



Northern Ireland
Assembly

Committee for Education

OFFICIAL REPORT (Hansard)

Education Bill: Research and Library Service
Briefing

10 October 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Mervyn Storey (Chairperson)
Mr Danny Kinahan (Deputy Chairperson)
Mr Jonathan Craig
Mrs Jo-Anne Dobson
Mrs Brenda Hale
Mr Chris Hazzard
Mr Trevor Lunn
Miss Michelle McIlveen
Mr Sean Rogers

Witnesses:

Miss Caroline Perry Research and Library Service

The Chairperson: We move to the research briefing on the Education Bill. I thank Caroline for a very comprehensive paper. As always, Caroline produces for the Education Committee information that is invaluable to us. Caroline, thank you again.

Miss Caroline Perry (Research and Library Service): The Education Bill provides for the establishment of the Education and Skills Authority (ESA) and introduces a range of other provisions relating to the management and governance of schools. In this briefing, I will touch on some of the key clauses as set out in the executive summary. I will look at how they are different to the current provision, and I will discuss some areas that could be given further consideration. I am happy to take any questions afterwards.

First, I will look at Part 1 of the Bill, which is on ESA. Clause 3 brings about a key change in the existing arrangements in that ESA will become the single employing authority for all staff in grant-aided schools. ESA will have responsibility for the collective employment functions, such as strategic workforce planning and trade union negotiations, but school-specific functions, such as recruitment and staff discipline, will be delegated to the boards of governors of individual schools. This clause also details the submitting authority of schools, which will be responsible for preparing an employment scheme and a scheme of management. That will be the boards of governors for controlled or grant-maintained integrated schools and the trustees for voluntary schools, or the trustees can delegate that to the boards of governors. Where the trustees are the submitting authority, they have to have due regard to the views of boards of governors, so consideration could be given to the weighting that is to be given to their view. It is important to note that clause 3(5) confirms that the role of boards of governors in changing admissions criteria for a school remains the same, so they retain that right.

I will now look at employment schemes and schemes of management. Under clauses 4 and 5, the submitting authorities will be required to prepare and submit to ESA an employment scheme, which will set out the employment functions that are to be carried out by the boards of governors, such as the appointment of staff and arrangements for discipline. Under clause 5, the Department may issue guidance, including model schemes, and submitting authorities have to have regard to such guidance in developing their schemes. Clauses 33 and 34 require every school to have in place a scheme of management that will provide for the membership and procedures of boards of governors and the management of the school.

The requirements for the content of schemes of management will be broadly similar to those that are in place; they have been in place since 1989. The key differences relate to who has responsibility for developing schemes. Currently, it is the Council for Catholic Maintained Schools (CCMS) and the education and library boards for maintained and controlled schools respectively, and it is the boards of governors for voluntary and grant-maintained integrated schools.

The other key differences relate to the use of model schemes devised by the Department. Currently, for controlled and maintained schools, standard schemes are in place that are devised by CCMS and the education and library boards, but the voluntary grammar and grant-maintained integrated schools will have their own scheme of management. Finally, it offers boards of governors the opportunity to refer schemes to a tribunal if they are not happy with them.

If a scheme differs from a model scheme, the submitting authority has to give ESA information on how it differs from that model scheme. In this area, consideration could be given to a number of factors; for example, the basis on which the model schemes will be devised, whether that is the management type, school phase or school size. Other factors could be the extent to which submitting authorities will be permitted to differ from model schemes in practice and any potential implications of using model schemes for school autonomy and flexibility.

Clause 24 puts area planning into statute for the first time. Under clause 28, ESA has to consult the relevant interests in preparing, revising or revoking the plans. Clause 28(3) states that this requirement does not apply:

"if ESA determines that the changes to the plan for the area are not of sufficient importance".

Consideration can be given to a number of areas here. For example, how those areas will be decided and whether plans for neighbouring areas will be considered together; whether plans will take into account cross-border provision; what criteria and indicators will be used to determine the adequacy of current provision; what data and indicators will be used to forecast enrolments; and whether a rural-proofing process will be carried out on area plans to see whether there will be a differential impact.

The Bill also introduces new arrangements for governors. Clause 38 places a new statutory duty on boards of governors to promote high standards of educational attainment by pupils. Consideration might be given to how high standards of educational attainment will be defined; the potential implications of that for the recruitment and retention of governors, particularly for schools that face challenging circumstances; and the implications for boards of governors if the educational attainment in their school is deemed to be of an inadequate standard.

Under clause 39, ESA is required to appoint governors that are committed to the ethos of the school — in the case of Irish-medium schools or those with an Irish-medium unit or stream, to the viability of that part of the school. Consideration might be given to the implications of those requirements for the recruitment of governors. So, for example, how the commitment to a particular ethos or the viability of the school will be defined and the process by which that will be ascertained in practice.

Clause 44 deals with school inspections and educational and youth services. There are quite significant changes here. They include a widening of the role, so that the inspectors will be required to advise the Department on any aspect of establishments, whereas they are currently required to advise on any aspect of the curriculum. The areas that inspectors may inspect and report on are detailed and include teaching and learning management, as well as equipment, resources and accommodation. They will have new powers to inspect, copy or take away documents from the establishment being inspected, and to obtain access to any computer and associated material. It is stated that that power may be exercised "at reasonable times only".

There is a new duty on the responsible authority — typically, the board of governors — to prepare and publish a statement on the actions that it intends to take in light of the inspection report. Consideration

might be given to the potential implications of these changes for the schools, the boards of governors and for the staff. Clarification might be sought on how the inspection of equipment, resources and accommodation will feed in to inspection reports and ratings; how any documents taken will be used and stored; and what is meant by "at reasonable times only".

Clause 62 sets out requirements for the Office of the First Minister and deputy First Minister to make regulations for the appointment of the tribunal that would review decisions on appointment schemes and schemes of management. That is to ensure that they align with the legislation and the heads of agreement. Consideration might be given to how that tribunal will be appointed and what measures will be taken to ensure that it is independent and objective.

Clause 63 deals with, and sets out definitions for, sectoral bodies. Consideration could be given to the timescales for those bodies to be established and the proposed funding arrangements for them.

Finally, the membership of ESA: schedule 1 states that there will be a chair appointed by the Department. There will be 12 appointed members; four will represent the interests of controlled schools, four the trustees of maintained schools and four will be representative of the community in Northern Ireland. There will also be eight political members, appointed under d'Hondt on the basis of party strengths in the Assembly. Consideration might be given to the extent to which that proposed membership represents the interest of all stakeholders in education and the wider community, and whether it is likely to result in an appropriate mix of skills and expertise.

The Chairperson: Caroline, thank you very much. I will watch and listen carefully on Monday to see how many members actually use Caroline's paper, but don't you be watching me. I will open the meeting to members' questions because, as I said, yours is an extremely useful and very good overview. Thank you very much for an invaluable piece of work.

Mr Kinahan: I feel much the same; the overview is very useful. Most of our questions will be for the Department rather than you, Caroline.

The Chairperson: Sorry for interrupting. Somebody's mobile phone is going off. Might it be in the public gallery? No? I hope that it is not Robert Herron's. May I just welcome the Reverend Robert Herron from the Western Education and Library Board. We look forward to meeting you later. Sorry, continue Danny.

Mr Kinahan: I think that I will leave my questioning for the Department. Thank you Caroline.

Mrs Dobson: The paper is excellent, as usual. I have a couple of points. From your briefing paper, it appears that there was very little consultation for a Bill of this size and scope. Is that normal?

Miss Perry: I had a look at previous Bills that had been through the Assembly. There has been policy consultation on this from around 2006. That was done on 87% of Bills that have come through the Assembly since 2006. With regard to consultation that has been done on draft legislation, that has been done on 27% of Bills. So it is fairly in line. However, there have been quite a few changes made to this legislation since those initial policy consultations were done in 2006.

Mrs Dobson: It just appears that, with four years to consult, there has been very little consultation. We can see also that the Department has not consulted with the public or schools. When you were conducting your research, did you find any evidence that it consulted with other third parties, possibly private consultants? Is there any evidence of that?

Miss Perry: I am not sure about that. I know that the consultation involved a working group and a range of stakeholders in all the policy papers and the ongoing development of the legislation. I am not sure about third parties.

Mrs Dobson: Could that be explored? It would be useful to find out whether they had done that.

Miss Perry: Certainly, the departmental official, Chris Stewart, might be able to answer that question for you.

Mrs Dobson: Finally, in your section on area planning, you say:

"ESA should establish, lead and co-ordinate planning groups that are representative of all the educational interests".

Have you any details of how the Department intends to establish ESA's groups and ensure that they are representative?

Miss Perry: No, it is not clear in the legislation or in the explanatory and financial memorandum. Those recommendations were from the Bain review of 2006, the report of which recommended area-based planning. That was Bain's vision for area-based planning. Clarification could be sought as to how that would work in practice.

Mrs Dobson: That would be useful. Thank you very much, Caroline.

Mr Lunn: Thanks again, Caroline. Definitely, we are going to go to the employment schemes, employing authority, employer, and so on. The voluntary grammar schools have a concern about their loss of independence and freedom of action, the independent control of their own schools, and their ability to make these schemes and control them. What seems to be happening is that the Department is saying that ESA is just a longstop or a backup in case all else fails. These schools will continue to have the same autonomy. I have not had a close look at all this yet, but when I looked through the Bill, it says, fairly explicitly at times, that that is exactly what the schools will have. However, they are still concerned about it.

Clause 4(6), on the bottom of page 3 of the Bill, refers to schedule 2. I am trying not to get too technical here; I have been lying awake all night worrying about this. *[Laughter.]*

The Chairperson: Well, you had not very long to do so. I had only from 2 am to 6 am.

Mr Lunn: Schedule 2 is the "Provisions required in employment schemes" and, in simple terms, clause 4(6), on page 3 says:

"The Department may by order amend Schedule 2".

So:

"The Lord giveth and the Lord taketh away".

There is always a caveat, is there not?

The Chairperson: There is.

Mr Lunn: I know, from speaking to the Governing Bodies Association, that it is concerned by that. Have you any thoughts on that?

Miss Perry: Do you mean about the power to change that?

Mr Lunn: I mean about the assurances — I do not want to ask you a political question. I mean about the assurances that have been given to the voluntary grammar schools, and the fears that those schools have, in particular, the fear that they may not be allowed to be represented as a sectoral body. I am not necessarily a huge fan of the grammar schools but I think they have a point. They have, what is it, 40% of the post-primary intake?

The Chairperson: I think it is 46%.

Mr Lunn: Let us say that voluntary grammars have 40% of the post-primary school population, and yet they will not be formally represented. They are sensitive about these things. Maybe we do not want to go into that level of detail today, but I wonder about that line.

The Chairperson: Perhaps, in fairness, Chris should deal with that. Caroline may want to comment, however.

Miss Perry: Certainly, it is by order, so I guess that we would have to bring in regulations to change that. Schedule 2 sets out what will be in the employment scheme. When producing their scheme, they must have regard to model schemes and guidance from the Department. I cannot speak for the Governing Bodies Association. Perhaps there are concerns around that; I am not sure.

Mr Lunn: I do not want to put you on the spot. It is more about the legal interpretation of what that means. It looks pretty straightforward. I will ask *[Inaudible due to mobile phone interference.]*

The Chairperson: OK. In the absence of any other comments, thank you again, Caroline. I cannot stress enough that your paper is very useful. I always like an overview and summary of any paper that I get, and this is very useful.