



Northern Ireland
Assembly

Committee for Education

OFFICIAL REPORT (Hansard)

Education Bill: Informal Clause-by-Clause
Scrutiny

6 February 2013

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

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

Witnesses:

Mr Chris Stewart Department of Education

The Chairperson: Before we go to clause 1, Chris, do you want to comment on anything that you heard from the Youth Forum this morning? We might try to keep that evidence in mind.

Mr Chris Stewart (Department of Education): I thought that you might ask me about clause 28. The points and arguments were very well put, and, from the Department's perspective, our starting point is the same as that of the Youth Forum. We want to see the effective, not tokenistic, involvement of children and young people in the area planning process. However, all the discussion on the clause focused on only half the requirement, which was consultation. The wording of the clause, "consult and involve", reflects a strand of the argument that the Youth Forum makes. The intention is not simply to present any group of people with a decision at, or near the end of, a process, and say "What do you think about that?" The intention is that they should be involved from the outset, sitting around the table and making the area planning decisions. The reason given by the Department was accurately cited: what is the best way of doing that? Should it be a power or should it be duty? A "duty to consult" children and young people would be relatively straightforward, and there are many ways of doing that. A "duty to consult and involve" children and young people raises the issue of practicality. How do you do that? Which children and young people, and how should they be chosen?

In thinking about that and about how we might involve, as well as consult, various interests around the area planning table, it is the issue of practicality that makes the difference between those listed under the "duty" part of the clause and those listed under the "power" part of the clause. However, the intention is absolutely what the Youth Forum has argued for, which is the active involvement of young people around the area planning table.

The Chairperson: Thank you, Chris.

Let us go straight to clause 1, which establishes the name of the Education and Skills Authority (ESA) and applies schedule 1, which we will deal with later. For now, let us just deal with clause 1. As members can see from the table, a number of stakeholders wrote to the Committee, suggesting, for various reasons, that ESA be renamed. One stakeholder believed that the acronym might be confused with the European Space Agency. I think that that might be very appropriate. *[Laughter.]* Another said that ESA will have no remit to promote skills and should, therefore, be renamed. The Department has provided a response, which is included in the table. Does the Department have anything to add?

Mr Stewart: I assure you that neither clause 1, nor even clause 22, empowers ESA to engage in space flight. We would take a very dim view of that. I do not think that there is much real chance of ESA being confused with the European Space Agency. The name has been in circulation for some time now and is well understood across the education sector. When we say "ESA", people know what we are talking about.

I think that we have made the Department's position on skills known. Skills are not solely the remit of our colleagues in the Department for Employment and Learning (DEL). Skills are an important part of the curriculum delivered in schools. Boards of governors have an interest in ensuring that the curriculum is delivered effectively, and teachers have an interest in ensuring that pupils who follow skills-based courses enjoy success. I think that that could and should be reflected in ESA's duties and in its name. It reflects the Department's approach to the curriculum and what we mean by educational attainment, and it has been part of the landscape for quite some time. To change it now would cause confusion and call into question where we see the skills part of the agenda sitting in the schools-based curriculum.

The Chairperson: Do members have any comments?

Mr Lunn: I will comment on the acronym. There are dozens of examples of duplicated acronyms for different organisations. For a start, I can think of the Financial Services Authority and the Food Standards Agency. I do not think that anybody ever confused those. The Prison Officers' Association and price on application is another example. Give me half an hour, and I will give you 20.

Mr Stewart: Chair, I am told that, phonetically, ESA is also Irish for Jesus.

The Chairperson: That is one that we did not know. That gives it a completely different perspective, although I do not think that conferring biblical powers on ESA would be wise.

Mr Lunn: We need to hear from the Irish-medium sector. *[Laughter.]*

The Chairperson: There are proposed amendments, but are members content to informally accept clause 1 as it is?

Members indicated assent.

The Chairperson: Clause 2 places a duty on ESA to contribute to the development of children, young people and the community at large. ESA must co-ordinate the planning and delivery of schools' educational services and youth services, with a view to promoting the achievement of high standards of educational attainment. ESA must also encourage and facilitate the development of education in an Irish-speaking school.

I think that it is useful to group some of the proposed amendments, so we will consider the first four. I am trying to correlate what I have in my notes with what you have. All these proposed amendments refer to clause 2(2), which sets out ESA's general duties.

Some stakeholders wanted ESA to contribute to things other than the spiritual, moral, cultural, social, intellectual and physical development of children and young people.

The first amendment would require ESA to promote shared education; the second would remove the reference to spiritual development from the clause; the third would require a level of curricular support

to accompany the commitment to promote spiritual development; and the fourth suggests that linguistic development be added to the list of what ESA is to promote.

Chris, do you want to comment?

Mr Stewart: On the first amendment, which is perhaps the one that requires the most explanation, we understand the argument put forward. The Minister has said that he has an open mind on that and is prepared to consider it further.

As I said in previous evidence sessions, it is important to point out that this is not a rights-based clause. There are those who argue that there ought to be an equivalent for integrated education in order to provide equal rights for that sector. This is not a rights-based provision; it is a needs-based provision, and it is a very practical one. It recognises that there are things that ESA needs to do for all schools, but needs to do them in a particular way for Irish-medium schools because they have some particular needs — I have quoted the example of curriculum support before. As I said, the Minister is open-minded. If an argument can be put to him for why integrated schools have particular needs that would require ESA to deliver functions in a particular way, he would be willing to consider a similar duty. However, he wants to hear a reasoned argument for why there would be particular needs.

Mr Kinahan: Given what we heard last week about the Treacy judgement, can we be sure that we will not find "it is the duty of" thrown back at us in 20 years' time?

Mr Stewart: There is always that possibility, Danny. It is a duty, and if there similar duties in relation to integrated education, the question for the Department and for ESA would be whether ESA was doing all that it would be reasonably expected to do to discharge that duty. It would be open to representatives of the sector or any other interested party to seek a judicial review to challenge what ESA was doing if they thought that that was not the case. Alternatively, a direct challenge could be made to the Department. One can never absolutely rule that out. However, in couching it in terms of being a "duty", it would be the Department's responsibility to ensure that ESA was aware of the implications of that and that it keeps what it does under review to ensure that it satisfies the requirements of the duty.

Mr Lunn: I am looking at the four words "to promote shared education" in the proposed amendment. As far as I remember, the duties for the Irish-medium and integrated sectors do not use the word "promote"; they use the words "encourage" and "facilitate". A couple of years ago, the Assembly agreed that it should try to promote integrated education, but that is not binding on the Minister.

Mr Stewart: There is no duty to promote any form of education — integrated, Irish medium or otherwise. Trevor is right in saying that the two duties are to encourage and facilitate. If you are contemplating a duty to promote, the issue to be considered is that, by definition, promote involves giving one or other form of education precedence over others, which raises issues of parental preference.

Mr Lunn: Yes, we discussed the meaning of "promote" a few weeks ago, and it is to raise above others.

The Chairperson: A number of issues arise from that, all of which go back to the 1989 order that gave two sectors particular positions. Some would argue that their positions were privileged; others that it was a rebalancing or redefining of the Department's actions or attitudes towards those sectors. If the 1989 order is to stay as it is and not be repealed, why is it necessary to have only one of the two sectors named in that order specifically named in an additional provision in the Bill? Clause 2(5), for example, mentions only the Irish-medium element; it makes no reference to the integrated sector. So is there any need for that to be there at all?

Mr Stewart: One of the two existing duties is in the 1989 order, and the other is in the 1998 order, both of which remain in situ. Neither is being repealed. Clause 2(5) is not a restatement of the existing duty on the Department. It follows on from that and is a proposed duty on ESA to discharge functions in a particular way because, as I said, the Minister is satisfied that there is a particular need in Irish-medium education that requires that. He has not ruled out the possibility of a similar duty in relation to integrated education, but he remains to be convinced of the need for it. The two fundamental duties that apply to the Department remain as they are in current statute.

The Chairperson: Why would the Department argue that there is a need for one and not the other?

Mr Stewart: The argument is that the requirements of Irish-language teaching and learning differ. As I said, curriculum support is the example quoted most often to me. For teaching to be effective, I am told that it is not just a matter of translating into Irish the curriculum support materials that have been prepared in English. The differences between Irish and English are so profound that bespoke curriculum support materials must be prepared in the Irish language for teaching in Irish. There is not simply a read-across to any English-medium school. Of course, there could be in other areas, and the Deputy Chair mentioned transport. If an argument can be made about the transport needs of the integrated sector, the Minister is absolutely prepared to consider it.

Mr Lunn: The transport needs of the Irish-medium sector?

Mr Stewart: The Irish-medium sector, as we have seen from the Treacy judgement, clearly has particular transport needs. A similar argument could be made for the integrated sector because the catchment areas of integrated schools can be considerably larger than those of other types of schools.

Mr Lunn: In last week's discussion, the point was made that the integrated sector already has some special transport arrangements.

Mr Stewart: That would seem, then, to negate the argument for a clause similar to clause 2(5).

The Chairperson: I want to ask you about clause 2(2)(c), which goes into the field of area planning, which is dealt with in clause 24. Clause 2 deals with the functions and general duty of ESA. Clause 2(2)(c) states that it is the duty of ESA:

"to promote, and co-ordinate the planning of, the effective provision of schools, educational services and youth services".

Given that ESA is the owner of the controlled sector — we will come to the issue of sectoral bodies and sectoral support later on, which is, you could argue, predominantly about ownership — how can it carry out its functions under this proposal for the controlled sector in such a way that it is seen to be reflective and impartial and genuinely doing the job in the best interests of that sector?

Over the past number of months, we have heard a number of criticisms of the current operations and practices of the boards. When it came to area planning, every organisation was involved in the area plan on the basis of owning their schools. They had their sectoral body there, but the controlled schools had board officers. The schools particularly affected, where board officers and the board have come up with a scheme that says that a school will change radically, close or whatever, are not convinced. Time and time again, we have heard that the boards have not represented their views. Clearly, that issue has to be addressed.

Mr Stewart: There is an issue there, and a number of facets of the Bill are designed to deal with that. Whether they go far enough is a matter on which the Committee will want to form a view. Many times down the years, we have heard the argument put, in contrasting ways, that ESA's ownership of controlled schools would give those schools some sort of unfair advantage or some sort of unfair disadvantage. We have heard both arguments put fairly vociferously to the Committee.

There are two aspects in the Bill that address that and one that is missing, which I will come back to. The most important of the two aspects is in clause 2(3), where there is a specific duty on ESA not to treat the schools that it owns any differently from any other schools.

Alongside that, the changes to controlled schools are very important. Controlled schools today are those that are owned and managed by education and library boards. You are absolutely right, Chairperson, that, around the table today, board officers exercise two functions: first, as the education and library board, which is the education authority; and, secondly, as the representatives of the owners and managers of schools. That puts controlled schools in a difficult and, sometimes, invidious position.

The changes in the Bill mean that controlled schools will be in a very different position. They will still be owned by ESA, but they will be managed by their board of governors. In every respect other than ownership, their relationship with ESA will be the same as that which maintained schools have. Those

two elements — the statutory duty on ESA to be impartial and the fundamentally different relationship that it will have with controlled schools — will place the controlled sector and controlled schools in a different position and so deal with the issues of concern raised.

What is not in the Bill — you will not remember it with any fondness, Chairperson — is the proposal made in the previous mandate for a holding body for controlled schools. That dealt with the residual issue of ownership and would have separated the ownership of controlled schools from ESA. That did not find favour with anyone, which is why it is not reflected in the Bill.

The Chairperson: Let us work that out in practice. An area plan is being proposed and promoted by ESA, and there is a duty on ESA to consult. ESA decides that it will consult area A, in which there are two controlled schools, two maintained schools and one integrated school. Who will be at the table? Will the board of governors of the two controlled schools and ESA represent the controlled sector?

Mr Stewart: I suspect that all those parties will be there and that the areas for area planning will be considerably bigger than that. ESA will be there as the statutory planning authority holding the ring, as it were. The controlled sector body, or representatives of it, would, of course, be there. Looking at the duties and powers in clause 28, we expect all those listed to be involved in the area planning process.

The Chairperson: School A is a controlled school and decides that its view on the area plan needs to be brought to attention. So does ESA make a comment at the meeting, or must it say that it is impartial and so cannot comment? Ultimately, the responsibility for the area plan lies with ESA.

Mr Stewart: I think that there is a difference between being impartial and being silent. It will be ESA's job as the owner of the controlled schools, as the body that will establish new controlled schools, or as the body that will bring forward development proposals to close controlled schools if that were thought necessary, to give a view on what ESA thinks is required, not just in the controlled sector but in all sectors.

One would expect boards of governors and the other parties named in the clause to give their views as well, and, of particular importance, is the view of the sectoral body. At the end of that process, ESA has to assimilate all the views put forward in the area planning process into a cogent and coherent area plan that deals with the requirements for schooling in all sectors, including, as tends to be overlooked sometimes, youth services and early years services. ESA will put the plan to the Minister for a decision. Ultimately, the Minister will sign off on an area plan, and there will then be an individual development proposal to give effect to it.

Mr Kinahan: Does that mean listing every single type of body that should be consulted to ensure that they are all consulted?

Mr Stewart: We believe that we have done that. Clause 28 is not short. We have tried to identify all those whom we think ought to have a role in consultation and involvement in area planning, for reasons that were discussed earlier in relation to the Youth Forum's evidence. It is not practical to have an absolute duty to involve everyone who might wish to be involved, but placing that as a power rather than a duty gives ESA flexibility in how it will secure the meaningful involvement of all the sectors and interests named therein. It is the intention of the clause to be comprehensive, so, if we have left out some part of the educational landscape, I am sure that the Minister will want to consider that.

Mr Rogers: On the same point of consultation on the area plan, sectoral bodies are mentioned. What about groups not currently represented by a sectoral body?

Mr Stewart: There is a catch-all at the end of the clause, which I think that the Chair pointed out earlier, so if we have left anybody off a specific list, there is a power there for ESA to consult and involve them if it wishes. The intention is not to exclude any interest from the area planning process. It is meant to be inclusive.

Mr Rogers: Will ESA set that in motion?

Mr Stewart: Yes. ESA will be the area planning authority.

Mr Rogers: If the Irish-medium sector felt that it was not being represented, how would it engage?

Mr Stewart: It will be represented. There is a duty to have the Irish-medium sector represented because the duty extends to sectoral bodies. Comhairle na Gaelscolaíochta (CnaG) will be the sectoral body for the Irish-medium sector, so there will be a duty to involve it in the area-planning process.

The Chairperson: How do we square the circle of clause 2(3)? I want to stay focused on the clause that we are dealing with. You have referred to it. It states:

"In exercising its duty under subsection (2) in relation to schools, ESA shall ensure that schools whose premises are not vested in ESA are treated on the same basis as schools whose premises are vested in ESA."

That is in complete contradiction to clause 2(5), where, because of previous orders — 1989 and 1986 — a duty is placed on the Department to facilitate and promote two other sectors, and the remaining sectors, whichever they are, other than the two named, will claim that that is not a level playing field. If the Bill is about parity of treatment and equality — all those phrases that are used, whatever they mean, because they mean different things to different people at different times and in different places — there is an inherent contradiction. The clause basically states that ESA will have to ensure that the schools that it does not own are treated impartially and equally. Yet that has to be read against the 1989 and 1986 orders, which state that there is a duty to promote and facilitate. Which of those two takes precedence? If, in a court case, ESA decided not to give an Irish-medium or integrated school a newbuild or whatever, how will a court decide. It is not aspirational: Judge Treacy has clearly stated, and you have stated that you do not believe that the Department's interpretation of that was right —

Mr Stewart: I try not to disagree with High Court judges.

The Chairperson: So do I. Treacy was very clear that there is a practical significance. That was his phrase. How would a court judge decide whether the 1989 and 1986 orders or ESA was more predominant or important?

Mr Stewart: There are two points. Fair and equal treatment does not mean identical treatment; that is an important principle that runs through law. Treacy's judgement pointed out — I am paraphrasing the judge's words — that the duties give the Department some discretion about the treatment of those sectors that it does not have for some other sectors. That gives us, and will give ESA, the legislative basis to do certain things to encourage and facilitate those forms of education that we are not required or even authorised to do for other sectors. To answer your question at its simplest: those duties in articles 64 and 89 of the 1998 order cannot be ignored. They are not aspirational; they must be given effect by the Department and by ESA. However, to address the very specific concern put by some stakeholders, most usually that controlled schools would somehow be given preferential treatment simply because they were owned by ESA, we have, we hope, nailed with clause 2(3). That is specifically prohibited.

There may be those who wish to describe the treatment that will be given to Irish-medium and integrated education as "preferential". I will not use that word myself. However, to whatever extent the treatment of those two sectors differs from the treatment of other sectors, it is in pursuit of those statutory duties, which the judge made very clear to us are to be regarded as something more than aspirational: they have to be concrete.

The Chairperson: I want to raise an issue about the concerns that were raised by the TRC. In the summary of its submission to us, it stated that it welcomed the approach to education gained and the duty:

"to contribute towards the spiritual, moral, cultural, social, intellectual and physical development of children and young persons".

Regarding the spiritual development of children and young people, the transferors argue that the statutory provision of religious education is recognised by an appropriate level of curriculum support within the services of ESA or possibly delivered through a function of the sectoral support body. You are aware, Chris, that considerable concern has been raised about how we continue to ensure that RE is set out in the orders, which are not changing. Given the demise of the boards, education officers have all disappeared. You now have a situation whereby some would argue —rightly so — that the

provision of religious education, which is a duty of the Department, has fallen far short of what it should be. Yet we are again boosting one element of the sector while another element, for which the Department has a duty to carry out its functions when it comes to religious education, is in some cases withering on the vine. We need to address that issue.

Mr Stewart: That is absolutely right. It is recognised and accepted that the curriculum support service that boards can currently provide, not only in RE but across the curriculum, falls far short of what colleagues in the boards would wish to be providing and what we would wish them to be providing. That is not due to any misdeed on their part: it is because a significant number of posts have been taken out of education and library boards in recent years in preparation for ESA. It is not the fault of anyone on the education and library boards that we are not yet in a position to establish ESA. However, when it comes to the senior management of those sorts of services, we have enough staff in place to run one organisation, but they are spread over five organisations. At the delivery end of curriculum support, there has been rigorous vacancy control in the past few years in preparation for ESA to take out the posts and provide the savings that are outlined in the business case.

It is a sad fact that many officials will come in front of this Committee and others and explain why we have not made the savings that were predicted for some policy or other. This one is rather different. The savings have already been made, the money has already been taken out of the education budget, the posts have already been taken out of education and library boards, and we are waiting for ESA to come along and cast the remaining resources in a very different structure.

Our concern about the transferors' specific proposal is of a more practical nature and relates to the nature of primary legislation. The transferors are inviting the Minister to specify in primary legislation the outcome of an operational decision that ESA might make in configuring that curriculum support service. The question we would pose is: why stop at RE? Should we specify the curriculum support for geography, history, the important STEM subjects and modern languages. I do not argue for one moment that they are more or less important than RE, but it would be very unusual for any legislature to try to specify in primary legislation the outcome of one strand of an operational decision by ESA. Why bother with ESA, which is a large organisation that will cost a certain amount of public money to run, if we are going to ask the Assembly to do its work for it and makes those operational decisions?

The Chairperson: I am trying to remember which order places a duty on the Department to provide religious education. You say that that duty is there but that because of an operational malfunction — the running down of the boards at the behest of the Department because of the introduction of a vacancy control policy in 2006 to bring ESA into existence, which is a cynical view but is probably how it is — you have to allow the service to wither on the vine until you get the organisation established in the hope that ESA will ensure that its duty is carried out for the curriculum service. You may know the reference that I am trying to find in my head, but it specifically mentions religious education. It does not mention STEM subjects or any other curriculum provisions.

Mr Stewart: There are duties around the provision of RE, but the transferors' concern is that what is missing is not the provision of RE but the curriculum support from the board to give it back-up. RE teachers are struggling to do their best to deliver the subject without what they would regard as sufficient curriculum support back-up from the education and library boards. You summed up the reason for that absolutely correctly: the service has withered on the vine. When vacancy control was introduced in 2006, no one would have expected that here we would be, in 2013, still not having reached the point at which we had established ESA. The vacancy control policy was not designed to run for six or seven years; it was designed to run for a period of months.

Mr Kinahan: Have we moved off clause 2(2)(a)?

The Chairperson: No. We are still on clause 2, so anything relating to clause 2 is relevant.

Mr Stewart: That is why I raised an eyebrow when I heard that you had an ambition to reach clause 28 today; I thought that a little ambitious.

The Chairperson: We are doing all right.

Mr Kinahan: Can I take you back to clause 2(2)(a)? An amendment has been proposed to promote shared education. Trevor talked about "encourage and facilitate" as a better wording than "promote". Maybe we should put that in as a separate amendment. Is that what we are looking for?

The Chairperson: It is up to members to express whether they feel that that is what we should be doing. The proposed amendment is to require ESA to "promote" shared education, whereas in other orders, the words used are "facilitate and encourage".

Mr Stewart: Chair, if I may: I note that the words in the proposed amendment are "shared education". The obvious technical point is that there is no definition of shared education.

Mr Kinahan: Does "encourage and facilitate" read better?

Mr Stewart: Our advice is that "encourage and facilitate" is preferable to "promote". However, if the reference is to "shared education", the first question that the draftsman will ask me is: "What is the definition of shared education?" As you know, Chair, the Minister awaits the advice of the advisory group on advancing shared education. That may or may not include proposals for legislation, so I think that the Minister's view on that proposed amendment is that it is premature and that there are some technical deficiencies. He would wish to await the advice of the advisory group on advancing shared education. As he said, he wants to promote a debate across civic society on how best to do that. The conclusion from that may be that some legislative change is required. However, at this stage, the Minister would regard it as premature.

Mr Lunn: I completely agree with that. Shared education would be very difficult to define, so that issue is down the road somewhere. The duty to promote the spiritual development of children was, if I remember correctly, well fought over previously, and it was agreed to put it in even though some people thought that that duty was incumbent on Churches rather than schools. If there is to be a requirement on ESA to promote the spiritual development of children, it is hard to see how that does not lead to a level of curricular support, which I think is the comment from the transferors.

The Chairperson: In a sense, one logically follows on from the other.

Mr Lunn: I do not see how you can have one without the other.

The Chairperson: Is there a timetable for the response from the advisory group on the advancement of shared education?

Mr Stewart: The Minister has agreed to a slight extension. The original timetable would have meant that the report would have been with us now, but the group has asked for a few more weeks. We are expecting a report by the end of this month.

The Chairperson: Between now and final proposals being made, the issue could be looked at again.

Mr Stewart: It could. As I say, we have no idea at present what might be in the report. It is an entirely independent group, like the review of the common funding scheme. So we do not know what approach the group will take to a recommended definition of shared education or to how the advancement of shared education might be brought about.

The Chairperson: Are there any other points that members want to make on clause 2?

Miss M McIlveen: May I make a general comment on the clause-by-clause summary? We have received quite a number of written submissions. In fact, we have had 40 written submissions and 15 oral evidence sessions. I know that the proposed amendments are in one column, but those are not attributed to any organisation, and that is slightly confusing when it comes to making a comment.

The Chairperson: That is why members should make sure that they bring the summary of written submissions with them, as that attributes the proposed amendments and comments.

Miss M McIlveen: It might be useful to have that in this format as well.

The Committee Clerk: I can change the format of next week's paper so that it states where the proposed amendments come from. What the Committee is assessing now is the merit of a proposed amendment, such as it is, not really who proposed it. However, if members want that, I will certainly provide it.

Miss M McIlveen: It would be useful for reference purposes.

The Chairperson: That is why I am referring to the summary of written submissions. It gives me all the comments, a list of the organisations that have given submissions to us and a summary of their views on each clause, which is useful. I know that you end up looking at three or four different pieces of paper at the same time, and multitasking is probably a bit of a challenge for the male population.

Mr Kinahan: Speak for yourself.

Miss M McIlveen: It might be helpful if those could be merged.

Mr Kinahan: May I come in on another point? Sorry; I have forgotten what I was going to say. Carry on and come back to me.

Mr Rogers: I think that that is a very useful suggestion because there are so many bits of paper, and we really need to get all the comments on the same page.

Chris, you said that fair and equal treatment does not mean identical treatment. Will you elaborate on that?

Mr Stewart: One of the strands of my background is health economics, and the definition that a health economist would give for equity or equality is equal access for equal need. So it is not identical provision. It is provision that is equal in the sense that need has been assessed and adequate provision has been made to meet that need.

There are, for example, particular needs in Irish-medium education that simply do not exist in English-medium schools. Therefore, identical provision is neither necessary nor, indeed, feasible. However, that does not mean that recognising the particular needs of Irish-medium education is unfair, because those are unique needs.

Mr Rogers: Thank you. That was helpful.

Mr Stewart: The analogy one might draw in education generally is that special education is not unfair. It just recognises the needs of certain children.

Mr Kinahan: Last week, we delayed things because we did not have the amendments from the Department. Do we know that those amendments will not affect these early clauses?

Mr Stewart: The Minister has not yet come to a view on particular amendments that he wishes to propose. He is aware of the Committee's desire to see the Department's amendments as soon as possible, but he is not yet in a position to put anything specific to the Committee.

The Chairperson: Therein lies the problem. When we get to clause 3 in a few minutes, there will be another problem, because we have not seen the Department's proposals or amendments for that.

Mr Stewart: At this stage, I should point out that clause 2 is one of the easier clauses. On the Deputy Chair's question, I should say that the Minister has indicated that he has an open mind and is prepared to consider amendments to clause 2.

The Chairperson: I have an issue, and this goes back to Sean's point about treatment and so on. Clause 2(3) states:

"are treated on the same basis".

I do not see how ESA will be seen to treat them on the same basis when there is a legislative requirement in the 1989 and 1986 orders to promote and facilitate two other sectors? It cannot treat them on the same basis because there is this duty. I just cannot get my head round that one, and I have a real problem with it. I would have no difficulty with subsection (3) if we repealed the other provisions and put everybody on a level playing field. It would then be on the basis of need, but I know that that is not the Minister's view.

Mr Stewart: You have answered the question.

The Chairperson: It is my view and that of my party that there is an uneven playing field, which is, unfortunately, not being addressed adequately in that clause.

Mr Lunn: The reason why integrated and Irish-medium education received that "special" treatment, as you call it, is, frankly, because it is the only way in which they could ever have been established in the first place. A new school in integrated or Irish-medium terms could mean a dozen pupils. That is based on parental choice, parental demand and parental need — whatever you like. It is people's desire to see their children being educated with pupils from other religious backgrounds. Frankly, however, that is where it stops. When the children get into the schools, education provision is very much — in fact, absolutely — the same as that which they would receive in a controlled or maintained school. Forty years ago, it was laid down that there had to be a special provision to enable the establishment of those schools. In the case of Irish-medium education, it goes slightly further than that because there is an obvious need for different curricular tools and equipment. That is the difference. It is an ongoing argument that we will probably still be raking over in 20 years' time. That is my understanding.

The Chairperson: Judge Treacy did not say that with regard to practical significance and duty.

Mr Lunn: Judge Treacy referred only to transportation. He identified a further point in the entire spectrum of education in which there is a particular need for those types of schools because of their larger catchment areas. I do not see any contradiction in that. That is facilitation. You cannot facilitate the operation of an integrated or Irish-medium school that draws its pupils from, perhaps, a 20-mile circular catchment area — the case that we were talking about was from Downpatrick to Belfast — without having special transport arrangements. It is not to the detriment of other schools. There is nothing to fear here.

Mr Rogers: Parental choice is vital and is the basis of our education system. Certainly, it is my firm belief that faith schools, integrated schools and Irish-medium schools should have the same rights in legislation.

Mr Kinahan: I think that we should take legal advice as to how those clauses should be written so that there is a level playing field. I take the point. I can see that we are moving one person miles to study the Irish language, yet we might not move 200 people on four buses because that duty is not imposed.

The Chairperson: You could end up in that situation, and we will. For this comment, we will move outside of clause 2.

Mr Kinahan: It is all the way through the Bill.

The Chairperson: Primary schools' consultation is coming in the next number of weeks. There is no doubt about that. It is coming down the road. There will be proposals to close schools. One of the biggest issues will be how to transport children from rural primary schools that it has been proposed to close and bring them into a hub. If there is no duty on the Department to facilitate and promote in the sectors that are not specified, it is up to parents, under current legislation, to get their child from A to B. There could be two other sectors for which, because of the current legal position, the Department or ESA will have a duty to promote and facilitate. There will be a continuation of special or — perhaps "special" is not the word — different arrangements that, in the eyes of the other sectors, is totally and absolutely unfair. I am not picking out the two sectors because I have any issue with the fact that they exist: I would say the same about whichever sector it was. That is the dilemma. I accept what you are saying, Chris, in trying to explain it to us. However, I do not accept the rationale on which it is based.

Mr Stewart: I recognise that, Chair. Of course, it is entirely for the Committee to decide which amendments it wishes to propose or into which areas of policy it wishes to delve. The Department's starting point has to be the policy memorandum agreed by the Executive. No part of the policy memorandum asked us to look at the existing duties to encourage and facilitate. So it was not a question of our looking at the issue and deciding not to do it: it was simply not on the policy agenda that was set for us by the Executive.

The Chairperson: Therein lies the problem and our practical difficulty. A decision on any clause has to be read against existing provisions, which will have a practical outworking when it comes to the establishment of the body that we are discussing.

Mr Stewart: You are absolutely right, Chair. You are reading my own words back to me, and I cannot complain.

The Chairperson: The Executive may not have told you to do it. However, that is how it will end up. I could nearly sit in your seat, Chris. No — I am not going to go there.

Mr Stewart: I would not wish that on you.

The Chairperson: Let us go back to the proposed amendments. There is a proposed amendment to require ESA to promote shared education. Clearly, we do not know what the Department intends or may intend to do so we cannot come to a view one way or the other. Is that a fair comment?

Members indicated assent.

The Chairperson: There is a suggestion in the clause-by-clause summary about removing the reference to spiritual development, with which I do not agree. The reference to spiritual should remain as it is. Do members agree?

Members indicated assent.

The Chairperson: So we are rejecting that proposed amendment.

There is a proposed amendment to require a level of curricular support to contribute to the spiritual development of children. That has been explained. Was that a specific amendment from the TRC?

The Committee Clerk: Yes, it was. The TRC also refers to RE inspections, as members will probably recall.

The Chairperson: Chris says that that is more a result of issues around the curriculum advisory and support service (CASS) than a result of the duty.

Mr Stewart: Yes, very much so. It is about practicality. The Minister does not feel that it is appropriate to try to specify in primary legislation the outcome of operational decisions that he is paying ESA to make. There is also a clash with another aspect of policy, which has been touched on by a number of stakeholders who have given evidence. Those stakeholders have said that they very much, in the interests of school autonomy, want to move beyond the traditional model of CASS providing services. The criticism that has been made, rightly or wrongly, is that it has been a one-size-fits-all approach. CASS provides a particular type and level of service. It is good if it happens to meet the needs of schools, but if it does not, that leaves schools somewhat bereft of support. The Minister's policy is for a "mixed market" — I use the term advisedly — provision of curriculum support, with ESA providing some services, and schools or groups of schools providing other services or commissioning or procuring them. So the proposed TRC amendment clashes — indeed, runs against — the proposal for a mixed economy or a mixed market of curriculum support service.

The Chairperson: Can we park that because I want to provide members with the orders that refer specifically to how RE is provided for in schools? That is a very important issue. We will park that and have no view one way or the other on that proposed amendment.

There is a proposed amendment that linguistic development be added. Am I right in saying that that came from CnaG?

The Committee Clerk: That is correct.

The Chairperson: CnaG said that a reference to Irish-medium education should be included that would reflect the Department of Education's duty under the Belfast Agreement and the 1998 order, which places a duty on the Department to facilitate the development of Irish-medium education. CnaG

wants linguistic development to be included. Obviously, my party does not feel that it is necessary to do that, given that we have raised issues about clause 2(3) and the level playing field.

Mr Lunn: If it came from CnaG, and it thought that, for some reason, putting in the word "linguistic" somehow reinforces the need to promote the Irish medium, that is ridiculous. However, it might be a slightly different thing if it came from someone else who thought that it might be necessary to put in the word just to make the point that there are quite a lot of pupils now in schools who do not have English as their first language, that is, immigrants.

I heard the Department's comment that "intellectual development" would include the term "linguistic". I must say that I am not totally convinced by that. I am sure that, as it rightly points out, quite a lot of items could be listed under "intellectual", and "linguistic" might be one of the more valid.

Mr Stewart: It could. The Department's concern about this is purely practical. Linguistic development is clearly a very good thing; it is part of the curriculum. We feel that it is also part of intellectual development. If one were to list every dimension of intellectual development under clause 2, the clause would be very long indeed.

Mr Lunn: We had a discussion in the past about the need to develop, apart from just straightforward learning, social and presentational skills, as well as the use of language in the promotion of yourself at interviews and so forth. Is that development of linguistic skills perhaps that part of the equation? Could that perhaps involve the use of language, rather than learning a language?

The Chairperson: Would that not come under "social"?

Mr Lunn: I am just speculating.

The Chairperson: Do you remember that in the previous Bill we had the whole issue about whether we should include the term "mental". I hope that I am right in that. Chris, you can keep me right. Am I right?

Mr Stewart: I recall it well, sir.

The Chairperson: How long did we agonise over that? As it ended up, it did not come into this draft.

Mr Stewart: Many valid arguments could be made for the inclusion or omission of particular words in that clause. Our intention, certainly, was to have a comprehensive definition of what education is for, recognising that it should take a whole-child approach and contribute to every aspect of development that a child or young person will need to take his place as a citizen in society. It is our honest belief that the words that we have used achieve that. However, arguments could of course be made for other words. Many arguments could be made for many words, and clause 2 could end up being very long indeed.

The Chairperson: Is there not an issue here? Take the words "mental" and "linguistic" as examples. Not that we would ever aspire to be in the legal profession, but does it not all come down to an argument about what is efficient and effective? Whether it falls into the area of the terms "mental" or "linguistics" or whatever, you could argue that the issue is about whether the services that are being provided efficient and effective. The onus is on whoever feels that they have been short-changed or are not getting the service that they think is adequate to argue, however, that you have a duty under clause 2(2)(a) to ensure that there is efficient and effective primary and secondary education and that educational services are available to meet the needs of such children. Surely that would give you a pretty broad parameter to work under.

I am just trying to see whether we should adopt or reject the amendment, and I do not see that there is a consensus for adopting it.

Mr Lunn: Leave it the way it is.

The Chairperson: Leave it the way it is?

Mr Rogers: Is the word "linguistic" not there because it reflects the 1998 order, which puts a duty on the Department to facilitate the development of Irish-medium education?

The Chairperson: That was the argument that was being made.

Mr Stewart: The suggestion did, indeed, come from CnaG.

The Chairperson: Yes. That is right.

Mr Lunn: Is it not unnecessary?

The Chairperson: Would the Department argue, Chris, that that is not necessary?

Mr Stewart: Indeed, Chair. I do not think that anyone is arguing that linguistic development is anything other than a very good thing.

The Chairperson: So, will we just leave the clause as it is?

Mr Rogers: Could we get a bit of advice on that, particularly as the 1998 order puts a duty on the Department? This is just a grey area for me.

The Chairperson: It goes back to the point that Danny made earlier. I thought that we had agreed. Are you asking for legal advice on how the duty in the 1989 and 1986 orders sits with it?

We can include that. Is that OK?

The Committee Clerk: We have already asked Legal Services to provide a summary of the Department's obligations on Irish-medium education, so we are looking for additional legal advice on what you just said, which is how clause 2(3) sits with some of the other existing orders.

Mr Stewart: If I may make an observation on that point. If the argument is, as we heard is the case, that the suggested inclusion of the word "linguistic" should stem directly from the duty to encourage and facilitate, the word "linguistic" would seem to me to cover a much broader range of abilities than the duty that is specifically on Irish-medium education, which I have observed is rather broader.

The Chairperson: So, we have not decided. Are members happy enough to leave that one for the meantime until the legal view comes back?

Members indicated assent.

The Chairperson: We will now deal with clause 2(2)(e), which indicates that ESA will advise the Department on matters relating to schools, educational services and youth services. Stakeholders sought clarity on the nature and status of that advice. Clause 2(2)(e) states that ESA will:

"advise the Department on such matters relating to schools, educational services and youth services as the Department may refer to ESA or as ESA may think fit."

Mr Stewart: I have to say that I was somewhat perplexed by that comment when I saw it. Stakeholders are asking us to predict the advice that we might need in the future. I do not think that that is feasible. This is a very standard approach in legislation to an advice-giving power. One simply does not specify in advance what the advice might be about.

As to what the effect of the advice would be, it is just that: it is advice to the Minister of the day, and the Minister of the day can decide to accept it or not accept it.

Mr Lunn: Who came up with that comment?

The Chairperson: Was it the Northern Ireland Commissioner for Children and Young People (NICCY)?

Mr Stewart: The legislation that established the office of the Children's Commissioner. I recall that from a past life, because I worked on it. There are similar powers in that legislation for the commissioner to give advice, but we did not specify in the legislation what he or she might give advice on.

The Chairperson: Clause 2(2)(e) states the requirement for ESA to:

"advise the Department on such matters relating to schools, educational services and youth services as the Department may refer to ESA or as ESA may think fit."

The commissioner recommends clarification on what, if any, onus will be on the Department to take account of advice that ESA submits to it. She asks what the nature of the advice that it is anticipated that ESA will provide will be and whether there will be a formal mechanism for the provision of advice. The commissioner has been surprised by the lack of reference to integrated school sectors in the draft legislation and notes that a number of provisions in the Bill cover the specific duties and requirements that would aid or promote the development of Irish-speaking schools, units in schools, and, specifically, protect their viability. She states that the Committee may wish to consider how the Bill may be improved upon to show inclusivity and a recognition of those children, young people and parents who opt for integrated provision.

Mr Stewart: I think that the latter half of that risks taking the Committee back to the discussion that you just had, but I am happy to expand on it if you wish.

On the first part of the Commissioner's comments, the clause is the formal mechanism. One might ask ESA for advice on any given day, either formally or informally, so there might be an e-mail, a letter or even a phone call. However, if there is subject on which the Department wishes to formally commission advice, the permanent secretary or even the Minister would write to ESA and quote the clause and say that they are making a formal request for advice under section 2(2)(e), as one would hope it will be, in the Act.

I have never seen an approach in legislation anywhere where one could be any more specific on how one would go about asking for advice.

The Chairperson: I do not think that there is a strong view about not accepting that amendment.

Can we now look at some of the other comments? I am trying to follow the paper that Peter produced. We appreciate very much all the work and effort that Peter and his staff have put in to bring this material to us, so we have to try to make sure that we cross-reference and follow it. It is a huge task to try to put all the information down on paper, and I appreciate all that they have done for us.

Mr Stewart: For the record, the Department also appreciates the work that the secretariat has done in bringing all this material together and providing it to us. It is extremely helpful, and it has certainly made our job easier.

The Chairperson: Thank you for that, Chris.

Further comments refer to clause 2(5). We have jumped back and forward a wee bit, so we may have dealt with this. The clause deals with "encouraging and facilitating" Irish-medium education. One comment suggests a change to the Bill that would require ESA to also promote integrated education and faith-based education in line with parental choice. Another comment requires ESA to encourage and facilitate integrated education, while two further comments refer to equality in education and seek explicit assurances on that in the Bill. Yet another comment, which CnaG put forward as a drafting amendment, refers to Irish-medium education rather than to Irish-speaking schools, and another seeks to confine the promotion of Irish-medium education to Irish-speaking grant-aided schools.

Mr Stewart: There are a range of suggestions there, some of which are diametrically opposed. I fear that we cannot avoid going back to some of the previous discussion. As we pointed out, the starting point is that the whole basis of education legislation is not, as we often say, founded on parental choice; it is founded on parental preference. All the references in the legislation reflect that. We do not think that it is practicable to list all the manifestations that parental preference might take. It is certainly not possible to have a duty to promote, let alone encourage and facilitate, all of them. Our starting point is the existing body of legislation — the existing policy — which says that two particular

forms of education, Irish-medium and integrated, have specific duties attached to them that do not apply in similar form to other sectors. So, the clause has been drafted against that background.

The point was made, specifically on shared education, that it is a bit premature at this stage to try to contemplate amendments that would give effect to a policy direction that the Minister has not yet set.

The suggestion in clause 2(5) to remove the particular duty on Irish-medium education or to somehow limit it was, perhaps, based on a misunderstanding of the clause. It was somehow felt that it would require all schools to do particular things with Irish-medium education. That is not the case. The clause is very much focused on what ESA has to do for those particular schools. A school that is not involved in Irish-medium education would be completely unaffected by clause 2(5).

Mr Kinahan: I suppose that it ought to be written a bit more clearly, which is why I raised that when I originally spoke on it. When I first read it, I thought that it was able to make any school do Irish.

Mr Stewart: Absolutely not. That was never the intention, and that is not the effect of the provision.

Mr Stewart: However, if the Committee wishes to suggest it as an amendment, I am sure that the Minister would consider it. *[Laughter.]*

The Chairperson: Are there any other comments?

Mr Lunn: I agree with the departmental response to the comment on encouragement and facilitation. Much as I would like to see references on every other page to the need to promote integrated education, it is already there, and, as Chris said, it is not practicable to list all the various sectors. I do not understand the next comment. I am not clear where it came from. It says that there should be a duty on ESA to maximise opportunities for integrating education. It does not actually say, "for maximising the integrated system". It says, "for integrating education". Yet the proposed amendment goes back to the usual suggestion to encourage and facilitate the development of education in integrated schools. It is not the same thing. I am not with that one at all.

Mr Stewart: I think that intentions that do not fit terribly well are mixed in that suggested amendment. Given that this is major legislation, one can understand stakeholders suggesting to the Committee that all manner of good things be added to it. However, this is not a general education order; it is quite a specific education order to establish ESA and connected purposes. These may be good things or they may not; the Committee will have a view on that, as will the Minister. It is absolutely open to the Committee to suggest whatever it sees fit. Currently, however, many of these suggestions go far beyond the policy agenda that the Executive set for us.

Mr Lunn: I would see more sense to it if there were a suggestion to include in the area-based planning section the sorts of words that are in that proposed amendment to clause 2(5) on integrating education.

The Chairperson: That proposal came from the Integrated Education Fund (IEF).

Mr Lunn: That's me in the doghouse, then. *[Laughter.]*

Mr Stewart: That is a word that is used frequently, usually in the context of meaning some form of shared education that is more than just formal integrated schools. In that sense, it is used frequently in everyday conversation. As with so many terms, it would have to be precisely defined to be used in legislation.

The Committee Clerk: NICIE, IEF and others suggested quite a few amendments, including amendments to the clauses on area planning and their requirement to promote collaboration, shared education and, I think, integrated education. Certainly, there was quite a lot about shared education and collaboration.

Mr Lunn: That is an area on which certain bodies may come back to us again. I do not see how it fits in this particular section.

The Chairperson: Yes. Can I ask —

Mr Stewart: Chair, I would hesitate to see the draftsman's reaction if I asked him to include the word "collaboration".

The Chairperson: Can we all be there when you ask him?

Mr Stewart: Only to witness my demise, Chair.

The Chairperson: Just bring him here, and then we will ask him. *[Laughter.]* I accept what you say about the Bill's policy intent being to establish ESA. That means that it has to amend all other legislation that is related to the organisations that will be dismantled, that is, the boards and so on.

Mr Stewart: OK.

The Chairperson: However, if clause 2(5) were not there at all, the duty would not change. That goes back to the point on which we are seeking legal clarification. In my view, it would not change one iota the duty and legal requirements that are already in statute to promote and to facilitate. It and the amendments that we have received open up a hornets' nest of other sectors saying, rightly, "Hold on; there is somebody getting something more here than we are". As I often say, if the educational world is as Chris sometimes explains it, I wonder why we have so many problems. He can explain things in a simple way. However, we end up having those organisations not being able to accept or understand that that is not the intention. You say repeatedly that that is not the intention.

I will go back to Judge Treacy. The Department said that it was aspirational, and the judge said, "No, I am sorry. It ain't just aspirational; it has practical significance". As parties, or certainly as a Committee, we do not want to get to where I think is not a good place, which is to take a view that, on the face of it, we accept what the Department says, then six months down the road, when ESA starts to implement it, we discover that clause 2(5) is how it operates. So, what would the import be of its not being there?

Mr Stewart: You make a valid point. Although that clause was included before the Treacy judgement, one could say that that is the outworking of one aspect of the Treacy judgement. The judge has asked the Department to reflect on what it does to give effect to the statutory duty to encourage and facilitate Irish-medium education. If we are back in front of him again, and I hope that we are not, we may cite that clause in our defence. The Minister has said that he has an open mind on the inclusion of a similar clause on integrated education because there is a similar duty there.

If we had brought that Bill before you, and, instead of clause 2(5), there had been a similar clause that referred to, say, controlled schools, I think that we would have found that very difficult to defend. Members might well ask us why we had picked out controlled schools and given them what some might describe as preferential treatment, and they would have asked us to explain our rationale for doing that.

We could not point to any duty to encourage and facilitate controlled education. The reason why that particular clause can properly be included in the Bill is because we have that underlying duty to encourage and facilitate Irish-medium education.

The Chairperson: There is no political consensus. I can say, from my party's point of view, that we do not agree with, nor did we endorse, encourage, facilitate or promote, the inclusion of that in the 1989 or 1986 orders. That was a deal done under the Belfast Agreement by others, and they will have to take responsibility for that.

I am speaking now not as Chairperson but as a party member. We do not accept that you should then ring-fence and copper-fasten something that you do not believe should have been there in the first place. The purpose of the direction that we are going is to treat everyone fairly. My fundamental problem with this is that we are caught in that dilemma.

Mr Stewart: I cannot comment on any of that.

The Chairperson: I am not asking you to.

Mr Stewart: I know that you are not asking me to.

What would happen if the clause were not there? Let us go back to one of the aspects of the duty that we discussed, which was the requirement on ESA to ensure "efficient and effective" provision. One of the things that we would expect ESA to do, even in the absence of that duty, would be to provide effective curriculum support and other services to Irish-medium schools. So, in a sense, I agree with the point that you made. Even in the absence of this duty, these are things that we would expect a well-functioning ESA to do anyway. That has been given some strength by proposing to make it a duty in the Bill.

Mr Kinahan: So, I assume that you are going to amend the Bill accordingly with what you were saying?

The Chairperson: What?

Mr Kinahan: I was just being facetious, but given what you just said, I assumed that you were going to try to amend the Bill.

The Chairperson: I do not think that we will accept clause 2(5).

The Committee Clerk: You are waiting on legal advice on clause 2(5), but there are also other proposals to consider.

The Chairperson: Yes. We have to work our way through the other amendments. Perhaps we should just go through them, unless members have any other comments that they wish to make.

We should remember that others suggested these amendments. We are just trying to ensure that, as a Committee, we have given them due regard and that we are doing what I believe is right and proper. We are going through them, because people want to ensure that we, as a Committee, listened to them but then ignored what they said. We put the proposals in the format that is in the papers so that no one can say that we did not consider their suggested amendments.

If we have missed anything, we will be happy to go back to it. However, I do not think that Peter and his staff have missed anything in trying to encapsulate the amendments that have been brought to us to date in the submissions. That is why Peter sent them out to the Department, which has responded. Everyone can see what their amendment was, what the Department's view was and, now that we are in this process, what the Committee's views are.

Mr Lunn: Just for clarity, because you slipped it in there, are you going to propose the removal of clause 2(5)?

The Chairperson: My party does not support the inclusion of clause 2(5). That is a party view. We will reserve that position until we have seen the legal position and so on. I am saying now, in this informal clause-by-clause consideration that, in general, it has always been an issue for us and we are raising it.

Miss M McIlveen: We are being consistent.

The Chairperson: Yes.

Mr Hazzard: That is not the view of the Committee.

The Chairperson: No. I have been very clear; I cannot say that that is the view of the Committee. That is why I am asking for the Committee's view. As a party member and as my party's spokesperson on that issue, I have stated my party's view. We have been consistent in that. We do not agree that the 1989 and 1996 orders should ever have been included, nor do we believe that you should copper-fasten it by putting this element into the Bill.

Mr Lunn: I do not mean to get into any kind of political discussion, Chairman, but does that mean you are going to try to remove the requirement on the Department to encourage and facilitate Irish-medium education?

The Chairperson: We have already tried that in that amendment.

Mr Lunn: Are you serious?

The Chairperson: Yes. Why would we not be serious?

Mr Lunn: OK. I am just —

The Chairperson: Trevor, you cannot have a situation where you have an organisation that is supposed to be fair to everybody and then build in particular advantages, or whatever we would call them. I am always reluctant to call it "special provision" or to use such phrases, because they are all emotive in their own right. We get criticised for defending the controlled sector, because other sectors say, "You are defending them over and above the grammars." The grammars come and attack us, saying, "You are not defending us the way that you could." So, it is very hard to get a level playing field. However, I just think there is an imbalance there that we have never agreed to historically, and we do not think that it should be copper-fastened.

Mr Lunn: Are you intending to make an attempt to dismantle the Irish-medium sector and, presumably, the integrated sector?

The Chairperson: No. It is not an attack on the Irish-medium sector or an attack on the integrated sector per se. It is saying that a legislative provision has been made that we do not think should ever have been made. Those who argued for it at the time knew what it was: a trade-off. Irish-medium education was given to one side to satisfy nationalists, and integrated education was given to the other side to satisfy elements of pressure that were brought to bear.

Mr Lunn: Satisfy? I think you struggled for a word for who in the integrated sector that would have satisfied.

The Chairperson: It would be unfair to put them into any category, in that sense.

Mr Lunn: I think that Hansard will be interesting, Chairman.

Mr Rogers: If I could maybe bring a wee bit of reality into the discussion. I am just conscious of asking whether we will have the legal opinion on this subject for next week.

The Committee Clerk: I actually asked for it a week ago.

The Chairperson: Yes, that is what I thought.

The Committee Clerk: However, what we can do is park the issue. The idea of clause-by-clause scrutiny is that when you run into little problems such as this, you then park them and move on to other elements that do not touch the same subject. When you get the advisory information that you are looking for, you can then come back and the Committee can decide its position.

Mr Rogers: It is difficult to move on, because some of these issues are fundamental. Whether it is about encouraging and facilitating faith-based schools, Irish-medium schools or integrated schools, that is crucial to the whole essence of the Bill. It is very difficult to leave a clause, move on and come back to it. I really think that we need the legal advice on where we are ASAP.

The Chairperson: That is maybe why we are where we are, despite my ambition to get to clause 28. We got at least halfway. We did not get to the 8 but we got to the 2. We are doing all right. I was never very good with numbers at school; I think that that is evident.

I am trying to find out exactly who proposed that amendment to clause 2. That takes into account Michelle's point about a read-over, which would be an additional help.

The Committee Clerk: I think that it came from the integrated sector.

The Chairperson: I think that it probably was. The amendment refers to supporting parental choice. The departmental response states that ESA will be required to take account of parental preference, not choice. It then refers us to article 9 of the Education (Northern Ireland) Order 1997.

I will go back to this point, but we need all the orders sitting piled up in front of us so that we can cross-reference every element of this. If you want to be facetious, that is because the devil is in the detail.

Mr Stewart: Welcome to my world, Chairman.

Mr Rogers: We need Chris here to interpret it for us.

The Chairperson: The departmental response to the proposed amendment continues that it is neither necessary nor practicable to list every type of school that parents might prefer. It continues that there are duties to "encourage and facilitate" for integrated and Irish-medium education and that the Minister does not propose to introduce similar duties for other types of school.

Chris, do you want to make any additional comment? Let us stay specifically with that proposed amendment to clause 2(5), which suggests that the Bill would require ESA to also promote integrated education and faith-based education in line with parental choice.

Mr Stewart: I will choose my words carefully, because I fear that I may provoke a political discussion again. We all — me included — use the phrase "parental choice" from time to time. Education legislation does not refer to "parental choice" but to "parental preference". That is not a mere semantic distinction, but recognises that it is not always possible to accede to parental choice.

I will make a more practical point about the suggested amendment — this is where I am trying not to provoke a political discussion. There are two sectors that sit differently in education legislation, because there are specific duties attached to them. If we were to encourage and facilitate everything, we will encourage and facilitate nothing. The treatment of those two sectors in a particular way is the result of political decisions that have been taken. If there were to be a duty to encourage and facilitate every type of legislation, that duty would become largely meaningless.

The Chairperson: Members, to help us — maybe you will agree with this — we have come to 1.00 pm and there are a number of amendments with which we have issues. We want to get legal opinion, and I suggest that we stop at clause 2 and start again with that clause next week.

The Committee Clerk: Chair, I have to say that we have very little time left. We got only to clause 2 after two hours, and I absolutely recognise that there were very important issues that members needed to talk about. I think that this means additional meetings. Would the Committee agree that we will start at 9.30 am next week, run on to perhaps 2.00 pm and arrange to meet again the following day, Thursday, in the afternoon? I know that no members are meeting at that time. We could do that for a couple of weeks, as, for example, the Social Development Committee did for quite a period.

The Chairperson: Yes. Members, I think that we have to do that —

Mr Kinahan: I cannot do Thursday afternoons.

Mrs Dobson: I cannot either. My diary is booked solid.

Miss M McIlveen: Can we not do Tuesday mornings?

The Chairperson: I can assure you that I clear my diary. I spend Thursdays, Fridays and Saturdays doing what is important in my constituency, because I am here Mondays, Tuesdays and Wednesdays. We have to seriously look at the timings. We either meet on additional days or on sitting days. That is a decision we have to make.

Mr Kinahan: I cannot do Wednesday afternoons. We cannot just go straight through.

Ms Boyle: The Public Accounts Committee (PAC) meets on Wednesday afternoons. We will get a pre-brief next week at 1.00pm, so I could not sit through to 2.00pm.

The Chairperson: What about Tuesday mornings?

Mr Craig: Chair, I suggest that we schedule additional time on sitting days. You pointed out that there are three members of the Policing Board here, and Thursdays are always taken up by Policing Board business for those members. So, you will immediately be down by three members. You are going to run into difficulties with the PAC and conflicting Committees. Probably sitting days would be best. As Peter well knows, that was done in the past by the Committee for Social Development. There is precedent there.

Mr Kinahan: We also did it in the Committee for the Environment on planning.

Mr Rogers: If we are talking about fair and equitable treatment, as the only member from my party, if the PAC is on, I cannot —

The Chairperson: I accept that.

Mr Rogers: I think that it would be very difficult for people to rearrange appointments for next Thursday. However, if it would be helpful, we could meet, say, the following Friday or whatever.

The Chairperson: I am going to ask Peter, between now and Monday, to draw up a proposed schedule of additional meetings. That will include looking at Tuesdays, which are sitting days.

The Committee Clerk: I think that the problem with Tuesdays is that members of this Committee are also members of the Committee for Agriculture and Rural Development. It would have to be Monday afternoon.

Miss M McIlveen: What about Tuesday mornings?

Mr Hazzard: We could meet on Tuesday mornings between 9.00 am and 11.30 am.

The Chairperson: What time does the Committee for Agriculture and Rural Development meet?

Mrs Dobson: 1.30 pm.

The Committee Clerk: There are other things that you do.

Mrs Dobson: We have a group meeting as well.

The Chairperson: But that is on Mondays.

Mrs Dobson: On Tuesday.

Mr Hazzard: What is on Tuesday?

The Committee Clerk: The Committee for Agriculture and Rural Development. I thought that you —

Mr Hazzard: It is in the afternoon.

Mr Kinahan: So it is Monday afternoon then.

Mrs Dobson: Are we not meeting from 1.00 pm next week, Chris?

The Chairperson: I think Tuesday morning would be —

Mr Rogers: We could miss our group meeting on Tuesday morning if you got the Monday.

The Chairperson: We try to do all our business on a Monday morning and that leaves Tuesday for members to have other meetings.

The Committee Clerk: Just to advise members that, if we do meet on Tuesday mornings and clash with plenary meetings, you will need to talk to your party Whips and make sure that it is OK. The Speaker has commented previously about Members not being present at Question Time. There is no Question Time in the morning, but I think that we should be aware of that.

The Chairperson: I do not think that we can do that for next Tuesday morning, because obviously we will have commitments. However, I think that we will look at a schedule that will set out possible additional dates when we can meet. We will try to get that to you for Monday if not before. We need to look at a longer meeting next week and set out a schedule over the next few weeks.

Mr Kinahan: Bite-sized.

Mr Lunn: Are we on a fixed timescale? I know that, ideally, we pointed towards the end of April to finish these discussions, but —

The Committee Clerk: We have to report by 8 April no matter what. We absolutely have to do that.

Mr Lunn: Frankly, Chairman, there is virtually no prospect of that under the present system of trying to arrange days that suit everybody. Frankly, I think that we would need to get away from here for a couple of days and do nothing else. If we were to go somewhere on a Thursday teatime, do this for three or four hours, go to bed and do the same thing again on Friday all day, that would allow us to really try to break the back of this. If we could do that in the context of having got whatever legal advice we need and maybe become a wee bit less sceptical about some of the things that are written before us. I am looking at this issue of parental preference rather than parental choice. The comment just states that it is in article 9 of the Education (Northern Ireland) Order 1997. Do we not believe that? Why do we need to see it? I believe it, and if Chris says it is there, it is there. As we go through this, there will probably be other instances of where we might be calling for extra information or legal advice that we really do not need.

The Chairperson: Point taken.

The Committee Clerk: Just to summarise: we will meet next Wednesday and will make it a fairly long meeting. We will then probably meet the following Monday and Wednesday and continue with meetings on Mondays and Wednesdays for a bit.

The Chairperson: No, Tuesday. *[Laughter.]*

The Committee Clerk: Sorry, I do not know where I am. We will meet on Tuesday morning. I beg your pardon.

Just to be clear on the informal clause-by-clause consideration: I am not sure whether we will have the legal advice for next week. The way this is arranged is that we should be able to push on to other matters. For example, I think that you could probably talk about the powers of the Education and Training Inspectorate or the clauses that refer to the Council for the Curriculum Examinations and Assessment, which do not really impact on the Irish-medium stuff. That approach really works. You identify something that you have a problem with and need information on and push on and deal with other things. I promise you that we will come back to it. When you get all those things surfaced, that will finish the informal clause-by-clause consideration and, honestly, the formal clause-by-clause scrutiny will be quite easy. Those are famous last words, I know.

Mr Craig: Peter, are you going to get the amended tables that highlight who suggested what?

The Committee Clerk: Yes.

Mr Craig: I remember that was done in the Committee for Social Development. That was very useful. I have a good memory.

The Chairperson: OK, members. We will park that there. Chris, thank you again.