



Northern Ireland
Assembly

Committee for Education

OFFICIAL REPORT (Hansard)

Education Bill: DE Briefing

21 November 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)

Ms Michaela Boyle

Mr Jonathan Craig

Mrs Brenda Hale

Mr Chris Hazzard

Mr Trevor Lunn

Miss Michelle McIlveen

Mr Sean Rogers

Mr Pat Sheehan

Professor Tony Gallagher

Witnesses:

Mr Chris Stewart

Department of Education

The Chairperson: Members, you have a copy of the Committee Clerk's cover note together with the previous briefing information and correspondence from the Department. You will notice that the tabled items include ministerial correspondence that refers to the public appointments process for the Education and Skills Authority (ESA) board, which is to begin with advertisements in local newspapers from 22 November.

Chris, before you make your presentation, I will just ask you this question: does the Department know the Committee's view on who the other four members should be? The Committee might have decided appoint an Irish-medium representative to the ESA board, but you have scuppered that now. Is this another self-fulfilling prophecy from the Department? Is it a case of, "We will go ahead and do this because we have got the Bill to such a stage"? I have to say that I have a serious concern about this letter from the Minister. It causes my party to question seriously how far we will go in this process. I want to make it very clear that I am not at all happy that we are being told in a letter from the Minister, "The Committee is looking after the Bill. Scrutinise it and do all of that. By the way, I will go ahead and appoint people to the board."

Mr Chris Stewart (Department of Education): Chair, let me reassure you on a number of those points. I would not want the Committee to have the impression that the Department was trying to anticipate the will of either the Committee or the Assembly generally; that is absolutely not the case. However, in establishing a public body, it is normal practice for the responsible Department to do the preparatory work for the appointments. The import of the Minister's letter is that the process to prepare for the appointments will be getting under way. Of course, the appointments cannot be made until or unless the Assembly decides that there will be an ESA with a particular form of membership.

However, to leave enough time for the process to be completed, it is important that we get that under way now. We recognise that the Committee and the Assembly in general may change the Bill and the membership of the board. If that is the case, we will have engaged in some nugatory work that we will have to redo. Chairman, I want to give you an absolute assurance that no appointment will be made to ESA until or unless the Assembly has decided what the membership will be.

The Chairperson: Yet we have a paper here, Chris, that tells us that an organisation — ESA — that did not exist reduced its staff complement by 50%.

Mr Stewart: You have me at a disadvantage there. I am not sure exactly what you are referring to.

The Chairperson: Annex A in the papers, under the heading "Management of ESA", states:

"It is anticipated that there will be 35 senior management posts in ESA by comparison with 74 senior managers in January 2007, a reduction of 52%."

ESA did not exist then.

Mr Stewart: Sorry, Chair; I am with you now. That is a reduction in what will happen. Those posts are not yet established.

The Chairperson: Chris, you are very welcome to the Committee.

Mr Stewart: Thank you, Chair. If members would find it helpful, I will give you a very brief presentation and summarise the overall structure and content of the Bill. Thereafter, I am at the Committee's disposal. We can explore any aspect of the Bill in greater detail if that would be helpful.

Following on from what we discussed at the October meeting, I remind members that the Bill comprises 69 articles and eight schedules and is set out in six Parts. Its purpose is to deliver the heads of agreement that were published by the First Minister and deputy First Minister. It is derived from the previous two Education Bills that were considered in the previous mandate. However, in light of the heads of agreement, some of the provisions are very different, such as those on membership. Some of the provisions are very similar to those that went before, such as those on area planning. Others fall somewhere in between, a good example being the provisions on employment, where the core arrangements are very similar, but, as members know, the proposed role for ESA in improving the employment arrangements is very different from what was proposed previously. It is worth reminding the Committee that the Bill builds on and changes the very extensive body of existing education legislation — the 11 primary orders — and really needs to be read along with those orders.

I turn now to the content of the Bill. Part 1 is all about organisations and functions. Much of the meat of the Bill is in Part 1. The provisions there will establish ESA. They will set out the employment arrangements that will obtain throughout education. They give ESA its core functions. They will dissolve the existing eight organisations and transfer the assets, liabilities and staff of those organisations to ESA. The functions set out in Part 1 could be broadly divided into four. There are those that will transfer from existing organisations with little or no change, such as providing support for youth services and paying capital grants to schools. There are functions that will transfer but also undergo a fairly major transformation, such as the employment provisions. There are entirely new functions, such as area planning. Finally, there is a range of miscellaneous and ancillary functions that you might expect for any organisation like ESA, such as its power to undertake commercial activities.

If Part 1 is all about organisations and functions, Part 2 is all about schools, particularly the management of schools. Part 2 sets out the core provisions on school management, particularly the provisions on schemes of management, which, as members will know, follow very closely the earlier provisions on schemes of employment. In this Part of the Bill, we also set out clearly, for the first time in legislation, a duty on boards of governors to raise standards, which is a very significant provision. We also set out the arrangements for the appointment of governors by ESA. There are some very important provisions on controlled schools. Clause 43 is quite a small clause, and you might miss its importance on a quick read. However, that clause, along with the new definition that it brings and some other changes in the schedule of amendments, fundamentally changes the position of controlled schools in the education system. In essence, they will no longer be controlled in any real sense. Their relationship with ESA will be very similar to that of maintained schools.

Part 3 focuses on inspections. The effect of the provisions varies from Department to Department. Members will be aware that the inspectorate inspects on behalf of the Department of Education (DE), the Department for Employment and Learning (DEL) and the Department of Culture, Arts and Leisure (DCAL). The DEL powers of inspection are unchanged by the Bill; they are the same as those currently used. By contrast, the DCAL powers are significantly reduced. DCAL is content to rely on a general duty on libraries to be open for inspection, as contained in the Libraries Act (Northern Ireland) 2008. The provisions for DE are the same as those in the previous Education Bill. They represent a modest strengthening and clarification of the current powers. I will say in passing that they are much less robust than the similar powers available to Ofsted.

Part 4 deals with the Council for the Curriculum Examinations and Assessment (CCEA). It is really just a re-enactment of the existing provisions for CCEA in the 1998 order. That is necessary because some extensive tidying up of those provisions has been required. That reflects a series of evolutionary small changes in policy but no major policy shifts. The Bill does not, for example, refer to academic or vocational qualifications any longer because those terms are no longer as distinct and separate as they used to be. Instead, we refer to qualifications that are designated either by DE or DEL.

Part 5 deals with child protection. This is a very important and significant set of provisions. Their aim is to clarify responsibility throughout the education system to ensure that there is co-operation between all those with a role to play and that there is an effective means of ensuring that responsibilities are discharged. So there are already duties on boards of governors in the existing legislation on child protection. There will be a very clear duty on ESA, similar duties on other education providers, duties to co-operate and a duty on ESA to ensure that all of these arrangements work properly, with ESA having the power to direct boards of governors. That is the only area of the Bill in which it is proposed that ESA be given the power to direct. As the issue of child protection is thought to be so important, it was thought necessary to give ESA strong powers there.

Part 6 contains miscellaneous and supplementary provisions, which, as the title implies, is simply a range of provisions that does not really fit anywhere else. It includes a number of things that you would expect to find at the end of any Bill, such as the commencement arrangements and the approval arrangements for subordinate powers, which the Committee will look at later.

Last but not least, like most Bills, there is a series of schedules. They set out a range of very technical provisions on matters such as the operation of ESA, the detailed arrangements for the transfer of assets and liabilities and a volume of amendments to and repeals of existing legislation. In fact, the bulk of the Bill is taken up by the schedules, which is necessary to make sure that the Bill fits with the extensive body of existing legislation.

The Chairperson: Thank you, Chris. I have a couple of questions. First, what progress is being made on the implementation of the heads of agreement? In the debate at Second Stage, the Minister said that there were a number of issues that needed "tidying up" — I think that was the phrase he used.

Mr Stewart: Chair, you are referring to a number of clauses. There are a couple of clauses that deal with employment and a couple of very similar clauses that deal with schemes of management. Those emerged as the result of political discussions immediately prior — literally in the minutes before — the Executive meeting at which the Bill was considered. They were drafted in a hurry and, to be candid, it shows. There is political recognition that some work is required on those clauses to ensure that they deliver what has been agreed in the heads of agreement. I am not aware that there has been political agreement on what the necessary changes are, and I certainly have not been asked to prepare any amendments yet. As and when there is political agreement on the changes to be made, we will do some work to produce amendments that the Minister will want to bring to the Executive in due course.

The Chairperson: Who is responsible for bringing forward the changes? Is it the political process or the Department? Clearly, there is a framework and the political structures have said what they believe needs to be in place. Does the Department, at a stage, say what can and cannot be done? Is that not where we are now rather than seeking further clarification from the political processes? In a sense, they have spoken. They said what their agreement is and what they believe needs to be reflected in the Bill. The issue now rests with the Department.

Mr Stewart: I understand that there are to be further political discussions on what changes might be made. The vehicle for making those changes could take a number of forms. Individual Committee

members could table amendments at Consideration Stage or the Committee may wish to propose amendments collectively. As I said, the most likely vehicle is that the Minister will wish to bring some amendments to the Executive for agreement there. He would then table those at Consideration Stage.

The Chairperson: In the Minister's letter of 19 November, what is the Department's definition of "representative of the community"? How does it interpret that? Are we talking about the education community or the political community? What community is defined by that? Is it Northern Ireland plc?

Mr Stewart: There is no hard and fast definition, but it would be the broader community that you referred to — the community of Northern Ireland. That formulation is quite frequently used in legislation, but, to my knowledge, it is not formally defined anywhere. It is one of those concepts that you can recognise more in the breach than in the observance. If, for example, all four community members were either all male or all female, clearly the membership would not be representative of the community. If they all came from one particular community background or one particular geographical area in Northern Ireland, it is unlikely that the membership would satisfy that test. We recognise that with the total of that part of the membership being as low as four, it is actually quite difficult to get the degree of representation that would satisfy all stakeholders.

The Chairperson: It will be very interesting to see what happens given the track record of the Department in public appointments.

An issue that came up in previous discussions about the Northern Ireland literacy assessment and the Northern Ireland numeracy assessment and all that has been going on with computer-based assessment was the disconnect between schools and the Department, and the Department not listening to what schools were saying. What assessment, consultation, conversations or contact has the Department had with schools on the purpose of the Bill? According to the Department, there are:

"many excellent schools, but also many that are educationally, financially, or physically not viable or sustainable".

It also refers to:

"system-wide, a level of performance that is falling behind".

How does the Department propose to ask schools about this legislation given that they will be the ones on which it will directly impact?

Mr Stewart: Chair, there has not been a specific consultation process with schools on the drafting of this Bill, and there is not one planned. The timescale set out in the heads of agreement and the Executive agreement simply did not allow for that. However, the Executive were able to take that decision, mindful of the very extensive consultation in the past, both in the development of the underlying policy reflected in the Bill and in the drafting of the previous Bills, large sections of which, as I said, have been carried forward into the current Bill.

The Chairperson: How do you see that being done? If you take the area plans, there was a decision made by the boards, to a lesser or greater degree, depending on the board. They presented their ideas for the area plans and what they thought should or could happen in different areas. They put those ideas out, and there have been 47,000 responses, the greatest number of which probably came from my board area, the North Eastern Education and Library Board. What mechanism would be used to test the views of the public on the Bill given that we are at Committee Stage? Is there still a mechanism available to the Executive to put the Bill out to public consultation?

Mr Stewart: Technically, the answer is yes. If the Executive decided that, for example, between the end of Committee Stage and the beginning of Consideration Stage, they wished to allow for a period of public consultation, that could be achieved. That would, of course, have very serious implications for the timescale set out in the Programme for Government.

The Chairperson: It would not be the first deadline that we missed.

Mr Stewart: Indeed not.

The Chairperson: So that would not really be a big issue. It could be done.

Mr Stewart: Yes, it could be done. You will recall from the previous Bill that there was a rather long gap between the end of Committee Stage and what we had hoped would be Consideration Stage. An election came along before the Consideration Stage, and the Bill fell.

The Chairperson: Chris, will you clarify for me how many organisations will represent the maintained sector? I get confused. The Council for Catholic Maintained Schools (CCMS) will disappear, and another body, the commission, has been set up. My understanding is that the commission receives no funding from the Department. Your paper refers to a new body, and this is the first time that I have seen it mentioned, called the Trustee Support Body (TSB). So we are bringing back the TSB — many in Northern Ireland would be glad of that if it was a banking reference. Will that be the body? There is an inventive way in which that group of people normally operate. Will the TSB be made up of the same people who are in the commission?

Mr Stewart: No, that is unlikely. It is probably best to think of the commission, and this is not the perfect comparison, as analogous to the Transferors' Representative Council. The intention is that the Trustee Support Body will be the sectoral body for Catholic education. Your initial question asked how many bodies there will be for the maintained sector. Maintained is, of course, a management type. We all, including myself, quite often use it as a euphemism for the Catholic sector, but there is more than one maintained sector. There will be a sectoral body for the maintained and voluntary grammar Catholic sector, and there will be a sectoral body for the Irish-medium sector, because Irish-medium schools are maintained schools. So, the literal answer to your question is two, but the intention is that the trustee support body will be a single recognised sectoral body for Catholic schools.

The Chairperson: What consideration could be given to a secondary body? One of the issues that a number of people raised about voluntary grammars concerned whether the Governing Bodies Association (GBA), for example, would be recognised as a sectoral body for that organisation. We should bear in mind that the GBA does not always speak unanimously for the voluntary grammar sector, but it is an organisation that exists. What is the possibility of the Department's considering making it another body that is aligned with those that are set out in your briefing paper to us?

Mr Stewart: It is possible, Chairman. That would be a policy decision for the Minister. The Bill does not specify the number of sectoral bodies or the identity of any of the sectoral bodies; it simply makes provision for them to be recognised. Therefore, it is technically open for any body to approach the Department and for the Department to decide to recognise it as a sectoral body. As I said, that is ultimately a policy decision for the Minister. To my recollection, the heads of agreement do not mention a sectoral body for the voluntary grammar sector.

The Chairperson: The Bill could be amended to reflect that.

Mr Stewart: The Bill could be amended in any number of ways. If the Assembly decided to do that, it would then be possible to specify the sectoral bodies.

Mr Kinahan: I have a few points to raise. If I may, I will raise two or three now and then let everyone else and the Chair come back in. If, at the end, there are one or two points that someone else has not covered, I will come back in.

The first point is on the advertising of posts. Will that be done in a broad enough way? We just touched on voluntary grammars. If another body were added to the Bill, you would have done the interview already. It would be sensible to do it all beforehand, but if you do it in an open enough way, they could be included. I am sure that the intention of some of us is to try to get that in the Bill. Therefore, will the advertising be done in such a way that means that they will be included?

The next point is linked to that. If that is not in the Bill, who is intended to speak for the voluntary grammars in the controlled sector? You very clearly said that CCMS, or the new body that replaces it, will speak for the Catholic voluntary grammars. We all know that a gap exists. So, who will speak for those who are in that gap?

You said that child protection is the only area for which the Bill would increase in powers and that that is the only place that ESA would be able to direct governance. However, if you read the Bill in a different way and in different places, you will see that there are many other routes into how

governance is directed. I would like it confirmed that that is the only matter on which the Bill will give ESA powers to direct governance. The others, I assume, would be the Department. When talking of powers, you also touched on the fact that ESA will be similar to Ofsted. However, as I understand it, Ofsted is independent. That is what we do not have here.

I will stop there, but I have one or two other points for later.

Mr Stewart: On the first part of your question, I do not think that there is any intention at this stage to advertise or call for applications. I think that we are close enough to all the major stakeholders to know who would be interested in playing the role of sectoral body. We could be wrong, and other groupings could come forward, but I think that we are sufficiently close to stakeholders and sufficiently aware of their views for the Minister to make an informed decision about which sectoral bodies he wishes to recognise. I do not think that the GBA and others will be shy of making representations on that score if they wish to.

You asked about controlled grammar schools; grammar schools in the controlled sector — I think that that is what you meant. The aim is that if the controlled sectoral body is to play the role that everyone thinks that it needs to play and to be effective, it needs to be able to represent all the schools in that sector and to demonstrate that it does so. That includes the controlled grammar schools. We recognise, and we have said from the outset, that that is a very difficult challenge for the working group and, in due course, for the body. It is a very large and very diverse sector. It is a sector that simply does not have the tradition of operating or having someone operate on its behalf in this particular way. That is a real challenge. Although we do not regard any school or any group of schools in the controlled sector as any more important than any other group, the controlled grammars have an important and leading role to play in that sector. We certainly want them to have the trust and confidence in the sectoral body's ability to speak on their behalf, just as it could for all the other schools in that sector.

Forgive me if the presentation was maybe not as clear as it might have been on ESA's powers. You are quite right that the clause that I referred to is not the only one that says that ESA will interface with boards of governors. However, it is the only instance where we propose to give ESA the very strong power to direct. Members from the Committee's previous incarnation will have heard me speak many times about article 101 of the 1986 order, which covers the Department's power to direct. It is very powerful. It allows us to direct schools and educational organisations to do something, to stop doing something, to do something in a particular way or to not do it in a particular way. Those directions are enforceable in the High Court, so it is a very significant power. It is not one that we would use lightly, and it is certainly not one that we would hand out lightly to ESA. So, child protection is the only area where we propose giving ESA a power of the strength of the power to direct.

Finally, you asked about Ofsted's powers and independence. If you compare the powers that are proposed for the inspectorate for the inspection of schools with Ofsted's, you will see that our powers are very modest indeed. For example, Ofsted has the legal right of entry, which the police could enforce on schools. We are not proposing that for ESA. Ofsted's powers are very much more robust indeed. If I recall the legislation correctly, it is a criminal offence in England not to co-operate with an inspection. Again, we are not proposing that here. You are quite right to say that Ofsted is independent and that the position of the inspectorate here is different.

Chair, if I may, let me describe that very carefully to ensure that I do not mislead members in any way on this. The starting point is — this is extremely important — that individual inspectors and teams of inspectors inspect independently. They decide which schools to inspect, when to inspect them, what they will inspect when they are there, and they give their professional judgement in their report, independently of me or the Minister or anyone else. In rightly emphasising that operational autonomy of inspectors, we sometimes risk confusing the position and talking about the inspectorate as though it were an independent body. It is not. It is part of the Department of Education, and the existing education provisions set that out very clearly. It is article 102 of the 1986 order, and the heading of that article talks about inspections by the Department. So, the Education and Training Inspectorate is the Department; it is the Department inspecting. Successive Ministers have recognised and upheld the importance, as I say, of individual inspectors' being absolutely able to exercise their professional judgement without interference from anywhere.

Mr Kinahan: If you are advertising, can we guarantee that the scope of the advertisement for people to call back in will allow voluntary grammars, meaning a body such as the GBA, to apply and that it will not be written in such a way to count them out?

Mr Stewart: Perhaps the easiest way to give you assurance on that is to say that, on foot of today's meeting, I will convey the view that you expressed back to the Minister.

The Chairperson: Chris, I want you to clarify something for me before we go a bit further. We have had correspondence from the departmental Assembly liaison officer about sectoral support bodies. The correspondence states:

"The Heads of Agreement of 16 November, 2011 and Policy Memorandum of 14 December, 2011 have established that there shall be a sectoral support body for each of the following sectors: Catholic schools, Controlled schools, Integrated schools, and Irish-medium schools."

There is no mention of that in the heads of agreement. The heads of agreement are very clear:

"Sectoral support bodies will be established for the controlled and maintained sector."

It does not mention the others.

Mr Stewart: The other two already exist.

The Chairperson: Yes, but so does the GBA.

Mr Stewart: It does, but it is not funded by the Department for anything that is akin to a sectoral support role.

The Chairperson: I wanted to clarify that because it was not raised in the heads of agreement.

Mr Stewart: Chair, you are absolutely right. Again, apologies if the letter is slightly misleading about that. You are quite right to say that the heads of agreement mentioned only two sectoral bodies: one for the controlled sector and one for the Catholic sector. The policy memorandum that the Executive agreed would have referred to all four.

Mr Lunn: Thanks again, Chris. I want to run you over ESA's membership. From memory, the previous time, we started off with seven members, and there was a whole hue and cry about that. I think that we finished up with 13 as a proposition. The brief states that the membership will include eight political representatives. The previous time, that meant local councillors. Does it still mean local councillors?

Mr Stewart: There is no restriction. The political members could be anyone who the party nominating officers choose, so they could be MLAs or councillors. They could be holders of any political office or of none. No limitation is drawn in the Bill.

Mr Lunn: I am glad to see that, but it is a bit of an about-face. The previous time, the Minister was set against MLAs being able to join the ESA board for what I would have thought were fairly obvious reasons.

Mr Stewart: The provisions have certainly moved a very long way. You may recall, Trevor, as will Michelle, that the original proposal was for a very small board of seven or eight members. You might call that a technocratic board — members might call it a bureaucratic board — with no political representation whatsoever. We then moved to having some political representation and then to majority political representation in the form of district councillors. We now have the very different proposals that are captured in the Bill, all of which have come from the political process and from politicians telling officials what should be in the Bill.

Mr Lunn: It is really nice that the Department listens. We are now up to a membership of 20. I know that it is difficult to compartmentalise all the sectors. The political representatives, trustee members and transferor members will probably broadly cover most of the sectors, but others probably share my concern about the four "other" members of the board. I am sure that the Northern Ireland Council for Integrated Education will be pleased to be a recognised sectoral body with a bit of funding, but it would much rather have a seat on the board. I am sure that that is also the case with the Irish-medium sector. They are recognised sectors in the education system that stand apart. It is not the same as

voluntary grammar schools, which cross over sectors. Eventually, there will be an argument about this at Consideration Stage. What is behind the Minister's thinking that those two important sectors will have to rely on being one of four "other" members who are supposed to be representative of the whole community?

Mr Stewart: Trevor, forgive me if the answer that I give you sounds evasive; it is not intended to be. This is purely a policy decision. The Minister and the Executive took that decision about the sectors that should be represented as of right on the ESA board and those that should not. I am afraid that there is nothing further that I can say to add to that or to illustrate why that particular view was taken. It is the view and the conclusion that the Executive came to.

Mr Lunn: I am sure that, since he listened about the size of the board, he will have a completely open mind about its make-up.

I am not being facetious here. You said that article 101 is an extremely powerful tool. Theoretically, could it be used to direct a school to stop academic testing?

Mr Stewart: No is the short answer, because that would be unlawful. The underpinning restriction in article 101 is that we cannot use it to break the law. The law in the existing legislation — indeed, it is replicated in the Bill — very clearly states that it is lawful for boards of governors of schools to employ academic selection in their post-primary selection criteria. Until it is the Assembly's will to change that, that will remain lawful and article 101 cannot be used against it.

Mr Lunn: Could it be changed at Consideration Stage?

Mr Stewart: The particular provisions in the Bill could be changed at Consideration Stage. If you are asking whether someone could table an amendment to insert a new provision in the Bill to change the general position, in law, on academic selection, I can tell you that we would need advice from the Speaker. However, I expect that he would rule it out as being beyond the core principles of the Bill. So, the Assembly could do it, but it would have to be in a different piece of legislation.

Mr Lunn: It is a pretty academic argument anyway. Someone could throw in a petition of concern, and that would be the end of it.

The Chairperson: It is an awful thing having all these restrictions and political processes.

Let me just clarify something Chris. The composition of the board was not an issue of a policy decision but one that reflected the transferors' legal position. That was the whole issue that we had in the previous Committee. ESA's membership is a reflection, on a smaller scale, of the formula that is used in the composition of education and library boards. That was the reason for it; it was not for anything other than that. How many times were we told what we could and could not do? We received different legal opinions and got to the point where we were told that it could not be done. You will remember all the pain that there was going through that.

Mr Stewart: Yes, Chair. I bear the scars from that, and I always will. You are absolutely right. The composition of education and library boards is set out in the 1986 order. That, of course, predates the existence of coherent integrated and Irish-medium sectors in the way that we know them now.

You are absolutely right. Many times I came before the Committee and advised what the lawyers told us that we could and could not do. Perhaps it is best if I sum that up by saying that the legal advice evolved in a helpful direction and allowed us to give effect to the Executive's policy desire on membership. The Executive have not, at any stage, indicated that they wish to reserve seats on ESA as of right for any sector other than the controlled sector and the Catholic sector.

The Chairperson: We have received a newsletter and update from the controlled sector body. What is the Department's view of how that work is progressing? That sector has not had the advantage of the structural position or the financial assistance that CCMS has had since 1989.

Mr Stewart: I am not directly involved in that work, and, perhaps, at a future meeting, my colleague Paul Price might come along to brief you on that in more detail. My understanding is that that work is progressing well, but that it is still at an early stage. The working group has met and has set down some initial thoughts on what the body's scope and focus might be. We have seen those, and, by and

large, they look very positive. It is clear that the working group is taking its role very seriously and that it is working hard to bring forward a credible proposal for an effective body that would have a real focus on raising standards in the controlled sector. That is very welcome.

There is a long way to go. As I said in response to Danny's earlier question, it is one thing to get the technical aspects of a body in place; anyone can set down articles of association or a memorandum of understanding. However, the real challenge will be for those involved to build the trust and confidence that they need across the controlled sector so that the principals and boards of governors in every controlled school are happy to say that that body speaks for them and that they hope that the Department is listening because that body speaks for them. As we said before, we stand ready to give the group any assistance that it requires, including financial, to get that done.

The Chairperson: Obviously, the approach that the Department has taken in regard to the four members of the board is slightly different in that the letter that the Minister sent us today says that it is going to go ahead and advertise and then establish the board. However, the board for the controlled sector body was only established in shadow form, and my understanding is that "the body" will not be up and running until the Bill is passed.

Mr Stewart: That is not necessarily the case, Chair, and we are certainly not placing any restriction on it in that regard. We do not create or establish that non-statutory body through any sort of formal process. The Department is, at best, the midwife for the controlled sector body and will help it come into the world. The earlier it comes into the world, the better. The earlier it starts the process of building trust and confidence across that very large sector, the better the outcome will be for all.

The Chairperson: It is proposed to give ESA powers over area planning. An area plan is a document that contains a map of the area to which it applies. If you look at the managerial proposals that the Department has sent us, which outline the number of directors that Gavin Boyd is going to have under him and the number of subset managers that are going to be under them, you will see that ESA will end up having more staff than the five education and library boards. I will set that aside and come back to it at some stage.

Who will define an area plan? We have five boards, and we have plans out at the minute. The boards break into geographical areas, but when you have one organisation responsible for area-planning, will the area plans be coterminous with the new electoral wards proposed under the review of public administration? If so, we will have 11 area-plan areas. How will we marry those with what we are doing with the area plans, which are cross-boundary and cross-council area and, in some cases, cross-board?

Mr Stewart: The short answer is that that is all up for grabs. The current area-planning exercise is based on the board areas as a matter of pragmatics. That is the easiest way to approach that exercise in the time available for its completion while recognising that, at present, we still have five separate education and library boards.

The Bill is deliberately not specific about areas. It will be for ESA to propose an area plan for a particular area, however defined, but, ultimately, the decision would be made by the Minister because it is the Minister who signs off on area plans. The reason for not specifying it in the Bill was that, genuinely, we wanted to leave space to look ahead to see the best and most effective way of doing area planning.

You have drawn attention to the tensions that there are between a plan for the Belfast area and ones for, say, the South Eastern Board area and the North Eastern Board area. However, we know, particularly at post-primary level, that significant numbers of pupils who live outside the Belfast Board area travel into it to receive their education. So, there is a difficulty if you draw the area plan around that.

On the other hand, given the importance of ensuring community buy-in and democratic accountability for area plans, we have to give some cognisance to current and future geopolitical boundaries. However, there is also scope for a very sophisticated approach to area planning, analogous to what are commonly referred to as travel-to-work areas, which my colleagues in the Department of Enterprise, Trade and Investment would be very familiar with. So, the number-crunchers could do very sophisticated modelling on travel-to-education areas. However, those areas may not match geopolitical boundaries, so you may have a difficulty or a mismatch between a plan that is technically very rational but does not fit with local democratic accountability. So, the Bill is open. It allows us to

do it in any or all of those ways depending on what is thought to be best in order to meet the needs of education.

The Chairperson: Or, it may be that the argument used by the school is that it is the only provider of that type in the area. In my constituency, people from Larne come to an integrated post-primary school in Ballymena because they say that it is the nearest post-primary provision that they can access. The same thing will apply.

Mr Stewart: That is right, and I think that —

The Chairperson: So, a statutory duty will be placed on the Department to facilitate that particular sector.

Mr Stewart: That is a very significant factor, Chair; you are absolutely right. We are already saying in the current area-planning exercise that you need to consider a very different range of factors. For example, there are different factors to consider when you are looking at primary provision and post-primary provision. Different sectors and different management types have other factors as well.

The Irish-medium sector would, I think, rightly point out that the catchment areas for some of its schools tend to be much larger than those in other sectors simply because there are fewer of them. So, in order to access one, some pupils and parents have to travel greater distances. The same might be true in the integrated sector, to a slightly lesser extent. In some of the other sectors, in which the school types are more prevalent, the same sorts of issues simply do not emerge. Again, this might sound as though we are ducking the issue, but that is not the case.

Taking all those things on board, we thought that it was important to have a set of provisions on area planning that are flexible enough to allow ESA to address the very difficult task of picking through all those issues and coming up with a coherent and effective approach to area planning. There is no easy solution or easy and obvious approach to area planning. It will require some very careful thought, building on the extensive work that has already been done on the current first round of area planning. The Minister has always said that area planning is a process, not a single event. It is a process that will evolve in coming years.

The Chairperson: I notice that the Bill states that ESA can give direction only in relation to child protection, but the power of direction is also given to the Department. As regards area planning, it states:

"ESA may, and shall if the Department so directs".

So, we set up this body and tell it, "By the way, you are looking after area planning. However, if we want, we can direct you to prepare a plan for an area." What is the point? What circumstances do you envisage in which the Department would want to meddle in area planning?

Mr Stewart: I would not describe the Department's role as meddling in any regard.

The Chairperson: That was a biased comment from me. I am happy to see it as meddling.

Mr Stewart: Constructive input may be another way of describing it. *[Laughter.]* My point is not intended to be facetious. It is not meddling because, ultimately, the decisions on area plans and on individual development proposals will continue to rest, as they do today, with the Minister of the day. So, in that sense, it is not meddling. It is ensuring that legislation gives the Minister of the day the power to, if necessary, enforce his or her decisions on ESA, which is, after all, as the heads of agreement said, a delivery body. It is for the Minister of the day to set the policy.

Mr Lunn: My point is loosely around the area plan and the travel-to-school aspect of it. I recently dealt with a situation in which a mother wanted to send her daughter to a particular maintained school, which is only a mile and a half from her home but, in the end, she had to either send her to a different maintained school, which is about 10 miles away, or to the local controlled school. The reason why she could not go to the first school was because it was in a different parish. Is there anything in the Bill that might prohibit Catholic schools from giving priority to people who live in the same parish as the school, as they seem to do at the moment?

Mr Stewart: The short answer is that there is nothing in the Bill to prevent that, Trevor. However, I should give the caveat that I do not consider myself to be an expert on the arrangements and provisions around admissions criteria. Again, if there is a detailed question there, I can take it back to colleagues in the Department and bring you a more authoritative answer. I just do not know in detail how those particular arrangements work.

Mr Lunn: Well, neither do I, obviously. However, in that instance, I was quite surprised. The child could almost have walked to the school, but it was across a boundary.

Mr Stewart: The answer to your question is that there is nothing in the Bill that would affect that.

Mr Kinahan: Sorry, Chris. I have more questions. I would like clarification on the tribunal, which we have not really touched upon today. Page 6 states:

"Existing legislation already contains provision for dispute resolution".

It states, however, that it is not powerful enough. Have you had any scope or idea about the guidelines or regulations that will govern tribunals and how broad they will be? Where will that lie within existing legislation and/or the power of the Assembly? I would normally expect that sort of power to lie with the Assembly rather than with the First Minister and the deputy First Minister. That is one question: can you clarify how that all fits together?

My other question relates to minor issues. We never seem to touch on them. Can you give a little bit of clarification on the future of youth provision in line with Priorities for Youth? I know that we will all be fighting every other corner but slightly forgetting that it exists. I would also like a little bit more information on what is meant by "commercial activity".

Mr Stewart: Going back to the first of those questions, Danny, as you know, the Bill provides for the regulations on the tribunal to be made by the Office of the First Minister and deputy First Minister (OFMDFM) and not by the Department of Education. We have had some initial discussions with colleagues in OFMDFM to explore with them what the scope of the regulations, the form of the tribunal, and the options for that might be. I think that it is fair to say that it has not got very far yet. One of the major impediments to that is the matter that the Chair referred to earlier. The clauses in the Bill that are recognised as needing a bit of work are actually very significant with regard to that. The intention is, in some shape or form, to give boards of governors recourse to that tribunal. However, until those clauses are amended and their effect is clear, it is very difficult — indeed, well nigh impossible — for colleagues in OFMDFM to make any progress on the draft regulations that would establish the tribunal. That is something that, the longer it goes on, will be of growing concern. The earlier that we make progress on that, the better.

With regard to your point about, perhaps, expecting the Assembly to play a particular role, rather than the First Minister and the deputy First Minister, again, I am afraid that I must give the official's cop-out answer: that is a political decision, which is made by the Executive and the parties. It is not one for me.

With regard to youth, let me give you what I hope is a much more helpful answer, which is that I think that there is a good-news story here. The provisions in the Bill place youth services on a much firmer footing than ever. Wherever possible, we have tried to construct provisions on youth services in a similar way to the provisions on schools, recognising that the Youth Service plays an incredibly important role alongside formal education, particularly for reaching those children and young people who are at risk of falling outside or being excluded from the formal education system. That is why we thought that it was important that, while not taking away from the essentially voluntary nature of much of the youth sector — that is not to decry the contribution that statutory youth services make, but the contribution of the inherent flexibility and informal nature of the youth sector is a very precious thing with which we should not interfere — at the same time, we need to give it its place in the sun. That is what we have tried to do in the Bill, particularly with some of the earlier provisions in clause 2.

Mr Kinahan: I asked about commercial activity.

Mr Stewart: Sorry. If I may, Chair, I would like to come back on that. The short answer is that there is nothing to fear in that clause. As you will have seen, it is heavily caveated. ESA would not have a free hand. If the Department felt that it was proposing to do something commercially that would interfere with its core functions, we could stop it from so doing. It is actually quite a common provision

that you would see inserted in most Bills. For example, there is a similar power for the Libraries Authority in the Libraries Act. I am not sure whether it has ever been extensively used. We do not have anything specific in mind at present. I do not think that Gavin does either with regard to what ESA might do. The provision might have been more significant had the CCEA functions gone to ESA, when there might have been more scope for commercial exploitation of some of the things that ESA would do, but which, in a sense, CCEA will continue to do.

Mr Kinahan: Thank you.

The Chairperson: Thanks, Chris. I have no doubt that when we start this, you will be back on numerous occasions.

Mr Stewart: You will be sick of the sight of me, Chair.

The Chairperson: Thank you very much.