



Northern Ireland
Assembly

Committee for Education

OFFICIAL REPORT (Hansard)

Education Bill: Formal Clause-by-clause
Scrutiny

20 March 2013

NORTHERN IRELAND ASSEMBLY

Committee for Education

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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
Mr Chris Hazzard
Mr Trevor Lunn
Miss Michelle McIlveen
Mr Sean Rogers

Witnesses:

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| Mr Peter Burns | Department of Education |
| Mr Chris Stewart | Department of Education |

The Chairperson: Again, we welcome to the Committee Chris and Peter. The Department has tabled amendments, which are in the tabled pack. Most of the amendments touch on the employment and management schemes. As the Committee has not had the time to consider those amendments, I suggest that members simply note them for now. As we just got sight of those tabled amendments in the past few minutes, you will appreciate that we have not had enough time to give them due consideration. We are content to note the ministerial amendments, and then we will proceed.

On a point of accuracy, does that change the decisions that were made yesterday on the employment elements?

The Committee Clerk: As the letter indicates, that is not on the list of those amendments, so the decision on the heads of agreement, etc, has not changed.

The Chairperson: Chris, do you want to make any comment.

Mr Chris Stewart (Department of Education): I will echo that last point. I apologise for those being sent to the Committee so late, but it was not possible to provide them any earlier. It is a list of the amendments that the Minister currently proposes to bring forward. It does not cover the major issues, which, I think, are at the root of the Committee's decision to pause its consideration of the employment clauses. Those are the matters that will stem from amending the clauses and the references to the heads of agreement. Those matters are still under discussion. The Minister is not yet in a position to advise the Committee of his amendments.

The Chairperson: I know that the Department has a problem with numeracy, but it is a pity that they were not put in numerical order, at least. It goes clauses 2, 3, 5, 6, 7, 62, 34, 35. It makes it a wee bit more difficult for us. It is not that we cannot rearrange them, but —

Mr Stewart: It must have been some form of computer glitch, Chairman.

The Chairperson: Another technical error at the Department. There is probably a rationale for it.

Mr Kinahan: Chris, is there any hint of movement on the heads of agreement? Anything that we have just shows that discussions are ongoing.

Mr Stewart: Those would be the subject of political discussions, Danny, and I am not involved in them. I am not aware of the position.

The Chairperson: We are starting at clause 22. Obviously, we can refer to these at some stage as we go through. That might be useful.

We note the submission on the Bill from the Northern Ireland Teachers' Council, which was received yesterday and is included in our tabled items. We also have departmental/ministerial amendments in our tabled items.

Yesterday, the Committee agreed that it would not amend the Bill in respect of shared education but that it would adopt a suitably worded recommendation. That is included in the tabled items. The suggested wording for the recommendation is:

"The Committee recommends that the Department and ESA should give consideration to the promotion of collaboration and the sharing of resources between schools regardless of their sector where this will enhance the effective management and efficient provision of educational services to the betterment of the educational experience for pupils."

That is what is before us. Are members content with the recommendation, as worded?

Mr Kinahan: Is there any limit on "resources"? Is it every form of teaching through to grounds, classrooms, and so on?

The Committee Clerk: It is up to members. Do members want it to be limited?

Mr Kinahan: No. It should be as wide as possible.

The Committee Clerk: I was being fairly vague.

The Chairperson: Are we happy enough? Agreed?

Mr Stewart: There is one point that members might wish to consider. The phrase "educational services" is defined in the Bill, and I suspect, from the wording of the recommendation, that you want to use it in a slightly different way. It is not fatal to the recommendation, but it might cause confusion.

Mr Hazzard: What about "education"?

The Chairperson: Could we drop "services" and put in "education"?

Mr Stewart: That would fix it.

The Chairperson: Are members happy enough?

Members indicated assent.

Clause 22 (Ancillary powers of ESA)

The Chairperson: Let us commence with clause 22 and try to work our way through it. We are going back to the ancillary powers of the Education and Skills Authority (ESA). The clause allows ESA, subject to other statutory provision, as stated, to do anything that appears to it to be conducive or incidental to the discharge of its functions. The Committee previously noted a departmental response comparing ESA's powers to those of the Charity Commission. Yesterday, the Committee reserved its position on the clause pending sight of an amendment. That amendment is included in tabled papers.

The Committee Clerk: In line with yesterday's discussion, the amendment strikes out the wording after "ESA may". The wording "do anything that appears to it to be conducive or incidental to the discharge of its functions" has been removed, and the clause is left with the list (a), (b), (c), (d) and (e). That is followed up with: "the Department may by order amend" this particular subsection. That would allow the Department to bring regulations, which would require Assembly approval, to change that list. The list cannot be changed unless the Assembly approves, thus dealing with the Committee's concerns in this regard.

The Chairperson: Any comments? I will give you a minute to consider that.

If there were not the insertion in clause 22, "the Department may by order amend subsection 1", would that restrict ESA making any request to the Department, at any stage, to make a change?

Mr Stewart: It would not restrict ESA's ability to suggest a change, but that change would have to be achieved by bringing a Bill to the Assembly. It would require primary legislation to amend it, whereas the suggested addition to the amendment would allow that to be done by order, by subordinate legislation, albeit subject to the strong method of Assembly control.

The Chairperson: It could not just be done by regulation?

Mr Stewart: It would be by subordinate legislation, but not at the whim of the Department; only with the specific approval of the Assembly.

The Committee Clerk: The approval required would be through affirmative resolution, so there would have to be a debate in the Assembly. The Assembly would have to vote to allow ESA to be able to change that list.

The Chairperson: Is there agreement that the Committee is content with the amendment to clause 22 as drafted?

Members indicated assent.

The Chairperson: Is the Committee content, subject to the consequential amendment, with clause 22 as amended?

Mr Rogers: I just have one quick query. Clause 22(2)(e) reads:

"co-operate with, or provide advice to".

Does that cover consultation and negotiations with unions on matters with regard to the discharge of the functions of ESA?

Mr Stewart: No. I would not see that as falling under that clause. There would be a number of specific requirements for consultation. Indeed, when members have an opportunity to study the Minister's amendments, they will see that a number of them propose a statutory right of consultation for trade unions on various ESA functions. I do not think that the more normal business of negotiation with trade unions would be covered by any specific provision in the Bill.

Mr Kinahan: In the part of the Bill on area planning, it talks about consulting with sectoral bodies and others. Here, it talks about other bodies that are established by or under a statutory provision. Does that then exclude ones that it would appear to be worth consulting? Have we got two sets of standards here? We have bodies that are set up by regulations, and then we have others.

Mr Stewart: The main thrust of that provision, Danny, is not really about consultation as such; it is about co-operation. Perhaps I could give you an example of something that I would see falling under clause 22(2)(e), which reads:

"co-operate with, or provide advice to, other bodies established by or under a statutory provision."

One part of the Bill that members thought was particularly important was the set of provisions on child protection. Under that clause, one would expect ESA to work very closely with health and social services organisations and to co-operate with them and the Department, perhaps, on joint inspections and that sort of thing.

Mr Kinahan: Thank you.

The Chairperson: Are there any other comments?

Miss M McIlveen: Can I just get some clarification? When it says that the Department may by order amend subsection 1, does that mean subsection 1 of clause 22?

The Committee Clerk: Correct.

Miss M McIlveen: Have you not essentially removed subsection 1?

Mr Stewart: The net effect of the amendment would be to introduce a new subsection 1.

Miss M McIlveen: What would that be?

Mr Stewart: Essentially, it would be the additional words that are proposed and the list of things from (a) to (e). The amendment appears to be technically sound from the Department's perspective. The Minister will have to give his view as to whether he agrees with it. However, it appears to be technically sound and to have the effect that members discussed yesterday.

Miss M McIlveen: Is it not, essentially, just saying exactly the same thing?

Mr Stewart: No. I think that it is actually a very significant change. The clause, as currently drafted, leaves it really open to ESA to decide what its ancillary functions would be. The effect of the amendment is to limit those ancillary functions to the things that are already specified in the clause or which could be added by subordinate legislation. To sum that up in one pithy sentence: it takes away the catch-all. It absolutely takes away the "do anything" about which many stakeholders were concerned.

The Committee Clerk: To reassure members: the amendment did not come from the Department. I got the Bill Office to draft it for me, so I asked the Bill Office to do the thing that members asked for yesterday.

Mr Stewart: If that makes it more credible, we welcome that. *[Laughter.]*

The Committee Clerk: It did not come from the Department; it is from the Bill Office. I knew what members wanted. I said, "Please, do this." It seems to me that it does exactly what members requested.

Miss M McIlveen: That is fine. I am happy with that explanation. It is just that the Department is being very conciliatory in all of this, which makes me suspicious. *[Laughter.]* That is fine. Thank you.

Mr Stewart: Would members please not tell the Minister that we gave the impression that we were conciliatory? *[Laughter.]*

The Chairperson: The reality is it is in the Hansard report. *[Laughter.]*

Mr Stewart: We are in trouble now, Chairman.

Miss M McIlveen: You will forgive me for being suspicious. I have been on the Committee for a very long time.

The Chairperson: After six years, you do get suspicious.

Is the Committee content, subject to the consequential amendment, with clause 22 as amended?

Members indicated assent.

The Chairperson: I just want to thank the Bill Office for its help with that clause. That was useful.

Clause 23 (Power of ESA to undertake commercial activities)

The Chairperson: This clause allows ESA to undertake commercial activity as approved. The Committee previously agreed informally that it was content with the clause as drafted. Yesterday, however, members indicated concerns about ESA's power to "do anything" in clause 23(3)(a). It states that ESA has the power:

"to do anything which appears to ESA to be conducive or incidental to the exercise of any power conferred under this section".

An amendment to deal with the concerns has been tabled. Peter, do you want to talk us through it?

The Committee Clerk: The proposed amendment is in the tabled papers. It strikes out those two lines at the bottom of page 12 and adds the similar line:

"The Department may by order amend the powers granted to ESA under this section."

So, it is the same again with affirmative resolution requiring a vote in the Assembly before the list can be altered. However, we have taken away the "to do anything" line that the Committee was worried about.

Mr Kinahan: Subject to the Minister agreeing.

The Committee Clerk: No, this will be a Committee amendment. If the Department wants to support it, so much the better, but the Committee is agreeing this amendment.

Miss M McIlveen: Given the form that Chris is in today, I think that he would agree to anything.

Mr Stewart: Chris is not the Minister. *[Laughter.]*

Miss M McIlveen: I think we have worn him down.

The Chairperson: The wording is:

"The Department may by order amend the powers granted to ESA under this section."

Is that to keep it consistent with what we said about clause 22? It may be only a play on words, but does it not refer to clause 23(1)?

The Committee Clerk: For both clauses, we are taking away the catch-all wording. However, the Department argued that, if you do that, you make it very hard for ESA to do its job. The Committee does not want that, so it is allowing the Department to amend the list of things that ESA can do but it is wisely including the requirement for Assembly assent.

Mr Rogers: That was the point that I wanted clarified.

The Chairperson: Are you happy enough?

Mr Rogers: Yes.

The Chairperson: OK. Any other comments on that?

So, at the end of (a) we would have:

"The Department may by order amend the powers granted to ESA under this section."

The Committee Clerk: You are striking out those lines and putting that line at the very end of the clause so that it could amend anything in those subsections but only with the Assembly's agreement.

The Chairperson: Is there consensus that the Committee is content with the amendment to clause 23 as drafted?

Mr Kinahan: What then happens to clause 23(3)(b)?

The Committee Clerk: We renumbered it (3)(a).

Mr Kinahan: It is as simple as that; so it does not exist.

The Chairperson: OK.

Is the Committee content with the amendment to clause 23 as drafted?

Members indicated assent.

The Chairperson: Is the Committee content, subject to the consequential amendment, with clause 23 as amended?

Members indicated assent.

The Chairperson: That deals with the issues that we raised yesterday about those two clauses.

Clause 24 (Area education plans)

The Chairperson: This clause defines an area plan for education, which is to include a map of the affected area; an assessment of need for schools, youth services and educational services; an assessment of existing provision; and proposals for meeting need. The Committee reserved its position on this clause and the related area-planning clauses, which are 25 to 30.

This is an area of considerable concern. We have only to look at even recent announcements or action through the existing structure to know that there is little confidence in the area-planning process. Do members have any comments or questions? We are on clause 24, although the concerns cover the whole issue of area planning from clauses 25 to 30.

The Committee Clerk: I think, Chair, what you are saying is that Members may have concerns about, for example, consultation issues, which comes up in clause 28 — "Involvement of relevant interests" — but we are now talking about clause 24.

Mr Hazzard: Did we ever get word back from the Department on the legislative competence of working with southern authorities?

The Committee Clerk: I think that we did, Chair. It indicated that such amendments would not be competent.

Mr Hazzard: OK; no problem.

Mr Kinahan: Is there room to put something in that relates to having an overall strategic area plan? There is reference in clause 24(1)(a) to a map. Due to the way in which the area plan sits at the minute, none of us has an idea of the overall plan. We know a lot of guidelines on what we want to happen.

The Chairperson: Chris, let us look at the process, to date. We basically have five area plans. Clause 24(1)(a) mentions:

"a map of the area to which".

It does not say, "a map of Northern Ireland plc should apply." I assume, although it could be a wrong assumption, that there could be a number of these maps. Is that correct?

Mr Stewart: Yes. I imagine that there will be more than five plans, and, therefore, more than five areas.

The Chairperson: Subsections in the current plans are broken down mostly, but not always, along current council boundaries. That is how most of them were set out yesterday.

Mr Stewart: I imagine that that would be the sort of approach that ESA would adopt in the early days. As time goes on, and as the planning process matures and becomes more sophisticated, we envisage that the areas might not simply coincide with council boundaries. They may be the result of a more sophisticated analysis of where children and young people live and where they travel to receive their education.

The Chairperson: Do members have any further comments?

Mr Stewart: If members were to look at the Planning (Northern Ireland) Order 1991, they would see that the provisions there mirror, quite closely, the planning provisions. The description of an area education plan is quite similar to the description, in law, of an area plan for land use.

The Committee Clerk: Yesterday, one member had concerns about area planning and starting new integrated schools. The Committee agreed to consider that issue when it was looking at schedule 7 and the possibility of this applying to area plans around the case of starting new work for the transformation of schools into integrated schools.

The Chairperson: Do we want to take clauses 24 to 30 collectively? Or, do we want to deal with them individually?

Mr Kinahan: Take them all through collectively.

The Chairperson: To jump ahead a wee bit: clause 28 brings an issue that was raised about sectoral bodies and the power to consult. Of course, concerns were raised about clause 28(4), which states:

"ESA may make arrangements with a view to securing that the persons mentioned in subsection (5) are involved in and consulted on".

If I remember correctly, an issue was raised in writing around the use of "may", and it was stated that it should be "shall". That would strengthen that, but, maybe, we are jumping ahead too far. It would be better if we took these clauses individually. I think there is a general concern, per se, around the whole methodology of area plans. That would certainly be my view. Until you resolve who the managing authority is and where everybody stands with regard to what is being discussed on the issue of who the employer is, it is difficult to see how you could have a resolution of the issue of area plans because, in a sense, they are linked. There is still that issue of concern that is being raised.

Mr Rogers: I just want to go back to Chris's point and the point that the other Chris raised earlier. Certainly, there is no educational benefit to be derived from sticking closely to council boundaries. I could see that there would be a totally different plan in part of my constituency. If I, then, move to along the border, is there not some responsibility on ESA to take cognisance of cross-border initiatives that could lead to more effective education? Is there not a need for something?

Mr Stewart: I think that that would be reasonable and sensible for ESA to do. The difficulty with the particular amendment that was proposed was that it purported to place a duty on ESA to consult authorities in another jurisdiction. The legal advice is that that would be beyond the Assembly's competence. However, the general point that you make is an absolutely sound one. We know that

there are children and young people who choose to travel from one jurisdiction to the other, in both directions, to avail themselves of education. It would make sense for ESA and the corresponding authorities in the other jurisdiction to take account of that in all that they do in relation to planning. The numbers are not huge. Nevertheless, they should not be overlooked.

Mr Rogers: Thanks, Chris. That is helpful.

Mr Hazzard: I understand the inability to fit that in competently in the legislative framework. How do you get that cognisance into it, though? Is there an avenue to go down to get that in, or is it just an assurance from the Minister? How do you get that context put in?

Mr Stewart: Members might find an assurance from the Minister helpful on what he will expect in terms of ESA doing that administratively. I think that that is the answer. This is something that could be achieved administratively. It is difficult to capture the spirit of what members are looking for in a competent amendment.

Mr Hazzard: I tend to agree with that. Maybe we could look at an assurance from the Minister or, again, a recommendation in the report. Something along those lines: that we should take cognisance of the fact that that happens along that corridor, both ways across. I know that Michaela has spoken on that. She does a lot of work with families on the other side of the border who want their children to go to schools in the North. Perhaps that is something that we could capture coherently.

The Chairperson: Are there any other comments?

The Committee Clerk: Chair, I am not clear whether the Committee supports that suggestion of a recommendation. I can certainly indicate in the report that some members felt strongly that cognisance should be taken of cross-border provision. However, is it the case that the Committee wants a recommendation to that end?

Mr Kinahan: I met the principal of a school across the border who said that if we started to open up our borders, all of his students would come North and that would be the end of his school. There is a whole mass of other factors. We have got to be very careful. My temptation is to hold back with regard to a Committee view.

Mr Hazzard: Danny has highlighted the need, then.

Mr Kinahan: It works both ways.

Mr Hazzard: Exactly. There is a need, then.

Mr Stewart: On that point, what I was suggesting — and I hope that I was reflecting accurately Mr Hazzard's suggestion — was that planning should take account of choices that are made by parents, children and young people under current law, which allows for travel North/South and South/North. Nothing in the Bill or that recommendation would change that position in law. So, it would not open it up or close it down in any way. The opportunity to move between jurisdictions exists already.

The Chairperson: Are there any other comments?

I think that what we are saying is that that should be reflected as a view that was expressed, rather than as a Committee consensus. There are issues. Obviously, I have concerns. I appreciate that there is an issue for students in the Irish Republic who want to access education in Northern Ireland, and a smaller number the other way, but the current legal position is as it is, and that is the way that it will be. I am reluctant to be a flag-waver for opening up the border, as that takes us into completely different territory. However, I appreciate that there are Protestant pupils along the border in very small Protestant schools who are under the jurisdiction of the Irish Government, and who have concerns about a variety of these things. Therefore, it would be better reflected as being members' views.

Mr Hazzard: Taking your point, and without getting into the rights and the wrongs of the issue, we should at least acknowledge that there is an existing situation and that area planning should pay respect to the issue that exists. I am not asking area planning to solve the issue, but certainly it is a context that exists in area planning, and I think that it should find a way into our report or have an

assurance from the Minister that area planning will pay cognisance to the issue. I am not asking it to solve the issue indefinitely.

The Chairperson: Danny.

Mr Kinahan: No, I was not on this.

Mr Rogers: That is why I brought it up first of all. Area planning should do its best to sustain rural communities, not do the opposite and wipe them out completely. That is where I am coming from. I am not worried whether it is County Monaghan or County Armagh, or wherever: it is about sustaining those small rural communities, whether they are unionist or nationalist. Monaghan Collegiate School is across the border and it needs extra pupils. We have problems with Brollagh, which has a very small school a few miles from Ballyshannon but an hour-and-a-half's drive from Enniskillen and whatever else. There has to be something in the ESA Bill that leaves that opportunity open. As you said, Chris, it is not about putting a duty on ESA to ensure this, but it is about having cognisance of what is happening North and South and doing what we can to maintain rural communities.

The Chairperson: Are there any other views? Are members more content with the recommendation, or should we reflect in the report that it would be the views of members? My view is that it reflects the view of members, rather than a recommendation.

Mr Hazzard: I think that it should be more. It is an issue. I formally propose that it should be a recommendation or an assurance from the Minister.

The Chairperson: There is a proposal from Chris. Does anybody second that?

The Committee Clerk: It does not need a seconder.

The Chairperson: It does not need a seconder. OK.

The Committee Clerk: Sorry, Chair. I think that members are confused. The motion is that there be a recommendation in the Committee's Bill report, which is seeking a ministerial assurance and indicating that the Committee believes that ESA should be cognisant of cross-border issues in developing its area plans.

The Committee divided:

Ayes 3; Noes 5.

AYES

Mr Hazzard, Mr Lunn, Mr Rogers.

NOES

Miss M McIlveen, Mr Craig, Mr Kinahan, Mr Storey, Mrs Dobson.

The Committee Clerk: The motion falls.

The Chairperson: That will be reflected in the report.

The Committee Clerk: Yes.

Mr Kinahan: I am going back to the point. We are talking about all the area planning clauses. The issue I see is that you have the sectoral bodies. Do we name them or list them so that we know who they are? We also need more clarification on the consultation and, linked to the consultation, the Scottish system had a more forceful way of how we should consult, particularly in rural areas. That took us on to the rural point of view, and they had also put in a presumption against, although it was not quite written like that. However, I think that we should look generally at how all that affects all these clauses, because we should be protecting the rural side and, at the same time, putting in some affirmative resolution. I just think that there is more to be thought out in all these clauses, but we cannot do that individually.

The Chairperson: So do we want to reserve our position on clauses 24 to 30?

Mr Kinahan: That is my feeling.

The Chairperson: The two issues that have been raised most repeatedly are — obviously the issue of the rural proofing, and we got the paper on the Scottish model and the work that they did in looking at how to protect rural schools. The other one was this issue around clause 28 about ESA "may make arrangements". That was the whole issue of consultation. I do not know what it would look like on the rurality and the rural issue, but is there any view on amending 28(4) from "ESA may" to "ESA shall":

"make arrangements with a view to securing that the persons mentioned in subsection (5) are involved in and consulted on".

Mr Rogers: I think we just need to be careful. All our own definitions of "rural" are very much as opposed to outside Belfast and Derry. We need to be clear that it is our definition of "rural", not the "outside Belfast and Derry" one.

The Chairperson: The current legal definition of "rural" is anything outside the 30 mile per hour limit of the two cities.

Mr Kinahan: Do we need to define it in our own way? Do we need a new definition of "rural"?

Mr Rogers: No, I think that Mervyn's definition is fine: outside the 30 mile per hour limit and outside Belfast and Derry.

The Chairperson: That is the definition currently.

Mr Rogers: Is the Department's definition not just outside Belfast and Derry?

The Chairperson: That is the same thing. It is outside the 30 mile per hour limit of the two cities. Is that right, Chris? Is that the definition of "rural"?

Mr Stewart: I would have to check that, Chairman. It is not something that I am familiar with.

The Chairperson: That is my understanding.

The Committee Clerk: On a point of clarification, that is the definition used in the sustainable schools policy. There is another definition. If you remember, the Committee wrote to all the library boards and the Department about this. The reply was that they were told by the Department to use the sustainable schools definition of outside Belfast and the City of Culture. So, point of information.

Mr Stewart: Chair, I would draw members' attention to clause 30, which members may or may not feel might provide the answer to a number of those things. If the concern is about the area planning process and how it will be carried out, clause 30 proposes a power to make regulations on that very thing. A number of matters that have been referred to in evidence given to the Committee, and the amendments suggested, seem to the Department to sit more naturally in subordinate legislation, rather than on the face of the Bill. That is exactly why that provision is there.

Mr Kinahan: The other point is if you through the whole group of clauses. For example, clause 25(1) says that ESA "may" and "shall". There is strength in all those clauses. When you get to clause 30, and taking on what Chris has just said, do we not look again for the conciliation that it is an affirmative resolution when we get to water it? Leave the power with the Department, but, at the same time, put a check in place.

The Chairperson: In relation to clause 30 —

Mr Kinahan: It is the whole lot of them. They all have strength hidden in them.

The Chairperson: Can you explain why it would be necessary, in clause 25, to say that ESA "may" and "shall"? Why is it necessary to have both?

Mr Stewart: The overall approach recognises that area planning is a relatively new concept in education. Like most new concepts, we approach it cautiously. So we hope, and propose through these clauses, to equip ESA with the full range of powers that it will need to be an effective area planner. However, the backstop is there for the Department to intervene if necessary, either by, in that instance, requiring ESA to make a plan or, more generally, by bringing forward subordinate legislation to govern how the area planning process would work. It remains to be seen to what extent the Department will have to use those powers, or to what extent we can rely on ESA to administratively discharge the function in an effective manner.

The Chairperson: But, basically, is that not the situation that, if the Department currently — let us be blunt about it. The problem that the Department has at the moment is that it cannot get the boards to do what it ideally wants, which is to bring forward more radical proposals. We have had two stabs at it. In the post-primary sector, it has not yielded what, I think, the Department probably thought was a good outcome. It has now gone into the domain of the primary schools, and I suspect that that will not yield exactly what it is. However, the catch-all here is that if that process was not to work under ESA, the Department would have the power to direct ESA to produce a plan.

Mr Stewart: That is absolutely right, Chair. The Minister is on record of expressing his views about what he sees as the shortcomings in the current approach to area planning. As you rightly say, that approach is not based on specific legislative provisions. The clauses in the Bill would remedy that. You are absolutely right, Chairman: if the Minister, or a future Minister, felt that ESA was not taking forward area planning in the way that he or she wished, the powers would be there for the Department to do something about that.

The Chairperson: In clause 30:

"The Department may by regulations make provision"

Those would be subject to the affirmative —

The Committee Clerk: It is currently negative.

The Chairperson: It is currently negative, is it not?

Mr Stewart: Peter is just checking that for me. I imagine that it is negative; that is the default approach. It is only in instances where members' level of trust and confidence in the Department is not all that it might be that you would, perhaps, look for the stronger control mechanism.

Mr Kinahan: So, do we put affirmative all the way through?

The Committee Clerk: In sum, on these clauses, is it the case that the Committee is reserving its position on clauses 24 to 30? It wants to put down a recommendation that there should be a "duty" on ESA to consult, rather than the, as it is currently worded, "permissive". It is also the Committee's recommendation that area plans be appropriately rural proofed. Members have set out other issues which could be recorded in the Bill report. It also sounds as if members want to amend clause 65 so that the regulations made under clause 30, which refer to area planning, would be subject to affirmative resolution.

Mr Hazzard: Is there consensus on what "rural proofed" means, definitively?

Mr Stewart: There would be guidance on that from the Department of Agriculture.

Mr Kinahan: One nagging thing going through my mind is that it is all very well to look at "rural", but where, in an urban setting, ie Londonderry or Belfast, you have a community that is, let us say, divided away from the rest of the city, do we not meet the same problems as we do in rural proofing? If you take away schools, you destroy the community. I am going back to the Scottish model. I am asking anyone from Belfast here: are there areas like that that would really be cut off, but are within the system? Should we be looking at a clause that gives a little bit of protection into consultation or the effect on a community? Or does that make it far too complicated?

Mr Stewart: The Minister's view would be to ask the Committee to consider very carefully the balance between subordinate legislation and primary legislation when it comes to the detail of the area process. It seems to us that a number of the amendments would sit more naturally in the territory of subordinate legislation, in which, of course, the Committee could have a significant role.

Mr Kinahan: OK.

Mr Stewart: Also, on the proposal in clause 28 to change the power to consult involved to a duty, I think that the Department would ask members to consider the risk that might be involved in that. The list of those that ESA would have a duty to involve would be long and wide. We think that there would be a significant risk there of judicial review. This was summed up very neatly in the evidence from the Northern Ireland Youth Forum: there would be a significant risk of judicial review or challenge from anyone not involved or consulted as part of that process.

The Committee Clerk: On a point of clarification, I think what is suggested is that the Committee make a recommendation, not an amendment, so that it would be, then, for the Department to action the Committee's recommendation in such a way that it does the things that the Committee wants and protects itself from judicial review.

The Chairperson: OK. What is the view on clause 62? Can we try to stay on this and summarise what Peter has given us, as this will be reflected in our report? We would then be making a change to clause 65, which deals with regulations and orders:

"Except as provided by subsection (2), regulations under this Act are subject to negative resolution."

The Committee Clerk: All that we would do to that clause is, after 4(6), insert — sorry, I will start again. In terms of that clause, what we would do is, instead of there being an exception to there, so that all of the powers under the Act are subject to negative resolution, except for those under clause 62, we would just change that list so that it would now include clause 30, and it would be subject to affirmative resolution. That could be quite neat.

The Chairperson: Are members clear on what we are endeavouring to do? Are you happy enough with that? We will come to that anyway, at some stage later on. It is just important to note it, because it is relevant to the issues in relation to the area plan. OK. So are we content that the report reflects the issues that Peter rehearsed as our views on clauses 24 to 30?

Mr Rogers: Do we take it as read that, within this section on area planning, ESA will review all area planning decisions to date as part of this?

The Chairperson: Revision of plans under clause 25? No?

Mr Stewart: The plans under preparation would not have the same status as an area plan produced subsequently by ESA. I do not think that we could state automatically that ESA would review all the existing plans. It may or may not do that, or it may be directed to do so by the Minister.

Mr Rogers: It may, but it may?

Mr Stewart: It could do. ESA could decide, on the first day that it comes into operation, that it wishes to revisit all the planning work that has been done, or the Minister of the day could direct ESA to do that at any stage, but it is not specified one way or the other in the Bill.

The Chairperson: Sean, are you happy enough?

Mr Stewart: I am sorry, Sean, if that answer was not particularly clear. I am trying to be cautious and avoid using a form of words that would give anyone studying the Hansard record the impression that we were suggesting that decisions that the education and library boards and the Minister might make now, particularly about individual schools, would somehow only be provisional and could be overturned by ESA in due course. I think that that would be an unfortunate impression to give. The Minister has made it clear that he wants to see progress on area planning now.

Mr Rogers: But you would think that the work done so far would at least be a good starting point.

Mr Stewart: Again, I do not want to give the impression that it would all simply be overturned when ESA arrives.

The Chairperson: OK. Are we agreed on that approach, members?

Members indicated assent.

The Chairperson: The whole issue of area planning will obviously be ongoing.

Clause 31 (Dissolution of certain statutory bodies)

The Chairperson: This clause dissolves the education and library boards, the Council for Catholic Maintained Schools, the Staff Commission for Education and Library Boards and the Youth Council for Northern Ireland. The Committee previously reserved its position on the clause, the reason being that if the clause is not approved, we do not have an ESA.

Mr Stewart: Sine qua non, Chairman.

The Chairperson: I take it that the Committee reserves its position, because obviously it is connected to and associated with any resolution of the previous issues that we raised. Do we reserve our position on clause 31?

Members indicated assent.

Clause 32 (Transfer of assets, liabilities and staff)

The Chairperson: This clause applies to schedule 4, which allows for the transfer of assets, liabilities and staff of the dissolved bodies to ESA. The clause also applies to schedule 5, which deals with the transfer of assets, liabilities and staff of CCMS to ESA. The clause also applies to schedule 6, which deals with the matter of transfer from the Department to ESA. The Committee has sought a response from the Department setting out the assets, liabilities and staff posts that are to transfer, and, as yet, we have no sight of that information. Is there any update on that, Chris?

Mr Stewart: Unfortunately not, Chairman. It is still being worked on.

The Chairperson: The Committee previously reserved its position on this clause as well. I take it that it is the same position, for the same reason?

Members indicated assent.

Clause 33 (Schemes of management)

The Chairperson: This clause requires every grant-aided school to have a scheme of management. The scheme will set out the membership and procedures for the board of governors. The scheme must be consistent with the legislation, including the Education Bill, and with any governance instrument of the school. The board of governors must give effect to the scheme of management. The scheme of management for an Irish-speaking school or a school with an Irish-speaking unit must require the board of governors to use its best endeavours to maintain the viability of the Irish-speaking school or Irish-speaking unit.

This clause deals with the management schemes. The Committee previously felt that it required clarification from the Minister on whether ESA or the board of governors of certain types of schools would be the employer of staff. The Committee therefore reserved its position, pending a response from the Minister on the sole employer question. As the Department cannot provide clarification on the heads of agreement question, the Committee can reasonably refuse to agree, amend or oppose the clause. Members could take the view that this clause is similar to clauses 34 to 37.

Mr Hazzard: I welcome the suggested amendment about involving the trade unions and sectoral bodies. I was going to suggest something similar, so that is to be welcomed.

The Chairperson: That is in reference to —

Mr Hazzard: I am on 33.

The Chairperson: Sorry, you are referring to the potential ministerial amendments, including a requirement for the Department to consult sectoral bodies and education trade unions before producing guidance and model schemes. Would that include the current model schemes that we have seen?

Mr Stewart: That would happen anyway. There is consultation ongoing with sectoral bodies and trade unions.

The Chairperson: We have only seen the draft ones, and they are out for consultation.

Mr Stewart: That action is informal at present, because, obviously, the Bill is not yet law. The amendments that the Minister has proposed would give effect to what is current practice anyway.

The Chairperson: Right, but it would be a formal consultation for a 12-week period?

Mr Stewart: Yes.

Mr Kinahan: Who else is consulted? Unions and governors are consulted, but there is no scheme to talk to teachers outside the union system.

Mr Stewart: The consultation with unions is in their capacity of representing the interests of staff employed at the school. There is no specific proposal to consult parents.

Mr Kinahan: One of the briefings that we got told us that the Scottish system consulted parents and future parents. I do not see how you could do that given that there are so many parents, but that is the one group that we leave out completely. Parents should maybe be represented.

Mr Stewart: Essentially, that is a policy question that members will want to take a view on. There is not currently a proposal to consult parents, simply because the focus of the scheme of management is very much on the operation and the day-to-day governance and management of the school, which is clearly the territory of the principal, the senior management team and the board of governors. That is not to say that parents do not have an interest in it; of course they do, but it is not as close an interest as it is in some other matters.

The Chairperson: We have not seen the actual amendments, but the potential ministerial amendments that have been submitted for clause 34 are about:

"A requirement for a submitting authority to provide to any person on request a copy of any scheme of management in operation."

"Changes to reflect outcome of political discussions on management provisions and the Heads of Agreement."

The suggested amendment to clause 35 — reserve power of ESA to make scheme of management — is about:

"Changes to reflect outcome of political discussions on management provisions and the Heads of Agreement."

The suggested amendment to clause 36, which is on revised schemes of management, is for:

"A requirement for a submitting authority to consult relevant trade unions before submitting a revised scheme."

Are members generally content that, if those amendments were made, they would find favour?

Members indicated assent.

Mr Stewart: In essence, the Minister has responded positively to a range of suggestions from trade unions around consultation. We are not in a position to agree with some of the other changes that they have suggested, but, on consultation, it is absolutely at one with what is proposed.

The Chairperson: We have a concern about being consistent with clause 2(5). Clause 33(5) says:

"The scheme of management for an Irish speaking school shall require the Board of Governors to use its best endeavours to ensure that the management, control and ethos of the school are such as are likely to ensure the continuing viability of the school as an Irish speaking school."

I do not see why any particular sector should be taken by the hand and given preferential treatment. That is our view consistent with what we have stated about clause 2(5).

Mr Kinahan: That should apply to all sectors. There should be no preference.

The Chairperson: Yes. I have no difficulty if the scheme of management of a school is there to ensure the board of governors uses:

"its best endeavours to ensure that the management, control and ethos of the school are such as are likely to ensure the continuing viability of the school".

That is what it should be. That is called equality or parity of treatment.

Mr Stewart: A clause constructed in the way that you have suggested would be technically possible. If the requirement were to ensure the viability of the school as a particular type of school, that could run into a difficulty, because there are provisions in law for schools to transform to grant-maintained integrated status, and a provision that clashed with that would be technically unsound. You might ask why that does not occur in relation to Irish-speaking schools. It is because the requirement to be or not to be an Irish-speaking school does not change a school's management type. However, for example, a duty on a board of governors to keep a controlled school within the controlled sector might clash with the provisions on transformation.

The Chairperson: So, in essence, you are saying that, if a school goes for a transformation change, it changes the make-up of the board of governors.

Mr Stewart: A duty to keep a school viable is possible. A duty to keep a school viable but within a particular management type would clash with some other provisions.

Mr Kinahan: Clause 34(2) states that the Department may issue guidance with the approval of the Office of the First Minister and deputy First Minister. Is that something that we want to push, or do we want to allow a little bit of control through the education system, certainly with reference to this Committee? It just seems strange. I am uncomfortable with passing everything to OFMDFM.

The Chairperson: Sorry. Where are we at, Danny?

Mr Kinahan: We are on page 18. It is clause 34(2).

The Chairperson: I suspect that the reason for that was a decision to try to ensure that no regulations or issues would be brought into the scheme of management.

Mr Kinahan: I am happy with that, but I somehow think that this Committee —

The Chairperson: Yes, I see what you mean.

The Committee Clerk: Is the Committee suggesting that it wants the addition of regulations around the issuing of guidance so that it would have to come to the Education Committee?

Mr Stewart: I have to observe that that would be a remarkable degree of control over the administrative matter of producing guidance. It would be unprecedented in my experience.

Mr Kinahan: If you follow my logic, though, to have —

Mr Stewart: No hint of conciliation there at all, Chairman. It is now absolutely gone.

The Chairperson: Your conciliation is gone out the door.

Mr Kinahan: My logic is that this Committee knows most about education, yet we are passing it up for approval with OFMDFM without any link here.

Mr Stewart: I am sure that the Minister would expect the Committee to be consulted about draft guidance. We would do that as a matter of course. The suggestion is to take what is an administrative function of producing guidance, which is already proposed to be regulated in a most remarkable way by reference to another Department, and also to make that guidance subject to regulations, which themselves will require Committee approval and, perhaps, affirmative resolution. It is for members to take a view on that, but I merely observe that that is a remarkable degree of control.

The Chairperson: I need to say that they are guidance, and we need to stay within the definition of what guidance is. It is that: guidance. OK?

Mr Kinahan: I am happy with that.

The Chairperson: Our concerns relate to clause 33(5) and 33(6), because those deal with the same issue.

Mr Rogers: I have no concern with clause 33(5) or 33(6), but, similarly, there is a duty there to encourage integrated education. There is a duty there to encourage and continue to support faith-based education.

The Chairperson: Yes, but our view is that, if it is not there, the general duty is to ensure that the schemes of management are of such a nature that they are for the management and running of the school, irrespective of what type it is. The issue of type has already been defined, and the issue of the nature of the school has been defined. My worry about this is that, if you start in the position where you begin to specifically give one or other sector more than what some of us would argue they already have, you then create a further imbalance in the way in which those schools are governed, or, under the schemes of management at least, are managed.

A scheme of management should be about just that; it gives effect to the management arrangements of a school. However, should we then put into legislation that those schemes of management should, in some way, ensure the management, control and ethos of a school or the continued viability of a school, and name that school but not name anyone else? If it is the purpose of the management scheme to ensure the viability of a school, you would think that would be the reason why the board of governors would be there anyway.

I just worry about going down that particular route where you have individual sectors named in that way. Others will say that that is a duty that they do not enjoy. The 1989 Order has already created an imbalance and an unfair situation. The maintained, controlled and voluntary sectors claim that the 1989 Order gives an unfair advantage to the Irish-medium sector and the integrated sector. I am only trying to reflect that that is a general concern that people have. If we were to put this in, it would just exacerbate the situation.

Mr Rogers: There is a responsibility there to promote Irish-medium education, which goes right back to the 1989 Order and the Good Friday Agreement and all that. Rather than leaving that sort of thing out, should we not strengthen it by including faith-based education as well, or integrated education or whatever?

The Chairperson: You probably run the risk of being asked to define faith-based education. Faith-based education will be seen by one sector as being the Catholic sector. The independent school sector is faith-based, with a number of independent schools. Does that bring them under that jurisdiction? There are many schools in the controlled sector that will state in their schemes that they

have a Christian ethos, which brings them in. We run the risk of having to define a faith-based school. It goes right across the gamut of schools.

Mr Rogers: It does, yes.

Mr Stewart: If I may, although I will only partially answer Sean's question, article 66 of the 1989 Order contains a duty on boards of governors of integrated schools, but it does not address the issue of faith-based schools. The duty on boards of governors of integrated schools is similar to what is in the clause that members are currently considering.

Mr Lunn: I am sorry that I have not been contributing — *[Inaudible due to mobile phone interference.]* Is there no previous duty on boards of governors of Irish-speaking schools to promote the ethos of the school? I am sure that there was a previous one for integrated schools. I presume that there is a general one for all schools.

Mr Stewart: I do not think that there is, Trevor. There certainly is not one couched in the terms of that clause in relation to Irish-speaking schools. It is the case that those two sectors — the integrated sector and the Irish-medium sector — are treated in a particular way in legislation, which stems from the two statutory duties on the Department to encourage and facilitate.

Mr Lunn: It is not hard for me to follow the argument that those two particular sectors need a level of extra encouragement — *[Inaudible due to mobile phone interference.]* I take Sean's point about faith-based schools, but there is a particular set of circumstances that pertains for Irish-medium schools in particular — and maybe, to a lesser extent, for integrated schools — that requires the provision in clause 33(5) and 33(6).

The Chairperson: What we need to do, given that there is a difference of view on how we interpret some of these things, is stay at the position we were at; that we reflect in the report the issues that we have discussed, and that there is no consensus as to what we would do with regard to the clauses. Is that a fair reflection? That covers clauses 33 through to 37.

Mr Rogers: I just think that it is important to have them there. It is like what we were talking about yesterday for peripatetic and Irish-medium and whatever else. We have to state exactly what we want here. Then we have the transferors and others who want to see curriculum support for RE and for RE to be inspected. There should be curriculum support for RE across the board.

The Chairperson: How members feel will be reflected. That should be noted.

Mr Lunn: Sorry, Chairman, I am playing catch-up a wee bit. Of the potential ministerial amendments, six relate to clauses 34, 35 and 36. It goes back to the old problem of waiting for the white smoke from OFMDFM. Until we have proper suggestions or amendments, rather than just the scope of the suggested amendments, I am not quite sure what we can do with those clauses. In the informal scrutiny, we took the same view. The schemes of management ones are linked with the schemes of employment. So, we are reserving our position, are we not?

The Committee Clerk: Just to be clear, the Committee has reserved its position on clauses 33 to 37, but has indicated general support in principle for the ministerial amendments, because they talk about things like consultation and publication, etc.

We have a problem with mobile phone interference. Apparently, Hansard cannot hear us at all.

The Chairperson: Oh dear. Get your phones off, members, or I am going to have to take them off you before you come into the meeting and lock them away.

Mr Kinahan: If it is on aeroplane mode, it should not be an issue.

Clause 38 (Duties of Board of Governors in relation to achievement of high standards of educational attainment)

The Chairperson: Clause 38 requires boards of governors to promote the achievement of high standards of educational attainment. The clause requires that boards of governors co-operate with

ESA with respect to actions taken by ESA to promote high standards. The Committee informally agreed that it was content with the clause as drafted.

Did we not have an issue around the inspectorate? Or was that later on? That was later on. Are there any comments on clause 38? Is there a consensus that the Committee is content, subject to consequential amendments, with clause 38 as drafted?

Mr Lunn: I cannot think of any reason why anybody would find fault with clause 38, to be honest.

The Chairperson: We have informally agreed it.

Mr Lunn: I see that the contribution from the unions asks what "attainment" is. If they do not know what attainment is by now, I am sorry for them. It is perfectly obvious what one of the duties of a board of governors is. It is clearly stated there. I do not see any problem with it.

The Chairperson: The only thing that I would say, and it was alluded to in a late debate in the House last night, is that we set a standard now in our system saying that students need to achieve five GCSEs at A* to C, including English and maths. However, many of us know — some of us from personal experience as individuals and parents — that that will not be achieved by some in our family. Have those pupils still had an attainment and have they still achieved educationally? I argue that, yes, they have. However, according to the system that we currently construct, they have not. The question is whether you use that, and whether that all feeds back to the area-planning issues by saying that if you judge a school on attainment and achievement and it has not reached that level then it must be a failing school. I think that those are the wrong correlations and conclusions to come to.

Mr Lunn: I completely agree with you. It just says:

"achievement of high standards of educational attainment by pupils".

For some pupils, three GCSEs could be a major achievement. There is no point in suggesting that you need to specify particular levels in a clause. That just does not make sense.

Miss M McIlveen: There had been a suggestion by NAHT and ACGS to amend the clause to include a measure of attainment linked to value added by the school. The Department's response was that the Minister wishes to give further consideration to that suggestion. Has he given it further consideration?

Mr Stewart: He has.

Miss M McIlveen: I know that it says "but", but, at the same time, he was going to give it further consideration.

Mr Stewart: He has, but he does not feel that that is a matter that is amenable to legislation, at least at this time. I think that the Minister would sympathise with a number of the views that members have expressed. The five GCSEs standard is one standard and one method of assessing attainment; there are others. The duty is deliberately couched in terms that require a board of governors and the management team of a school to take it forward in the context of the school and the capabilities of the pupils. As we move forward in the development of our approach to assessment, I think that the Minister would support the need to develop more sophisticated and flexible approaches that would include an element of value added. If a school has an intake of particularly strong pupils, it is not enough for that intake of pupils to come out with average results. We need to see what the school is doing in terms of adding value if it is teaching the brightest and the best. Equally, if a school is teaching children and young people who are not in that position, we want to ensure that the school is not coasting and that it is assisting those children and young people to be the very best that they can be, and that is the measure of attainment with which we should rightly celebrate if a school achieves.

The Chairperson: There is always an element of cynicism in the worth of a ministerial assurance. However, it is a mechanism that we could use on that issue. Could we try to encapsulate what Chris said and the issue that you are raising around the added value and the comments that Trevor made and to get a ministerial assurance on this as opposed to trying to amend clause 38?

Miss M McIlveen: I am not sure what comfort a ministerial assurance actually gives.

The Chairperson: It is a catch-22 situation. You can say that we should not have it, or question it, but is it worth at least getting it and having something there? The alternative is whether there is something that we could change in clause 38 that reflects that view on value added. Obviously, the legislation is more binding, irrespective of who the Minister is at any given time.

Mr Rogers: I agree with what other people have said. I think that we should be using the word "achievement" rather than the words "educational attainment", because "achievement" takes in that value added. If children transfer at 11 with a high level of attainment and get seven As to Cs, whereas another group transfers with a poor level of attainment and gets seven As to Cs, there is major value added. There is a major achievement.

The Chairperson: How could we summarise that and amend clause 38 to reflect it? How would you suggest doing that?

Mr Lunn: I suggest that if clause 38(1) said, "with a view to promoting the attainment of high standards of educational achievement", instead of the other way round, it actually would not make any difference to me. Perhaps, it would please some people — I do not know — if it promotes the achievement over the attainment. I think that it is the same thing.

Mr Hazzard: To follow on from Trevor; I do not know what we are really trying to achieve here. I find this to be one of the more straightforward clauses. I am a wee bit confused as to what we are doing.

Mr Stewart: Some time ago, members asked about the concept of an aspirational duty, which is one that the Department does not support. I think that this is an example of a progressive duty, because it is not defined in any particular or binding way with reference to any one method of assessment at this point in time. The duty will progress. As our approach to the measurement of attainment becomes more sophisticated, the duty will reflect that.

The Committee Clerk: Would it satisfy members were the Committee to make recommendations, say, in its Bill report, that the Minister gives consideration to more meaningful value-added measures of achievement and not simply attainment?

Mr Rogers: Yes. We do not want to narrow educational achievement down to five As to Cs.

The Chairperson: That is the system that we have.

Mr Kinahan: Could it be suited to the school? You do not want any school to be weaker than any other.

The Chairperson: Ultimately, it is suited to the school, I suppose, in a sense. I take the point that Trevor makes that you could change around the way in which it is worded and have "achievement" as opposed to "attainment", but you would probably end up with the same point. Could we reflect what Sean said on the issue, and I think that members are generally of that view, which is that — let us take the school out of it because that sounds as though we are just trying to protect institutions — a pupil is not judged solely on their academic certificates and that there are other elements that add value, which we have never been able to fully define and put inside a framework, that are of immense value and benefit to many young people?

Miss M McIlveen: I think that that is important, even when we take into context the conversations that we may have on the inspectorate.

The Chairperson: Are we happy that the report reflects that? Remember, members, that we will have to go through all this when the draft report comes to us, so you will have the opportunity to say, "No, Peter, I do not think that that is what we were saying." Poor Peter — *[Laughter.]* OK. Are you happy enough?

Members indicated assent.

Mr Lunn: I am sorry: the Department's real response is that which it gave to the Northern Ireland Commissioner for Children and Young People (NICCY) on clause 38. It is all fairly high-minded. The bottom line seems to me to be the important one. It states:

"the provision is sufficiently flexible to permit BoGs to perform the duty in the context of the particular circumstances of their schools."

That is the most important thing, whether you use the word "achievement", which the Department says is not couched in absolute terms — whatever that means — or "attainment". It is flexible. It allows boards of governors to reflect the particular needs of pupils in their own schools. I cannot see the problem with this clause.

The Chairperson: Is the Committee content, subject to consequential amendment, with the clause as drafted?

Members indicated assent.

Clause 39 (Appointment by ESA of governors for controlled, maintained, grant-maintained integrated and certain voluntary grammar schools)

The Chairperson: This clause transfers from the ELBs to ESA the right to appoint governors for some schools. The clause requires ESA to ensure that the appointees are committed to the ethos of the school. In the case of an Irish-speaking school or a school with an Irish-speaking unit, ESA must ensure that the appointee is committed to continuing the viability of the school or unit.

The Committee noted a departmental response on the public appointments process and school governors and reserved its position on this clause. Obviously, we will be consistent with what we have said in relation to clause 2(5) and our issue with clause 39(1)(e)(7)(b) and clause 39(2)(a)(3)(b). Does the Committee still reserve its position with regard to clause 39?

Members indicated assent.

Clause 40 (Part-time teachers to be eligible for election as governors)

The Chairperson: This clause allows part-time teachers, but not temporary teachers, to be eligible for election as governors of their schools. The Committee agreed that it was content with the clause as drafted. Is the Committee content, subject to consequential amendment, with clause 40 as drafted?

Members indicated assent.

Clause 41 (Management of controlled schools)

The Chairperson: This clause makes the board of governors of a controlled school responsible for control and management of the school. The clause also permits more than one controlled nursery school to be grouped under a single board of governors. The Committee reserved its position on this clause. Can members recall why?

Miss M McIlveen: The TRC wanted to have a right to nominate a board of governors when a controlled secondary school and a controlled grammar school were amalgamated. The Department said that there was no basis for that to happen, and we had concerns.

The Chairperson: Yes; the TRC had never had nomination rights to the boards of governors.

Miss M McIlveen: That just proves that I was listening that day.

The Chairperson: Do you have any other comment on that, Chris? Obviously, that is the legal position on the issue.

Mr Stewart: That is the legal position on that issue. Members may have felt last time that the clause did not go far enough and was not ambitious enough in what it provides for in the concept of federation. The two reasons for that are the legislative workload required to achieve that and the

Minister's desire to wait and see what the advisory group on shared education says before going further in that direction.

Mr Kinahan: I am sure that in the Chamber the Minister said that there were virtually no hindrances to cross-sector thinking. I asked him a question on that because I have been trying to encourage —

Mr Stewart: I hope that he did not say that.

Mr Kinahan: I thought that he said it. I am lost. I was trying to get clarification on whether legislation prevents schools working together. He seemed to indicate that there are ways around that.

Mr Stewart: There are not ways around it in relation to federation. The Minister may have been referring to the concept of joint faith schools in the maintained management type. It is possible to have a maintained school jointly owned by Protestant and Catholic churches. It is not possible to have a federation comprising a controlled school and a maintained school under a single board of governors. It has to be one type of board of governors or the other, and the two types are differently constituted.

Mr Lunn: Why the exclusion of controlled integrated primary schools?

Mr Stewart: They have a particular composition of boards of governors that is unique.

Mr Lunn: However, if you have two controlled integrated primary schools, with a unique format of board of governors, they are both the same.

Mr Stewart: It would be possible that you would not have the same technical barrier there, but I doubt whether, in practical terms, they would be sufficiently closely located to make it a practical proposition. However, it is possible.

Mr Lunn: I still wonder why it is excluded in that way.

Mr Stewart: That simply reflects the wording of the existing legislation. There is currently an exclusion, but there is no fundamental technical difficulty in grouping two controlled integrated schools under a single board of governors because the boards of governors of the two separate schools would be identically constituted. I think that it is more of a practical concern.

Mr Lunn: It is a practical concern to recognise the fact that controlled integrated schools tend to be further apart than ordinary controlled primary schools.

Mr Stewart: However, there is no technical reason why that could not be amended. I am not aware of any particular policy concern that the Minister would have if the Committee were minded to suggest that.

Mr Lunn: I do not know what way the Committee is minded, but you say that it is a repetition of what already exists in legislation. Why are we repeating existing legislation? I thought that, generally speaking, we do not do that.

Mr Stewart: When it is necessary to re-enact, by and large, we follow the existing wording.

Mr Lunn: That could be a case for a further amendment.

The Chairperson: So we will reserve our position on clause 41, as previously was the case. I assume that that is because of the issues that were raised by the TRC and the issues that Trevor raised about controlled integrated schools. I think that they are reserving their position on that.

Members indicated assent.

The Chairperson: We would support them on it.

Clause 42 (Management of maintained nursery schools)

The Chairperson: This clause allows for more than one maintained nursery school to be grouped under a single board of governors. The Committee informally agreed that it was content with the clause as drafted. Is the Committee content, subject to consequential amendment, with clause 42 as drafted?

Members indicated assent.

Clause 43 (Controlled school: definition)

The Chairperson: This clause defines a controlled school as a grant-aided school, the premises of which are invested in ESA. The Committee previously reserved its position on the clause. I take it that we still have the same position and that there is no change in regards to that?

Members indicated assent.

Clause 44 (Inspections on behalf of the Department)

The Chairperson: This is Part 3 of the Bill on inspections, and it runs from clause 44 to clause 48. Clause 48 allows inspectors to be appointed by DE to undertake inspections in schools and establishments funded by the Department or ESA. The clause requires inspectors to promote high standards of education and to consider the standard of education and professional practice at schools and establishments. Inspectors may monitor, inspect and record any aspect of the establishment, including teaching and learning, management and staffing, equipment, accommodation and other resources. Inspections will not include RE, except when a board of governors agrees. The Department may give a direction under article 101 for the purpose of remedying any matter identified in an inspection report.

This clause and clauses 45 to 48 deal with inspections in schools. The Department has also provided clarification on how the Bill will change the powers of the inspectors. The Department also provided a response on the use of lay assessors, and the Minister for Employment and Learning has written to advise of amendments to clauses 47 and 48.

On clause 44, the Minister of Education states:

"Inclusion of more explicit references to the inspection of governance, leadership, teaching and learning. The proposal would not represent a substantive policy change, as inspection already focuses on governance, leadership, teaching and learning. The effect of the amendment would be to ensure that the wording of the legislation reflects modern inspection practice more closely."

On clause 46, the suggested amendment is to:

"Include a requirement to send inspection reports to sectoral bodies".

That is not the case at the moment, although they are all on the website.

Mr Stewart: They will all be on the website, Chairman. The Minister feels that one of the core functions of sectoral bodies will be to take an interest in raising standards and the promotion of raising standards, so it makes sense that they are equipped with the information to do that.

The Chairperson: Clause 47 relates to DEL. I assume that the suggested amendment is from DEL:

"Changes to bring the DEL inspection powers into line with those of this Department, and to establish powers to inspect private sector training organisations".

The Committee Clerk: Members can find that information from DEL in their folders. You will find there the letter from the Minister for Employment and Learning.

Mr Stewart: Members might find it helpful if I rehearse the background to that. DEL did not initially propose to change significantly the powers of inspection. It did not see a need to keep them in parallel with those of the Department of Education, but a difficulty arose recently in relation to the inspection of

a private sector training organisation that was successfully challenged in court proceedings on the basis that there was no formal legal power for DEL to inspect such providers. It was relying on inspection being a condition of grant aid. Colleagues and the Minister for Employment and Learning reflected on that and felt that it would be better to place inspection of those providers on a sound legislative footing, hence the proposal. At the same time, they then looked again at the particular powers of inspection and decided to mirror the approach taken by the Department of Education. If the provisions go forward in that form, there will be a consistent approach to inspection across schools, further education and private sector training providers. The Department that will still be pursuing a different course is the Department of Culture, Arts and Leisure (DCAL), which does not see the need for formal powers of inspection, hence it has not been included in the Bill.

The Chairperson: It is proposed that there will be a new clause 47. Members, I will put my cards on the table on the inspection issue. My personal view is that the issue of inspections should be taken out of the Bill completely. I know that some members do not like me going back to that dreaded document called the heads of agreement, and, if my party leader hears me saying that, I will be in trouble. It is now in Hansard, but anyway. The document states:

"There should be further consideration of the future of the Council Curriculum, Examinations and Assessment (CCEA) and the inspectorate including the option of some or all of its functions remaining in a separate body."

It is our intention that all references to inspection should be taken out of the Bill completely. Is there any support for that view? Obviously, I would like to think that my colleagues will support me in that. I take that as a given.

Mr Kinahan: We are pretty close to supporting that, but I would like to hold back.

Mr Rogers: Chris says that the purpose here is to put the inspectorate on a sound legislative footing. Who inspects the inspectorate?

Mr Stewart: This Committee.

The Chairperson: That is the case — I am sorry to cut across you, Sean — but as members will recall, Chris made it very clear, with no ambiguity, that the inspectorate is the Department. So the statutory role of this Committee is to inspect the inspectorate. That is how we would see it. We have a statutory duty, and in light of all that is going on, I am very concerned about a number of schools, about which I have been made aware, where there are issues about the way in which inspections have been carried out. As a Committee, we will have to come back to the issue of the inspectorate very soon.

I dread to use the phrase, but it is inextricably linked to the area planning process. There is area planning, the inspectorate and rationalisation. They are not individual silos; there is a link between them all, which is why we take the view that there needs to be legislation that looks specifically at the issue of the inspectorate.

If it is in the context of ESA, it is in the context of area planning and the new administrative arrangements; it is part and parcel of the same thing. It should be taken outside so that everyone has confidence that we have an inspectorate that is a critical friend rather than the eyes and ears of the Department.

Chris was right, and I am glad that we recorded that, not for any malicious purposes. It takes away any ambiguity that somehow the inspectorate is not what it is supposed to be. That is what it is there for; it is the Department inspecting schools.

Mr Rogers: If it is in the Bill, does there not need to be legislation to ensure that the inspectorate is independently scrutinised by ESA? What about the formal complaints procedure, for example? If the Committee began to deal with all the complaints about the inspectorate, we would need three meetings a week. How is the overall inspection process monitored and evaluated?

The Chairperson: That is the very reason. It is not my intention, Sean, to put you in a position of having to accept what I am saying about the way in which we should deal with this. However, those

are the very reasons why we should have separate legislation that specifically covers the whole area of inspections. In that, you would be able to address issues such as an appeal mechanism.

There is no appeal mechanism. There is a very limited way of addressing issues. I know that it happened recently that comments have been made in an informal presentation, and information has been passed informally from the inspectorate to the school, and the school was content. However, when the report came, it bore no reflection on what was said in the informal presentation. There is a serious issue there, and we are looking at it at the moment.

We need legislation that gives confidence to schools. Schools are becoming more and more worried. No one ever looks forward to an inspection, and everyone is reticent about them, but generally, people took the view that they were happy enough. Now, however, when people hear about an inspection, they have major concerns. That is probably because of the public perception of the whole hype around the future of schools and which schools will survive or close. For those reasons, it would be cleaner and give us more focus to include in the legislation issues such as accountability and so on, whereas the current situation muddies the waters unnecessarily.

Mr Lunn: I have previously agreed with you, Chairman, that in theory it would be better for the inspectorate to be separate from the Department. It is odd that the present and previous chief inspectors disagree with that and do not see the need for it. That argument differs from the one made in the Bill, which is to do with the powers of inspectors. Sean spoke about the relationship between ESA and the inspectorate. There must be some relationship there, and this is probably the appropriate place to prescribe it.

I note that in its response to the Northern Ireland Teaching Council's concern about clause 45, the Department states that the clause "provides a modest enhancement" of inspection powers, which does not go anywhere near as far as the powers to inspect schools in Scotland, where a criminal offence is involved. It would be a huge step to try to take it out of the Bill and plan a separate Bill; it should surely be under the ESA umbrella, like every other aspect of the educational spectrum. So I think that we disagree slightly here.

The Chairperson: Not for the first time.

Mr Kinahan: I am on similar ground. I am concerned that we have not got an inspection system at the moment that works well. Were we to take it out, how long would it be before we get a Bill in place that makes it better? I do not want a decision to be made today. I want to find out from the Minister whether there could be plans for a Bill on inspection, and if so, when it could come in. We may then take it out of the present Bill rather than take it out and find that we are stuck with what we have for ages.

The Chairperson: The easiest way to deal with that is that members reserve their position on the relevant clauses. Our views obviously differ; the Committee had reserved its position on those clauses during informal consideration. It will then be up to individuals to decide how they will pursue that when the Bill comes back to the House.

Miss M McIlveen: For clarification: my recollection of when we spoke about this issue previously is that not to include it in the Bill would mean that the powers of the inspectorate would remain as they are. Is that right, Chris?

Mr Stewart: Were you to take out the repeal of the current inspection provisions — yes. They are in article 102 of the 1986 order.

Miss M McIlveen: That gives us the opportunity, therefore, to have greater scrutiny of what we want to look at in developing a future inspectorate.

Mr Lunn: I hear that, too. However, if you take this out of the Bill and ask the Department to produce a separate Bill, that separate Bill would probably be pretty much identical to what is already here. It would just have been separated, so we would be having the same discussion about whether it is within or without ESA.

The Chairperson: True — although it would give us a better opportunity. The difference would be that we would be looking at it on its own rather than as clauses 44 to 48 in a Bill with 66 clauses. We

would then be able to provide a better overall view as to whether you add things, such as Sean's comments about an appeal mechanism and so on, which are not in this draft of the Bill. That is the only thing. That is the difference that I see.

Mr Rogers: You know the way that we had that thing earlier, well ESA may do that when it gets leg room or whatever. I am looking at clause 46 on the conduct of an inspection and the separate reference to "monitoring, inspecting and reporting". Can we have something in the legislation to ensure that the inspectorate will be subject to the independent scrutiny of ESA in evaluating what it does?

Mr Stewart: I will offer a couple of points of information on that, which may inform members' consideration. If members feel that there is a need for some mechanism that independently scrutinises the inspectorate, you may wish to suggest that. However, one of the proposals is that the inspectorate will inspect ESA and the delivery of certain of its functions. If ESA had that role, therefore, you would have a somewhat circular relationship between the inspectorate and ESA.

I would also point out that the issue of the need, or lack of it, for an independent scrutiny or challenge mechanism of ESA arises whether or not it is part of the Department. An independent inspectorate, surely, would require the same mechanism.

The Chairperson: Thank you. Any other comments? Who inspects the inspectorate? We do.

Mr Rogers: If the inspectorate is to be a credible organisation and build respect throughout the educational environment in Northern Ireland, there has to be some way that it is moderated and evaluated. There has to be a formal complaints procedure. Is there anything that we can build into the legislation to begin that process?

Mr Stewart: The inspectorate operates an informal complaints procedure. Members may wish to consider whether they wish to put that on a formal basis.

The Chairperson: Chris, you also said that that would require a repeal.

Mr Stewart: The Bill does two things. It repeals the current inspection provisions in article 102 and introduces new inspection provisions in this clause. If the Committee wishes to see things staying as they are, you need to repeal the new inspection provisions and the repeal of the old provisions.

The Chairperson: Yes, I think that I understand that. That is clear. Obviously, members, there is some disagreement, but there is an element of consensus around issues that still need to be considered. Probably the best way to proceed is for that to be reflected in the report.

The Committee Clerk: Do you want to go as far as a recommendation around consideration of the appeals mechanism and complaints procedure? Would the Committee go as far as saying that there should be consideration of ETI becoming an independent body independent of the Department? Would members go that far?

Members indicated assent.

The Committee Clerk: Right, there is your recommendation.

The Chairperson: It is the Committee's decision. In light of that, will that be the recommendation in the report?

The Committee Clerk: Yes.

The Chairperson: Yes, and we will still reserve our position on clauses 45 to 48. Agreed?

Members indicated assent.

The Committee Clerk: The Minister has suggested several amendments. His suggested amendment to clause 46, for example, is to:

"Include a requirement to send inspection reports to sectoral bodies."

Even though the Committee is reserving its position on the clauses, is the Committee generally in support of that? Likewise, the Minister for Employment and Learning's proposals around sending inspectors to private institutions?

Members indicated assent.

Mr Lunn: Did I hear earlier that those inspection reports are on their website anyway?

The Chairperson: Yes.

Mr Lunn: The Minister's proposed amendment is entirely irrelevant.

The Chairperson: Yes, the reports go on the website, but there is no legal requirement to do that.

Mr Kinahan: Is it not an issue that they go on too early in some cases?

The Chairperson: In some cases, they do not go on for a long time.

Mr Kinahan: There is that too.

The Chairperson: I have an ongoing issue that I am meeting the Minister about next week. Two schools in my constituency have been waiting for a decision on formal intervention since November last year. That is totally and absolutely unacceptable. You cannot convince those schools that something is not up. It does not matter how many assurances that inspectors or the Department give, somebody smells a rat that something is going on. It is for those very reasons that a time-bound response is needed. Once you start to add to that, there needs to be something more that expands on where we are at.

Mr Lunn: The Minister's suggested amendment does not alter the situation at all.

The Chairperson: No.

Mr Lunn: If he wants those inspection reports to go to sectoral bodies, they will clearly go at the same time as they are published on the website or given to the school. So what odds?

The Chairperson: That brings us to clause 48, and lunch has arrived, so we will have a 15-minute break. Is the Committee content to reserve its position on clauses 44 to 48?

Members indicated assent.

Committee suspended.

On resuming —

The Chairperson: OK, members. My appreciation goes to the staff who organised the food. That was very helpful.

Clause 49 (Interpretation of this Part)

The Chairperson: This clause is all about the Northern Ireland Council for the Curriculum, Examinations and Assessment. It defines certain terms used in this Part of the Bill. It is part of a sequence of clauses, clauses 49 to 54, that deal with CCEA. The Department has provided some responses on CCEA's interaction with business and commerce, but it has not responded with a policy paper on the role of CCEA.

The Committee informally agreed that it was content with the clause as drafted. — *[Inaudible due to mobile phone interference.]*

The Committee Clerk: The Committee reserved its position on — *[Inaudible due to mobile phone interference.]*

The Chairperson: Chris, do you have any further comments on this clause?

Mr Stewart: No, Chair. Unfortunately, the other information that the Committee requested is still being worked on.

The Chairperson: OK. Was it only clause 49 that the Committee informally agreed?

The Committee Clerk: — *[Inaudible due to mobile phone interference.]* reserved.

The Chairperson: The Committee informally agreed to clause 49, but reserved its position on clauses 50 to 54. Is that right?

The Committee Clerk: Yes. We were waiting the response from the Department on the role of CCEA.

The Chairperson: Are there any comments? There is obviously still an issue with the conflict of interest between CCEA being the regulator and the provider of services. It sets the exams, and, in a sense, polices itself.

Mr Lunn: I take it that we have had no response from the Department. The Committee was waiting for a departmental response to set out the policy in respect of CCEA. There was also the thing that Jonathan raised about the cost of services for Irish medium and special needs.

The Chairperson: We have not received anything. OK, members.

Is the Committee content, subject to the consequential amendment, with clause 49 as drafted?

Members indicated assent.

The Chairperson: The Committee reserved its position on clauses 50 to 54. I take it that that is still the case. Are there any comments on that? We will try to deal with all those clauses together if we can. Obviously, we are concerned with being consistent in relation to clause 54(1)(b)(iii).

Is the Committee content to reserve its position on clauses 50 to 54?

Members indicated assent.

Clause 55 (Safeguarding and promoting welfare of children and young persons)

The Chairperson: This clause relates to the protection of children and young people. It also relates to schedule 7. This clause places a duty on ESA to ensure that its functions are exercised with a view to safeguarding and promoting the welfare of children. This is part of a sequence of clauses — 55 to 59 — that deal with the safeguarding and promotion of the welfare of children and young people. The Department provided information on how ESA will interact with the Safeguarding Board.

The Committee informally agreed that it was content with this clause and all the clauses in this Part of the Bill as drafted.

Miss M McIlveen: I want to again welcome the inclusion of these clauses and thank the Department for taking the amount of time that it has to strengthen this particular area. I congratulate it in this case.

Mr Stewart: Is that in the Hansard report? *[Laughter.]*

Miss M McIlveen: It is.

The Chairperson: Yes.

Mr Lunn: We seem to have informally agreed that we are content with all these clauses. The only thing outstanding is the response on the relationship between ESA and the Safeguarding Board.

The Chairperson: We have that.

Mr Lunn: Have we got it?

The Chairperson: Yes.

The Committee Clerk: The Department wrote to us, I think, last week to set out the relationship between ESA and the Safeguarding Board and the tie-in with the relevant legislation that the member — *[Inaudible due to mobile phone interference.]*

Mr Lunn: Have we seen it?

The Chairperson: It should be in your correspondence from last week.

Mr Lunn: You cannot read them all.

The Chairperson: OK. Is the Committee content, subject to the consequential amendment, with clauses 55, 56, 57, 58 and 59?

Members indicated assent.

Clause 60 (General duty of the Department and DEL)

The Chairperson: This clause amends the 1989 Order to set out the Department's general duties, which include the promotion of education for children and young people. The clause also set out the duty of DEL to promote further and higher education.

The Committee previously noted suggested amendments relating to shared education. The Committee has agreed to not amend the Bill in respect of shared education and instead adopt a related recommendation in its Bill report. I think that is an accurate reflection. Again, the Committee reserved its position on this clause.

Are there any comments on clause 60? Is the Committee content, subject to consequential amendments, to reserve its position on clause 60?

The clause places a general duty on the Department and DEL and gives the six elements to that. Are there any comments on that?

Mr Hazzard: I would like some clarity on why we are reserving our position on this clause. What is the issue?

The Chairperson: That is what I am asking?

Mr Lunn: It might be my usual — *[Inaudible due to mobile phone interference.]* — on behalf of the NICIE and the IEF — *[Inaudible due to mobile phone interference.]* — the Department's response is that they are catered for in previous orders. That is fair enough. However, we could bring that right through the Bill.

The Chairperson: OK, so is it the case that the Committee is content, subject to consequential amendments, with clause 60 as drafted?

Members indicated assent.

Clause 61 (Grants for educational and youth services, etc.)

The Chairperson: This clause amends the 1986 order to allow DEL, DE and DCAL to pay grants to persons for various services and relevant research. The Committee informally agreed that it was

content with the clause as drafted. Is the Committee content, subject to the consequential amendment, with clause 61 as drafted?

Members indicated assent.

Mr Lunn: Sorry, just for clarity, under clause 61, are grants not to be paid to voluntary or grant-maintained integrated schools?

Mr Stewart: There are separate provisions in the 1998 Order for paying grants to schools. This is grants for bodies other than schools.

Clause 62 (Tribunal to review certain decisions in relation to employment schemes and schemes of management)

The Chairperson: This clause places a duty on OFMDFM to make regulations to establish a tribunal, which will be appointed by the Department. The tribunal will consider schemes of employment and management that are referred to it. The Minister is to bring forward amendments that will transfer responsibility for the tribunal to OFMDFM. The Committee has not seen the relevant amendment. It deals with transfer of responsibilities for the tribunal to OFMDFM and any consequential amendments to reflect changes to the provisions on schemes of management and employment.

The clause touches on the employment and management schemes. The Committee previously felt that it required clarification from the Minister as to whether ESA or the board of governors for certain types of schools would be the employer of the staff. The Committee therefore reserved its position on the clause, pending a response from the Minister on the sole employer question. The Department still has not provided clarification on the sole employer heads of agreement question, so are we still reserving our views on clause 62 for those reasons?

Members indicated assent.

The Committee Clerk: Even though it is reserving its position on the clause, how does the Committee feel about the Minister's amendment about transferring all responsibilities for the tribunal to OFMDFM?

Mr Kinahan: Same comment as before — *[Inaudible due to mobile phone interference.]*

The Chairperson: — *[Inaudible due to mobile phone interference.]*

The Committee Clerk: So, a majority of members are reserving their position but some members are clearly very much in support — *[Inaudible due to mobile phone interference.]*

Mr Lunn: What is the difference between the Minister's amendment transferring responsibility for the tribunal to OFMDFM and what is already there, where it states that they will:

"make provision for the establishment of a tribunal"?

The Committee Clerk: According to the Bill as drafted, the Department would appoint members to the tribunal. The Minister is proposing that OFMDFM will do all of that, so it would take it completely out of the Minister's control.

Mr Kinahan: The answer I got to a question for written answer was that OFMDFM would do it at the appropriate time.

Mr Lunn: I did not get that.

Mr Kinahan: I have not got the answer with me, but I wrote asking about the tribunal and for some details, and the answer was at the appropriate time.

Mr Lunn: Until they manage to agree something.

The Chairperson: OK? Thank you.

Clause 63 (Sectoral bodies)

The Chairperson: This clause defines a sectoral body as a body recognised by the Department as representing the interests of schools of a particular description. The relevant sectoral body is the body representing the interest of schools of that description. The Committee reserved its position on the clause. The Committee also agreed to consider the question of a separate legal entity for IME schools as part of the clause. I assume that the position is the same. Any further comments?

Does the Committee agree that the question of a separate legal identity for IME schools should form part of the clause? Some members do; some members do not.

Mr Hazzard: The Catholic definition — [*Inaudible due to mobile phone interference.*]

The Chairperson: Is that not further on in the definition under one of the schedules?

Mr Stewart: It will probably be in that clause. The Minister will support both of those. He intends to bring forward amendments to include a definition of a Catholic school and a revised definition of an Irish-speaking school. That is probably subject to advice from legislative counsel, and that is probably the clause where we will include it, because it is relevant to identifying the appropriate sectoral body for those schools.

The Chairperson: Some members would probably support it, and others would not be in favour of it.

Mr Lunn: There is such a wide range of views from all the interested parties, and I am not quite sure how we will agree on that.

The Committee Clerk: It sounds like the Committee is agreeing to not agree.

The Chairperson: That is a fair assumption, yes.

The Committee Clerk: Is that also the position on the definition of Catholic schools, Chair?

The Chairperson: Yes.

Clause 64 (Supplementary, incidental, consequential, transitional provision etc.)

The Chairperson: This clause allows the Department to make any supplementary, incidental, consequential, transitory or transitional provisions as it considers appropriate to give full effect to the legislation. It allows secondary legislation to amend primary legislation, and we have had some reference to it as the "Henry VIII clause". A similar clause was opposed by the Regional Development Committee on the Transport Bill, and we found that interesting. The Committee had informally agreed that it was content with the clause as drafted. Are you aware, Chris, of the reasons for a similar clause in the Transport Bill being opposed by another Committee?

Mr Stewart: I was not aware of that, and I am not aware of the reasons for it. This is a standard clause that one would expect to see in a Bill.

The Committee Clerk: The Regional Development Committee at that time felt it an unnecessary additional power for a Department to have. That was the reasoning, I think.

Mr Lunn: It is not like the ESA clause where it could do anything it liked. It is allowing the Department to do what is necessary in a small way to give full effect to the legislation.

The Chairperson: We informally agreed to it previously. Are we content, subject to the consequential amendment, with clause 64 as drafted?

Members indicated assent.

Clause 65 (Regulations and orders)

The Chairperson: This clause provides that all regulations made under the legislation will be subject to negative resolution procedure with the exception of supplementary, incidental, consequential, transitory or transitional provisions set out in clause 64 and the regulations under clause 63 to appoint a tribunal, which are both done by affirmative resolution. The Examiner of Statutory Rules previously provided a report that indicated that he was generally content with the delegated powers in the Bill. The Committee asked for an amendment to clause 22, which would require affirmative resolution procedure on regulations relating to ESA's ancillary powers. That has led to a consequential amendment to clause 65 to allow for affirmative resolution. The consequential amendment is in the tabled items.

The Committee Clerk: Members have also agreed to make a change to clause 30, which would require regulations to have affirmative resolution. Instead of it just saying clauses 22 and 23, it would say clause 30 as well.

The Chairperson: Are members happy enough?

Miss M McIlveen: Yes, I am happy enough. We skipped over clause 64, and given the length of our conversation on clause 22 and the ancillary powers of ESA, we did not look at clause 64 in the same level of detail, given the far-reaching powers of — *[Inaudible due to mobile phone interference.]* However, it may be that the amendment to clause 65 will then —

The Committee Clerk: It does not touch on that clause. Clause 65 states that the provisions under clause 64 will be subject to draft affirmative resolution, which is the highest form of scrutiny that the Committee can apply. Members may take some comfort from that.

The Chairperson: Is the Committee content with the amendment to clause 65, as drafted?

Members indicated assent.

The Chairperson: That means that the Committee is content, subject to further consequential amendments, with clause 65, as amended. Are members content?

Members indicated assent.

Clause 66 (Interpretation)

The Chairperson: Clause 66 defines the terms used in legislation. There was a reserved position on clause 66; it is like an auction. I will refresh your memories. It was suggested that the clause be amended in line with other amendments, such as the heads of agreement being included as a schedule. The Minister's policy is to ensure that the requirements of the heads of agreement are reflected in individual provisions, as necessary. We await the outcome.

Mr Stewart: I do not think that the Minister envisages it touching clause 66.

The Committee Clerk: As the Committee has set out its position on the heads of agreement question very clearly, my procedural advice is that it could, probably, safely agree clause 66 but state clearly that it has concerns around the heads of agreement and the employer question and that it expects them to be resolved. The Committee can state that it has reserved its position, because the view of most members is that the matter has not been resolved.

Mr Kinahan: What was the legal position? If you put the heads of agreement into the Bill, it would not work, but was that because of the way in which we did amendments.

The Committee Clerk: As you can see, the GBA suggested that you include the heads of agreement as a schedule. I am not sure how the heads of agreement question is to be resolved. I do not know whether it will be resolved that way. However, since the Committee has reserved its position and said that it expects the matter to be sorted out, it could probably agree that clause, and you still have a marker down.

Miss M McIlveen: Therefore it is essentially agreed, subject to that being sorted out.

The Committee Clerk: It is on a without-prejudice basis.

Mr Lunn: I would be surprised if anybody wanted to run with the GBA's suggested amendment, because it is quite ridiculous. This is about definitions. The heads of agreement is an ill-drafted political document on which we cannot get clarification. Why on earth anyone would want it to be specified in the Bill as being necessary, rather than referred to, is beyond me. I definitely would not run with that.

Mr Hazzard: To mirror what Trevor said, I accept that the requirements of the heads of agreement will be throughout the Bill in various places, but I do not think that it would fit in the Bill as a schedule. It does not seem right for a political position to be in a schedule to a Bill.

The Chairperson: OK. Are we saying that there are different views, but, taking the Committee Clerk's comments on the procedural advice, the Committee is content with clause 66, as drafted, subject to that concern being addressed?

Mr Lunn: Are there different views, Chairman?

The Chairperson: Michelle expressed a different view.

Miss M McIlveen: No, I did not; I said, for clarification, that we were in agreement, subject to —

The Chairperson: Yes.

Mr Lunn: I am lost, because I cannot hear Michelle very well.

Miss M McIlveen: I was only trying to interpret what Peter said. *[Laughter.]*

The Committee Clerk: It is the Clerk's fault.

The Chairperson: It is dangerous to try to interpret a Clerk's advice; it is even more dangerous than trying to interpret what the Department is saying.

Mr Lunn: Is the suggestion that we agree the clause, subject to further discussion about the GBA's suggestion?

The Committee Clerk: If I understand members correctly, the Committee is to agree the clause on a without-prejudice basis. You have put down your marker already around the heads of agreements and sole employer question. It may be that the solution to that problem will have nothing to do with clause 66. Therefore, on a without-prejudice basis and subject to consequential amendments, the Committee is content to agree the clause.

Mr Rogers: It is consequential, because we are waiting on clarification on the heads of agreement.

The Chairperson: Clear as mud. We have got to clause 66 without getting to this stage.

Mr Lunn: We have had only one vote so far. *[Laughter.]* It would be nice if we could just agree something because the alternative is completely ludicrous.

The Chairperson: I am in your hands.

Mr Lunn: I propose that we agree clause 66 without any alterations, ifs, buts or consequential amendments.

The Committee Clerk: The motion falls. Therefore, as the motion was about agreeing the clause without any ifs and buts, you revert to the position that the Committee is content with the clause, subject to the consequential amendment.

The Chairperson: Agreed?

Members indicated assent.

Mr Hazzard: So, is the Committee seeking to get that included?

The Chairperson: No.

The Committee Clerk: To clarify: where members have agreed a clause today, they have agreed it subject to consequential amendment. That means that you have agreed, for example, clause 12, but if a further solution to, say, the heads of agreement problem comes along, oh my goodness, clause 12 will have to be changed. That is OK. The Committee does not have to rescind its decision; it could, if it wanted, adopt that overall solution and change clause 12.

Mr Lunn: Somebody used the word "clarification" about the heads of agreement.

Mr Rogers: I did.

Mr Lunn: You are to blame. *[Laughter.]* It would make no difference, frankly, how it was clarified; it still should not be in it. Well, it does not matter.

The Chairperson: OK.

Clause 67 (Minor and consequential amendments and repeals and revocations)

The Chairperson: This clause applies to schedules 7 and 8, which contain minor and consequential amendments and repeals. It removes references to ELBs in the education orders. The Committee informally agreed that it was content with the clause as drafted.

Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Clause 67 agreed to.

Clause 68 (Commencement)

The Chairperson: This clause contains provisions for the commencement of the legislation. Some provisions, such as the tribunal and the transfer of staff to the ESA, will happen after Royal Assent; other provisions come into effect only when the Department decides. The Committee informally agreed that it was content with the clause.

Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Clause 68 agreed to.

Clause 69 (Short title)

The Chairperson: The Committee informally agreed that it was content with the clause as amended, namely that the short title of the Bill will be Education Act (Northern Ireland) 2013.

Is the Committee content, subject to consequential amendment, with clause 69 as drafted?

Members indicated assent.

Mr Lunn: It will probably have to be 2014. *[Laughter.]*

Mr Hazzard: That is if the Committee agrees that it wants to put it through this year.

The Chairperson: Do we want to add a caveat to the short title? I would not jest.

Mr Lunn: I was not jesting.

Schedule 1 (The Education and Skills Authority (Status))

The Chairperson: Schedule 1 sets out the composition of the ESA board and the ESA's procedures for finance and reporting. The Committee had reserved its position on this schedule.

Various bodies raised concerns about the composition of the ESA board and why certain people were on the board and others not.

Miss M McIlveen: The word "status" is part of the title of schedule 1. Is that normal practice?

Mr Stewart: Yes. Most of schedule 1 is what you might call the standard recipe for a non-departmental public body, including the provisions on status. The bespoke part is around membership.

The Chairperson: It would be as well to have an amendment if there was to be a change in the definition of Catholic maintained schools. Would that change schedule 1(2)(ii):

"4 shall be persons appearing to the Department to represent the interests of trustees of maintained schools".

What would be the implications of that?

Mr Stewart: It is unlikely that the Minister would propose a change there. The legal advice that we received is that that provision is lawful because it preserves existing rights. The existing rights refer to the trustees of maintained schools.

The Chairperson: It changed the definition of Catholic schools.

Mr Stewart: A definition of "Catholic school" will be included. The definition of "maintained school" would not change. However, the established rights are those of the trustees of Catholic-maintained schools, and those are the established rights that would be preserved. The Minister would take the view that the reference in law should follow the existing wording, which is "trustees of maintained schools".

Mr Lunn: There is a debate about the make-up of the authority, and every sector is putting its spoke in. If there was a demand from integrated and Irish-medium schools, trades unions, young people and whoever else, how could that be accommodated in what is apparently proposed?

Mr Stewart: If the decision was to accommodate all the requests that were received, the membership provisions would need to be taken out and for us to start again.

Mr Lunn: The big one is from the voluntary grammars, which, oddly enough, I support. Where would they fit into the present definitions?

Mr Stewart: I do not think that they would fall within any of the definitions. If the Minister were to accede to all the requests, we would need to start again from first principles, decide what the membership of the ESA should be and reflect it in new provisions. Needless to say, that is not the Minister's policy.

Mr Lunn: I know that it is not the Minister's policy. It was the same the last time, Chairman, with the proposed make-up. Even by the time we were finished with it, and it went from seven to 15, it still did not come close to representing in any obvious way the people who needed to be represented. It seems to me, on the basis of that, that you could quite easily make up the board and the authority with those numbers and not have a single representative from the Irish-medium, integrated or voluntary sectors. You are talking about 45% of the school population. It looks like a "cross it out and start again" scenario to me.

Mr Kinahan: Is it not for us all to —

The Chairperson: Those are the reasons, among others, why the Committee reserved its position. Chris, can the Department refuse the appointment of the chief executive of an education and library board? Schedule 1(6)(4) states:

"ESA shall not appoint a person as chief executive unless the Department approves the appointment."

Mr Stewart: I believe that that is the case with education and library boards. If I am incorrect, I am sure that the gentleman behind me will give me some advice.

The Chairperson: Are there any changes? I think that Trevor reflected some of the issues that people have with schedule 1.

Mr Rogers: I agree with Trevor. It is contrary to the Minister's policy as agreed by the Executive. Does that mean that it was the Executive that formed the policy, and so it has to go back to the Executive to be changed?

Mr Kinahan: I thought that it was subject to the Committee and the Assembly.

Mr Stewart: It could be changed by the Assembly in any way that the Assembly deems fit. If the Minister wished to change it, he would have to go back to the Executive.

Mr Lunn: It reflects the heads of agreement only tangentially, because the heads of agreement is worded completely differently. It may amount to the same thing: 40% trustees and transferors, 40% political representatives, and 20% appointed by the Minister.

The Chairperson: You could not be sure of that document. It is not trustworthy. I would not quote it.

Mr Lunn: You probably know what I would do with it. There seems to be an awful lot of store set on the community representatives. That seems to be the Minister's cure for everything — that those four people can be magicked out of the community in some kind of geographical or demographic way.

The Chairperson: Members should look at the make-up of their education and library board.

Mr Kinahan: Is that necessarily the model that we want to follow?

The Chairperson: Parties and individuals should look at the education and library boards, which have served for all the years of their existence.

Mr Kinahan: I have a concern that whatever we put in here will be here for 30, 40 or 50 years, but the world changes.

The Chairperson: For those reasons, we still have no agreement on schedule 1, and that will be reflected in the report. OK?

Members indicated assent.

Schedule 2 (Provisions required in employment schemes)

The Chairperson: Schedule 2 sets out those matters that must be included in a scheme of employment, including the staff complement, discipline and suspension policies. The schedule allows the ESA to determine certain aspects of the employment scheme for a controlled or maintained school that has its delegation withdrawn. Again, the Committee reserved its position on the schedule.

This schedule touches on employment schemes. The Committee previously felt that it required clarification from the Minister on whether the ESA or boards of governors of certain types of school would be the employer of staff. The Committee therefore reserved its position on the schedule, pending a response from the Minister on the sole employer question. We are still in the same position, as there is no resolution on that issue. Are there any comments or views on schedule 2?

Mr Lunn: This is another issue on which we are no further on. It is subject to discussions in another place.

The Chairperson: OK?

Members indicated assent.

Schedule 3 (Transfer to ESA of staff employed by Boards of Governors)

The Chairperson: This schedule provides for the transfer of staff from boards of governors to ESA, with protections under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE). That is in line with ESA becoming the sole employer of all staff in schools.

The Committee previously reserved its position on this schedule as it relates to the issue of employment and the transfer of staff. Are there any comments on this schedule?

Mr Lunn: It is the same as the previous schedule, Chair.

The Chairperson: OK. Are there any comments in relation to the technical amendments that were proposed by the Northern Ireland Public Services Alliance (NIPSA)? Those are on page 120 of the clause-by-clause scrutiny table. It proposed that the TUPE regulations would apply to all staff transferring to ESA. That also refers to schedules 4 and 6. The response from the Department was that that is already the effect of the provision.

The Committee Clerk: Chair, a number of amendments were proposed by NIPSA, not just the one you highlighted about the TUPE regulations. It also asked for pensions and other provisions to be protected after transfer, which, if my understanding is correct, is above and beyond TUPE. The Department has advised that that would be a unique arrangement were it to be applied.

Mr Stewart: And unconstitutional.

The Chairperson: Is the Committee content to reserve its position on schedule 3?

Members indicated assent.

Schedule 4 (Transfer to assets, liabilities and staff of dissolved bodies)

The Chairperson: This schedule provides for the transfer of assets, liabilities and staff of the ELBs, the Staff Commission, the Youth Council and the CCMS, with protections for staff under the TUPE regulations.

The Committee sought a departmental response on the assets, liabilities and staff posts that are to be transferred. As yet, we have not had sight of what all that will entail.

The Committee previously reserved its position on this schedule. Are there any comments?

The Committee Clerk: It is the same again, Chair. The Committee will reserve its position. It has not seen the rest of the transfers, and this is also linked to the sole employer question.

The Chairperson: Is the Committee content to reserve its position on schedule 4?

Members indicated assent.

Schedule 5 (Transfer of certain assets and liabilities of CCMS before appointed day)

The Chairperson: This schedule provides for the transfer of assets and liabilities from CCMS. This allows for all the assets not transferred to ESA to be transferred to the Roman Catholic Church.

The Committee sought a departmental response on the assets, liabilities and staff posts that are to be transferred. As yet we have not seen that. Chris, is there any indication as to when that might be available?

Mr Stewart: I am sorry, Chair. I do not know. I would have to ask colleagues in the Department for an update on that. I should point out that that schedule deals with just assets and liabilities. It does not deal with staff.

The Chairperson: OK. We will correct that. Thank you.

Is the Committee content to reserve its position on schedule 5?

Members indicated assent.

Schedule 6 (Minor and consequential amendments)

The Chairperson: This schedule provides for the transfer of staff from DE to ESA, with protections under the TUPE regulations. However, for some strange reason, I cannot remember why, the Committee informally agreed that it was content with schedule 6 as drafted. Peter, can you keep us right?

The Committee Clerk: I think that it was because it was just a matter of the Department moving its staff from one box in DE to another box in ESA. Members felt that that was a matter for the Department.

Is the Committee content, subject to consequential amendments, with schedule 6 as drafted?

Members indicated assent.

Schedule 7 (Minor and consequential amendments)

The Chairperson: The Committee previously reserved its position on schedule 7.

A member raised concerns that the area planning provisions would override parental preference, particularly in the case where parents choose to transform a school into an integrated school. The Department advised that, if members wished to propose amendments that might disapply the requirement for proposals to comply with an area plan, such an amendment would best be tabled to schedule 7.

Is it the Committee's view that it wants to table an amendment that would disapply the area planning provisions in this situation? Trevor, I think that you raised this.

Mr Lunn: I am trying to recollect. I doubt whether it is the Committee's view that whatever I suggested should be taken on board.

Mr Stewart: Would it help if I briefly summarised the effect of the provisions as they are currently drafted and perhaps contrast that with the situation today?

The Chairperson: Yes.

Mr Stewart: If a school decides to seek transformation today by means of a ballot, a development proposal to that effect is brought forward, and it is decided by the Minister. The difference under these provisions is that, if there is a similar result, a proposal is brought forward and first considered against the area plan. If it is in conformity with the area plan, it would then go for ministerial decision in the usual way. If it were not in the conformity with the area plan, like any other proposal, it would be filtered out and would not proceed for ministerial decision. So, the difference in the procedure is the application of the area plan as a filter mechanism for any proposal for transformation, in the same way as any other proposal for the development of a school.

Mr Lunn: Yes; that was it. *[Laughter.]* It seemed to raise the spectre of a school not being allowed to transform to integrated status because it does not fit with the area plan, even if 80% of the parents wanted to do that. That does not seem logical to me.

Mr Stewart: Members must take a view as to whether that is right or wrong. The position in law today is that the Minister could decide not to allow the transformation to proceed.

Mr Lunn: As it is a development proposal, the Minister has the final say under the present rules or under this. It is the same thing.

Mr Stewart: That is correct; that is the very point that I am making. There is no absolute right of transformation for any school. It is all subject to decision by the Minister.

Mr Lunn: But the notion that the Minister could turn it down because it does not fit with the area plan seems illogical to me. It would affect the same number of pupils in the same school.

Mr Stewart: If it did not fit with the area plan, it would not even reach the Minister for decision. It would be turned down at an earlier stage.

Mr Lunn: How on earth could transformation not fit with the area plan?

Miss M McIlveen: I have not previously indicated my position on this, but, where Trevor finds it illogical, I find it logical. If every other sector has to comply with an area plan why should a school transformation also not have to comply?

Mr Lunn: May I come back on that?

The Chairperson: Yes; you can, Trevor.

Mr Lunn: As I think I said last week or the week before, if a new integrated school were being established, I would agree that it has to conform with the area plan. Although, I may have the view that, at times, that is also being applied illogically. However, when you are talking about the transformation of an existing school to integrated status, the school is already there. You would just be meeting the demands of the preference of parents to have a different status. What effect that would have on an area plan, I do not know. That is the point: I am making a distinction between transformation and establishment.

Mr Hazzard: On that, if a school were to transform, could that affect the sustainability and viability of another integrated school in the area? You would be damaging another school.

Mr Lunn: We have already agreed that integrated schools are so far apart that they cannot have even have dual — *[Inaudible.]*

Mr Hazzard: They would be in the same area plan, would they not? I am just wondering whether that is perhaps one of the reasons why a school needs to be cognisant of the effect on another school if it was to transform.

Mr Lunn: It has been used in the past as an excuse not to allow integrated schools to be established, because they might have an effect on a controlled or maintained school down the road. In some circumstances, perhaps, I would have a grain of sympathy with that, but not very much. However, when it is an existing school transforming because the right balance of pupils and their parents want it that way, I really do not see the problem. I worry that it would be another obstacle identified that might prevent transformations.

Mr Hazzard: If it were viable, would the area plan not let it through? If it was going to be OK, it would get through the filter anyway.

Mr Lunn: The school must be viable or it would not be there — or it would not be there shortly.

Mr Rogers: That takes me back to the earlier point I made about reviewing area plans. That might work, at the minute, within a particular area plan, but the area plans in the next board area will need to be reviewed to produce an area plan for that.

Mr Lunn: I got lost somewhere along the way. *[Laughter.]*

Mr Rogers: Maybe, in the present circumstances —

Mr Lunn: We are talking about the overlap between area plans?

Mr Rogers: Yes.

Mr Stewart: Chair, the purpose of the area plan will be, amongst other things, to identify the unmet need for integrated schooling. If an area plan has identified an unmet need that might be met through a school transforming, such a proposal would clearly be in conformity with the plan. If, on the other hand, a vote for transformation was unexpected, that might constitute new evidence of unmet need for integrated schooling, which might trigger a review of the area plan.

Mr Lunn: Is there something in the area-planning process that allows for dealing with the unmet need for integrated schools?

Mr Stewart: I think that the core reason for having such extensive provisions for reviewing or revising area plans is the recognition that new evidence can come along.

The Chairperson: I think, members, in the light of that, it is clear that there is no consensus on schedule 7. Would I be right?

Mr Lunn: You got that right.

The Chairperson: That can be reflected. We are still awaiting an amendment to:

"9 ... (b) ... the definition of 'Catholic maintained school'".

Mr Stewart: The definition of "Catholic school" will probably remove the need for a separate definition of "Catholic maintained school". That will probably come out.

The Chairperson: So, that would be the sum and substance of the amendment.

Mr Stewart: There will be only one reference to Catholic maintained schools left in education legislation, and that would be it. There would be a requirement for a particular form of consultation around a development proposal in a Catholic maintained school. However, the Minister's broader amendments, which would require consultation with the relevant sectoral body on any development proposal coming forward, would remove the need for that specific reference to Catholic maintained schools. We would simply take it out.

The Committee Clerk: Following on from what the Department said, the Minister has proposed a number of amendments to schedule 7. One of them is the:

"Requirement for any person or body bringing forward a development proposal to consult the relevant sectoral body or bodies."

I am sensing that the Committee is going to reserve its position on the schedule. You may care to give an opinion of the Minister's amendment ... go to the sectoral body.

The Chairperson: Are there any other comments? There is also an amendment:

"Removing the requirement for Transferor governors of Controlled Secondary Schools to also be governors of feeder Controlled Primary Schools."

That is one amendment that we would welcome. Is the Committee agreed to that amendment?

Mr Hazzard: I am in favour of all three of the proposed amendments, including the requirement for any person or body bringing forward a development proposal to consult, and the amendment concerning the transferor governors.

The Committee Clerk: Other members are reserving their position on the first amendment to schedule 7. However, is the Committee content, in principle, with the second amendment, which is on the transfer of governors of controlled secondary schools?

Members indicated assent.

The Committee Clerk: What about the third amendment?

The Chairperson: Schedule 7 sets out the minor and consequential amendments to exercising the existing legislation. There is an error in relation to the proposed amendment of article 49 of the Education and Libraries (Northern Ireland) Order 1986, which deals with suspensions and expulsions. The current amendment in the schedule would leave the article referring to ESA making a scheme for schools under its management, which are the controlled schools. That needs to be changed to a straightforward reference to controlled schools, as ESA will not manage those schools.

That has been an error in article 49 of the 1986 Order.

Mr Stewart: It is an error in the instructions for the drafting of this Bill.

The Chairperson: So, it was to tidy it up. Is the Committee content to reserve its judgement on schedule 7?

Members indicated assent.

Schedule 8 (REPEALS)

The Chairperson: Schedule 8 sets out the existing legislation that is being repealed. The Committee informally agreed that it was content with the schedule, as drafted. However, there are probably a couple of issues, as a result of discussions that have taken place as we have gone through this today. There was the issue around the repeal of the ETI matters.

Is the Committee content with schedule 8, as drafted, subject to consequential amendments?

Members indicated assent.

The Chairperson: There is a list of suggested amendments that were put forward by stakeholders. They do not sit readily with the Bill's clauses and schedules. Previously, the Committee informally agreed to support one in relation to controlled schools, which was recommended by the Minister.

I refer members to page 132 of the scrutiny table.

The Committee Clerk: Members have already agreed suggested amendment h, which was from the TRC. Does the Committee support any of the others?

Mr Lunn: Suggested amendment e is from the Association of Teachers and Lecturers (ATL). It makes a suggestion about the Northern Ireland Audit Office. The departmental response is that it is not a function of the Department of Education to legislate in relation to the Audit Office, but ATL's suggestion is valid. Where would legislation on the operation of ESA arise under the scrutiny of the Audit Office?

Mr Stewart: There are two points to that. First, the operation of ESA will be under the scrutiny of the Audit Office, but legislation on that will be a matter for DFP. DFP and the Audit Office would take a very dim view if the Department of Education tried to indicate to the Audit Office, in any way, what it should or should not examine.

Mr Lunn: Are you saying that the Audit Office already has the power to scrutinise ESA?

Mr Stewart: Absolutely.

Mr Lunn: In the same way that it scrutinises the present system?

Mr Stewart: I have no doubt that, in due course, the Audit Office will be looking very carefully at the business case for ESA to ensure that we have delivered.

Mr Lunn: Yes. If it is already there, we do not need to worry about it.

Mrs Dobson: I totally agree with the Ulster Farmers' Union that the Bill should be amended in line with the Scottish system to include a presumption against the closure of rural schools. The departmental response states:

"The Minister considers that these matters are best dealt with in the area planning process."

They will not be dealt with in the area planning process. They will simply close. I agree totally with the Ulster Farmers' Union assessment on that. We, too, need what Scotland already has.

The Chairperson: We discussed that.

Mrs Dobson: We did but the issue is back.

The Chairperson: There is a list of proposed amendments from various organisations. I suggest that any that we want to support are reflected in the report. It is then ultimately up to members and parties whether they feel there are any that they want to pursue at Consideration Stage. Those proposed amendments are there to help the Committee Clerk to formulate and come to a conclusion on the view of the Committee. However, that will be reflected because it will all form part of the report.

The Committee Clerk: Indeed, Chair. Where I am struggling a little is that I am not clear at all about members' views on some of those proposed amendments. With some, it is very clear.

The Chairperson: Unless members want to express a view, we could end up having a discussion on every one of those proposed amendments. One view has already been expressed, and Trevor referred to a proposed amendment. Do members have any other comments?

Miss M McIlveen: I would like to seek clarification on the point that Jo-Anne made about the Schools (Consultation) (Scotland) Bill. Do we know the detail of that and whether its definition of "rural" is similar to ours?

Mr Stewart: I will have to check that, Michelle. I am not sure of the definition.

Miss M McIlveen: Anything outside Belfast or Londonderry is regarded as rural, so it means that we would be putting protection on other schools.

Mr Stewart: To introduce such a requirement would be a significant policy change. It is quite open to the Committee to suggest that. It is not currently what the Minister favours.

Miss M McIlveen: Can I get clarification from the Department on that and how that correlates with our practice?

Mr Stewart: Yes, we can certainly find out the definition of "rural".

Mr Hazzard: We covered the new definition of "Irish speaking school" earlier. However, that will be included, like the definition of "rural", in another place, will it not? The issue of the new legal definition is in the "Miscellaneous" section as proposed amendment i.

The Committee Clerk: The report will indicate that some members felt strongly about that. However, I think that the Committee did not make a decision on that but you are putting down a similar marker.

Mr Hazzard: Just so that you know when you are going through them.

Mr Rogers: I similarly agree with proposed amendment i. in relation to Irish-medium schools but also with b. in terms of increased autonomy for schools. However, it has to be increased autonomy with clear guidelines.

Mr Lunn: We had a fair old discussion last week about proposed amendment q.:

"The Bill to be amended to allow for the repeal of Article 90(2)b of the Education (NI) Order 1989 which precludes special schools from being designated as integrated schools."

The departmental response states:

"This is outside the scope of the Bill."

There are already lots of other repeals in this Bill and I cannot see what that section should not be repealed. We got to the bottom of the argument that the intention was not automatically to give special schools integrated status but merely to give them the opportunity to apply in the normal way. Members agreed to reserve their position, so that is as far as I can say.

The Committee Clerk: I think that the member is clearly indicating his support for an amendment along those lines.

Mr Lunn: Yes.

The Chairperson: Any other comments?

Mr Kinahan: Elements of proposed amendment p — *[Inaudible due to mobile phone interference.]*
ParentsOutloud — *[Inaudible due to mobile phone interference.]*

The Committee Clerk: Is the Committee's view that it has some sympathy with the ideas behind the — *[Interruption.]* — but are perhaps viewing this as not the appropriate vehicle for the amendment? Is that what the Committee is saying?

Mr Kinahan: That is what — *[Inaudible due to mobile phone interference.]* — is certainly saying.

The Chairperson: OK, members, we will conclude with the long title. It has taken us a long time to get to this point. The long title of the Bill is as follows: a Bill to provide for the establishment and functions of the Education and Skills Authority; to make further provision about education, educational services and youth services; and for connected purposes.

Is the Committee content with the long title of the Education Bill as drafted?

Members indicated assent.