



Northern Ireland
Assembly

**COMMITTEE
FOR EDUCATION**

OFFICIAL REPORT
(Hansard)

Education (No.2) Bill

14 October 2009

NORTHERN IRELAND ASSEMBLY

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FOR EDUCATION**

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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

Witnesses:

Mr Chris Stewart) Department of Education

Mr Tom Flynn) Department of Education

The Chairperson of the Committee for Education (Mr Storey):

I welcome Chris Stewart and Tom Flynn. I had thought that you would not have to come back here on Wednesdays. To disorientate you completely, we decided to change the time of the Committee meeting to the afternoon.

Mr Chris Stewart (Department of Education):

The pleasure is no less for that.

The Chairperson:

Members should have all the relevant papers.

Mr Stewart:

It might be helpful if I responded briefly to Trevor's earlier concerns about the passage of the first Bill. We are aware of the pressures on the timetable; hence our desire to proceed to Consideration Stage at the earliest possible opportunity; however, we are not yet at panic stations. The guidance that members heard quite rightly reflects the norm or getting towards the upper end of the length of time that the various parts of the process can take. They can, with good will and hard work, be accelerated from time to time. Some steps do not have to be taken in series; they can be taken in parallel. It will require careful game management on our part, and it is not something that we take lightly. We are coming up against time pressures, and the Minister is very concerned about the effect that delay would have on the education system, which has been planning for some time for an implementation date of 1 January 2010. It remains the Minister's intention, with the will of the Assembly, to complete the passage of the first Bill by that time. There is still time to do that, but it is drawing to a close and we will need to work hard to maintain momentum.

I am delighted to have Tom Flynn with me today. Members will remember Tom from our meeting in Bessbrook. Tom knows as much as anyone about the policy behind area planning, so you can ask him all the hard questions on that subject.

Chairman, I will take a quick canter through the Education (No.2) Bill, which divides into three main parts. I am at the will of the Committee as to whether you would like me to go through the entire Bill or pause at the end of the major blocks to take questions. I am happy to do either.

It is important to start with a reminder that the Committee is seeing an early draft of the Education (No.2) Bill. The Executive have not yet formally considered the Bill or the associated policy memorandum; therefore, it could change before introduction. At this stage, there is no reason to think that it will change significantly, but there is a possibility.

There is good news and bad news about the Bill: the good news is that it is considerably shorter than the first Bill, with 24 clauses and seven schedules; the bad news is that at least parts

of it are more complex, more technical and a more challenging read than the first Bill.

There are three main groups of provisions: area planning of the educational state and the delivery of the curriculum; the education advisory forum; and controlled schools. There is a fourth group of fairly standard supplementary provisions, which I will deal with when we come to them.

I will begin with the area planning part of the Bill, which is at clauses 1 to 8 and schedule 1. Those provisions set out the definition of an area plan; the process for developing or revoking area plans and for having them approved; the regulation of plans; and, perhaps most importantly, the effect of plans.

Clause 3 sets out the definition and has three main components: each area plan must contain an assessment of need, an assessment of the adequacy of current provision, and proposals to meet need. There are a couple of key points that need to be emphasised. The definition includes all services for which the Department is responsible: preschool and early years; primary schools, including nursery schools; post-primary schools; and youth services. A full range of services will be covered by area planning. The second point is that there is no fixed definition in the legislation for the areas to be covered by plans: the plans will define the areas that they cover. That is in recognition of the fact that area planning as a discipline will evolve and develop and become more sophisticated as time passes, and that may require changes to the areas covered by the plans.

Clauses 2 to 5 set out the planning process and the roles and responsibilities of the participants. Plans will be prepared, revised or revoked by the education and skills authority, subject to the approval of the Department.

Clause 4 deals with the involvement of stakeholders. The ESA will be under a statutory duty to consult and involve the various sectoral interests in the planning process. Members will see that that clause is deliberately broad in its construction to ensure that all the sectoral interests have a guaranteed role in the process. There is also a power to consult and involve other key interests: children and young people, parents, staff and school governors.

Members may be wondering why we have a duty to involve some interests but a power to

involve others; the reason is practicability. It is important to involve representatives of consumers and education providers in the planning process. However, it is not practicable to place a duty on the ESA to involve every child, parent, employee and governor. Nevertheless, the involvement of their representatives, or a sample of them, will be an important part of the process.

Clause 5 further underpins the planning process with a fairly standard and broadly expressed requirement for public consultation and publicity. If members are interested, they should study the approach taken in the Planning (Northern Ireland) Order 1991, as the construction of some clauses is, in many ways, similar to some planning legislation. Clauses 6 and 7 will cover the regulation of plans. Members will note that we have tried to take account of some of the Committee's concerns about aspects of the first education Bill. We have made provision for guidance and regulations to cover the scope and content of plans and the planning process.

Clause 8 and schedule 1 contain the key provisions on the effect of area plans. They are some of the most significant provisions in the Bill and some of the most difficult to read, as they deal with the relationship between area plans and development proposals. The provisions recognise that the pattern of area plans will build up over time and that it may be some years before we have complete coverage. Therefore, the provisions must cover two sets of circumstances: when no area plan is in force; and when an area plan is in force for a particular area.

If there is no plan in force, the procedures on development proposals will remain largely as they are at present. The education and skills authority would publish development proposals for consultation and advise the Department of its views on those proposals, after which the Department would decide on the outcome. On the other hand, the procedure will be significantly different if an area plan is in force. Initially, the ESA must consider whether the development proposal is in conformity with an area plan; that is deliberately intended to be a high bar that is difficult to clear. If a proposal is not in conformity with the plan, it must be rejected and will proceed no further; it will not be published for consultation. If a proposal is in conformity, it will proceed through the procedures in the time-honoured way. The key difference is that the ESA, when advising the Department, must give its views on the extent to which a development meets the need that is set out in an area plan.

In summary, an area plan performs two main functions in the planning process: first, it acts as

a filter to remove any non-complying development proposals at an early stage; secondly, it acts as a tool to assess how well each compliant proposal fits with the plan and, where necessary, to allow the ESA and the Department to rank proposals. I want to emphasise that those provisions will apply to any development proposal in any grant-aided school regardless of sector, including proposals to transform a school to integrated status. I can pause for questions if you wish.

The Chairperson:

I prefer to discuss each issue separately. We will deal with area planning, then the controlled sector and, thereafter, the education advisory forum. Paragraph 15 of the Department's briefing paper states:

"If an area plan is in force, then the procedure will be different. The ESA must first consider whether the proposal is in conformity".

The footnote says:

"The test of conformity is intended to be an exacting requirement".

Is that test quantitative or qualitative?

Mr Stewart:

It is both.

Mr Tom Flynn (Department of Education):

I have been considering a test whereby an order of questions is set against a development proposal to determine whether it meets aspects of an area plan.

For instance, if it was clear that the need that the development proposal was designed to address was not covered in an area plan or was not picked up in the review of a plan, it does not conform to the plan. If it proposes a solution to a need that is covered in the plan, which is slightly different from the area plan, there would be another series of questions; however, if it meets a need in the plan, it would not automatically be deemed not to be conforming to the plan.

The Chairperson:

What engagement has there been with the sectors on the concept of area planning? There is a central group to which sub-groups report. Are we happy that, without exception, all sectors will engage with the process of area planning?

Mr Flynn:

My understanding of the entitlement framework exercise to which you refer is that all sectors did engage. All sectors commented on the longer-term policy for the ESA, which is associated with the legislation that we are discussing, and there has been a series of meetings with them. There has been engagement.

Mr Stewart:

The sectors may wish to comment on the provisions in the legislation — I would be surprised if they did not. Hand on heart, I cannot tell you that all the sectors are entirely satisfied with every provision in the Bill, because they have not said so yet. Given the centrality and importance of area planning, I would be astounded if the sectors did not agree to take part in the process.

The provisions are powerful: area plans will be the key determinant of service provision in future. Clause 4 gives sectors the opportunity to influence the content of area plans. It is the only show in town — if they are not prepared to participate, they will lose the opportunity to influence the delivery of services.

The Chairperson:

Clause 1(1) states:

“An area education plan is a document which contains —
(a) a map of the area to which the plan applies;”

Is it based on the county or the parish? Do we know what the map will detail?

Mr Flynn:

I have been doing some work on what would constitute the boundaries of an area to be covered by an area plan. That is being done with an eye on the community-planning process and the new structures for local government. My analysis is on pupil-to-school flows, and the results for primary and secondary pupils combined suggest there should be about nine to 10 areas covering the Province. Those areas would align fairly closely with the 11 local-government areas, except in Belfast. Belfast is, for want of a better word, leaky, because there is quite a lot of flow of pupils in and out.

Combining primary and post-primary pupils across the existing 26 district council areas, about 14.5 % travel to a school outside the district council of their residence. Taking the 11-council

structure for local government, we could bring that percentage down to 5%, which is a Bain recommendation. That would not include Belfast, where we would consider combining some of the councils on the outskirts of the city.

The system is a complex one in which to devise areas that are coterminous with other planning areas and which are also home to education and travel-to-school areas. There will be flows of pupils in and out of an area, so the first principle is to have areas against which area plans will relate so that we build up to the region.

With regard to analysis of need, however, we need to look at hinterlands, as they do not follow administrative boundaries. The key issue is that in the analysis and in determining recommendations in the plan for change, all pupils are accounted for, irrespective of whether they are inside or outside the boundary of an area plan. The two elements are the local hinterland analysis and the presentational level of area plans.

Miss McIlveen:

I welcome your comments on community planning, because I wanted to develop that with you. What role will the local committees have in the consultation process?

Mr Stewart:

I am sure that local committees of the ESA will be given the opportunity to provide input into the development of area plans. It would be for the ESA, depending on whether the Assembly decides to regulate those matters, to determine their function.

Miss McIlveen:

May that be included in the second Bill?

Mr Stewart:

Regulation of the functions of area committees would stem directly from the first Bill rather than the second.

Miss McIlveen:

With regard to duty and power, you say that there is a duty to consult and involve the various sectoral interests in the planning process but that that does not apply to minor changes. Will you

elaborate on that? The next paragraph says that the clause includes a power to consult. What is the difference?

Mr Stewart:

I assure you that there is nothing sinister in a duty to consult. The clause places a significant duty on the ESA. It is not intended to be tokenistic; involvement and participation is meant to be serious and rigorous. Therefore, it will be a complex and costly process. If, for example, there is a minor change to a boundary or an area that will not have a significant effect on the plan, but which nevertheless requires a minor alteration to it, the provisions allow for that duty to be set aside, and the full rigour of the involvement and consultation process does not apply. However, any significant change to an area plan would call the duty into operation, and the ESA must involve sectoral representatives.

With regard to the difference between a duty and power, the duty is absolute and the ESA must comply with it. The power gives the ESA discretion on how and when it consults and involves the representatives referred to in that part of the clause.

Miss McIlveen:

Therefore there is no duty to consult with school staff or governors.

Mr Stewart:

No. However, there is a clear expectation, which will be referred to in the policy and guidance, that the ESA will do so. However, there is no absolute duty, as that would not be practicable. A duty would require the ESA to involve and consult every child, every parent, every governor and every member of staff. That is simply not doable.

Miss McIlveen:

I am sure that we will return to that issue.

The Chairperson:

No doubt.

Mrs M Bradley:

Michelle asked what I was going to ask. Chris mentioned children, young people, parents, staff

and school governors but said that the ESA does not have to consult governors or staff.

Mr Stewart:

For that group of interests, it is a power rather than a duty. However, the clear policy expectation, and the requirement that the Minister will have, is that the ESA will put in place effective mechanisms to allow the voice of governors, parents and staff to be heard. That will require a degree of sophistication on the part of the ESA, particularly with regard to children and young people, to ensure that that involvement is real and not tokenistic and that we have a genuine and effective mechanism for the most important consumers of education to play a part in its planning.

Mrs M Bradley:

Who would choose the people in an area?

Mr Stewart:

The ESA.

The Chairperson:

I want to elaborate on that. Say, for example, that there were 10 area plans for geographical areas. Will the ESA establish the area-based planning committee? For example, if there were 35 schools in a geographical area, will those schools be asked to put together an area plan by sector? How will it work in practice?

Area-based planning will not come into operation until the ESA has been established, yet paragraph 45 of the Department's revised policy paper of 1 April 2009 states that:

“Some Area Plans may be required much earlier than others because of pressing issues to be addressed.”

If the ESA is established on 1 January 2010, and the draft Education (No.2) Bill is not enacted by then, there will be no legislation in place for area-based planning. How will it work in such a case? Will we have the same fiasco as we had with the self-fulfilling prophecy on the establishment of the ESA? There was a policy intention, the posts of interim chief executive and interim chairperson were created and proposals were made to appoint members of the board, yet the Education Bill has yet to be passed by the Assembly. Must we go through the same process again?

Mr Stewart:

I am not sure that you are comparing like with like, Chairman.

The Chairperson:

I am comparing like with like with respect to the process, Chris.

Mr Stewart:

The process for the appointment of the chief executive designate, the chairperson designate and the members of the ESA is not unusual and is provided for in legislation. The Interpretation Act (Northern Ireland) 1954. makes it clear that a Department can take certain actions when preparing for the establishment of a statutory authority. Indeed, the Department recognises that it would be too late to wait until 1 January 2010 before commencing the appointment process for the chair and members of the ESA.

You are correct: until the Education (No.2) Bill is enacted, the powers and functions for area-based planning set out in its provisions will not apply. For that reason, it is in everyone's interest that the progress of the draft Education (No.2) Bill be as rapid as possible; however, the ESA and the Department are not entirely frozen with respect to what they can do until the Bill is enacted.

It would be better for area-based planning to be implemented on clear, sound and well-understood legal provisions. However, until that happens it is possible to carry out area-based planning, or an approach similar to it, informally using the powers that the Department has.

The Chairperson:

The Committee scrutinised the 55 clauses and 8 schedules of the Education Bill. Some will make the accusation that the Committee deliberately delayed the progress of the Bill through that scrutiny, but it did not. The draft Education (No.2) Bill is not as long as the Education Bill, but it contains huge implications for area-based planning for all schools in all sectors, in addition to the huge implications that area-based planning will have for the controlled sector. Do you really believe that it is possible for the Committee to give the provisions of the Education (No.2) Bill the serious consideration needed in the timescale that has been foisted on it by the Department? The Committee received the Bill only on 30 September 2009, and, technically, the Education (No.2) Bill could begin its Committee Stage before the Assembly had given the first Education Bill approval. That is not the best way of demonstrating that the process is being well managed

and that it can deliver its intention.

Mr Stewart:

I would not want to attempt to foist any timescale on the Committee or the Assembly on the Bill. As you rightly said, the Education (No.2) Bill is shorter than the Education Bill, but it is still extremely important, containing extremely important provisions.

The Assembly, the Committee and the Executive will take as long as they determine to deal with the Bill and its provisions.

It is precisely because the area-planning provisions are so significant that we were not in a position to include them in the first Bill. The ideal situation would have been to have had a single Bill to deal with every aspect of the RPA at the same time. However, area-planning policy is sophisticated and requires a great deal of detailed and painstaking work. We were simply not in a position to legislate for it at the same time as the first Bill, hence the inclusion of the provisions in the second Bill.

I do not for one moment expect that the second Bill will become law anywhere near 1 January 2010. I am sure that the process will take longer than that, which is regrettable. I wish that we were in a position to enable it to become law sooner. The Department's commitment is that it will work as hard as it can, and with the Committee, to speed its passage. However, as you rightly say, the Committee will regard the Bill as a significant set of provisions and will want to scrutinise it carefully.

Mr D Bradley:

Previously, we were told that area boundaries would be flexible, perhaps because of topography, infrastructure or even population. Does the Bill allow for that flexibility in the boundaries?

Mr Stewart:

Yes, it does, through the simple mechanism that the Bill does not prescribe the boundaries. Each plan will delineate its own boundaries, therefore the approach will be as sophisticated as we can make it, depending on the state of knowledge and our ability to model at any given time. Over time, as our ability to model improves and the planning process becomes more sophisticated, it will be necessary to revise and replace plans. Areas will change over time as our modelling of

pupil flows becomes more sophisticated.

Mr D Bradley:

Clauses 6 and 7 provide for guidance and regulations, which you mentioned. When will the Committee be able to see that guidance and/or regulations?

Mr Stewart:

I will let Tom talk about the guidance. At the moment, there is no specific intention to bring forward regulations. Nevertheless, mindful of the Committee's concerns about the employment arrangements in the first Bill, we thought it prudent to include in the second Bill the power to make regulations, should the need for them arise. I must say that legislative counsel took some convincing that it was necessary or appropriate to have a power to make regulations and a power to make guidance. However, we twisted his arm, and we now have both.

Mr Flynn:

The guidance will be operational and largely technical. It is my hope that we will be able to bring it to the Committee as quickly as possible. The guidance has to be cleared in the Department, but we will certainly be pushing that as hard as we can in the coming weeks.

Mr D Bradley:

How quickly is as quickly as possible?

Mr Flynn:

I cannot answer for senior staff in the Department, but I certainly hope that it is a matter of weeks.

Mr D Bradley:

What about the regulations?

Mr Stewart:

There are no firm plans to make regulations at the moment. At this stage, we feel that the right approach to setting the control framework is to issue guidance. Once the Committee has seen the guidance, it will take a view on whether it is sufficient. We are conscious that it is difficult for the Committee to comment on the adequacy or otherwise of the provisions until we can answer

all its questions about how the plans will work in practice. The answer is liable to be found in the guidance. As Tom said, we want to show you that guidance as soon as we can — hopefully within weeks. We will certainly not dwell on it one day longer than necessary.

Mr D Bradley:

As you probably know, some sectors have already begun their own version of area-based planning. In some cases, those plans are considerably advanced. Does the Bill take cognisance of that fact, and, if so, how?

Mr Stewart:

It does so in the sense that it allows for more than consultation; it allows for consultation and the involvement of sectoral representatives in the planning process. To put it simply, we do not expect those representatives to come to the table with blank sheets of paper. They will have their own ideas based on their assessment of the needs within their sectors. However, as far as the planning process is concerned, there is only one source of area plans and there is only one planner — the ESA. It is the role of the sectors to contribute any thinking or planning that they have done on a non-statutory and informal basis to the formal statutory process that the ESA will operate.

Mr D Bradley:

So, the planning that some sectors have already done has not been carried out under any form of guidance from the Department.

Mr Flynn:

I would not say that. The word “planning” can be interpreted in many different ways, but there have been two-way discussions between various units in the Department and the education sector, particularly on specific schemes that they may wish to introduce. From time to time, those discussions have covered areas that are involved in a long-term, area-based planning process. Secondly, the entitlement framework exercise in which the sectors were involved was a learning experience for both the Department and the sectors. I presume that they have taken account of that experience in any planning that they have done.

Mr D Bradley:

At what stage is the area-based planning process?

Mr Flynn:

Today, we are discussing the ESA process, and that is the future —

Mr D Bradley:

Can you tell us anything about the current process?

Mr Flynn:

I think that you are referring to the entitlement framework exercise. My understanding is that an announcement is expected from the Minister shortly, so I would not like to pre-empt that.

Mr Stewart:

Tom and I are not directly involved in that exercise, so we are being ignorant rather than evasive.

Mr Flynn:

At the Education Committee's meeting in Bessbrook, I said that the process concentrated on the entitlement framework and did not, therefore, cover the range of age groups or policies that the full ESA process will cover. It was a submissions-type process. We envisage that the ESA area-planning process will take a more proactive approach to planning.

Mr Stewart:

One of the key policy planks underpinning the ESA area-based planning process is the recognition that planning takes place in sectors, probably with varying degrees of sophistication and rigour. It is an unfortunate feature of the current arrangements that those separate planning strands are not well enough knitted together.

At present, education and library boards and the Department sometimes find themselves in the difficult position of becoming involved in a co-ordinating or area-planning role only after they have received development proposals from particular sectors or sectoral interests. They then have to consider individual proposals on their own intrinsic merits and also rationalise them with development proposals, or indications of development proposals, from other sectors. That all happens too late in the process and too far down the road. The point of area planning is to ensure that the thinking that takes place, and needs to take place, in sectors is knitted together at a much earlier stage in the process and is then incorporated and signed off into a formal plan that all sectors can take forward.

The Chairperson:

That is a huge problem at the moment. By the time the process is up and running, the earliest that area plans would be in place — and it is hard to give a definitive date — would be 2012 or 2013. It would certainly not be any time before that. By that time, some sectors will have moved ahead and organised themselves in such a way as to simply compound the current difficulties around how we manage the system and how we create an education service that can provide for all our children, not just particular sectors or sections of the community. That is the difficulty.

Mr Stewart:

It is a difficulty, and one that we should neither underestimate nor overestimate. Education and library boards and the Department do not consider individual development proposals in isolation. A form of area planning, albeit informal, is carried out at the moment. The difficulty arises when planning within a particular sector advances to the stage of a development proposal, which the relevant education and library board and the Department must then consider. They may decide to reject that proposal because of the effect that it could have on other service providers or other proposals. In that instance, a lot of time and effort would have been wasted in formulating the proposal, publishing it for consultation, analysing the consultation responses and submitting it to the Department.

It is not that I think that, in the absence of those provisions, the education estate would develop in ways that would be disastrous. However, we will impose unnecessary administrative costs and burdens — as a result of the wasted time and effort — the longer we take to get them on the statute book. I would not for one moment claim that there is any benefit to be derived from the provisions being late. It is in our interest to have them on the statute book as soon as possible.

Mr Craig:

Boundaries will be set in the area plans, and I am already hugely concerned that areas around Belfast will be tinkered with, which would have serious implications for those areas. I am deeply suspicious because I think that the area that I represent will be one of them. When will the initial boundaries be drawn up, and when will we get sight of them?

Mr Flynn:

I do not agree that the areas around Belfast will be tinkered with. I said that if one based the area-

plan boundary on the new Belfast local government boundary under the 11-council model, about 40% of pupils who are currently educated in post-primary schools in Belfast would not be covered. That is just the simple reality of pupil flows. My point is that to capture those pupils and the natural flows, we must widen the boundary of the area plan.

At a presentational level, a jigsaw of plans would have to be presented that would then be built into a whole. That is a necessary evil, otherwise areas will get missed out altogether. Below that is the analytical level at which the pupils in every plan area are accounted for. It is a simple fact that if a fixed line is drawn on a map, people will cross it. It is the same for local government boundaries and the services that councils will have to provide. Therefore, every area in the area plans will have flows of pupils in and out, and some areas more so than others.

In the analysis that informs the recommendations on the facilities and services that are to be provided within an area, we need to account for the pupils that enter and leave that area. That is where the lower-level hinterland analysis comes into play. However, there is still a requirement to have set boundaries on a map so that we have complete coverage of the region, even if just to tie in with other processes such as community planning, which will be carried out along local government lines.

Mr Stewart:

Let me reassure the member that we will not attempt to engage in any form of social engineering. As Tom says, we must recognise the reality of education flows and of parent and pupil choice. The figure of 40% that Tom mentioned equates to something like 2,000 post-primary pupils who travel into Belfast daily from outside the local government district — probably from most, if not all, of members' constituencies. It is not for the Department to work against the legitimate choice that parents and pupils have made. We must recognise that fact and have a planning system that takes account of it. As Tom Flynn said, we must plan for flows in both directions across any boundary, anywhere.

Mr D Bradley:

That argument goes back to the Committee's earlier discussion about open enrolment. Members believe that there is a contradiction between area-based planning, which delineates an area where education will be managed on a number of fronts, and the continuation of the policy of open enrolment, which could involve the crossing of those boundaries. We asked your departmental

colleagues who deal with that specific issue to look into it for us. Have you considered that matter in the second Bill?

Mr Flynn:

I think that that cropped up in June. If we go down the road of a centrally planned, long-term planning system, open enrolment becomes an issue. However, it is a central departmental policy, and we must work in parallel with all the education policies. I was accused of using Civil Service speak when I used the term “optimisation” to explain that there was a trade-off in certain respects in all planning.

The pupil or the parent is sovereign in the current planning system. It is not like health planning, in which the sector can dictate the location of certain specialities and the patient has to go there. In that sense, the patient — the consumer — is not sovereign. However, in education the system is different, and, as far as I am aware, that policy will not change. Therefore, we have tried to devise an area-planning model that works within that policy and alongside other policies, both education policies and wider, cross-cutting policies.

Mr Stewart:

That is right. Left to their own devices, civil servants would come up with a system of rigid boundaries and parents and pupils would be directed where to go. If we tried that in education, I do not think that we would get away with it for long. As Tom said, we must recognise that area planning is a mechanism by which to deliver the range of other policies that the Minister of the day has, and the current Minister’s policy is open enrolment.

Mr Flynn:

I would argue that it is actually more than that.

Mr D Bradley:

It was mentioned earlier that the Minister ultimately wants her policy to achieve the objective of children going to their local school, which appears to run contrary to policy of open enrolment. Therefore, contradictions exist. I am not sure whether the Department has disentangled all the threads involved.

Mr Stewart:

We might describe them as tensions rather than contradictions. The reality is —

Mr D Bradley:

That is Civil Service speak.

Mr Stewart:

It is. Thanks for that compliment. *[Laughter.]*

Mr Flynn:

Cause and effect play a part in some of this. Open enrolment or parental preference is aided by an estate which has 55,000 — or whatever the latest figure is — surplus places. A more effectively managed estate that more closely met the overall absolute distribution of need might constrain some parental preferences. There will always be that tension.

Mr D Bradley:

The Committee heard earlier that some parental preferences are constrained.

Mr Stewart:

Pupils and parents do not have an absolutely free choice. It must be borne in mind that the choice is one of how pupils will access the curriculum to which they are entitled. The choice must involve sustainable schools, because of the effect of the sustainable schools policy. Area planning has to be able to deliver on that, and we believe that the policy, the procedures and the legislation do so.

It is demonstrably the case that the vast majority of parents want their children to attend a local primary school that they deem suitable and which delivers the education that they wish their children to have. However, the situation in respect of post-primary schools is a little different. The travel-to-education areas are much broader, and some parents and pupils choose to travel quite considerable distances to some of the larger post-primary schools. For as long as that remains the policy and we do not resort to Stalinist-style Civil Service planning, the legislation must accommodate it.

Mrs M Bradley:

The departmental briefing paper states that:

“Plans will be prepared (or revoked) by the Education and Skills Authority (ESA), subject to the approval of the Department.”

Does that mean that the Committee will get sight of all of those plans? The briefing also mentions a minor boundary. What is meant by that? Is it to do with the number of people in an area?

Mr Stewart:

I will answer the second question first. The test of reasonableness has to apply. If we are talking about a boundary change to a patch of uninhabited land, I do not think that anyone would expect the full consultation process to kick in. If we are talking about half a town, then of course the process would kick in. The issue is about drawing the dividing line somewhere in between. It is a test of reasonableness. I do not think that anybody could give a hard-and-fast rule on that.

You asked about Committee involvement. I do not wish to commit the Minister to anything without having discussed it with her, but it does not seem to be unreasonable that the Committee would want to see area plans.

The Chairperson:

Will the proposed boundaries be subject to public inquiry in the same way as the local government boundaries were?

Mr Stewart:

It is not a public inquiry per se, but the provisions, which are modelled very closely on planning provisions, allow for publicity and representations to be made.

The Chairperson:

So you could end up in a situation in which there was either a judicial review or an appeal against the decision to have a line running from A to B?

Mr Stewart:

There is always the prospect of judicial review in just about any administrative procedure in which a public authority or Department might be involved. Perhaps I am anticipating your next question, but we do not have, nor do we envisage having, the equivalent of the Planning Appeals Commission or any sort of formal body in the process.

Given that the appeal lies with the Department and the Minister and that the Department and the Minister are also the decision-making body in that instance, one could argue that the Department is judging its own cause. That is the case, but it is not entirely unheard of in the public sector.

Mr Flynn:

I would argue that, in a sense, the boundary is largely irrelevant because the key issue, from the point of view of the recommendation in the area plan, is the pupils who attend school in the area. In the longer term, when area plans will cover the entire region, the boundary will become less of an issue because all pupils are accounted for anyhow, irrespective of whether they live within the boundary; as long as they attend a facility within it or avail themselves of the service within it.

Mr Stewart:

That is reflected in the provisions, where mention is made of representatives of parents or pupils who live in, or receive education or services in, the area. That reflects the fact that a parent, child or young person may have taken a decision to receive education or services outside the area in which they live. Nevertheless, they will have an interest in the planning of future services that will be delivered in that area, and they may want to have a choice and an input into that process. We have constructed the legislation accordingly: it does not cut anyone out of involvement in the consultation procedure.

The Chairperson:

There are no more questions about area planning, so we will move to the education advisory forum, which, hopefully, will not take just as long. It takes up all of two clauses.

Mr Stewart:

As you say, Chairperson, this is one of the simpler and more straightforward parts of the Bill. The provisions that will establish the education advisory forum are contained in clauses 9 and 10 and schedule 2. The clauses establish the forum as a public body and give it the simple function of providing advice to the Department of Education and the Department for Employment and Learning on request from either of those Departments.

Schedule 2 will have a ring of familiarity about it. It contains a fairly standard set of

provisions on membership and governance-related issues. As members will see, those provisions are very similar to those that were contained in schedule 1 to the first Bill.

The Chairperson:

A simple question: do we need a civic forum for education?

Mr Stewart:

That would be a policy question, and the Minister's policy is that it is important.

The Chairperson:

There are already two clauses and a schedule to deal with the forum, and then it is proposed to build a whole raft of scaffolding around a body, which, in my view, we have as much need for as — I just do not see the relevance of having an education advisory forum.

Mr Stewart:

I wondered how you were going to finish that sentence.

The Chairperson:

I will restrain myself.

I worry when I look at schedule 2; there is mention of remuneration and provision for a chief executive and all sorts of things. My personal view, and it is not necessarily the view of the Committee, is that the Civic Forum did not add value to anything; not one of its recommendations was accepted by the Government. I doubt very much whether an education forum would have any real benefit.

Mr Stewart:

There are two issues. There is the fundamental policy issue as to whether or not it is felt that an education advisory forum is required, and that is an issue on which members must take a view. The scaffolding that the Chairperson mentioned is perhaps not as bad as it looks. The education advisory forum is intended to be a simple body with simple functions. It will not have huge headquarters or hordes of staff on vastly inflated salaries running around.

However, to establish even the simplest, most straightforward public body, certain things have

to be legislated for. If the education advisory body is to have one employee on a modest salary, that has to be allowed for in legislation. If it is to be a public body that spends public money, even in small amounts, it has to have accounts and an annual report, and it has to be subject to legislation such as the Freedom of Information Act 2000. I am afraid to say that the legislative scaffolding is absolutely necessary. However, if your fear is that behind that scaffolding lies some awful edifice, I can tell you that it will not be as bad as you think.

Miss McIlveen:

Chairman, I indicated that I wanted to speak before you had even thought about what you were going to say. You said what I was going to say, and you have stolen my thunder. *[Laughter.]*

The Chairperson:

My apologies; great minds think alike.

Miss McIlveen:

I struggle to understand what the purpose of an education advisory body would be. The Bill appears to provide for the setting up of an established body with a secretariat, regardless of how many staff are required, and the body will be required only on an ad hoc basis. You are going to the expense of setting up an advisory body to provide advice to two Departments that are already fully staffed.

You referred to remuneration and so on, and I imagine that, by this stage, you might have some concept of estimated costs. Schedule 2 states that the education advisory body will have a prescribed number of members in addition to a chairperson and deputy chairperson. Has that been decided yet?

Mr Stewart:

From memory — and my colleague can correct me if I am wrong — I think that there will be 26 other members. That might sound like an alarmingly high figure. However, that is to ensure that we cover the full range of stakeholders who might wish to play a role or have an input into the education advisory forum.

I cannot give you a figure today, Michelle, on the running costs. We have done some preliminary work, which I am happy to feed back to the Committee. From the outset, the

intention and thinking was that we must keep the costs to an absolute minimum. For example, we do not see the education advisory forum as having a headquarters; it does not need one. There are lots of facilities that can be used for its meetings. The forum does not need large numbers of staff; we do not see there being any more than perhaps two or three staff, and those positions may not all be full time.

Miss McIlveen:

It will have a chief executive, though, and chief executives come at a price.

Mr Stewart:

Chief executives come at a price, but that price needs to reflect the weight of the job. I cannot give you a salary figure for a chief executive. However, it is quite possible that the chief executive post will not be full time.

Miss McIlveen:

It would be helpful if we could see something more to show what you envisage the body doing and the remit that it may hold.

I will revisit a question that I asked in the distant past. Paragraph 13 of schedule 2 deals with finance, and it states that the two funding Departments will be the Department of Education and the Department for Employment and Learning. At this stage, do you know what proportion of the funding will come from the Department for Employment and Learning?

Mr Stewart:

I do not know. It should reflect the proportion of advice that is generated. If the forum works mainly for the Department of Education, one might expect the Department of Education to provide the bulk of the funding. Both Departments have indicated a willingness and need to use the organisation. We will work it out pro rata.

Miss McIlveen:

We will revisit that issue.

Mr D Bradley:

Do the Department of Health, Social Services and Public Safety and other Departments have

bodies that are comparable to the education advisory forum and that act in a similar way to advise Ministers?

Mr Stewart:

Not really. During the early policy development of the forum, the research considered whether models existed in this jurisdiction and beyond with which to draw comparisons. It drew a blank and could not find a suitable comparator. However, bodies exist in other sectors. The Housing Council has a role to advise the Housing Executive, and the Patient and Client Council advises the Department of Health, Social Services and Public Safety. That comparison might be misleading: those bodies tend to focus on operational delivery of services, whereas we envisage that the education advisory forum will not have any role in the delivery of services. It will provide policy input to the Department.

We began by considering who can influence the policymakers. We are relatively close to existing organisations such as the education and library boards, the Council for Catholic Maintained Schools (CCMS), and the Council for the Curriculum, Examinations and Assessment (CCEA), and we will be close to the education and skills authority. We will probably see more of each other than either of us will be comfortable with. Statutory bodies have plenty of opportunity to influence the development of policy, but consumers of education do not. Those who are involved at the coalface, or the chalk face, such as teachers, school governors, parents, pupils, children and young people, do not always have the same access to people such as Tom and me as the education and skills authority or the education and library boards do. The rationale behind the education advisory forum is to give a voice to people in the policy process who do not have one already.

Mr D Bradley:

Do people not have a voice in the policymaking process through consultation?

Mr Stewart:

They do. I hesitate to say this, but not every stakeholder says that our consultation is as good as it should be. There is no formal mechanism. The thinking was that a forum would provide those people with a formal mechanism that would be placed on a legislative footing and that would underpin and strengthen their involvement.

The Chairperson:

Given that the ESA has a considerable amount of power, should it set up a mechanism whereby it can listen to advice? Your paper says that the forum is not intended to be a vehicle for lobby groups. There has always been a difficulty with how organisations and individuals access information from education and library boards. By and large, they do it through elected representatives. Does the ESA not have a role to offer a listening ear to the sectors and the people that it serves?

Mr Stewart:

Yes; that is important. Elected representatives will have a significant role in the ESA and its committees. You are right; it will not be enough. The ESA will need to establish mechanisms to hear the views of consumers and education providers. I am not certain that the Committee would welcome a suggestion from me that we establish another education advisory forum to advise the ESA on delivery.

The Chairperson:

I will be facetious and ask a question. Paragraph 1(1) of schedule 2 states:

“the Forum shall not be regarded—

(a) as the servant or agent of the Crown;”

Is the Minister a servant or agent of the Crown?

Mr Stewart:

I will be very careful about how I answer that question.

The Chairperson:

I think that I will move on.

Mr Stewart:

The Minister, as head of the Department, will be cognisant of the fact that the Department would not be regarded as a servant or agent of the Crown.

The Chairperson:

Answered as a true civil servant.

Mr Stewart:

If I still have a job after that answer, I will see you next week.

The Chairperson:

I want to move to the third element. In fairness, we are moving into a huge area. Rather than trying to do it all today, it might be useful to consider the controlled sector at another meeting. Members may find that more advantageous. Are members happy with that? We have only received the papers and members need time to look at them.

Members indicated assent.

The Chairperson:

I thank Chris and Tom for their attendance today.