental amendments to clauses 1 to 23. I refer members to the table of proposed departmental amendments and the Department's spreadsheet.

Mr B McCrea:

Are we noting the amendments or considering them?

The Chairperson:

We will just consider them briefly.

Mr B McCrea:

And next week we will say yea or nay to them?

The Chairperson:

Yes. If there are any points that need clarification, Chris will be here. Obviously, Chris will not be involved in the decisions, so, at that stage, there will be no requirement for Chris to be present. We will have a farewell gift for you, Chris, so do not worry.

Mr C Stewart:

I do not know what we will do on Wednesdays.

The Chairperson:

Members will recall that clause 2 deals with the ESA's functions and general duties. The first amendment is to clause 2(2)(b), which is referred to in paragraph 72 of the draft report. It explains the background to the Department's amendment, which seeks to address a concern raised by a number of stakeholders. Do members have any comments?

Mr B McCrea:

I remember when we discussed that matter, but I might have missed the reply to the suggestion

that the word “mental” be included in that paragraph. Was there a reply?

The Committee Clerk:

That is a separate proposal in another clause later in the Bill.

Mr B McCrea:

That is OK. The Bill imposes a duty on the ESA to contribute to children’s moral, cultural, social, intellectual and physical development. I suggested — and there was some support for it — that given the impact of mental-health issues, mental development should be included. I remember that issue being raised, and I remember people saying that it was a good idea. I do not recall whether we received a response.

Mr C Stewart:

The response is in Eve’s letter of 15 September 2009.

Ms E Stewart:

The duty for mental health rests with the Department of Health, Social Services and Public Safety (DHSSPS), and it is not appropriate for two Departments’ duties to overlap.

Mr D Bradley:

The Department of Education provides health education, social and personal development and professional counselling, which is aimed at improving the mental health of children, especially those who are under particular pressures. That defeats your argument that mental health is solely confined to the sphere of the Department of Health, Social Services and Public Safety. It clearly is not. The Department of Education has a responsibility, too; that has been highlighted by the fact that the Department has brought in professional staff to help young people after the terrible spate of suicides in various parts of the North in the past number of years.

Mr C Stewart:

We would not for one moment argue that mental health is solely the preserve of our colleagues in health and social services or that education does not have a key role to play. For the reasons that Dominic has given, it clearly does. However, the Minister is concerned that placing two almost identical duties on two separate Departments will be a recipe for a lack of clarity, and for confusion, overlap and, perhaps, unseemly tussles between the two Departments about which is

responsible for what. It corresponds with the view that DHSSPS colleagues have taken on the special education review. For the same reason, they resisted the notion that health and social services bodies should have a statutory duty in relation to special education.

Mr D Bradley:

Using that argument, you could say that, because the Department of Culture, Arts and Leisure is responsible for sport, PE should not be taught in schools, or that, because it is responsible for culture, culture should not be included in this clause. You cannot have it both ways.

Mr C Stewart:

We do not seek to have it both ways. However, there is a difference between recognising the role of education in the various spheres of development and a statutory duty for mental well-being, which, I think, members had originally proposed.

Mr D Bradley:

The fostering and development of good mental well-being is as much a part of education as intellectual development.

Mr C Stewart:

It depends whether we are talking about — to use the common shorthand — mental health or mental development. If we are talking about mental development, the Department argues that it is covered by the requirement for intellectual development. If we are talking about mental health, we argue that that represents an overlap with our colleagues in the Department of Health, Social Services and Public Safety.

Mr B McCrea:

I fully support Dominic's point. Approximately 20% of young people suffer from some sort of depression or face a mental challenge, and there are unfortunate incidents of suicide, and so on. We have already talked, even earlier in today's meeting, about sexual education and domestic violence, which are the preserve of the Department of Health, Social Services and Public Safety. However, those issues affect education as well.

I truly believe that an emerging theme is the importance of young people's mental well-being. If we ask schools to take a role in that — which we appear to be doing, because they have

counsellors — we ought to give them the remit to do so. Otherwise, they, or the ESA, will be carrying out work that we have not asked them to do. The inclusion of that one word may sound insignificant: however, if we want to be progressive, it is an important way forward.

Mr D Bradley:

We are splitting hairs as regards the definitions of mental development, intellectual development, and so on. There is a close relationship between mental and intellectual development and mental health. If a child does not have good mental health, that has a detrimental influence on his or her mental and intellectual development. Therefore, if schools can help to foster — not be solely responsible for — good mental health in their programmes, which they do already in their social and personal development programmes, that enhances schools' ability to nurture children's mental and intellectual development.

Mr C Stewart:

You are coming dangerously close to taking my side in the argument. It is important that we do split hairs. If we do not have precision and clarity about the legislative duties that we place on organisations, it is a recipe for extreme difficulty down the line which, ultimately, would only be resolved by the courts.

It is absolutely correct to say that education services have a role to play in fostering mental health. You are absolutely correct to say that in the absence of mental health, intellectual development would certainly be impaired. In the absence of physical health, intellectual development would certainly be impaired. However, there is no proposal to make the education and skills authority responsible for the physical well-being of children and young people. There is a responsibility for it to contribute to children's physical development. The two matters are quite different.

Mr Lunn:

I am listening to all that with interest. I am not sure whether we are talking about well-being, health or development. Basil started off talking about mental health, which appears to me to be, primarily, a matter for the Department of Health.

If the ESA manages to make a positive contribution to children's spiritual, moral, cultural, social, intellectual and physical development, surely that should go a long way towards, at least,

providing a level of mental well-being. When you move into mental health, that is a different matter. That clause will help to produce happy, well-rounded, holistically perfect children.

The Chairperson:
Is there a way out of that by means of delineation between function and duty? At present, we are talking about function under clause 2. However, clause 23 is about general duty. Can something be included there? Would that help? Perhaps, I am answering my own question. Is clause 23 merely a restatement of what appears in clause 2(2)(a)?

I understand what you are saying, Chris, about who would, ultimately, have responsibility. However, even with current legislation, we already have that problem because people try to argue that something is the responsibility of the Health Department, while others argue that it is the responsibility of the Education Department.

Mr C Stewart:
I believe that if the focus were to shift to clause 23, it would make matters worse, because it deals with the general duty of the Department, rather than that of the ESA. Certainly, if there are two Departments with overlapping statutory duties, it raises all sorts of issues.

The concern that members have expressed is a real one. No one would disagree with that. It is the need for a range of statutory authorities, which have a contribution to make, to operate in a joined-up way, and not to spend their time arguing with each other about who is responsible for what. I do not believe that there is any disagreement about the problem. However, there might be disagreement on what would be an effective solution.

It is our contention that overlapping statutory duties are not an effective solution. A better solution might lie in seeking some sort of compulsion on the ESA and health authorities to co-operate. That might take us into the realms of community planning, which would bring a third Department, our colleagues in the Department of the Environment (DOE), into the equation.

Mr B McCrea:
Perhaps it is late in the day to be going back over the issue, but a tree in Hillsborough was cut down without telling anyone because a second person was found hanged from it. A 14-year-old child hanged herself because she was depressed. I deal with such incidents all the time, and I do

not know what to say on those occasions. The same thing happened in Dromore. If we consider the effect on the school, community, and so forth, the loss of a child who has taken his or her life is simply devastating.

That is a genuine concern that educationalists should be picking up on. Child psychologists and others are involved but we should also take some responsibility. To pick up on Dominic's argument, it could be argued that spiritual and moral development are not the business of education and are the responsibility of the Churches. The similar argument that could be made about culture is that it is the responsibility of the Department of Culture, Arts and Leisure and is none of the Department of Education's business. It could be argued that physical development is the responsibility of the Department of Health, Social Services and Public Safety, and not the Department of Education. It is not a matter of semantics, but a change in the way that schools should be seeking to bring up young people.

Dominic is right in saying that if some young people are either physically or mentally unwell, that will have a hugely detrimental impact on their development. That impact could spread to colleagues, friends, and so forth. Whether the issue is included in the Bill or not, the problem will persist and the schools will have to deal with it, but without any support. I am simply saying that, if we are seeking to be progressive by tackling a modern and emerging issue, the Department of Education, through its agent, the ESA, and the schools should address the issue of mental well-being.

The Chairperson:

The Committee will give a joint presentation with the Committee for Health, Social Services and Public Safety, probably in October, based on Professor Ferguson's report that deals with health and education. Work is, therefore, ongoing. Speaking personally, I would not trust the ESA and the Department of Education with the issue of spiritual well-being, which is why my children are being educated in an independent Christian school, but I will not go into that. The fact that it is mentioned in the Bill does not cause me undue concern but the fact that another sector is not mentioned is a huge issue and a matter of concern.

Mr D Bradley:

I would be happy to insert the word "mental" between social and intellectual, so that it would read: social, mental, intellectual and physical development. There is a difference between the

mind and intellect. Intellect is a function of the mind, but there is more to the mind than purely intellect. Someone may function adequately intellectually but suffer from poor mental health.

Mr C Stewart:

I will not second-guess what he will say, but I strongly suspect that legislative counsel would regard that as a tautology.

Mr D Bradley:

What the Office of the Legislative Counsel regards as a tautology may differ from what people living in the real world regard as a tautology.

Mr B McCrea:

What is the Ulster Scots version of tautology, as a matter of interest?

The Chairperson:

It might be codology.

Chris, will you explain how the Office of the Legislative Counsel defines tautology?

Mr C Stewart:

It defines it as the unnecessary repetition of two terms that have the same meaning.

The Chairperson:

Chris, that is most impressive.

Mr D Bradley:

I have just explained that mind and intellect do not have the same meaning. Any of the terms concerned are open to interpretation, particularly moral and spiritual. We have heard from the Chairperson that he would offer an alternative interpretation of spiritual.

Mr C Stewart:

The usual approach that legislative counsel and other draftsmen take is that where a term such as that is not sufficiently, clearly and universally understood by the right-thinking man in the street, a specific definition is included. Where, by your argument, two terms are very close, or perhaps

two different dimensions of the same thing, and where they are both to be mentioned in the same sentence, then we have to define them both.

Mr Lunn:

I think that Dominic has got it in one. We are nearly there. If we put the word “mental” in clause 2(2)(a) rather than the words “mental health”, it will mean mental development because the word “development” appears at the end of the list.

Mr C Stewart:

Mental development as an alternative to intellectual development would, I am sure, be perfectly acceptable. However, that does not answer Basil’s point; mental development it is not the same as mental health.

Mr Lunn:

I am struggling to see the difference between mental and intellectual; I think that they overlap. However, as long as we are not talking about mental health and intruding on the Health Department’s patch, I am more than happy. I cannot see any harm in it; we are talking about mental development, spiritual development, moral development and cultural development.

Mrs M Bradley:

I think it is important for young people that we find some way of getting that wording in. Any youth groups that I know of are working with young people with mental-health problems to try to give what support they can to those who avail themselves of their facilities. How do we include the matter in the Bill? We could include the phrase “health and well-being”; perhaps that is not strong enough to cover all sorts of health problems.

Mr C Stewart:

My concern is that that would be too strong.

Mrs O’Neill:

A lot of good work on mental health is being carried out jointly by the Health Department and the Education Department. In particular, there is a focus on some sort of work programme for mental-health issues to be dealt with in schools.

All the aspects of development that are mentioned in clause 2(2)(a) contribute to the overall well-being of a person. The clause takes a whole-person approach, and that is good. However, PlayBoard springs to mind as an example of something that is passed between the Health Department and the Education Department because we are not sure who is responsible for it. Chris, are you saying that we could end up in a similar situation with this provision?

Mr C Stewart:
That could happen, but another issue could arise if you give an education body a specific legal duty around mental health. At the moment, there is joint participation and working by the two sectors, but, in the area of mental health, the overall priorities are determined and led by the Health Department, which has the greater professional expertise in that area. If there are two bodies with similar duties, that will create rivalry. The Health Department and the Department of Education would both be bidding for scarce resources in the mental-health field, and arguing about where the priorities ought to be. It strikes me that that is not going to provide an effective solution to the sorts of problems that Basil quite correctly pointed to.

The Chairperson:
Surely that is an admission that the two Departments cannot come to an amicable arrangement as to what ought to be done. It is not a definitive interpretation. If you take Dominic's point, the word "mental" would be used in the context of development and not in the context of health. That may not go far enough for Basil, but it would, at least, put the onus on the ESA to make sure that it pays due regard to mental development — I do not know whether we want to get into that. At least the word "mental" would be included in the clause. If it is not included, it will not even be considered.

Mr C Stewart:
I understand that, and I understand that it might provide some reassurance to members and, perhaps, the public at large. Forgive me, however, if I look at the matter through a civil servant's eyes. Our job, when not dealing with legislation, is to make the best possible case for funding for education, to argue that it is the most important area for the Assembly to consider and to ask the Assembly to give us lots of money. If Eve and I were transferred to the Health Department tomorrow, we would do exactly the same job arguing for its priorities. Government always face the difficulty of allocating scarce resources between competing priorities. If we set up a situation whereby two Departments are making rival bids or arguments for the same thing, that will not

solve the problem.

Mr B McCrea:

I think that the mental well-being of children in schools should be a fundamental responsibility of the Department of Education. I do not think that the issue can be addressed as well in other areas. I realise that that may involve a change in policy, and one which may have to be debated elsewhere, but I cannot get away from the fact that the mental well-being of children is inextricably linked with their overall well-being and their educational advancement. Indeed, the Committee has received papers on that fundamental issue, and we attended an event in the Long Gallery.

I am telling you now, folks, in the gentlest and nicest way possible, that whether you propose an amendment or not, I will be bringing an amendment to the House on the issue. The schools have been placed in an invidious position, and the Committee ought to give them the support that they require. Schools are best placed to tackle some of those issues, and they should have the support of their colleagues in the Department of Health. I am not suggesting that teachers should go to the hospitals to speak to patients there. My point is that children are in their teachers' care, and there are serious ramifications if mental-health issues are not picked up on. We, as part of the education system, should be progressing that issue. My feelings on that issue are as strong as Mary's.

Mr D Bradley:

I wish to make a proposal that reflects what Chris said earlier. I would be reasonably happy if the Committee proposed replacing the word "intellectual" with "mental" in clause 2(2)(a). I do not know whether Basil would be happy with that. To my mind, the word "mental" is a much more inclusive word. It includes intellectual development and the development of emotional intelligence, which is key to good mental health.

Mr B McCrea:

I would have a difficulty with the word "intellectual" being removed from that clause altogether. The whole idea of a school is that it should enhance people's intellectual ability. I know that Dominic is seeking a compromise, and I am not averse to that, but I feel that I should raise that point.

The Chairperson:

In light of that conversation, and if Dominic is happy with the suggestion, can we ask the Committee Clerk and his staff to formulate an amendment that we could consider as a Committee? I am very conscious of the timing issue with respect to the Bill Office, as we are at a critical stage. However, if that amendment could be produced by next week, the Committee would be able to consider it.

Mr B McCrea:

OK. Thank you.

The Chairperson:

That discussion was very useful. Let us move on to consider clause 2(2)(b), to which the Department is proposing an amendment. That amendment clarifies that the duty on the ESA in relation to youth services is similar to the duty in relation to schools and educational services. Are members content with the amendment?

Members indicated assent.

The Chairperson:

Of course, that is subject to the amendment being brought forward to include the word "mental", or whatever form of words is agreed.

Mr Lunn:

Does what we are talking about apply to clause 2(2)(a) rather than clause 2(2)(b)?

The Chairperson:

It would apply to clause 2(2)(a).

Mr Lunn:

It follows, then, that if the Committee found a wording that suited it in clause 2(2)(a) —

The Chairperson:

The Committee would have to amend clause 2(2)(b).

Mr Lunn:

The Department would obviously agree to change it. If that is the case, would the Department then also agree to change clause 23? It uses the same wording as clause 2(2)(a) except that instead of the word "contribute", clause 23 uses the word "promote".

Mr C Stewart:

I think that it would be essential that the general duty of the Department matches the general duty of the ESA. Therefore, whatever changes the Assembly decides to make will, no doubt, apply to both.

The Chairperson:

Are members content with that?

The Department proposes another amendment to clause 2, inserting a new clause 2(4A) to place a duty on the ESA to encourage and facilitate Irish-medium education. I must say that I have an issue with the amendment.

Mr D Bradley:

May I ask Chris why the Department uses the terminology "Irish-speaking school" and not "Irish-medium school"?

Mr C Stewart:

"Irish-speaking school" is the terminology in the Education (Northern Ireland) 2006 Order.

The Chairperson:

Do members have any other comments?

Mr B McCrea:

Yes, just the expected one, that an equality issue is involved. One must try to deal with all sectors. The trouble is that it raises difficulties if one sector is included and others are left out.

The Chairperson:

I have an issue with the fact that the legislation places a duty on the Department to encourage two particular sectors: the Irish-medium and the integrated sector. There are other sectors, including the maintained and controlled sectors. Since the Minister tells us that she wants equality, we

must strive for equality. I do not think that the new clause 2(4A) helps to achieve equality.

Mr D Bradley:

I beg to disagree. The reason that Comhairle na Gaelscolaíochta wanted the new clause included is partly historical; it is not an attempt, on behalf the Irish-medium sector, to lord it over any other sector. Because the Irish-medium education is relatively young in comparison to other sectors, with the possible exception of the integrated sector, it was left out — not always deliberately — and provision was not made for Irish-medium education in the various policies of the Department of Education and other educational bodies, such as the CCEA. There was a feeling in the sector, particularly with Comhairle na Gaelscolaíochta, that it wanted to be sure that in future under the new educational body, the ESA, there would be no repeat of such neglect. The sector felt that the best way of assuring itself that it would not be neglected was to ask for new clause 2(4A). .

Mr B McCrea:

I have no problem with tackling the issue to find a solution. However, had an amendment come forward that "the ESA shall be tasked with encouraging and facilitating the development of education among white, Protestant middle-class schoolchildren who live on the Malone Road", there would have been an outcry because that is not fair.

Mr D Bradley:

That would be a racist proposal, and it is wrong to compare it with what has been proposed.

Mr B McCrea:

It was not a proposal; it was designed to highlight the dangers of singling out individual issues. Although I can be won over by your argument about the historical problems, and I am sympathetic to finding a resolution, if that proposal is included on its own it will be misinterpreted. It is counterproductive. If the Irish-medium sector wants to address certain issues, it should find a way to do that; but this approach will cause problems.

Mr D Bradley:

To all intents and purposes, the ESA and the Department have that responsibility already.

The Chairperson:

Why, then, is the amendment necessary?

Mr D Bradley:

I have already explained why it is necessary: historically, the experience was that the Department did not always discharge its responsibility to the Irish-medium sector; not always through deliberate neglect, but often through lack of forethought.

Miss McIlveen:

Is it a matter of perception by the Irish-medium sector that it is not being provided for, and is the amendment necessary?

Mr C Stewart:

Those are matters of policy on which it would not be appropriate for me to comment.

Mr D Bradley:

I will comment if you want, Michelle: it was not perception; it was experience. The sector thought that the amendment was one way of ensuring that there would not be a repetition of what happened under the Department up until now.

Miss McIlveen:

Basil made the point that that sector had a loud enough voice to have the ear of the Minister to have such an amendment included that another sector might not have had.

Mr D Bradley:

I think that it was I who promoted that amendment on behalf of Comhairle na Gaelscolaíochta through the Committee or through a letter to the Department.

The Chairperson:

When C na G was before the Committee it gave a cautious welcome to a suggestion by one Committee member that a duty should be placed on the ESA to facilitate and develop all sectors. Do you remember?

Mr Lunn:

I am glad to see that the suspicion that I sometimes refer to is a two-way street. It seems to me that the first line of —

Mr D Bradley:

I am sorry; I did not quite catch what you meant.

Mr Lunn:

I have frequently accused the other side of the House, so to speak, of being suspicious of the Minister's intentions. Now, I find that —

Mr D Bradley:

Everybody is. *[Laughter.]*

Mr Lunn:

Not precisely; but surely that clause covers all grant-aided schools, including Irish-medium schools. I am not without sympathy for what Dominic is saying, but the clause as it stands does the job that it is meant to do, and it surely —

The Chairperson:

And there is no requirement for the amendment.

Mr Lunn:

There must be some other way, apart from the amendment. I could argue that another amendment, say 2(4B), should facilitate and encourage integrated schools, but there is no such need. There must be another way to hold the Department to account if it neglects one sector, whether the Irish-medium sector or any other. I do not see the need for the amendment.

The Chairperson:

Do you want to comment, Chris?

Mr C Stewart:

I will, with the caveat, of course, that anything that I say is not an attempt to justify or promote a particular policy line but merely to explain what the Minister is attempting to do. Dominic accurately summarised C na G's argument, which the Minister has accepted. The purpose of that clause is not to get the ESA to promote one form of education at the expense of another. It is to recognise that Irish-medium education has particular needs and that in order to meet those needs,

the functions that the ESA discharges — and the new clause does not give it any new functions — need to be discharged in a particular way. That is the meaning of the words to which Trevor referred: its functions relating to grant-aided schools. The plain English explanation of clause 2(4A), if I could attempt one, is that in doing what it does for schools, the ESA must recognise that Irish-medium schools have particular needs.

The Chairperson:
That could be said of the other sectors. The Department's own report identifies underachievement among working-class Protestant boys. It could be argued that a duty should be placed on the ESA with regard to controlled schools, as its own research shows there to be a huge problem there. Why can we not argue for equality? Why should we argue for one sector over another?

That is the problem that the amendment creates. I take Trevor's point: the clause is sufficient without the amendment.

Mr C Stewart:
It is not for me to argue for or against a particular policy line.

The Chairperson:
I appreciate that.

Mr C Stewart:
The Minister's thinking reflects the fact that the needs of Irish-medium education arise from the fact that teaching and learning are carried out through the Irish language. In areas such as examinations or curriculum support, the one-size-fits-all approach is unsuitable. In order to encourage and facilitate the development of education in those schools, the ESA must adopt an approach that recognises their needs, which, many argue, are unique.

The Chairperson:
OK. I take it from the discussion that members are not content, at this stage, with the Department's amendment to insert proposed new clause 2(4A).

Mr D Bradley:
Some of them are not.

The Chairperson:
Some of them are.

Mr Lunn:
Some of them are still reflecting.

The Chairperson:
The next proposed amendment is to clause 3. We might get to the end if we concentrate for the next few minutes. Members will recall that clauses 3 to 12 deal with the ESA as a single employer of all staff in grant-aided schools and schemes of employment. Members should refer to paragraphs 87 to 91 of the draft report. We have already had some discussion on this issue. Do members have any comments?

I am gravely concerned that there has been consultation with one sector but not with another. The voluntary grammars, represented by the GBA, have not had any consultation or contact with the Department to ascertain its views. I stand to be corrected, but I assume that this amendment has been approved by the trustees of the maintained sector or it would not have got this far.

Mr C Stewart:
Not necessarily, Chairman. The trustees have not yet given a formal response to the Minister, but informal contact with representatives of that sector suggests that they feel that the amendment is on the right lines. I understand that the Minister is due to meet the GBA this week. Unfortunately, that organisation, in giving evidence to the Committee, indicated that it did not wish to have contact with departmental officials.

The Chairperson:
Will those discussions take place?

Mr C Stewart:
The Minister intends to meet the GBA this week.

The Chairperson:

If we engage with stakeholders, we have a duty to engage with them all.

Mr C Stewart:

I agree. Our door is open to all stakeholders.

Mr Lunn:

Did the GBA give any reason for not conducting talks?

Mr C Stewart:

If memory serves, its representatives gave two contrasting reasons. The first was that they were too busy; the second was that they did not feel that they would hear anything new.

Mr Lunn:

That is amazing.

The Chairperson:

If an organisation takes that view, can you consult one stakeholder but not another?

Mr C Stewart:

We welcome consultation with any and all stakeholders; however, I cannot force the GBA to meet me.

Miss McIlveen:

I missed that earlier. Has the Department not made any approaches to the GBA since it made its presentation to the Committee?

Mr C Stewart:

No.

Miss McIlveen:

Because of comments that were made to the Committee?

Mr C Stewart:

We have indicated to the GBA that we are prepared to meet it at any time to discuss the issues.

The Chairperson:

Was the text of the amendment sent to the GBA?

Mr C Stewart:

No.

Miss McIlveen:

Therefore there has been no contact whatsoever between —

Mr C Stewart:

Not since the GBA ended contact.

The Chairperson:

OK. Are members content, at this stage, with the Department's proposed amendment? I am certainly not content.

We move to clause 4, which relates to employment schemes for grant-aided schools. Members will recall stakeholders' concerns on the issue of employment schemes. The Minister now proposes to amend clause 4 by inserting the following at the end:

> "(4) The Department may by regulations make provision as to the form and content of employment schemes."

This matter is covered in paragraphs 93 to 111 of the draft report. The Department's employment paper and draft regulations have been received and are included in members' packs. Do members have any comments? I suppose that this amendment follows on from the amendment to clause 3. If a change is made to clause 3, a change must be made to clause 4.

Mr C Stewart:

The two amendments are related, Chairman, but one does not necessarily follow the other. The change to clause 4 reflects the concern of many members and stakeholders that it is not sufficient to regulate employment schemes simply with guidance. Members and stakeholders felt that greater clarity and certainty were required in the form of subordinate legislation, and that is the

approach that the Minister has decided to take.

The Chairperson:

If members do not have any comments, we will move on. Clause 6 relates to the reserve power of the ESA to make employment schemes. We are at paragraph 114 of the draft report, and the amendment appears to stem from the enabling provision that we have just considered in clause 4.

Mr C Stewart:

You are correct, Chairman. This one is consequential to the previous amendment.

The Chairperson:

If members do not have any comments, we will move on. The Department's next proposed amendment is to clause 11, "Salaries, etc. of staff: administrative and financial arrangements". Paragraphs 128 and 129 of the draft report relate to the background to this proposed amendment. Do members have any comments on clause 11, which enables staff salaries to be included in the budget share of all grant-aided schools?

I may sound cynical, but I hope that there is no jiggery-pokery in how schools are funded. Members have stated before that there is a duty of accountability when money is received from the taxpayer. In light of the review of the common funding formula, is there anything here that could be changed? As was mentioned this morning, there are two distinct ways in which schools can receive money. Is the amendment being made in preparation for changes to the common funding formula?

Mr C Stewart:

No, Chairman, it is not. I assure you that there is no jiggery-pokery whatsoever.

The Chairperson:

That sounds better than the word that you used earlier.

Mr C Stewart:

The amendment is to fix a mistake that we made when clause 11 was drafted. It was not the draftsman's mistake; we instructed him incorrectly. As you say, there are two methods of funding schools. However, the idea behind the policy is for schools to get comparable amounts

of money to do the same things. Clause 11, as originally drafted, would have run counter to that. Some schools would have had control over their salaries budgets; others would not. That was an error, and it was never the Minister's policy intention to arrive at that position. We propose to fix the error with an amendment that would ensure that all schools have control over their salaries budgets, irrespective of the mechanism by which they are funded.

The Chairperson:
Will the amendment affect schools' freedom or autonomy in the use of budgets?

Mr C Stewart:
If the mistake had not been fixed, we would have taken a considerable amount of autonomy away from controlled and maintained schools.

The Chairperson:
The Department's next proposed amendment relates to clause 16. That clause sets out that the ESA will pay capital grants, which were formerly paid by the Department, to voluntary and grant-maintained integrated schools. Paragraphs 147 and 148 of the draft report set out the relevant detail.

The amendment to clause 16 is reasonably lengthy. Do members have any comments?

Miss McIlveen:
Can we have clarification on "certain" capital works in the title of the amendment? Does it relate to something specific?

Mr C Stewart:
It relates to major works. Minor works would still be carried out by the schools; major works will be carried out by the ESA.

The Chairperson:
Is there a financial memorandum that sets a threshold?

Mr C Stewart:
I am sure that there is, although I am not aware of what it is.

The Chairperson:

Clause 17 provides that superannuation benefits for teachers, which were formerly paid by the Department, will be paid by the ESA. The Committee raised no issues in relation to clauses 16 and 17; the Department's amendment to clause 17 is set out in paragraph 149 of the draft report. It is a functional transfer.

Mr C Stewart:

This is a purely technical amendment on the advice of the Office of the Legislative Counsel to put the meaning of the clause beyond doubt.

The Chairperson:

The amendment to clause 26 calls on the ESA to consider the requirements of those attending Irish-speaking schools in relation to curriculum examination. Some members will probably have the same concerns with this amendment as they had with proposed new clause 2(4A).

Mr B McCrea:

Why is it necessary? Has the Department not been doing that already?

Mr C Stewart:

The argument made by C na G was that, in exercising curriculum support functions and examination functions, the authorities, the boards and CCEA were not meeting the needs of Irish-medium education sufficiently.

The Chairperson:

That does not reflect the intention of trying to establish equality.

Mr D Bradley:

I do not want to reiterate everything that I said before, but the same arguments apply from C na G's point of view, and I am sure that other members will agree, although not everyone. Children being taught in a language other than English have specialised requirements. Cognisance must be taken of that fact, and it must be reflected in the operations of the ESA and its examination and curriculum function.

Mrs O'Neill:

I agree with Dominic. That is the reason behind the amendment.

Mr B McCrea:

I have no argument with Irish-medium schools having an Irish-medium curriculum and Irish-medium exams. However, the amendment brings unnecessary attention to the issue, and that is why I asked whether that had not been done already.

Mr D Bradley:

That was one of the reasons that Comhairle na Gaelscolaíochta considered that specific reference and felt that that provision was needed in the Bill. Its experience was that the needs of teachers and pupils were not taken into consideration when guidance materials were produced. That contributed to an experience of neglect. As I said before, it may not always have been deliberate neglect, but that experience has led Comhairle na Gaelscolaíochta to ensure that it will not have to endure such neglect in future.

Mr B McCrea:

If academic schools requested help and advice for entrance tests, which set out their conditions, or faith-based schools requested their own conditions, we could end up with a plethora of special-interest cases. Is it not better to have some form of general requirement?

Earlier, I spoke about designation, an issue that the Gaelschools were examining and which would require schools that are so designated to perform in a certain way. Therefore, there are ways of accommodating legitimate sectoral aims without making special cases. All that I am saying, Dominic, is that it seems that the Bill is specifically for Irish-language schools and not for everybody.

Mr D Bradley:

I do not agree with you, Basil. Academic schools or faith-based schools in the system —never those outside it — have not had the experience of being neglected, left out of policy making or not being provided for in service-training programmes. As a result, those schools would not need or want a specific mention in the Bill. The Irish-medium sector has had that experience, and, in some cases, it has had to fight to be included, even though it was entitled to be included from the beginning.

The amendment is an attempt to ensure that the Irish-medium sector does not have to continue to experience what it has experienced in the past. However, there may be other ways of satisfying its desires.

Mr Lunn:

There is a difference between the argument that the Committee had earlier on new clause 2(4A) and this amendment. The previous argument related to the ESA's requirement to encourage the development of Irish-speaking schools, whereas this is purely to do with curriculum and examinations. Irish-speaking schools have special requirements with respect to curriculum materials and examinations, because they are conducted in a different language from other schools. I understand the first argument, but I cannot understand this one.

The Chairperson:

The argument relates to what is currently being provided, and provision is surely already being made for those who wish to have curriculum materials and examinations in Irish. The argument is about the need for an additional amendment to deal with one sector of education. The Irish-medium sector exists, and there are curriculum materials and examinations in Irish; therefore why must an additional requirement — that I assume would be very costly— be placed on the ESA?

Mr C Stewart:

I cannot comment on the size of the cost implication of the provision. However, the Irish-medium sector argues that the present curriculum support does not meet its needs. That is not because that support does not exist, but because it is not sophisticated enough and does not sufficiently recognise the particular needs of the sector. For example, it is not sufficient simply to translate English-language curriculum support materials into Irish; that does not meet all the needs of Irish-medium education.

In making its argument, C na G acknowledges the developments that have taken place in the education organisations and that things are better than they were. However, they argue that things have not developed sufficiently, and that there is a need to give that development greater impetus through the proposed amendment.

Mr D Bradley:

It has implications for the staffing of the ESA. In order to fulfil the needs of Irish-medium education, the ESA will have to employ staff who are not only skilled in the language, but in the other aspects of the curriculum, examination, and design.

Mr B McCrea:

Other people — and I will not embarrass or bring the Chairperson into the debate — will make an argument that they are distinctly unhappy with the teaching of evolution and might want an amendment to the Bill that says that the Department must take cognisance of their deeply held beliefs. Issues of special cases will begin to emerge. I would rather include a general requirement on the Department or the ESA to look after the needs of all schools and to give them the appropriate level of support and advice. That can be done in other ways, rather than through including specific issues in the Bill. I am open to suggestions about how to do that. I only know that when one sector is accommodated, that raises the issue of including other sectors.

The Chairperson:

There is one word for that — equality. As I have said to the Minister and to the Committee numerous times, we will either have equality or we will have none. A party around this table used to say that it was either neutrality or equality. The Bill will either achieve neutrality or equality. I do not say that because — as people might accuse me — it is about the Irish-medium sector. I would make the same argument about the integrated sector. We might establish a new dispensation for education that provides equality of access, but we will never achieve equality of outcome because all our children are different. However, it will provide equality of access in how our schools are governed and in how we decide the future of our estate.

Including other duties has the implication of unravelling the Minister's intention, which is to achieve equality. I take the point that you will make that the sector will argue that the provision is necessary because existing inequality must be addressed. That will be addressed by that sectoral body telling the ESA what it requires. The legislation is sufficient to make the ESA able to respond to the needs of any sectors without giving specific reference to one particular sector over and above another.

Mrs O'Neill:

Equality is about addressing imbalance, not about giving an equal amount to everybody.

The Chairperson:

There is a huge amount of work to do on that.

Mr B McCrea:

It is also about education, equality of opportunity and equality of outcomes. That argument was put forward in Transfer 2010. The issue is about getting a fair and equitable solution for all concerned; that is what we are about.

Mrs O'Neill:

That is what I said; it is about addressing imbalance.

Miss McIlveen:

Taking that to its conclusion, does that mean that the imbalance that affects the controlled sector will also be addressed?

The Chairperson:

That is the point that I made to Chris earlier. A report from the Department clearly identifies a problem with working-class Protestant boys. There should be a requirement in the Bill that specifically places a duty on the ESA to ensure that that is addressed. That would address an imbalance and inequality that has been highlighted by the Department. If we go down that road, the difficulty is that we might begin to set one organisation up against another. Although I do not want to be controversial, I must say that the Minister's attitude has been very dismissive of a sector that educates 42% of post-primary schoolchildren, namely the grammar sector. That sector provides 1·3% of our education but has only a very small percentage of the school estate. There is a huge issue of disparity.

Mr O'Dowd:

I take it that the Chairperson still supports parental choice.

The Chairperson:

I still support parental choice, but parental choice —

Mr O'Dowd:

Then your argument slightly falls apart.

The Chairperson:

No, it does not, because parental choice comes at a cost, and, as a parent, I made a parental choice and it cost me. I educated all my children outside the state, and that cost me as a parent.

Mr O'Dowd:

I can assure you that there are associated costs for any parent who is putting their children through any level of Irish-medium education.

The Chairperson:

I do not doubt that. However, we should not compound the issue by giving preference to one sector over another.

We want to conclude this matter, because we could be here all day. Obviously, there is no agreement on clause 26. I have to apologise to the Committee: I made an error, which is that the Committee already considered the amendment. I had to be reminded by the officials that at last Thursday's meeting the Committee worked from clause 24 onwards.

Mr B McCrea:

So we can go now?

The Chairperson:

No; there is one more clause. The Committee did not consider clause 28, which is entitled 'Approval of courses leading to external qualifications.' The DEL amendments propose changes to clause 28 and the insertion of two new clauses. Chris, will you provide an outline of them?

Mr C Stewart:

I can give a brief outline, but you will appreciate that it will require DEL colleagues to brief the Committee in detail on the policy intention behind those amendments. Essentially, DEL needs the ESA to carry out certain functions on its behalf aimed at supporting DEL in its functions with regard to qualifications that it would designate. The popular shorthand for that is vocational qualifications. That is what DEL is looking for here. Essentially, the amendments ask the ESA

to carry out a range of functions on behalf of DEL, which are very similar to the functions that it would carry out on behalf of the Department of Education.

Mr O'Dowd:

I am tempted to ask whether those policies would be driven by the Minister for Employment and Learning.

The Chairperson:

That is what might worry me, so the Committee needs to scrutinise that.

Mr B McCrea:

I speak in defence of the most excellent Minister for Employment and Learning, but I want to ask about new section 6(a) in one of the DEL amendments. I have lost the will to live, but somewhere along the line we were adding in the equivalent phrase. There was an amendment to add a paragraph (c) in the equivalent section. Is that correct?

Mr C Stewart:

You have me at a disadvantage, Basil.

Mr B McCrea:

I think there was somewhere where we had to have due regard for the Irish-medium sector. Was there not? The second proposed new clause in the DEL amendments states that the ESA shall have regard to:

"(a) the requirements of industry, commerce and the professions regarding designated qualifications; and

(b) the requirements of people with special learning needs".

Mr C Stewart:

Sorry, yes, I am with you now.

Mr B McCrea:

Yes, help me out.

Mr C Stewart:

The Minister for Employment and Learning has not asked for a similar provision for Irish-

medium education.

Mr B McCrea:

Yes, but the provision —

Mr C Stewart:

I am not certain that there is Irish-medium education in the further-education sector

Mr B McCrea:

Maybe there ought to be. Just help the Chairperson, because he is looking at me as if I have two heads.

The Chairperson:

No; carry on.

Mr B McCrea:

Will you be introducing one amendment that has a 6(a) and (b)?

Mr C Stewart:

Yes.

Mr B McCrea:

And somewhere else there will be a 6(a), (b) and (c)?

Mr C Stewart:

Yes.

Mr B McCrea:

I am just raising that as a quirky issue.

The Chairperson:

So do you not agree with the amendment, Basil?

Mr B McCrea:

I am just pointing that out. I have not had time to really consider the matter, but as it is my leader that is bringing the amendment forward, I am sure that it is brilliant — for the record, you know. *[Laughter.]*

The Chairperson:

Be careful.

Mr B McCrea:

I am just pointing out that whatever decisions the Committee makes, it would be appropriate to have compatibility. It would look wrong to have two supposedly identical clauses but one with only two paragraphs and the other with three. Anyway, I have brought the matter to the Committee's attention and the Department can have a think about it.

Mr O'Dowd:

After me and you meet, you should go and meet Reg. *[Laughter.]*

The Chairperson:

Do members have any further issues about clause 28? The DEL amendments propose the insertion of two new clauses, which relate to the functions of the ESA with regard to qualifications.

The Committee Clerk:

What was distributed was the Committee for Employment and Learning's endorsement of the Committee amendments.

The Chairperson:

That concludes consideration of the amendments.